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1	Bukti Submission ke jurnal Pena Justitia	12 Januari 2025



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12 Januari 2025

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Legal Protection for Children as Victims of Sexual Violence Reviewed in Terms of Benefits for the Victims

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Abstract

As the future generation of the nation, children must grow up in a safe and protected environment. However, in reality, children remain vulnerable to sexual crimes, which have severe physical and psychological impacts. Legal protection for child victims of sexual crimes is regulated under various laws, but the implementation is still far from optimal. A justice system that focuses more on perpetrators and the lack of adequate compensation for victims are among the main challenges.

This research formulates two main issues: first, how is the legal protection for children as victims of sexual crimes regulated? Second, how is the sentencing of perpetrators of child sexual abuse viewed from the perspective of legal benefit?

The type of research used is normative juridical. The findings indicate that efforts to restore the psychological condition of child victims — such as counseling, support, and therapy — must be optimized. Thus, sentencing should not only focus on punishment but also consider the physical and psychological condition of the child as the victim. Therefore, perpetrators should be subject to additional penalties, such as restitution, as a deterrent.

1. Introduction

Every action conducted by Indonesian residents must adhere to applicable legislation. This is in compliance with the provisions outlined in Article 1, Paragraph 3 of the 1945 Constitution. The declaration in Article 1 paragraph 3 of the 1945 Constitution seeks to provide order, security, and welfare in the lives of society, nation, and state. Furthermore, the declaration seeks to reduce and prevent infractions or crimes involving the rights and obligations of persons and groups. W.A. Bonger defines crime as an act that violates societal norms and is consciously responded to by the state through punishment or pain.

Meanwhile, R. Soesilo defines crime as all human behavior that, while not governed by law, is perceived or regarded by citizens as behavior or activities that economically or psychologically assault and harm moral feelings in community life. Violence against children is a common type of crime or criminal behavior in today's society. According to the Online Information System for the Protection of Women and Children (SIMFONI-PPA), 1,993 incidences of abuse against children were reported between January and February 2024. This figure has risen in comparison to the number of violent incidents reported in 2023. According to the National Commission for Child Protection (Komnas PA), there were 3,547 reports of violence against children in 2023. This is clear evidence that incidences of violence against children are extremely alarming.

The cases of violence mentioned in this case involve sexual violence against children. Cases of sexual abuse against minors are like ghosts that stalk the world, becoming increasingly common and transcending national borders. Not only is the number increasing, but the level of cruelty is becoming more horrible. Ironically, these child predators frequently lurk within the walls of educational institutions. According to the 2022 national assessment, 34.51%, or one in every three students, suffered sexual violence, 26.9% experienced physical punishment, and 36.31% experienced bullying. In actuality, from January to May 2023, the Federation of Indonesian Teachers' Unions recorded 22 occurrences of sexual violence involving 202 students across all educational units under the Ministry of Education, Culture, Research, and Technology and the Ministry of Religion.

Child abuse is typically linked to adults' inability to give safety and a sense of

security. The relationship between the criminal and the victim is an equally crucial aspect. This proximity, however, is a risk factor. Indeed, the number of cases of sexual violence done by close family members (familial abuse) far outnumbers those committed by outsiders. This demonstrates how the family, which is supposed to be the protector, may become the perpetrator of the crime. Perpetrators of sexual violence against children not only indirectly harm the child's mental condition at the time, but they also leave a trail of terrible trauma that affects the child's future. Given that children are weaker animals than adults and because the consequences of sexual crimes can cause bodily, psychological suffering, and long-term damage to children, it is only natural that they receive more specific protection than adults. As a result, young victims of sexual violence require specific protection in the form of psychological rehabilitation. The author can develop the following issues based on the background description: how is the legal protection for minors who are victims of sexual offenses evaluated from a benefits standpoint? and how is the benefits of criminalizing those who commit acts of sexual abuse against minors evaluated?

2. Research Method

The type of research used is normative juridical. This is a legal research method conducted by examining library materials, which are referred to as secondary data. The data in this study is sourced from secondary data, consisting of primary, secondary, and tertiary legal materials. Primary legal materials serve as the main sources and will be used as the basis for answering the research problems. These primary legal materials are supported by secondary legal materials, which provide supplementary information or explanations related to the primary legal sources. Secondary legal materials include journals, articles, research findings, and other relevant sources related to the topic discussed. Both primary and secondary legal materials will be clarified through tertiary legal materials, such as magazines, internet data, and other supporting information.

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3. Results and Discussion

According to Barda Nawawi Arief, legal protection for children is described as an effort to defend numerous freedoms and basic rights of children, as well as interests linked to children's wellbeing. Not only that, but Maidin Gultom also shared his thoughts on child protection. According to him, child protection is defined as an effort and action of all levels of society in various positions and functions who recognize the importance of children for the future of the nation and state. If they

have developed in both physical and mental social development, it is time to replace the previous generation. Setiono offers a similar definition of legal protection, interpreting it as an effort to safeguard the community from arbitrary measures taken by authorities in order to achieve order and harmony in the lives of society, nation, and state.

