



Legal Protection for Children as Victims of the Crime of Sexual Intercourse

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Abstract: This study aims to determine legal protection for children as victims of the crime of sexual intercourse. The method used in this research is empirical research methodology. This study uses a qualitative approach and sampling using purposive sampling and using descriptive qualitative analysis techniques. The results of this study indicate that legal protection for child victims of the crime of sexual intercourse is given with the aim of protecting victims, especially victims of sexual intercourse in order to get their rights as victims by way of children getting health services as an effort to restore the condition of children as victims of sexual intercourse, children also get legal protection in terms of legal aid, rehabilitation, and prevention. The need for a fair criminal law settlement for victims of sexual intercourse, which adds or considers the rights of victims of sexual intercourse and parents should participate in efforts to provide protection for children by fulfilling children's rights, protecting the best interests of children, and increasing supervision over children. environment and children's play area.

Keywords: Protection; Child; Victim; Intercourse

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1. Introduction

Everyone has their own interests, which are not only the same, but sometimes contradictory, so that legal arrangements are needed to protect those interests, which involve the interests of children regulated by legal provisions relating to child protection. To ensure that a child can live normally, the State has provided a legal umbrella, namely Law Number 23 of 2002 concerning Child Protection. Child protection is all efforts made to create conditions so that every child can carry out his rights and obligations for the development and growth of children naturally, physically, mentally and socially. And protected from violence and discrimination.

The application of child protection in the form of state accountability is the state's responsibility for the promotion of children's rights, not just a legal responsibility, but also a constitutional responsibility and internationally recognized human rights. Protection of children is very important because violations of child protection are essentially violations of human rights. Furthermore, violations of children's rights are a major obstacle to the survival and development of children because children who experience violence, exploitation, neglect and other abuse will take risks, such as shorter lives, poor mental and physical health, as well as other problems. problems related to education (including dropping out of school). However, On the other hand, effective protective measures will increase children's chances to grow physically, mentally, confidently, and have self-esteem. In this modern era, we find so many crimes and often the victims are children. Some forms of violence in early childhood that are often found in the community are physical violence, psychological violence, sexual violence, and social violence.¹The Ministry of Women's Empowerment and Child Protection (PPPA) has recorded 14,517 cases of child violence occurring throughout 2021. Of the 14,517 cases against children, 45.1 percent were cases of sexual violence.²

Crime is a reality in life that still requires special handling. This is because crime creates unrest in people's lives in general. Therefore, various efforts are always made to overcome these crimes, although in reality it is very difficult to eradicate crime completely because basically crime will always develop along with the development of society.³

Meeting the necessities of life there are often crimes and violations committed by certain people and people who threaten some members of the community,

¹Ekaningtyas, Ni Luh Drajati. (2020). Psychology of Communication and Sexual Violence in Early Childhood. *Pratama Widya: Journal of Early Childhood Education*. 5(2), 148.

²<https://www.cnnindonesia.com/nasional/20220120030219-20-748827/14517-case-kerasan-anak-terjadi-sepanjang-2021>.

³Prodjodikoro, Wirjono. *Certain Crimes in Indonesia*. (Jakarta : PT Reflika Aditama, 2002), 15

threatening actions are criminal acts.⁴A criminal act is an act which by a rule of law is prohibited and is punishable by punishment, provided that at the same time it is remembered that the prohibition is aimed at the act, (i.e. a situation and event caused by the behavior of a person), while the criminal threat is directed at the person who caused the incident.⁵We can easily find crimes against children either through television, social media, newspapers, and so on, it is quite heartbreaking for a nation that upholds morality as well as a portrait of the nation, is a benchmark for the nation's civilization, therefore it must be carried out in accordance with the capabilities of the homeland and nation. . Child protection activities are a legal action that has legal consequences.⁶Therefore, crime is categorized as a major problem in people's lives.⁷

