

LEGAL PROTECTION OF CHILDREN AS VICTIMS OF SEXUAL CRIMES COMMITTED BY PERSONS WITH DISABILITIES

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Abstract

Children as the younger generation are the greatest wealth for the family, society and nation. They are components that have a big responsibility in determining whether the country will experience progress or decline. Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "Every child has the right to survival, growth and development and the right to protection from violence and discrimination". Sexual violence is a form of violence that can occur both in public and at home. Individuals who are often victims of sexual violence cases are usually women and children, who are often considered to be in a weaker position. Perpetrators of sexual crimes often target children as victims because they feel that children will not understand that these actions are against the law, or because they think children will not dare to resist. The research used in this scientific paper is a type of normative juridical research, a legal research method that involves secondary data analysis or literature study. Persons with disabilities who are involved in sexual crimes can be accused if there is sufficient evidence to support the crime. This means that the perpetrator's status will change from suspect to defendant when sufficient evidence is met. The reasons for child protection are very reasonable because children are individuals who have not yet reached physical and mental maturity.

1. Introduction

Children as the younger generation are the greatest wealth for the family, society and nation. They are components that have a big responsibility in determining whether the country will experience progress or decline¹. Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "Every child has the right to survival, growth and development and the right to protection from violence and discrimination". This means that the constitution firmly guarantees the rights and

¹ Liza Agnesta Krisna, *Hukum Perlindungan Anak* (Yogyakarta: Deepublish, 2018).

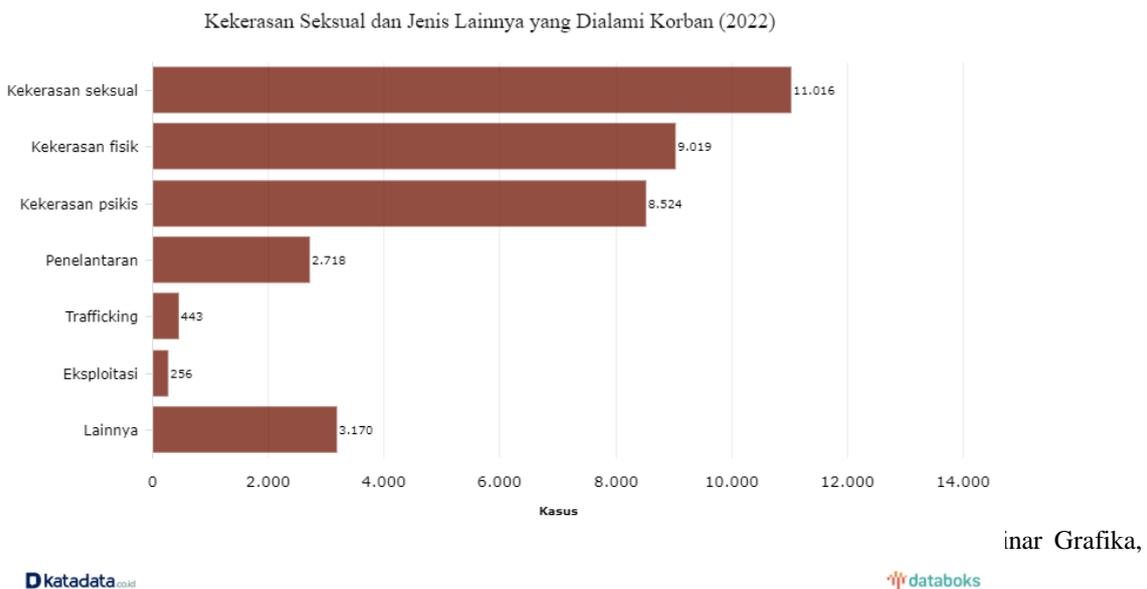
protection inherent in all children which must be respected by all parties, including the state.

The care, protection and safeguarding of children's interests should be carried out by individuals or entities who care for them under the supervision and guidance of the government, and if necessary, by the government itself. Therefore, the person responsible for child care must also protect the children from disturbances that come from outside or that may arise from the children themselves².

Every child has the right to welfare, loving care, services that support their development, protection from the womb and after birth, as well as protection from the environment that can hinder their growth. When a child is in a dangerous or threatening situation, it is the child who must receive priority in receiving help, assistance and protection³.

Behind children's rights being regulated in this way, in reality many children's rights are violated and taken away by some parties through criminal acts. One real form of violation of this right is through sexual violence, which is clear evidence of non-compliance with child protection principles. It is appropriate for children as the future generation of the nation to have full rights to obtain security and comfort when carrying out all activities.

