

## Legal Protection For Children Born as A Result of Rape Victimization

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### KEYWORDS

Child Protection, Society,  
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### ABSTRACT

This study aims to analyze the legal protections for children born as a result of rape in Indonesia, focusing on the gaps in the current legal system and the challenges these children face in accessing their rights. The research uses a normative juridical method combined with qualitative analysis to examine existing laws and regulations related to child protection, with a particular focus on the legal status of children born from rape. The findings reveal that while Indonesia has child protection laws in place, there are significant gaps in the application of these laws for children born as a result of rape, leaving them vulnerable to discrimination and a lack of legal clarity regarding their rights. The study concludes that there is an urgent need for legal reforms to ensure that these children are provided with the same legal protections and rights as other children, including access to healthcare, education, and protection from further harm. It is essential to strengthen legal frameworks and ensure consistent application of child protection laws to guarantee the rights and welfare of all children, regardless of their birth circumstances.

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### Introduction

Children are an inseparable part of human survival and the sustainability of a nation and state (Dewi & Saleh, 2020; Oeliga et al., 2022). In order to be able to be responsible for the sustainability of the nation and state, every child needs to receive the widest possible protection and opportunity to grow and develop optimally both physically, mentally, and socially. For this reason, it is necessary to make protection efforts to realize the welfare of children by providing guarantees for the fulfillment of their rights without discriminatory treatment.

One of the violence against children that is of public concern is sexual crimes in the form of rape (Anggoman, 2019) which has recently happened a lot around us, sometimes even done by people close to the child that we have never expected, such as sexual violence committed by a father to his child (both biological father and adoptive father) so that the child gives birth to a child.

Sexual abuse is a crime against humanity that falls into the category of Human Rights (HAM) violations (Laurensius Arliman S, 2017). In the provisions of the Convention on the Rights of the Child Article 1 paragraph 2, it is explained that the state guarantees the rights of every child without discrimination whether it is race, color, sex, language, religion, ethnicity or other legal status of the child according to the law (Nurusshobah, 2019). However, the provisions guaranteed by the Convention on the Rights of the Child in the existing reality have not fully guaranteed the protection of children properly and appropriately.

Violence is an act committed by a person or a number of people in a strong position (feeling strong) to a person or a number of people in a weak or weakened position who by means of their strength, both physically and non-physically, deliberately commit an act to cause suffering to the object of violence (Hari Alijana, 2022; Kustanty, 2019). Therefore, violence against children can be understood as violence against children is an act of physical, psychological, social, sexual violence committed intentionally or unintentionally by other people, including parents, families, community educators and government actors (Kayowuan Lewoleba & Helmi Fahrozi, 2020; Rizqian, 2021).

According to data collected by the Data and Information Center of the Indonesian National Commission for Child Protection from 2010 to 2014, there were 21,869,797 cases of child rights violations, spread across 34 provinces, and 179 districts and cities. As much as 42-58% of the violations of children's rights, he said, are sexual crimes against children. The rest are cases of physical violence, and child neglect. Data and victims of sexual crimes against children increase every year. In 2010, there were 2,046 cases, of which 42% were sexual crimes. In 2011 there were 2,426 cases (58% of sexual crimes), and in 2012 there were 2,637 cases (62% of sexual crimes). In 2013, there was a considerable increase of 3,339 cases, with sexual crimes accounting for 62%. Meanwhile, in 2014 (January-April), there were 600 cases or 876 victims, of which 137 cases were child perpetrators.

The data on reports of sexual violence against children under 18 years old is indeed very small when compared to the current reality (Hartanto & Praiseda, 2022; Marrilac, 2021). This is caused by several factors, namely: 1) Refusal made by the victim so that the victim does not report his case for fear of threats and consequences that will later be received from the perpetrator (trauma); 2) Manipulation of the perpetrator often rejects the accusation that he is the perpetrator. This strategy is used by the perpetrator by accusing the victim of lying and making up fabrications; 3) The victim's family considers that sexual violence against children is a shameful disgrace if it is revealed in public; 4) The assumption that matters related to family affairs are not appropriate to be interfered with by others; 5) The public does not know clearly the signs of children (victims) who experience sexual violence, especially in cases of sexual abuse, because there are no obvious physical signs; and 6) Reporting systems and procedures that are not known for sure and clearly by the public (Hari Alijana, 2022).