Considering that crime prevention efforts through non-penal channels are more of a preventive measure for the occurrence of crime, the main target is to deal with these conducive factors, including social conditions that can directly and indirectly lead to or foster crime.⁸The application and enforcement of the law are elements of the legal system that must be continuously addressed in order to realize a legal position in a legal state that is beneficial to the interests of the community, nation and state.⁹So that society and every other person, including the government must heed it, by making laws on the basis of natural rights themselves.¹⁰The government creates order and peace in people's lives, and maximizes the potential for regional development.¹¹As said by Prof. Fenty Puluhulawa in his writings also stated that the Government through the law has provided a starting point for the judiciary, which is carried out for the sake of justice based on the One Godhead.¹²

⁴Ismail, Dian Ekawaty., & Sarson, Mohamad Taufiq Zulfikar. (2021). Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes. *Journal of Law Review*. 3(3), 58

⁵Lakoro, Aniza., Badu, Lisnawaty W., & Achir, Nuvazria. (2020). Weak Police in Handling Crimes of Online Togel Gambling". *Legality Journal*. 13(1), 36

⁶Nashriana. *Criminal Law Protection for Children in Indonesia*. (Jakarta: PT RajaGrafindo Persada 2012), 3

⁷AS Alam and Amir Ilyas. *Criminology An Introduction*. (Jakarta: Prenadamedia Group, 2018), 29

⁸Kendi, John. (2017). Criminal Policy in the Indonesian Law State: Efforts to Welfare the Community (Social Welfare). *Journal of Islamic Government and Politics*. 2 (1), 19

⁹Soekanto, Soerjono. *Introduction to Legal Research*. (Jakarta: UI- Press, 2010), 11

¹⁰Daffodil, Dolot Alhasni. (2020). Determination of Legal Protection for Neighboring Right Holders.*Journal of Law Review*.2(1), 67

¹¹Achir, Nuvazria, and Sri Nanang Meiske Kamba. (2021). The function of sharia-based Regional Regulations on Education and Social Services in the Regions. *Jambura Law Review*. 3 Special Issues, 16

¹² Puluhulawa, Fenty., Tujow, Lusiana M., & Sutrisno. (2020). Application of the Principles of Justice, Legal Certainty and Benefit in Judge's Decisions. *Gorontalo Law Review Journal*. 3, (2), 184

Sexual violence against minors has become a threat in Indonesia, rampant sexual violence in Indonesia makes everyone alert because sexual violence is a form of torture against children as sexual stimulation. The abuse in question is in the form of asking or forcing children to perform sexual acts / activities, exposing sexual genitalia that are inappropriate for displaying to children, reporting pornographic content to children, having intercourse with children, making physical contact with the genitals. from a child (except for certain activities, for example a medical examination of the child), looking at the genitals of a child by not making physical contact (except in non-sexual contexts,¹³Indirectly, the perpetrators must and must be processed legally.¹⁴ Many criminal acts have been processed in court, but from those cases the perpetrators were not sentenced to the maximum sentence in accordance with the provisions of the legislation.¹⁵ Legal protection is very necessary because it is an effort to integrate various needs in the association so that there is no conflict between needs and can enjoy all the rights granted by law.¹⁶

Violence, harassment, and sexual exploitation do not only happen to adult women, but also women who are classified as minors (children), this sexual crime also does not only take place in companies, offices, or certain places that provide opportunities for Humans of different types can communicate with each other, but it can also occur in the family environment.¹⁷

Sexual intercourse with a minor will certainly have an impact on the psychological and other developments of the child, especially for the victim. Psychological impact on children will give birth to prolonged trauma which can then give birth to unhealthy attitudes, such as inferiority, excessive fear, disturbed mental development, and ultimately mental retardation. This situation may be a bad memory for the child victims of sexual intercourse. Children who are victims of sexual intercourse suffer many losses, not only material, but also immaterial such as emotional and psychological shocks, which can affect the child's future life. Sexual intercourse is a crime that is classified as decency. Sexual intercourse can be said to be a violation of moral values and therefore also a violation of the law. There have been a lot of things that have been going on lately. It is widely reported in the media that children are victims of sexual crimes. No exception, in Bone Bolango Regency, one of the victims of sexual