Figure 1. Type of Violence Often Experienced by Victims in 2022



Source: Katadata.co.id

Sexual violence topped the list as a form of violence frequently experienced by victims, reaching 11,016 cases. The Ministry of Women's Empowerment and Child Protection noted that cases of sexual violence against children reached 9,588 in 2022, an increase from the previous year which only reached 4,162 cases⁴.

Sexual violence is a form of violence that can occur both in public and at home. Individuals who are often victims of sexual violence cases are usually women and children, who are often considered to be in a weaker position. Children are considered vulnerable to sexual violence because they are still very dependent on adults, so they easily become victims of sexual violence committed by perpetrators⁵.

The negative impact often experienced by victims of sexual violence is psychological damage. Acts of sexual violence against children will cause trauma throughout their lives. When experiencing sexual violence, children often do not understand the situation and do not realize that they are victims. From a biological perspective, children can experience problems with vital organs because they are forced to engage in sexual activity. Socially, they can also feel easily intimidated and experience a lack of self-confidence⁶.

Perpetrators of sexual crimes often target children as victims because they feel that children will not understand that these actions are against the law, or because they think children will not dare to resist. Sexual violence against children will have a negative impact on the psychological well-being and development of the child and

⁴ KemenPPPA, "KemenPPPA: RI Emergency of Child Sexual Violence, 9.588 Cases During 2022," CNN Indonesia, 2023, <https://www.cnnindonesia.com/nasional/20230127173509-20-905780/kemenpppa-ri-darurat-kekerasan-seksual-child-9588-cases-during-2022>.

⁵ Ani Purwanti and Marzellina Hardiyanti, "STRATEGI PENYELESAIAN TINDAK KEKERASAN SEKSUAL TERHADAP PEREMPUAN DAN ANAK MELALUI RUU KEKERASAN SEKSUAL," *Jurnal Masalah-Masalah Hukum* 47, no. 2 (2018): 138–48, <https://ejournal.undip.ac.id/index.php/mmh/article/view/19012/13859>.

⁶ Nurfazryana and Mirawati, "Dampak Psikologis Kekerasan Seksual Pada Anak," *Journal of Social and Economics Research* 7, no. 2 (2022): 32–43, <https://ojs.ekasakti.org/index.php/UJSCR/article/view/315/281>.

cause shame in the victim's family⁷.

Sexual violence is a serious issue that does not respect gender, age or social position. Anyone, including people they know or trust, can be a perpetrator of sexual violence at any level of society. Even a person with a disability can commit heinous, immoral crimes of sexual violence against children.

In 2020, a man with intellectual disabilities from Tebet, South Jakarta, known as Eddy Soeryono or Yoyo, was charged with committing acts of sexual violence against two girls, A and S, aged 10 and 8 years. This case has entered the trial stage at the South Jakarta District Court. This incident began when Yoyo was recorded in a video circulating on social media and short message applications on August 16 2019. The video showed Yoyo touching the children's genital area. The video was taken by a neighbor of Yoyo who lives next to the crime scene⁸. In this case, no one can rule out the possibility of committing a sexual crime. Therefore, legal protection for children must be taken seriously.

Legal protection for children in a community is a marker of the level of civilization of that community, so it needs to be enforced as optimally as possible according to the capabilities of the state and its people⁹. The state must be present to defend and provide protection for children who experience sexual violence. This defense and protection is not only carried out legally, but also extends to the child's psychological and health recovery.

Legal regulations in Indonesia regulate that criminal acts of sexual violence against children are immoral acts, with severe penalties. Juridically, the legal rule that handles this issue is Law Number 12 of 2022 concerning Crimes of Sexual Violence. Based on this background, the author is interested in studying "The Legal Consequences of Persons with Disabilities as Perpetrators of Sexual Crimes Against Children in Indonesia".

⁷ Irvan Rizqian, "Legal Protection Efforts for Children as Victims of Crimes of Sexual Violence Examined According to Indonesian Criminal Law," *Journal Justiciabellen* 1, no. 1 (2021): 54.

⁸ M. Yusuf Manurung, "Person with Mental Disabilities Tried on Charges of Obscenity," *Metro Tempo*, 2020, <https://metro.tempo.co/read/1360716/pendengan-disabilities-mental-disidikan-atas-tuduhan-pencabulan>.

⁹ Krisna, *Hukum Perlindungan Anak*.

From the background above, it can be concluded that the problem that the author will take up is what are the legal consequences of child sexual crimes committed by people with disabilities? What is the legal protection for children as victims of sexual crimes?

