



The Rights of Women and Children Victims of Rapes: Study at Ternate Resort Police

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Abstract

This study aims to analyze the accommodation rights of victims of the crime of rape during the investigation process at the Ternate Police and a form of legal effort in the criminal justice system in Indonesia to provide protection against the crime of rape. The type of research used in this study is an empirical research method as a starting material for researchers to approach the law, concept approach, and case approach. Therefore, in this research through literature study and field study by conducting interviews. The characteristics of this study are entirely using primary data, consisting of primary legal materials; secondary legal materials; as well as tertiary legal materials. The results showed that legal protection provided for victims of underage sexual intercourse and rape in the criminal justice system is carried out through a preventive and repressive efforts carried out, both by the community and the government (through law enforcement officers), such as providing protection/supervision from various threats that can endanger the lives of victims, providing adequate medical and legal assistance, examination and judicial processes. That the accommodation of children's rights as victims of underage sexual intercourse and women as victims of rape during the investigation process at the Ternate Police is in accordance with the positive law applicable in the criminal justice system.

Keywords: *Legal Protection; Rights of Victims; Children; Women; Rape*

Introduction

One of the phenomena of crime that is often experienced by children and women is an immoral crime. Of the many immoral crimes that often make children and women as victims, namely the crime of

rape (verkrachting).¹In this postmodern era, the crime of rape is a crime (misdrijven) that gets enough attention in the community. Often in newspapers or online news informs of a crime of rape.

If you study history, actually this type of crime (delict, strafbaarfeit) has existed for a long time, or it can be said as a classic crime configuration that will always follow the development of human culture itself. There are developing all the time although maybe not too much different from before. In addition, this crime of rape does not only occur in big cities that are relatively more advanced in culture, awareness or legal awareness, but also occurs in rural areas which still hold relatively high values. , tradition (tradition), and customs (custom).²

Children and women are prone to become victims of rape, one of the factors is because of their weak position. This also means that the crime of rape is a form of violence against women which is an example of the vulnerability of women's positions, their accentuation of men's sexual interests. The sexual image of women, who have been placed as sexual objects of men, turns out to have far-reaching implications on women's lives, so that they are forced to always face violence, coercion and physical and psychological torture.

Various studies around the world show that violence against children and women is something that is terrible for women themselves and is a cause of physical harm and reproductive health of children and women. Attention and protection of the interests of victims of the crime of rape, either through the criminal justice process (litigation/adjudication) or through certain social care facilities is an absolute part that needs to be considered in criminal law policies and social policies, both by the legislative, executive, judicial institutions. , as well as by existing social institutions. Based on the goal (oogmerk) to realize equitable distribution of justice (justice) and general welfare,

The phenomenon of the crime of rape causes the most difficulties in its resolution. In addition to the difficulties in the limitations above, there are also difficulties in proving such as rape or obscene acts which are generally carried out without the presence of other people or third parties. Although many rape cases have been processed to court, but from the existing cases, the perpetrators were not sentenced to the maximum sentence in accordance with the provisions of the legislation contained in the Criminal Code (KUHP) CHAPTER XIV concerning crimes against decency (Article XIV). 281 to 296), specifically regulating acts of rape carried out with violence are regulated in Article 285 of the Criminal Code which states:

"Whoever by force or threats of violence to force a woman to have sex with him outside of marriage, is threatened with rape, with a maximum imprisonment of twelve years".

The victim factor plays an important role to be able to overcome or resolve cases of rape, with courageous steps from the victim and the support of families and communities. Because in general, victims experience threats of another rape from the perpetrator and this makes the victim afraid and traumatized. Based on the applicable provisions, then the victim can sue loss or compensation for convict party. The issue of protection for victims of violent rape has always been an interesting phenomenon to be observed, because of the problem protection for rape victims is not only related to the provision of protection, but also relates to compensation, restitution and obstacles in the field that become obstacles.

¹ Octorina Ulina Sari, 2014, Upaya Perlindungan Korban Perkosaan, Ditinjau dari sudut pandang viktimologi, *Jurnal Hukum*, Fakultas Hukum, Universitas Atma Jaya Yogyakarta, hlm. 1

² Yulianta Saputra, 2018, Perlindungan Hukum Korban Tindak Pidana Perkosaan Dalam Hukum Positif Di Indonesia, <https://vivajusticia.law.ugm.ac.id/2018/02/26/perlindungan-hukum-korban-tindak-pidana-perkosaan-dalam-hukum-positif-di-indonesia/>, (diakses pada tanggal 1 Mei 2022)

In the context of protecting victims of crime, there are efforts to preventive and repressive measures carried out, both in the community and the government (through law enforcement officers)³ like a gift protection/supervision from various threats that can endanger the lives of victims, providing adequate medical and legal assistance, a fair examination and trial process against perpetrators of crime, is basically one of the manifestations of the protection of human rights as well as a balancing instrument.