Paying attention to such community conditions, legal protection efforts for children victims of sexual violence need to be carried out in a real, careful, precise, and sustainable manner. So that these legal protection efforts require the participation of the government, related institutions in the protection of children, the community, and the laws and regulations that are implemented. In addition, socialization, promotion and enforcement of children's rights need to be carried out continuously and earnestly. This is because the nature of children is as an individual who is weak in the period of growth and must be protected, cannot be allowed to fight alone in obtaining their rights in full.

Next Gosita (Mozin & Sunge, 2021) Stating several things that are necessary in providing guarantees of legal protection for children victims of sexual violence so that they are carried out properly, namely: 1) In terms of the implementation of legal protection for children victims of sexual violence, it is necessary to understand the right understanding related to child protection issues, such as human understanding, human rights and obligations, crime prevention, prevention of victim induction, and the implementation of responsible protection interests answer and useful; 2) Legal protection for children born as victims of sexual violence must be carried out between citizens, members of the community, both individually and collectively for the sake of the common good. This can be done by socialization and counseling on child protection so that the community is aware of the importance of child protection; 3) Cooperation and coordination necessary to launch child protection activities; 4) The protection of child victims of sexual violence must have a philosophical, ethical and juridical basis so that it can be accounted for and beneficial for all components of society; and 5) Legal protection for children victims of sexual violence must be reflected in various areas of life. Therefore, in order to realize child protection, every member of the community needs coordination with the government and law enforcement officials.

One of the sexual behaviors that is considered deviant is a form of sexual violence, meaning the practice of sexual relations carried out by violent means, outside the legal marriage bond (Purwanti & Zaliani, 2018). Violence is highlighted to prove that the perpetrator has more physical violence or physical strength and is used as a tool to launch his evil efforts.

The implementation of resolving cases of sexual violence against children is that the police immediately receive the victim's report both verbally and in writing. After that, it was continued with the preparation of a visum letter to the doctor as evidence of sexual violence against minors. Thus, if the perpetrator is proven guilty, the perpetrator will be designated as a suspect in the act of sexual violence against minors to subsequently make a BAP (Examination Report) which is then processed to be transferred to the District Attorney's Office in the prosecution process at the District Court.

Forms of protection for minors can generally be classified into various types. However, the protection of sexual violence is categorized in several understandings, namely:

First, physical violence which means an act that causes pain, falls ill with the victim, so that in the implementation of handling the victim requires appropriate assistance and settlement so that the case of violence experienced can be resolved appropriately.

Second, psychological violence which can be understood as an act that results in fear and loss of confidence to act and place oneself in society, so that the victim experiences very heavy suffering in his life. Therefore, the rest of the community can accept the victim well and accept the full consequences of the violence experienced by providing encouragement and motivation so that the development stage runs well.

Third, sexual violence which means the coercion of sexual relations carried out by another person which is legally prohibited. This situation in society urgently needs a pattern of more legal awareness, that unnatural behavior towards children is a form of violation of the law and violation of the norms that apply in society.

Since 2002, Indonesia has had a legal instrument that specifically provides protection for children, namely Law Number 23 of 2002 concerning Child Protection, which also regulates the protection of children victims of sexual violence. However, the existence of Law Number 23 of 2002 concerning Child Protection has not been able to

regulate in the law and reduce the number of sexual violence against children, which in fact is increasing every year. One of the causes is weak law enforcement against cases of sexual violence against children.

The number of reported cases of sexual violence against children cannot necessarily be continued with the legal process. Some of the obstacles that occurred in the investigation process include: 1) In the case of sexual violence against children committed by a boyfriend, the victim's parents chose to reconcile with the perpetrator by marrying the victim to the perpetrator; 2) There are no witnesses who saw the perpetrator's actions against the victim; and 3) The victim or family is late in reporting so that the evidence attached to the victim's body is gone;

During the examination of the victim's witnesses at the Court trial, the child victim of sexual violence still has to deal with circumstances that do not protect the victim, especially if the child is sexually violent against a child with an adult perpetrator where the child must be present at the trial to give his testimony in the general court and must deal with the perpetrator and/or the perpetrator's lawyer who will be unfriendly to the victim and ask questions that will be psychologically burdensome victim.