2. Research Method

The research used in this scientific paper is a type of normative juridical research, a legal research method that involves secondary data analysis or literature study¹⁰. This research examines the principles or concepts contained in legal science¹¹. In this research, various approach methods were used, including the statutory approach, conceptual approach, case-based approach, and analytical approach. Data Collection

In normative juridical research, data collection is carried out by conducting literature studies sourced from statutory regulations, the internet, books and other sources that can be used as references to obtain secondary data. The secondary data collected will be focused on the problem topic being researched.

In this research, the data processing method used is through library research. Library research is a data collection method that focuses on secondary data such as documents and laws and regulations that are relevant to the research topic, as well as legal theories related to the research material.

3. Analysis and Discussion

A. Legal Consequences of Child Sexual Crimes Perpetrated by Persons With Disabilities

1) Overview of Disability

Disability is a term that describes a situation when a person experiences limitations both physically and mentally for a long time. This condition often inhibits the individual's ability to interact and socialize with other people, and can result in striking differences¹². Terminology used in the context of disability often reflects a negative view of people with disabilities, describing them as a social group that is

¹⁰ Soerjono Soekanto, *Pengantar Metode Penelitian* (Jakarta: Rajawali Press, 2001).

¹¹ H. Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2017).

¹² Ebenhaezer Alsih Taruk Allo, "Persons with Disabilities in Indonesia," *Journal of Social Sciences* 9, no. 3 (2022): 807.

considered to have various limitations and disabilities, and tends to be pitied by others. However, it should be noted that this perception is not in line with the government's efforts which focus on respecting the dignity of people with disabilities, improving their position in society, and protecting and guaranteeing equal human rights¹³.

Article 4 paragraph (1) in the 2016 Law on Persons with Disabilities explains the classification of individuals with disabilities as follows:

a. Physical Disabilities

Physical disability can be explained as a condition where there are abnormalities in parts of the body (such as hands, feet, body and other organs) that can hinder, disrupt or become an obstacle for individuals in living their daily lives in the same way as individuals without disabilities. Examples include paralysis, dwarfism, and Cerebral Palsy (CP)¹⁴.

b. Intellectual Disability

Intellectual disability refers to a disorder in a person's abilities or thinking patterns characterized by below average skills, which also hinders his or her ability to adapt. As a result, individuals with this disability may face difficulties in understanding behavior or speech given to them by others¹⁵.

c. Mental Disability

Mental disability is a condition where a person experiences disturbances in emotions, thought patterns and behavior due to obstacles in their psychological functioning. Some examples of these psychological disorders include schizophrenia, bipolar, anxiety, depression, autism, and hyperactivity disorder¹⁶.

2) Legal Position of Persons with Disabilities in Indonesia

In 2016, the Plenary Session of the House of Representatives officially approved the Draft Law on Persons with Disabilities, which later became the Law on Persons

¹³ Dorang Luhpuri, *Introduction to Social Work Practices with Disabilities in Indonesia* (Bandung: Poltekkes Press, 2019).

¹⁴ T. Somantri Sutjihati, *Psychology of Exceptional Children* (Bandar Lampung: Refika Aditama, 2006).

¹⁵ Ira Retmaningsih, "Social Representation of Intellectual Disability in Peer Groups," *Journal of Psychology* 39, no. 1 (2012): 14.

¹⁶ Yazfinedi, "Concepts, Problems and Solutions for People with Mental Disabilities in Indonesia," *Quantum: Scientific Journal of Social Welfare* 14, no. 2 (2018): 101.

with Disabilities. This step was taken as a concrete effort to fulfill the rights of persons with disabilities, including their economic, political, social, cultural rights, as well as their rights to equality before the law. It is hoped that the presence of this law will provide solid legal protection for all citizens, especially for people with disabilities, with the aim of preventing various forms of injustice, violence and discrimination.

The paradigm adopted by law enforcement today emphasizes that people with disabilities should be treated as individuals who have the same rights as other individuals in society. This understanding is based on the principle of human rights, which means having the right to claim and enjoy these rights based on the principle of "human rights based". This paradigm rejects the old view that sees people with disabilities only as objects of charity who should receive love and social protection alone, within a "charity" or "social based" framework, which often creates stigma and reduces their dignity. Instead, the current focus is on providing equal support, access and opportunities for all individuals, regardless of disability status, with the hope of achieving inclusion and equality in society¹⁷.

The presence of citizens who experience disabilities must be recognized and given the same rights according to the type and level of disability. The principle of equality under the law must always be upheld to ensure the rule of law and a fair justice system. The government has an obligation to safeguard the human rights of its population without violating legal principles¹⁸.