The crime of rape against women and children causes fatal consequences in a disproportionate way. Such acts include acts that cause physical, mental and sexual harm and suffering or such threats, coercion and other deprivation of liberty. The analysis of the workings of criminal justice in Indonesia as a social process seeks to explain the meaning or background of the work of law enforcement to try.⁴,

The criminal justice system is a forum for a fair legal process. On the other hand, a fair legal process is the spirit of the criminal justice system itself, which is marked by the protection of the rights of suspects and defendants.⁵ In addition, it has been mentioned about a fair legal process according to the criminal justice system in Indonesia. It appears that a fair legal process is highly oriented towards protecting the rights of the suspect/defendant. This can be seen both in the provisions governing the rights of the suspect/defendant as well as in the principles governing the protection of human dignity contained in the explanation section of the Criminal Procedure Code. As a result, a fair legal process in this context tends to create an imbalance of two interests, namely the interests of the suspect and the victim.⁶

From the description of the background above, the problem can be formulated as follows: how do you try legal protection provided for victims of underage sexual intercourse and rape in the criminal justice system?

Research Methods

The research entitled "Protection of the Rights of Children and Women as Victims in the Crime of Rape" was located at the Ternate Police Station. This research is an empirical study using a statute approach and a case approach. As for in this study, the researcher uses. Thus, the authors conduct observations or research directly into the field in order to obtain accurate truth in the process of completing this writing, the purpose and usefulness of this study is basically used to show the way to solve research problems.⁷

Research Results And Discussion

1. Legal Protection for Children as Victims of Underage Sexual Intercourse

The presence of the child as a creature of God Almighty has human rights like other human beings, so that no human or other party may rob them of these rights. In the life of the nation and state, children are the future of the nation and the next generation of the ideals of the nation so that every child has the right to survive, grow and develop, participate and have the right to protection from acts of

³ Sajipto Rahardjo, 2003, *Sisi-sisi Lain dari Hukum di Indonesia*, Kompas, Jakarta, hlm. 121

⁴ Philipus M. Hadjon, et.al, 2011, *Pengantar Hukum Administrasi Indonesia*, Gajah Mada University Press, Yogyakarta, hlm. 10.

⁵ Sajipto Rahardjo, 2010, *Teori Hukum Strategi Tertib Manusia Linmas Ruang Dan General*, Genta Publishing, Yogyakarta, hlm. 44

⁶ Peter Mahmud Marzuki, 2006, *Pengantar Ilmu Hukum*, Kencana Prenada Media Group, Jakarta, hlm. 176

⁷ Bambang Sunggono, 2016, *Metodologi Penelitian Hukum*, Jakarta, PT RajaGrafindo Persada, hlm. 112

violence and discrimination as well as civil rights and freedoms.⁸ The position of children in society is very vulnerable, given the physical and mental conditions that are not yet strong and mature. The phenomenon of decency crimes cases lately actually places children most often involved in these crimes, as perpetrators or victims.⁹

Accurate understanding of children's rights is clearly very important and the main thing to do considering that children have all the hopes of the Indonesian nation. Thus, it can be understood that children are a form of investment that is an indicator of the success of a nation in carrying out development. The success of child development will determine the quality of human resources in the future.¹⁰ In Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia) reads that:¹¹

"Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination".

Law Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection into Law (hereinafter referred to as the Child Protection Act) in the provisions of Article 1 number (1) qualify that a child is said to be someone who is not yet 18 (eighteen) years old, including a child who is still in the womb.¹² The presence of the Child Protection Law has provided the widest opportunity for a child to grow and develop optimally both physically and mentally so that an ideal generation will be created. Therefore, when there is sexual violence against children, of course the action is a form of torture against children.¹³

If a child becomes a victim of crime, then for legal protection, of course, more attention must be paid because children are the next generation of the nation. Rape experienced by child victims certainly has a deep trauma or bad memory effect on children, this affects the behavior, lifestyle and behavior of children in the future. Thus, the increasing number of rape cases against children proves that this problem is not just an ordinary problem. However, it is a serious problem that must be addressed by the government.