¹³M, Arief Mansur, D., & Gultom, E. *The Urgency of Crime Victim Protection*. (Jakarta : PT RajaGrafindo Persada, 2007), 137

¹⁴Wantu, Fence M. *Criminal Procedure Law*. (Yogyakarta: Reviva Cendekia, 2011), 13

¹⁵ Alhasni, Mohamad Rizky., Badu, Lisnawaty W., & Nggilu, Novendri M. (2019). *Assessing the Role of the Police in Preventing the Crime of Obscenity Against Minors*. *Legality Journal*. 12(2), 112

¹⁶Puluhulawa, Jufryanto., Towadi, Mellisa., & Swarianata, Vifi. (2020). *Leato / Japanese Cargo Wreck Underwater Site Legal Protection*. *Journal of Legal Reform*, 24(2), 197

¹⁷Wahid, Abdul & Irfan, Muhammad. *Protection of Victims of Sexual Violence Advocacy on Women's Human Rights*. (Bandung: PT Rafika Aditama, 2011), 7

intercourse was even carried out by people who were closest to the victim. The following is the case data for the Criminal Investigation Unit of the Bone Bolango Police in the last three years as follows: No exception, in Bone Bolango Regency, one of the victims of sexual intercourse was even carried out by people who were closest to the victim. The following is the case data for the Criminal Investigation Unit of the Bone Bolango Police in the last three years as follows: No exception, in Bone Bolango Regency, one of the victims of sexual intercourse was even carried out by people who were closest to the victim. The following is the case data for the Criminal Investigation Unit of the Bone Bolango Police in the last three years as follows:¹⁸

Table 1.1 Cases of Sexual Intercourse against Children in the Legal Territory of the Bone Bolango Police

Year	Number of Cases
2019	5
2020	8
2021	12
Total	25

Data Source: Bone Bolango Police, 2022

Based on the table above, all cases of 25 children who have become victims of sexual intercourse in the jurisdiction of the Bone Bolango Police must receive special attention. In essence, children cannot protect themselves from various kinds of actions that cause mental, physical and social losses in various fields of life. Children must be assisted by others in protecting themselves.

2. Method

The research method used in this paper is empirical research, which is said by one of the experts Mukti Fajar that this empirical research is a research or social study. The point is to look at the social facts that have occurred based on the legal facts on the ground.¹⁹This research was conducted through interviews and real actions obtained through direct observation. While the sampling using purposive sampling and using a qualitative approach and data analysis techniques using descriptive research.

3. Legal Protection for Children as Victims of the Crime of Sexual Intercourse

¹⁸Interview with Muh. Arianto as the Satreskrim of the Bone Bolango Police. Tuesday, December 6, 2021

¹⁹Fajar, Mukti., & Achmad, Yulianto. Dualism in Legal Research (Normative and Empirical), (Yogyakarta: Pustaka Pelajar, 2010), 153.

The problem of children is definitely not a trivial matter whose solution is enough through the act of turning the palm of the hand, but the child is the next generation of the nation and state. The actions taken in terms of fulfilling the legal protection of children who are victims of the crime of sexual intercourse have been optimized in such a way, starting from providing assistance to victims to the process of developing the victim's mentality resulting from the act of intercourse he experienced. Protection guarantees must also be given to children's potential, which must be developed as well as possible and protected from acts of violence and discrimination so that the constitutional rights of children are guaranteed and fulfilled so that they can live, develop,²⁰

According to Philipus M. Hadjon, "legal protection is the protection of dignity, as well as the recognition of human rights owned by legal subjects based on general provisions from arbitrariness or as a collection of rules or rules that will be able to protect something else.²¹ So that the degree of legal compliance depends on the law-making process.²²