The importance of emphasizing the protection of the rights of persons with disabilities is due to the fact that they are individuals with special abilities. Therefore, special treatment and special attention is needed from the government to ensure the fulfillment of their rights as regulated in Chapter XA of the 1945 Constitution of the Republic of Indonesia regarding human rights. If the government does not provide adequate protection, individuals with disabilities will be highly vulnerable to

¹⁷ RR. Putri A Priamsari, "Just Law for Persons with Disabilities," *Jurnal Hukum* 48, no. 2 (2019): 218.

¹⁸ Endah Rantau Itasari, "Legal Protection for Persons with Disabilities in West Kalimantan," *Integralistic Journal* 31, no. 2 (2020): 80.

discrimination in their efforts to fulfill their rights¹⁹.

3) Legal Consequences of Sexual Crimes Perpetrated by Persons with Disabilities on Children

Article 30 and Article 36 in the Law on Persons with Disabilities outlines that persons with disabilities have the right to receive the same legal protection and justice as other individuals, whether in their role as victims, witnesses or perpetrators of criminal acts. Any law enforcement officer involved in a criminal proceeding involving a person with a disability should consult with a psychologist or psychiatrist who has an in-depth understanding of the individual's health condition and psychosocial aspects. For persons with disabilities who are perpetrators of criminal acts, law enforcement officers must provide appropriate accommodation throughout the entire judicial process.

In this research, various approach methods were used, including an approach based on sexual crimes as regulated in Article 6 of Law Number 12 of 2022 concerning the Crime of Sexual Violence, subject to punishment for committing physical sexual harassment with various varying threats. Article 6 letter a explains the threat of a maximum prison sentence of 4 (four) years and/or a fine of up to IDR 50,000,000.00. Meanwhile, in letter b, the perpetrator can be subject to a maximum prison sentence of 12 (twelve) years and/or a maximum fine of IDR 300,000,000.00. legal, conceptual approach, case-based approach, and analytical approach.

Persons with disabilities who are involved in sexual crimes can be seen as defendants after sufficient evidence is met, and at this point, the perpetrator's status will change from suspect to defendant. The definition of a defendant is explained in Article 1 point 15 of the Criminal Procedure Code (KUHAP) as "a suspect who is charged, undergoes an examination process, and is brought before the court at a court hearing."

Law Number 1 of 2023 concerning the Criminal Code (UU KUHP) explains as follows:

¹⁹ Arie Purnomosidi, "The Concept of Protecting the Constitutional Rights of Persons with Disabilities in Indonesia," *Jurnal of Legal Studies* 1, no. 2 (2017): 172.

Article 38 of the Criminal Code Law reads: "Every person who at the time of committing a crime has a mental disability and/or intellectual disability may have their sentence reduced and/or be subject to action."

Article 39 of the Criminal Code Law reads: "Any person who at the time of committing a crime has a mental disability which is in a state of acute relapse and is accompanied by psychotic features and/or moderate or severe intellectual disability cannot be sentenced to a crime, but can be subject to action."

In other words, whether the defendant will face punishment or be acquitted²⁰. If sentenced, it must be confirmed that the actions committed violated the law and the defendant has the ability to be responsible for his actions. This ability reflects the perpetrator's mistake, which can be intentional or negligent. This means that the action was considered wrong, and the defendant realized the wrongness of his actions²¹.

In the context of criminal law, the concept of "liability" is a central element known as the doctrine of guilt or "mens rea". In this teaching, guilt or evil intent is required for a person to be considered guilty. Therefore, there are two conditions that must be met to convict someone: first, there must be a physical act that violates the law (actus reus), and second, there must be a mistake of thought or evil intent (mens rea)²².

Because responsibility in a criminal context cannot be realized without error in a person's actions, error is a central element in the concept of criminal responsibility, or in other words, error is an inseparable characteristic in criminal law²³.

Thus, to determine if the legal subject of a person with a disability who commits a sexual crime is guilty or not, it is necessary to fulfill the following elements of error:

- a. The ability to be accountable to the individual who makes something;
- b. The internal nature connected between the individual who performs the action and the characteristics of the action, which can be an intentional act (dolus) or an omission (culpa);

²⁰ M. Zaid et al., "The Sanctions on Environmental Performances: An Assessment of Indonesia and Brazil Practice," *Journal of Human Rights, Culture and Legal System* 3, no. 2 (2023): 236–64, <https://doi.org/10.53955/jhcls.v3i2.70>.