Sexual violence in the context of rape is still often confused about its meaning. There is whether or not the element of physical violence is still often used as a criterion to categorize acts of sexual abuse against children as a crime or not. Sexual harassment of children itself still tends to be narrowed down, meaning it is limited to the form of sexual contact by denying non-contact forms of sexual harassment such as pornography. child.

Sexual intercourse with minors is considered a crime with a fairly high level of cruelty and is considered very degrading to human dignity.¹⁴ The punishment of the perpetrator of sexual violence does not relieve the trauma suffered by the child. Children are the foundation of the family and the successor of the nation must be protected. However, the fact that there are so many cases of sexual violence seems to

⁸ Eka Tjahjanto. 2008. *Implementasi Peraturan PerUndang-undangan Ketenagakerjaan Sebagai Upaya Perlindungan Hukum terhadap Eksploitasi Pekerja Anak*. Tesis. Program Pasca Sarjana. Universitas Diponegoro. Semarang, Hlm. 53

⁹ P.A.F Lamintang dan Fransiscus Theojunior Lamintang, 2016, *Dasar-Dasar Hukum Pidana di Indonesia*, Jakarta, Sinar Grafika, hlm. 179

¹⁰ Lihat Penjelasan UU RI Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak

¹¹ Lihat Ketentuan Pasal 28 B ayat (2) Undang-undang Dasar Negara Republik Indonesia 1945.

¹² Pasal 1 angka (1) Undang-Undang No. 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak

¹³ P.A.F Lamintang "Dasar-Dasar Hukum Pidana di Indonesia" sebagaimana dikutip dalam bukunya Hazewinkel Suringa, *Inleiding*, hlm.180

¹⁴ Pompe dalam bukunya *Handbo* yang disadur dalam: Lamintang "Dasar-Dasar Hukum Pidana di Indonesia" hlm.180

alert us all that children need to be protected. So many children who have experienced this tragic thing are victims of their families and in today's society.

The condition of the child is more of a form of physical abuse with the presence of signs or injuries on the child's body. If violence against children in the household is carried out by parents, then it can be called domestic violence. Acts of domestic violence which are included in acts of domestic violence are causing suffering both physically and mentally beyond certain limits to other people who are in the same house; such as against a spouse, child, or parent and the act of violence is carried out at home.

There is no single specific characteristic or personality type that can be identified from a perpetrator of sexual violence against children. In other words, anyone can be a perpetrator of child sexual abuse or sexual assault. The ability of the perpetrator to control the victim, either by deceit or threats and violence, makes this crime difficult to avoid.

Data recorded at the Indonesian Child Protection Commission (hereinafter abbreviated as KPAI) that cases of sexual violence that enter the institution continue to increase. Various violations of children's rights in 2021 still occur, both violations related to the fulfillment of rights and related to special protection of children. Based on data from public complaints, it is quite volatile, in 2019 there were 4,369 cases, in 2020 there were 4,116 cases, and in 2021 it reached 5,953 cases, with details of cases of Fulfillment of Children's Rights 2971 cases, and Child Special Protection 2982 Number of public complaints related to cases of special protection for children in 2021 as many as 2,982 cases. The trend of cases in the special child protection cluster in 2021 is dominated by the 6 highest cases, namely first, children who are victims of physical and or psychological violence reaching 1,138 cases; second, child victims of sexual crimes reached 859 cases; third, child victims of pornography and cybercrime totaling 345 cases; fourth, child victims of abuse and neglect reached 175 cases; fifth, children are exploited economically and/or sexually amounting to 147 cases; and sixth, children faced with the law as perpetrators in 126 cases.¹⁵

Cases of physical and psychological violence, child victims of abuse reached 574 cases, child victims of psychological violence 515 cases, child victims of murder 35 cases, and child victims of brawls there were 14 cases. Meanwhile, the highest complaints of sexual crimes against children came from children as victims of sexual abuse as many as 536 cases (62%) and children as victims of sexual intercourse 285 cases (33%), children as victims of same-sex sexual abuse 29 cases (3%).¹⁶ From the perspective of the perpetrators, the perpetrators who carried out physical and/or psychological violence against the victim, generally were people who were known to the victim and a small part were not known to the victim. The perpetrators were quite varied, namely friends of the victim, neighbors, acquaintances of the victim, parents, unscrupulous educators and education personnel in the education unit and individual officers.