Legislation has provided rules for the rights of victims and witnesses, namely Article 5 of Law Number 31 of 2014 concerning Protection of Witnesses and Victims, and Article 69A of Law Number 35 of 2014 concerning Child Protection. Protection of children is also regulated in Law Number 39 of 1999 concerning Human Rights, which in article 58 paragraph 1 states that every child in the care of parents, guardians or any party has the right to receive legal protection from all forms of physical and mental violence. , neglect, ill-treatment, and sexual harassment.²³

The obligations and responsibilities of the State and Government in child protection efforts are regulated in Law Number 35 of 2014 amendments to Law Number 23 of 2002 concerning Child Protection, namely:²⁴

- a. Respect and guarantee the human rights of every child without distinction of ethnicity, religion, race, class, gender, ethnicity, culture, and language, legal status of the child, order of birth of the child and physical and/or mental condition (Article 21);
- b. Provide support for facilities and infrastructure in the implementation of child protection (Article 22);

²⁰Ahir, Nuvazria. (2022). Fulfillment Of The Constitutional Rights Of Abandoned Children Victims Of Economic Exploitation. *Journal of Jambura Law Review* .4(1), 161.

²¹Kansil, CST Introduction to Indonesian Law and Legal Administration. (Jakarta: Balai Pustaka, 1989), 40

²²Santiago, Faisal. (2017). Law Enforcement of Corruption Crimes by Law Enforcers for the Creation of Legal Order. *Pagaruyung Law Journal*. 1 (1), 23

²³Article 5 Paragraph 1 of Law Number 39 of 1999 concerning Human Rights.

²⁴Law Number 35 of 2014 amendments to Law Number 23 of 2002 concerning Child Protection

- c. Guarantee the protection, maintenance, welfare of children by taking into account the rights and obligations of parents, guardians or other people who are generally responsible for children and oversee the implementation of child protection (Article 23);
- d. Guarantees children to exercise their right to express opinions according to the child's age and level of intelligence (Article 24)

The above description can provide an understanding that the state has a responsibility to protect every citizen who experiences any form of crime. Every human being has the right to live so that the state has an obligation to provide legal protection. Quoting what was said by Lisnawaty Badu where it was said that the right to life must also be protected by the state, especially the rule of law.²⁵ So that every behavior, action, thought and decision of the government and its people must be based on law. In connection with the opinion of Novendri M. Ngilu that Indonesia is the highest agreement of the state-formers, even though it has experienced a constitutional test when the 1945 Constitution was changed to the Constitution of the United States of Indonesia in 1949, however, the recognition of the regions under the auspices of the Indonesian State still recognized.²⁶

The following are some of the legal protections given to child victims as the results of interviews with the Assistant Investigator for the Protection of Women and Children at the Bone Bolango Police, First Brigadier Fingky A. Mantili, SH and First Brigadier Desriyanti Ngoyo, SKM, namely:²⁷

- a. Obtain protection for the security of his personal, family, and property, and be free from threats related to the testimony he will, is currently giving, or has given.
Based on the results of the author's interview with investigators from the Women and Children Protection section, that in providing protection for personal, family, and property security, as well as being free from threats related to testimonies that will be, are being, or have been given to child victims, the PPA Unit The Bone Bolango Police have tried to provide protection in the form of assistance to victims of sexual intercourse and their families in order to avoid future threats from both the suspect and from other parties in the ongoing investigation process.
- b. Participate in the process of selecting and determining the form of security protection and support.

²⁵Badu, Lisnawaty. (2012). Euthanasia and Human Rights. *Legality Journal*. 5(1), 1

²⁶Nggilu, Novendri M.. (2020). Juridical Review of Criminal Sanction Arrangements in Gorontalo Provincial Regulations. *Lambung Mangkurat Law Journal*. 5(2), 110

²⁷Interview with First Brigadier Fingky A. Mantali and First Brigadier Desriyanti Ngoiyo. Tuesday, June 7, 2022.