The Government of the Republic of Indonesia since 2014 has responded very quickly in the legal field to the increasing sexual violence against children. On June 11, 2014, the President of the Republic of Indonesia issued Presidential Instruction (Inpres) No. 5 of 2014 concerning the National Movement Against Sexual Crimes against Children which gave instructions to Ministers, Attorney General, Chief of the National Police of the Republic of Indonesia, heads of government agencies, ministries, governors, regents/mayors, to prevent and eradicate sexual crimes against children.

Furthermore, on October 17, 2014, the President of the Republic of Indonesia passed Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2014 concerning Child Protection. Law Number 35 of 2014 which came into effect on October 18, 2014 has undergone many changes in the "legal paradigm", including providing responsibilities and obligations to the state, government, local governments, communities, families and parents or guardians in terms of child protection, the increase in minimum criminal provisions for perpetrators of sexual crimes against children, and the introduction of a new legal system, namely the right to restitution.

In the old child protection law, the threat of sexual offenders was only threatened with a maximum penalty of 15 (fifteen) years, a minimum of 3 (three) years and a maximum fine of Rp 300,000,000 (three hundred million rupiah) and a minimum of Rp 60,000,000 (sixty million rupiah), while in Law Number 35 of 2014 it was amended with a maximum penalty of 15 (fifteen) years, a minimum of 5 (five) years and a maximum fine of Rp 5,000,000,000 (five billion rupiah). What is more specific in this law is that if the perpetrator of rape or molestation is committed by a parent, guardian, childcaregiver, educator, or educator, the penalty is increased by 1/3 (one-third).

The issuance of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2014 concerning Child Protection has not yet deterred the perpetrators. Sexual violence against children continues to increase significantly which threatens and endangers children's lives, damages children's personal life and growth and development, and disrupts the sense of comfort, tranquility, security, and order of society.

Previous studies have explored various aspects of child protection in cases of sexual violence. For instance, Dewi and Saleh (2020) examined legal protections for children who are witnesses in rape cases, emphasizing the need for a comprehensive legal framework to protect their rights. Similarly, Kustanty (2019) investigated the prevention

and handling of child violence, including sexual abuse, and highlighted the role of community and legal institutions in protecting children's rights. Both studies underscore the importance of robust legal systems and community involvement in ensuring child protection.

The urgency of this research is highlighted by the increasing number of sexual violence cases against children, particularly those born as a result of rape. While the Indonesian legal system has provisions for child protection, gaps remain in effectively addressing the rights of children born from such tragic circumstances. The lack of clear legal protection for these children has led to inconsistent applications of their rights, leaving them vulnerable to further victimization and discrimination. It is crucial to address these legal deficiencies to ensure that children born from rape are granted the same protections as other children.

While there is substantial research on child protection laws and the general treatment of sexual violence victims, there is a lack of focus on children born as a result of rape. Previous studies often fail to distinguish the specific legal challenges faced by these children or explore the gaps in legal frameworks that prevent them from receiving adequate protection. This research aims to fill this gap by analyzing the legal protections available to children born of rape, with a focus on how the current laws in Indonesia address or fail to address their needs.

The novelty of this research lies in its focus on the legal protection of children born as a result of rape, a subject that has not been adequately addressed in previous legal studies. By specifically examining the legal rights of these children, this study brings attention to the inadequacies in Indonesian child protection laws. It also proposes necessary legal reforms to ensure that children born from rape receive the same rights and protection as other children, contributing to the broader discussion of legal justice for vulnerable groups.

The objective of this study is to analyze the legal protection afforded to children born as a result of rape, focusing on the gaps in the current legal system and the challenges faced by these children. The study aims to provide a clearer understanding of the legal complexities surrounding their rights and propose reforms to improve their protection. The findings will benefit legal practitioners, policymakers, and child protection advocates by providing insights into how the legal system can better serve the needs of these children, ensuring their rights to safety, dignity, and development are fully protected.

## **Research Methods**

This study uses a normative juridical method with a qualitative approach that analyzes legal norms in laws and regulations, court decisions, and applicable social norms (Benur & Azhar, 2020). In type, this research is empirical in legal studies, but still adopts normative principles in its processes, principles, and procedures. This research is descriptive analytical, namely describing and analyzing applicable regulations and their relationship with legal theory and their practical implementation. The data used consisted of primary sources, such as laws and regulations related to the protection of child victims of sexual violence, as well as secondary sources that included primary, secondary, and tertiary legal materials, including legal literature, expert opinions, dictionaries, and encyclopedias. The data collection technique is carried out through literature research by reviewing legal documents and field research through interviews with related parties. The data obtained were analyzed in a qualitative descriptive manner to formulate conclusions that could be accounted for.