Based on the description of the data above, it indicates that children are a group that is very vulnerable to crimes of sexual violence because children are always positioned as weak or helpless figures and have a high dependence on the adults around them. This is what makes children helpless when threatened not to tell what happened. In almost every case revealed, the perpetrator is someone close to the victim.¹⁷

¹⁵ Lihat data Komisi Perlindungan Anak Indonesia (KPAI) terkait Catatan Pelanggaran Hak Anak Tahun 2021 dan Proyeksi Pengawasan Penyelenggaraan Perlindungan Anak Tahun 2022.

¹⁶ *Ibid*

¹⁷ Romli Atmasasmita, *Penulisan Karya Ilmiah Santunan Korban Tindak Pidana* Jakarta, BPHN Departemen Kehakiman RI 1991-1992., hal 7-9

Child protection provided by the state must be able to guarantee the fulfillment of children's rights optimally for the realization of justice and welfare for children. However, the protection provided does not violate the rights of others and also does not violate religious norms as norms that must be upheld the purity of his teachings. Child protection aims to ensure the fulfillment of children's rights so that they can live, grow and develop, and participate optimally in accordance with human dignity.

Children who are victims of criminal acts, hereinafter referred to as child victims in Article 1 paragraph (4) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, are children who are not yet 18 (eighteen) years old who experience physical, mental and/or mental suffering, or economic loss caused by a criminal act.¹⁸ Child victims and child witnesses in Article 89 of Law Number 11 of 2012 concerning the Juvenile Justice System are entitled to all protections and rights regulated in the provisions of the legislation. Article 90 states that in addition to the rights that have been regulated in the provisions of the legislation, child victims have the right to:

- a. Medical rehabilitation and social rehabilitation efforts, both within the institution and outside the institution;
- b. Guarantee of safety, whether physical, mental, or social; and
- c. Ease of getting information about the progress of the case.¹⁹

A child who is a victim of crime from a crime, especially rape, has various rights and obligations that must be carried out in accordance with his age-related abilities. The rights obtained in the position as a victim include the following:

- 1) Get physical assistance (health first aid, clothing, shelter, etc.).
- 2) Get assistance in solving problems (reporting, legal advice, and defense).
- 3) Get back his rights.
- 4) Get coaching and rehabilitation.
- 5) Refuse to be a witness, if this will endanger him.
- 6) Obtain protection from threats from the victim maker when reporting or being a witness.
- 7) Obtain compensation (restitution, compensation) from the perpetrator (according to ability) or other parties concerned for the sake of justice and welfare concerned.
- 8) Refusing compensation for the common good.
- 9) Using legal remedies (*rechtsmiddelen*)..²⁰

Children's rights in Article 1 paragraph (12) are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, the state, the government, and local governments.²¹ Child protection in Article 1 paragraph (2) of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection are all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity, and receive protection from violence and discrimination. Article 20 states that the State, government, local government, community, family, and parents or guardians are obliged and responsible for the implementation of child protection.²² Meanwhile, protection in Article 1 paragraph (6) of Presidential Regulation Number 75 of 2020 concerning the Implementation of the Rights of Child Victims and Witness Children is all efforts to fulfill rights and provide assistance to provide a sense of

¹⁸ Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak.

¹⁹ *Ibid.*

²⁰ Nashrian, 2012, *Perlindungan Hukum Pidana Bagi Anak Di Indonesia*, Jakarta, Rajawali Pers, Hal. 20-23.

²¹ Undang-Undang No. 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak

²² Undang-Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak.

security to child witnesses and child victims carried out by witness and victim protection institutions. or other institutions in accordance with the provisions of the legislation.²³

Judging from the nature of child protection, it can also be divided into juridical protection, including protection in the field of civil law and in criminal law, which furthermore is non-judicial protection, covering protection in the social, health and education fields.²⁴ Article 15 of Law Number 35 of 2014 states that every child has the right to obtain protection from:

- a. Abuse in political activities;
- b. Involvement in armed conflict;
- c. Involvement in social unrest;
- d. Involvement in events that contain elements of violence;
- e. Involvement in war;
- f. Sexual crimes.²⁵

Article 1 paragraph (15) special protection is a form of protection received by children in certain situations and conditions to get a guarantee of security against threats that endanger themselves and their lives in their growth and development. Article 59 The government, regional government and other state institutions are obliged and responsible to provide special protection to children. Article 69 A of the Child Protection Law states that special protection for child victims of sexual crimes is carried out through efforts:²⁶

- a. Education about reproductive health, religious values, and moral values.
- b. Social rehabilitation.
- c. Psychosocial assistance during treatment until recovery. And
- d. Providing protection and assistance at every level of examination starting from investigation, prosecution, to examination in court.