Investigators of the PPA Polres Bone Bolango stated that victims of sexual intercourse were given the freedom to determine their own forms of protection and security support for themselves.

- c. Give information without pressure
PPA investigators from the Bone Bolango Police said that during the investigation process, victims of sexual intercourse gave information without pressure from anyone, to make it easier for investigators to collect evidence.
- d. Get a translator
PPA investigators stated that the victim also received assistance from a translator for children who had difficulty speaking or were not fluent in speaking or providing information during the investigation process.
- e. Free from ensnaring questions
During the investigation process, the Bone Bolango Police investigator did not ask questions that ensnared child victims so that they felt safe in giving testimony.
- f. Get information about the progress of the case
The investigator said that the victim could get information about the progress of the case to the investigators of the Women and Children Protection Unit of the Bone Bolango Police.
- g. Get information about court decisions
Victims of sexual intercourse can ask the police for information about the court's decision from the Women and Children Protection Unit of the Bone Bolango Police.
- h. Obtaining information in the event that the convict is released
The police, in this case the investigator of the Women and Children Protection unit, notifies the victim in the event that the convict is released
- i. Identity withheld
Protection of the identity of the victim of sexual intercourse is devoted to reducing the trauma experienced by the victim. Saying the identity of the victim and disseminating information about the victim will damage the victim's good name and damage the future of the victim of immorality. Victims of sexual intercourse will experience a loss of privacy and trust.
- j. Get legal advice
PPA investigators always provide legal advice to victims of sexual intercourse from the beginning to the end of the investigation process.
- k. Getting Medical Help
PPA Assistant Investigator, First Brigadier A. Mantali, SH stated that child victims in the crime of sexual intercourse also receive medical services. Medical services can be in the form of health checks or treatment until the victim recovers and also a written report on visum et repertum or a medical certificate that can be used as evidence. This certificate is required if the case of sexual intercourse is legally processed.
- l. Getting legal assistance

Legal assistance provided can be in the form of advocacy and assistance to victims of sexual intercourse. This assistance is carried out by the government or non-government institutions such as Non-Governmental Organizations (NGOs). Special assistance is provided by accompanying the victim of the crime of sexual intercourse during the examination at the police, before the trial, during the trial, and after the trial. Assistance is provided so that children do not feel cornered, afraid of being treated unfairly during the legal process.

m. Get psychological rehabilitation assistance

Some of the stages above are part of victims of violence to get full legal protection, in addition to the child protection law and human rights law that can protect the interests of victims, there is also a regulation that is devoted to protecting witnesses and victims, namely witness and victim protection institutions and Basically, at all stages, there will be terms and conditions that must be met first, after which you will get protection from any form of crime. Legal protection is given solely as a guarantee for victims to get essential justice and of course the legal protection is a form of protection provided by the state to its people who are dealing with legal processes.²⁸

To quote as said by Fence M. Time in his Journal that the essence of justice is an assessment from one person to another, which is generally seen from the party receiving the treatment only.²⁹ Quoting as stated by Suwitno Yutye Imran that Justice serves as a guide to distinguish between fair and unfair actions, elements of the aspect of justice can be contained in the substance.³⁰

Social media is also a factor in the occurrence of criminal acts. Because children who experience crime start from the use of social media. Children can interact with anyone through social media such as Facebook, WhatsApp, and Instagram. Minors have a high curiosity to get to know strangers on social media. After getting acquainted on social media, the perpetrator invites to meet and usually ends in crime. Perpetrators of sexual intercourse feel that children can be one of the targets to channel their sexual desires. This is influenced by the opinion that children are not capable enough to understand that the act is a criminal act or that children do not have the personality to resist the perpetrator's wishes. Basically, in Indonesian state law, especially in the Criminal Procedure Code, the authority of law enforcers to find and examine criminals is limited by