²¹ Lukman Hakim, *Principles of Criminal Law*, Textbook for Student (Yogyakarta: Deepublish, 2020).

²² Hakim.

²³ Hakim.

- c. Absence of justification to eliminate guilt or absence of grounds for forgiveness²⁴.

B. Legal Protection for Children as Victims of Sexual Crimes

1) Child Protection Background

Child protection is an issue that continues to develop in line with the development of society in various parts of the world. As successors of the family and society, the position of children is a primary concern, encouraging serious efforts and steps to protect them so that they can grow and develop well. This aims to ensure that they will become the next generation who can continue the life of the nation in the future²⁵.

Peter Newel, an expert in the field of child protection, shares his perspective on the subjective factors that need to be taken into account when considering child protection, including things like²⁶:

1. The costs of dealing with the damage resulting from failure to protect children are very expensive, far exceeding the costs required to provide protection to children;
2. The actions or inactions of governments or other groups have profound and long-term effects on children;
3. Public services are often uneven or uneven in their treatment of children;
4. Children do not have the right to participate in decision-making, and their lobbying power is limited in influencing government policy;
5. The risk of exploitation and abuse tends to be greater for children.

The basis for protecting children is very reasonable, considering that children have not yet reached physical and mental maturity. If a child experiences an unusual event or is the victim of an adverse event, they can experience lasting psychological

²⁴ Rinaldy Amrullah and Dwi Intan Septiana, *Indonesia Criminal Law* (Yogyakarta: Suluh Media, 2021).

²⁵ Rahmat Amin, *Law for the Protection of Children and Women in Indonesia* (Yogyakarta: Deepublish, 2021).

²⁶ Hadi Supeno, *Criminalization of Children: Offering Radical Ideas for Juvenile Justice Without* (Jakarta: Gramedia Pustaka Utama, 2010).

trauma, and it will take a long time to overcome the negative effects²⁷.

2) Child Protection Institution

An entity that plays an important role in implementing child protection efforts in Indonesia is the Indonesian Child Protection Commission. The presence of this institution is considered an aspect that provides hope for ensuring the fulfillment and protection of children's rights in their lives. This is part of the efforts and tasks described in Article 74 of Law Number 23 of 2002 concerning Child Protection.

The National Commission for Child Protection or Komnas PA is an organization in Indonesia whose mission is to monitor, promote and protect children's rights and avoid violations of children's rights that may be committed by the state, individuals or other entities. Komnas PA was formed in Jakarta on October 26 1998 as a measure to protect children from various forms of violence, neglect, wrongdoing, discrimination and exploitation.

The duties of the Child Protection Commission are regulated in Article 76 of Law Number 35 of 2014 concerning Child Protection, namely as follows:

1. Supervise the implementation of the protection and fulfillment of children's rights;
2. Convey views and recommendations in the process of formulating policies related to child protection;
3. Record data and information related to child protection;
4. Respond to and assess complaints submitted by the public regarding violations of children's rights;
5. Facilitate dispute resolution regarding violations of children's rights;
6. Collaborate with organizations founded by the community in child protection efforts;
7. Inform authorities of potential violations of this law.

Through this discussion, handling child victims of sexual violence requires a comprehensive protection approach and requires a system basis. The goal is to strengthen an environment that protects children from harm. This approach emphasizes the primary responsibility of the state in providing services for the rights and protection

²⁷ Amin, *Law for the Protection of Children and Women in Indonesia*.

of children, recognizing children as rights holders with state responsibility for their welfare²⁸.

4. Closing

Persons with disabilities who are involved in sexual crimes can be accused if there is sufficient evidence to support the crime. This means that the perpetrator's status will change from suspect to defendant when sufficient evidence is met. In criminal law, it is important to note that criminal responsibility can only be applied if there is the subject's fault, and this fault is the main focus in the concept of criminal responsibility. This means that error is one of the characteristics that cannot be eliminated in criminal law. To determine whether a person with a disability who is involved in a sexual crime can be punished or not, several elements of error need to be considered, such as the ability to take responsibility, the presence of an element of intent or negligence, as well as an assessment of the existence of reasons to erase or forgive the error.

The reasons for child protection are very reasonable because children are individuals who have not yet reached physical and mental maturity. Therefore, when they experience abnormal situations or become victims of negative events, lasting psychological impacts can occur and take a long time to recover. Efforts to ensure child protection in Indonesia are carried out through the Indonesian Child Protection Commission, which is a positive step in fulfilling and protecting children's rights in their lives in accordance with the mandate stated in Article 74 of Law Number 23 of 2002 concerning Child Protection.

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