In the opinion of the researcher, all the ideals and hopes set out above, as a special protection effort for child victims of sexual crimes will only be an empty dream if there are no applicable efforts to realize them. The efforts that need to be made to achieve this progress must be improvements in the field of education because through a strong and well-established education the next generation will be able to compete in an increasingly sophisticated era of globalization and is always changing all the time.²⁷

If it is considered from the rights and obligations of the child above, it is an effort where a person's human rights must still be considered in the effort to protect children, because children at their age are very vulnerable to being victims of wrong treatment from adults, they do not understand and understand that their rights have been taken away by people who make children as victims in a crime.

2. Legal Protection for Women as Rape Victims

Rape is a form of violence against women which is an example of the vulnerability of women's positions, especially to men's sexual interests. Attention and protection of the interests of victims of the crime of rape either through the criminal justice process or through certain social care facilities is an

²³ Peraturan Presiden Nomor 75 Tahun 2020 Tentang Pelaksanaan Hak Anak Korban Dan Anak Saksi.

²⁴ Maulana Hasan Wadog, 2000, *Pengantar Advokasi Dan Hukum Perlindungan Anak*, Jakarta, Grafindo, Hal. 40.

²⁵ Undang-Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak.

²⁶ Lihat Pasal 69 A UU Perlindungan Anak

²⁷ Kartini Kartono, 2004, *Psikologi Abnormal*, Jakarta, Pradnya Pramitha, Hal. 35.

absolute part that needs to be considered in criminal law policies and social policies, both by the executive, legislative and judicial institutions as well as other social institutions. ²⁸

The problems faced by women victims of sexual violence are very important and complex. The problem he faced was not only the rape that happened to him, but also occurred in the legal process for the case that happened to him. Women victims of sexual violence can be double victims in the trial process and can also receive unfair treatment in the process of seeking justice itself. The urgency of providing adequate legal protection to crime victims is not only a national issue, but also an international issue, therefore this issue needs serious attention.

Furthermore, the development of the handling of cases of criminal acts of child sexual intercourse below, the authors describe in the table as follows:

Table 1.1 Numbers of Cases of Sexual Intercourse with Minors
At the Ternate Police Resort

No	Year	Frequency	Percentage%
1	2019	2	8.33
2	2020	13	54.17
3	2021	5	20.83
4	2022	4	16.67
Total		24	100

Source: Ternate Police PPA Unit

Based on the data from the table of sexual acts above, during the last 4 (four) years from 2019 – 2022 in Ternate City there were 24 (twenty four) cases of criminal acts of sexual intercourse against minors, each of which amounted to 2 cases (8.33%) in 2019, while in 2020 there was an increase in the number of reported cases to 13 cases (54.17% %), in 2021 the number of cases again fell to 5 cases (20.83%), and again decreased from 5 cases to 4 cases (16.67%) in August 2022.

This shows that rape cases reported to the Ternate Police Resort, from year to year cases of sexual intercourse with minors are quite fluctuating, namely not decreasing but are not permanent, meaning they can increase and vice versa. With the trend of these cases, it is very worrying for law enforcement and the community in Ternate City because children are vulnerable to being victims of criminal acts of sexual intercourse.

Table 1.2: Number of Rape Crime Cases
At the Ternate Police Resort

No	Year	Frequency	Percentage%
1	2019	1	25
2	2020	2	50
3	2021	1	25
4	2022	-	-
Total		4	100

Source: Ternate Police PPA Unit

²⁸ Soerjono Soekanto, 2008, *Pengantar Penelitian Hukum*, UI. Press, Jakarta, h.51-52

Based on the data from the table of sexual acts above, during the last 4 (four) years from 2019-2022 in Ternate City there were 4 (four) cases of rape against women, each of which amounted to 1 case (25%) in 2019, while in 2020 there was an increase in the number of reported cases to 2 cases (50% %), in 2021 the number of cases fell again to 1 case (25%), and again decreased until August 2022 without a report.