²⁸Tijow, Luciana. Protection of Human Rights to the Right to Life of Children in the womb outside of a legal marriage. *Legality Journal*. 3 (2), 80

²⁹Wantu, Fence M. (2013). Judge's Obstacles in Creating Legal Certainty, Justice, and Benefits in Civil Courts. *Legal Pulpit Journal*, 25 (2), 206

³⁰Imran, Suwitno Y. (2021). The Urgency of Regulation of the Ultra Qui Judicat Principle in Criminal Judgments. *Journal of Law Review*. 3(2), 398

the attitude of not arbitrarily arresting, examining and punishing someone without clear evidence and procedures. A person who is strongly suspected of having committed a criminal act must also be treated like a human being.³¹Therefore, the important point is to ensure that every competent person in the authorities conducts a prompt and impartial investigation into indications such as acts of torture or serious discrimination that occur in their jurisdiction, especially sexual intercourse.³²

Sexual intercourse with children will certainly have an impact on the psychology of children and will give birth to prolonged trauma which can then give birth to unhealthy attitudes, such as inferiority, excessive fear, disturbed mental development, and ultimately result in mental retardation. This situation may become a bad memory for children who are victims of sexual intercourse. The development of digitalization of information and communication technology in the form of social media exposes the public to a new reality, namely the mortal world that is visible from the screen of the device/gadget but synchronized with real world life.³³

PPA Assistant Investigator, First Brigadier A. Mantili, SH stated that legal protection for children who have trauma, namely children will be deposited in LAPAS (Temporary Child Care Institutions). If the child does not have trauma, the child will be returned to the parents, but when carrying out the BAP he is accompanied by the Social Service or P2TP2A (Integrated Service Center for the Empowerment of Women and Children. Rehabilitation is given to children who are victims of the crime of sexual intercourse through psychological rehabilitation of a child, so that the child is expected to return to the way it was before he became a victim of the crime of sexual intercourse. Providing rehabilitation to victims of sexual intercourse to help the victim to improve the victim's way of thinking and reorganize his disturbed psychology. This condition can be in the form of depression, severe stress,

Based on this, the author can draw the conclusion that legal protection for children who are victims of sexual intercourse should not only be carried out until the decision is completed but must continue until the child is truly worthy of his life and can live and develop healthily in accordance with what must be done. accepted by the child, it is in line with the purpose of victimology which wants to protect victims, especially victims of sexual intercourse, in order to get

³¹ Ismail, Dian Ekawaty., Tamu, Yowan. (2009). Efforts to Protect the Rights of Suspects/Defendants Through Pretrial Mechanisms in Gorontalo City. *Journal of the Legal Pulpit*. 21(1), 83

³²Towadi, M., Kasim, NM, Rumawi, R., & Tahir, SA (2021). An Indication of China's Policy towards Uighurs and its Implications by International Law Aspects. *Jambura Law Review*. 3(1), 66

³³ Puluhalawa, MRU, & Husain, R. (2021). Body Shaming Through Social Media As a Digital Crime In The Era of Disruption. *Jambura Law Review*, 3(1), 117

their rights as victims. So that the victim as the party who suffers physically and spiritually as well as the party who is the most materially harmed can get the rights that should be obtained.

4. Conclusion

Legal protection for child victims of the crime of sexual intercourse is given with the aim of protecting victims, especially victims of sexual intercourse in order to get their rights as victims by way of children getting health services as an effort to restore the condition of children as victims of sexual intercourse, children also get legal protection in terms of legal assistance, rehabilitation, and prevention.

The need for a fair criminal law settlement for victims of sexual intercourse, which adds or considers the rights of victims of sexual intercourse and parents should participate in efforts to provide protection for children by fulfilling children's rights, protecting the best interests of children, and increasing supervision over children. environment and children's play area.

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