Muchsin distinguishes between two types of legal protection: preventive and repressive. Preventive legal protection is government-provided protection that aims to prevent infractions. In general, this protection is outlined in laws and regulations. While repressive legal protection is provided in an endeavor to rehabilitate the victim's state by compensation or recovery of conditions following a crime, either physically or psychologically. It can also be viewed as protection supplied by imposing punishments in the form of imprisonment or additional fines for specific purposes on both the culprit and the victim.

As the harmed party, the victim is frequently ignored. This is because Indonesia's justice system is oriented toward the perpetrator of the crime. In fact, victims of sexual abuse, particularly youngsters, should be given protection that might help them recover psychologically from the perpetrator's immoral deeds against them. This is in accordance with Article 59 of Law Number 35 of 2014 on Child Protection, which states that the government, regional governments, and other state institutions are obligated and responsible for providing Special Protection to Children, including child victims of sexual crimes.

According to Tri Kurnia Nurhayati, recuperation means returning to the prior state. So, in this scenario, recovery can be described as returning to the original state. The healing in this scenario takes the shape of meeting the need for psychosocial, medical, psychological, and legal support. According to Article 1 paragraph 19 of Law Number 12 of 2022 Concerning Criminal Acts of Sexual Violence, recovery refers to any endeavor to rehabilitate the victim's physical, mental, spiritual, and social situations. As a result, as victims of sexual assault, children must receive specific legal protection in the form of psychological restoration, which can be accomplished through a variety of methods such as counseling, mentorship, and treatment.

According to Article 415 of Law Number 1 of 2023 respecting the Criminal Code, anyone who commits an indecent act with someone who is known or suspected to be a child faces a maximum sentence of 9 (nine) years. However, in Indonesia, punishment is generally limited to punishing the perpetrators. We can see this in

rulings involving sexual violence, where perpetrators are simply charged with imprisonment. As per the Medan District Court Decision with decision number 221/Pid.Sus/2022/PN.Mdn, the criminal was simply charged with six (6) years of imprisonment and no further penalty in the form of restitution for the victim. Furthermore, in Decision Number 858/Pid.Sus/2022/PN Bjm, the Banjarmasin District Court sentenced him to 18 (eighteen) years in prison and a fine of Rp. 1,000,000,000 (one billion rupiah), as well as an additional sentence of 2 (two) years of Chemical Castration. Based on these two rulings, it is possible to conclude that criminalization in Indonesia does not adequately compensate for the victim's losses, in this case a child.

Restitution and compensation are the two categories into which this compensation is separated under Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. In terms of punishing those who commit acts of sexual abuse against minors, the author refers to restitution as an additional criminal consequence. Restitution is governed by Article 7A paragraph 1 of Law Number 31 of 2014, which states that victims of criminal acts have the right to receive restitution in the form of compensation for loss of wealth or income, compensation for losses caused by suffering directly related to the crime, and/or reimbursement of medical and/or psychological care costs. This is consistent with the benefit side, which states that if a breach of human rights results in physical or psychological harm to others, the perpetrator should face further punishment in the form of recompense for the victim's suffering. The imposition of additional punishment in the form of compensation is intended to assist the victim, namely children.

4. Conclusion

Children, as the nation's next generation, have a fundamental right to live and grow in a safe environment. However, the reality is that many children remain victims of sexual crimes, which have a devastating impact on their physical and mental health. In this context, it is critical to understand how Indonesian law protects children who have been victims of sexual offenses.

According to Barda Nawawi Arief and Maidin Gultom, legal protection for children is defined as an endeavor to defend children's numerous rights and freedoms while also benefiting their wellbeing. Setiono noted that legal protection aims to bring order and calm to community life.

Muchsin separates legal protection into two categories: preventive and repressive. Preventive protection strives to prevent violations from occurring, whereas repressive protection seeks to restore the victim's situation following a crime. Unfortunately, the Indonesian legal system frequently concentrates solely on the offenders of a crime, leaving victims, particularly children, neglected.

This plainly contradicts Article 59 of Law No. 35 of 2014 on Child Protection, which mandates the government and other state institutions to give specific protection to child victims of sexual crimes. It is critical to improve the psychological well-being of child sexual crime survivors. According to Tri Kurnia Nurhayati, recuperation means returning the kid to its original state. Counseling, mentoring, and therapy are all options for this type of healing.

According to Law Number 12 of 2022 Concerning Criminal Acts of Sexual Violence, healing seeks to restore the victim's physical, emotional, spiritual, and social well-being. Although there are laws and rules in place to safeguard children who have been sexually abused, the reality is that much more has to be done. Criminal sanctions against perpetrators frequently focus solely on prison sentences, without regard for victim restitution. Law Number 31 of 2014, which amends Law Number 13 of 2006, covering the Protection of Witnesses and Victims, governs restitution, or recompense paid to victims for loss of wealth, income, suffering, and medical and/or psychological care expenditures.

The imposition of additional criminal penalties in the form of restitution is intended to benefit victims, particularly children, and help them recover. It is critical to continue to encourage pro-victim law enforcement, particularly among youngsters who have been the victims of sexual crimes. This can be accomplished by raising awareness of victims' rights, providing proper legal aid, and encouraging law enforcement officials to use fair and pro-victim **sanctions**.

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