This is the philosophical basis behind the importance of the victim of crime (his family) getting protection. The importance of victims getting recovery as an effort to balance the condition of victims who are disturbed, so that victims of crime need to be protected because:

First, society is considered as a form of system institutionalized trust (system of institutionalized trust). This belief is integrated through the norms expressed in the institutional structure. The occurrence of a crime against the victim will mean the destruction of the belief system so that the regulation of criminal law and other laws concerning the victim will serve as a means of restoring the belief system. Second, there are arguments for social contract and social solidarity because it can be said to monopolize all social reactions to crime and prohibit private actions. Therefore, if there are victims of crime, the state will pay attention to the needs of the victims by improving services and regulating rights

The importance of protecting crime victims cannot be separated from the consequences experienced by victims after their rape. Victims not only experience physical suffering but also as well as psychological suffering. The issue of protection for rape victims has always been an interesting issue to observe, because the issue of protection for rape victims is not only related to the provision of protection, but also to the obstacles faced. It is not easy to provide protection for rape victims because there are several factors that hinder them.

The victim factor plays an important role in being able to overcome or resolve this rape case, this requires courage from the victim to report the incident that happened to him to the police, because in general the victim gets physical violence and psychological pressure from the rape perpetrator and this makes the victim feel scared and traumatized . The forms of sexual violence due to rape can be categorized into two, namely:

a. Verbal Sexual Violence

Verbal forms of sexual violence are more carried out in the form of invitations or words that are proposed to others but lead to something related to sex, for example:

- 1) Joking, flirting with the opposite sex, or asking questions about sexuality in discussions or chats that are not specifically about sexual matters.
- 2) Communicating or asking other people about sexual desires or sexual desires that have been carried out by that person, which makes that person uncomfortable.
- 3) Forced to have sexual intercourse as done by a husband and wife but outside a legal marriage or not wanted, without consent and the action is followed by coercion both physically and mentally.

b. Non-Verbal Sexual Violence

Non-verbal forms of sexual violence are actions that take the form of an invitation to use writing or actions that do not directly touch the perpetrator and the victim. Verbal sexual violence and non-verbal

sexual violence can be subject to both men and women, as well as the object or victim, which can be male or female.²⁹

Women suffer double the suffering of rape by men. This suffering is not only in the form of coercion during sexual intercourse, but the risk of getting pregnant outside, bearing a fairly heavy mental burden after the rape incident and during her pregnancy, heavy social pressure she gets from the environment around her, and not to mention when the child she is born does not have a legal father. , although the rape convict can be determined as the father of the baby in the court, but often the perpetrators of rape deny responsibility.³⁰

Moreover, the most difficult thing is that if there is more than one perpetrator of the rape, it makes it more difficult to find the biological father of the baby conceived by the rape victim. Evidence of the fact of sexual violence can be proven, based on data from the Komnas Perempuan Annual Records (CATAHU) on March 5, 2022 which states complaints to Komnas Perempuan also experienced a drastic increase of 60% from 1,413 cases in 2019 to 2,389 cases in 2020 until In the January-July 2021 period, the escalation of violence against women was recorded at 2,500. Where there are 229 rape cases (Catahu, 5/3/2021).

For the perpetrators of the crime of rape, they must get a very heavy law so that the perpetrators feel the deterrent effect of what they do. We can see the criminal sanctions that can be applied to the perpetrators according to their actions, namely, in Article 285 of the Criminal Code which has the following elements:

- 1) Whoever, the term element of goods who is referring to anyone who can be subject to this element, what is meant by whoever is a man or a man who has intercourse with him.
- 2) With violence or threats of violence, what is meant by someone committing violence is that it can make people helpless or faint.
- 3) Forcing, coercive actions can be done with actions and can also be done with words or speech.
- 4) Fucked, meant With this element, the male genitalia must have entered the woman's vagina in such a way that it has finally released semen.
- 5) With him, who is meant by the word with himself the person who commits violence or threats of violence that has forced a woman who is not his wife to have intercourse with him.³¹

From the elements of the article, it can be proven in court. The protection for rape victims is carried out during the judicial process, as follows:³²

a. Before court trial

Legal protection given to victims of the crime of rape, first times given by the police when the victim reports. Victims are placed in the Special Service Room (RPK) where victims of violence or sexual abuse for children and women can report their cases.

c. During the court hearing

During the trial process, the victim in giving testimony was accompanied by LBH/NGO members so that victims can be calmer and not feel afraid in court. Considering that the victim is still mentally

²⁹ L Dalam Perspektif Hukum Islam (Studi Kasus : Di Dinas Social Pembedayaan Perempuan Dan Perlindungan Anak Kabupaten Kulon Progo Yogyakarta, Prodi Ahwal Al-Syakhshiyah, Fakultas Ilmu Agama Islam, UII, Hal. 27.