## **Results and Discussions**

### **Implementation of Children's Rights to Children Born as a Victim of Rape**

In practice of legal protection of the rights of children victims of sexual abuse An act is called violence if there is a party who is harmed, which is in the form of coercion, arbitrary deprivation of independence and even results in misery and suffering. Therefore, one of the efforts to get certain legal guarantees, victims can report to law enforcement officials and non-governmental organizations that observe children to get legal protection and assistance, but these services have not been maximized and even difficult to get children's rights.

According to the laws in force in Indonesia, the provision of the maturity limit is a benchmark for the definition of a child, including: 1) A child according to the general provisions of Article 1 number 2 of Law Number 4 of 1979 concerning Child Welfare states that a child is a person who has not reached the age of 21 (twenty-one) years and has not been married; 2) Child according to Law Number 23 of 2002 concerning Child Protection states that a child is a person who is not yet 18 (eighteen) years old, either a child who is still in the womb; and 3) Children according to the Civil Code.

Article 330 of the Civil Code (Civil Code) states that immature people are those who have not reached the age of twenty-one years, and have not been married before (Soebekti & Tjitosudibio, 1999).

Starting from the aspect of understanding children above, it turns out that Indonesia's positive law does not regulate the unification of definite laws and applies universally to determine legal protection for children born as a result of rape of a child. Therefore, regarding the legal certainty of children who are still classified as children, there are differences in determination. In the case of this marriage, that the difference between children born out of wedlock in the positive law of Indonesia and children born as a result of rape has not been regulated with legal certainty, then it is clear that this is different. Children are the next generation of parents, the next generation of society, the next generation of the nation, and even the next generation of human life in the world. A child's life absolutely needs the attention, observation, and guidance of older people, parents and society.

According to Dellyana(Hari Alijana, 2022; Mayasari & Bahri, 2022) that child protection is an effort to make oneself who protects children able to carry out their rights and obligations. As stated in the General Provisions of Article 1 paragraph 2 of Law Number 23 of 2002 concerning Child Protection which reads: "Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate, optimally in accordance with the dignity and dignity of humanity, as well as receive protection and violence and discrimination". As we know, violent crimes that occur in society can cause losses to various parties, both those who are victims of violence and other parties in general. For this reason, it is necessary to study more deeply about violence itself in order to find the real root of the problem which can then be used to find a solution to the case that occurred and legal protection efforts for victims of violence.

Violence occurs when a person acts in inappropriate ways and uses unlawful physical force and injures himself, others or his environment. Acts of violence are consequences. It is a manifestation of a chaotic soul and heart because it is disturbed. The shock of the soul and heart is so strong that it defeats common sense. In such an influence, the individual is completely influenced by his passions and focuses only his thoughts on

himself and the perpetrator does not care about the safety or well-being of others (Wahid, 1998).

**Legal protection for children born as a result of rape.**

The services needed for victims of violence against women and children include children who are victims of sexual violence. Legal protection for children victims of sexual violence at the regional level as mandated by Law Number 23 of 2002 Child Protection and Law Number 35 of 2014 concerning Amendments to Law No. 23 of 2014 concerning Child Protection. In 2016, the government considered it necessary to immediately amend Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The Government of the Republic of Indonesia views that the criminal sanctions imposed on perpetrators of sexual violence against children have not provided a deterrent effect and have not been able to comprehensively prevent the occurrence of sexual violence against children. Various regulations have been changed and made but still have not been realized.

**Conclusion**

The Importance of Legal Protection and Legal Certainty for children born as a result of rape, crimes resulting from rape to childbirth cannot be equated with children out of wedlock committed against children until childbirth is a child protection crime involving government agencies, parents, community organizations, academics, and child observers. As well as providing legal aid and other assistance effectively; Implementation of recreational activities; Exemption from torture, punishment, or other cruel, inhuman and degrading treatment; Avoidance of the death penalty and/or life imprisonment. There is a socialization program carried out by the government to the community so that the community knows its role in protecting children, there is sensitivity to the environment. And there are consequences for existing regulations, especially the issue of special protection for children who are facing the law. So that all legal institutions can implement or implement existing rules.

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