³⁰ Raditya Ermana H, Dkk., 2017, *Perlindungan Hukum Terhadap Perempuan Korban Kekerasan Seksual Sebagai Pelaku Abortus Provokatus Indikasi Perkosaan*, <http://www.ejournal-s1.undip.ac.id/index.php/dlr/> Diponegoro Law Journal Volume 6, Nomor 1, Tahun 2017, hlm. 1-2

³¹ Sugandhi, R. 1980. *KUHP dan Penjelasannya*. Surabaya: Usaha Nasional

³² Ni Putu Ari Manik Wedani, *Perlindungan Korban Tindak Pidana Perkosaan Selama Proses Peradilan Pidana*, hlm. 4-5

unstable and feels depressed after undergoing an examination during the judicial process, assistance efforts are urgently needed by the victim.

d. After the court hearing

After the perpetrator is sentenced by the judge, then in accordance with Article 5 paragraph (1) letter h up to Law Number 13 of 2006, the victim is entitled to protection, which includes the following: Knowing when the convict is released; Get a new identity; Get a new place of residence; Obtain reimbursement of transportation costs as needed; Get legal advice; and/or Obtain temporary living expenses assistance until the end of the protection period.

This provision implies that the Child Protection Act as long as the child is a victim of the crime of sexual intercourse under the age, starting at the time of the investigation. In line with the results of the author's interview with the Head of Women and Children Services (PPA) of the Ternate City Police, Ms. Fany F. A Syahalatua stated that:³³

"Regarding the accommodation of children's rights as victims of underage sexual intercourse, we refer to Article 82 paragraph (1) of Law of the Republic of Indonesia Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 Second Amendment to Law Number 23 2002 concerning Child Protection Becomes Law or based on Article 290 paragraph (2) Jo. Article 64 of the Criminal Code, namely if the victim rape is a child, the minimum imprisonment is 5 (five) years and long maximum 15 (fifteen) years in prison".

Conclusion

Effort Legal protection provided for victims of underage sexual intercourse and rape in the criminal justice system is carried out through a approach preventive and repressive efforts carried out, both by the community and the government (through law enforcement officers), such as providing protection/supervision from various threats that can endanger the lives of victims, providing adequate medical and legal assistance, examination and judicial processes. The background of the need for legal protection for victims of criminal acts is because victims experience physical and psychological suffering whose recovery takes a long time to recover so that when facing the examination and judicial process, they need to get legal protection.

References

Book

- Achie Sudiarti Luhulima. 2000. *Pemahaman Bentuk-bentuk Tindak Kekerasan Terhadap Perempuan dan Alternatif Pemecahannya*. Bandung: PT Alumni .
- Arif Gosita, 1993. *Masalah Korban Kejahatan*. Jakarta: Akademika Pressindo.
- Bambang Sunggono, 2016, *Metodologi Penelitian Hukum*, Jakarta, PT RajaGrafindo Persada.
- Eka Tjahjanto. 2008. *Implementasi Peraturan PerUndang-undangan Ketenagakerjaan Sebagai Upaya Perlindungan Hukum terhadap Eksploitasi Pekerja Anak*. Tesis. Program Pasca Sarjana. Universitas Diponegoro. Semarang, Hlm. 53.

³³ Hasil Wawancara dengan penyidik Unit Perlindungan Perempuan dan Anak (PPA) Aipda Fany F. A Syahalatua, pada 16 Agustus 2022.

- Kartini Kartono, 2004, *Psikologi Apnormal*, Jakarta, Pradnya Pramitha.
- Lilik Mulyadi, 2004, *Kapita Selekta Hukum Pidana Kriminologi Dan Viktimologi*, Jakarta, Djambatan.
- Maulana Hasan Wadog, 2000, *Pengantar Advokasi Dan Hukum Perlindungan Anak*, Jakarta, Grafindo.
- Nashrian, 2012, *Perlindungan Hukum Pidana Bagi Anak Di Indonesia*, Jakarta, Rajawali Pers.
- Ni Putu Ari Manik Wedani, *Perlindungan Korban Tindak Pidana Perkosaan Selama Proses Peradilan Pidana*, hlm. 4-5.
- P.A.F Lamintang dan FransiscusTheojunior Lamintang, 2016, *Dasar-Dasar Hukum Pidana di Indonesia*, Jakarta, Sinar Grafika.
- Peter Mahmud Marzuki, 2006, *Pengantar Ilmu Hukum*, Kencana Prenada Media Group, Jakarta.
- Philipus M. Hadjon, 1987, *Perlindungan Hukum Bagi Rakyat di Indonesia*, PT. Bina Ilmu, Surabaya.
- _____, 2011, *Pengantar Hukum Administrasi Indonesia*, Gajah Mada University Press, Yogyakarta.
- Romli Atmasasmita, *Penulisan Karya Ilmiah Santunan Korban Tindak Pidana Jakarta*, BPHN Departemen Kehakiman RI 1991-1992.
- Soerjono Soekanto, 2008, *Pengantar Penelitian Hukum*, UI. Press, Jakarta.
- Sajipto Rahardjo, 2003, *Sisi-sisi Lain dari Hukum di Indonesia*, Kompas, Jakarta.
- _____, 2010, *Teori Hukum Strategi Tertib Manusia Linmas Ruang Dan General*, Genta Publishing, Yogyakarta.
- Sugandhi, R. 1980. *KUHP dan Penjelasannya*. Surabaya: Usaha Nasional.
- Suyanto, Bagong. 2016. *Masalah Sosial Anak*. Jakarta: Prenada Media Group.

Legislation

- Undang-Undang Dasar Negara Republik Indonesia 1945.
- Undang-undang Dasar Negara Republik Indonesia 1945 Pasal 28 B ayat (2).
- Undang-Undang Dasar Negara Republik Indonesia 1945 Pasal 69 A UU Perlindungan Anak.
- Undang-Undang No. 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak.
- Undang-Undang RI Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak.
- Undang-Undang No. 17 Tahun 2016 Tentang Perubahan Kedua Atas Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak.
- Undang-Undang Nomor. 31 Tahun 2014 Atas Perubahan Undang-Undang Nomor 13 Tahun 2006 Tentang Perlindungan Saksi dan Korban.
- Peraturan Presiden Nomor 75 Tahun 2020 Tentang Pelaksanaan Hak Anak Korban Dan Anak Saksi.

Electronic Journal and Thesis

Data Komisi Perlindungan Anak Indonesia (KPAI) terkait Catatan Pelanggaran Hak Anak Tahun 2021 dan Proyeksi Pengawasan Penyelenggaraan Perlindungan Anak Tahun 2022.

Eka Tjahjanto. 2008. *Implementasi Peraturan PerUndang-undangan Ketenagakerjaan Sebagai Upaya Perlindungan Hukum terhadap Eksploitasi Pekerja Anak*. Tesis. Program Pasca Sarjana. Universitas Diponegoro. Semarang.

Hasil Wawancara dengan penyidik Unit Perlindungan Perempuan dan Anak (PPA) Aipda Fany F. A Syahalatua, pada 16 Agustus 2022.

L Dalam Perspektif Hukum Islam (Studi Kasus : Di Dinas Social Pemberdayaan Perempuan Dan Perlindungan Anak Kabupaten Kulon Progo Yogyakarta, Prodi Ahwal Al-Syakhshiyah, Fakultas Ilmu Agama Islam, UII.

Octorina Ulina Sari, 2014, Upaya Perlindungan Korban Perkosaan, Ditinjau dari sudut pandang viktimologi, *Jurnal Hukum*, Fakultas Hukum, Universitas Atma Jaya Yogyakarta, hlm. 1.

Pompe dalam bukunya *Handbo* yang disadur dalam: Lamintang “Dasar-Dasar Hukum Pidana di Indonesia” hlm.180.

Raditya Ermana H, Dkk., 2017, Perlindungan Hukum Terhadap Perempuan Korban Kekerasan Seksual Sebagai Pelaku Abortus Provokatus Indikasi Perkosaan, <http://www.ejournal-s1.undip.ac.id/index.php/dlr/> Diponegoro Law Journal Volume 6, Nomor 1, Tahun 2017.

Yulianta Saputra, 2018, Perlindungan Hukum Korban Tindak Pidana Perkosaan Dalam Hukum Positif Di Indonesia, <https://vivajusticia.law.ugm.ac.id/2018/02/26/perlindungan-hukum-korban-tindak-pidana-perkosaan-dalam-hukum-positif-di-indonesia/>, (diakses pada tanggal 1 Mei 2022).

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