

## The Nature Of Legal Protection For Child Victims Of Sexual Violence

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### ABSTRACT

The results of this study indicate that: (1) The essence of legal protection for victims of sexual violence against children is that it fulfils the protection of children's rights to achieve legal goals, namely to provide a sense of justice in a society in order to achieve a prosperous life. (2) The implementation of legal protection for children as victims of sexual violence from criminal law, especially in court, has not prioritized the interests of children as victims of sexual violence; on the contrary, in fact, it actually overrides the interests of children who make children victims for the second time because there is no protection for these child victims. (3) Factors that affect the legal protection of victims of sexual violence against children are legal substance, legal structure and community legal culture. The recommendations of this research are (1) It is necessary to increase the understanding of officials in terms of law enforcement to provide legal protection for children as victims of sexual violence. (2) There needs to be a change in legal regulations related to the rehabilitation of child victims of sexual violence in South Sulawesi. (3) There is a need for increased legal counselling to the public regarding the steps that must be taken when dealing with children as victims of sexual violence.

Keywords: Legal Protection; Children; Victims of Sexual Violence.

### INTRODUCTION

Children are a mandate as well as a gift from God Almighty. Children are considered the most valuable assets compared to other assets. Every child has human rights regulated in the 1945 Constitution of the Republic of Indonesia. Children, as the next

generation of the nation's ideals, have the right to survival, growth and development, participation, and protection from acts of violence and discrimination, as well as civil rights and freedoms. Children's human rights cannot be separated from the government's role as the person responsible for ensuring the welfare of children. Children are individuals who are immature physically, mentally and socially. Children are a weak and vulnerable group, so they are more at risk of being impacted by sexual violence. Sexual violence against minors has an impact on the psychology and growth of children. The psychological impact on child victims of sexual violence can cause prolonged trauma, excessive fear, disturbed mental development, and mental retardation. The psychological impact can be a bad threat for child victims of sexual violence. Child victims of sexual violence must receive serious attention from both the family and the government. Victims of sexual violence also need protection so that their rights can be fulfilled.

Sexual violence against children is related to exploitation, abuse, discrimination and so on. Children really need to be protected from various forms of crime that can affect their physical, mental and spiritual development. Child victims of sexual violence must receive recovery from traumatic conditions so that they do not become perpetrators in the future. Therefore, it is necessary to have regulations that can protect children from various forms of crime. Legal protection against sexual violence against children is regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Sexual violence against children is also regulated in the Criminal Code (KUHP), Law Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, Law Number 23 of 2004 concerning the Elimination of Domestic Violence (KDRT), and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In fact, it is not uncommon for victims as adults to become perpetrators of crimes of sexual violence as a result of deep psychological trauma; they will even continue to imagine in their memories when the perpetrator's actions were carried out with violence so that it will bring out the nature of revenge that is difficult to get rid of. As a result of this vengeful nature, it is possible for him to become a perpetrator of sexual violence when he grows up because it is not uncommon for perpetrators of sexual violence to be victims of sexual violence when they are young.

Attention to the problem of child protection as an object of crime has been discussed in several international scale meetings, including the Geneva Declaration on the Rights of the Child in 1924, which was recognized in the Universal Declaration of Human Rights in 1948. Then on November 20, 1958, the UN General Assembly passed the Declaration of the Rights of the Child (Declaration of the Rights of the Child). The international instruments in child protection which are included in human rights instruments recognized by the United Nations are UN Rules for The Protection of Juveniles Deprived of Their Liberty, UN Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), UN Guidelines for The Prevention of Juvenile Delinquency (The Riyadh Guidelines). It seems that the many instruments and recommendations from the meeting have not shown significant results in providing protection for children. Yet, as stated in the Declaration on the Rights of the Child, "the child, by reasons of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth..."

The 1993 Vienna Declaration produced by the World Conference on Human Rights (HAM) again put forward the principle of "First Call for Children," which emphasized the importance of national and international efforts to advance children's rights to "survival protection, development and participation" The above instruments have established a set of children's rights and the obligations of countries that sign and ratify them to protect children in matters of child labour, child adoption, armed conflict, juvenile justice, child refugee, exploitation, health, family education, rights -civil rights, and economic, social and economic, social and cultural rights that aim to provide protection for children who are vulnerable to becoming victims (victims) Legislation that regulates legal protection for children does not reduce the occurrence of problems of sexual violence in Indonesia Sexual violence against children still occurs in many places, both in cities and villages. Sexual violence that befalls children in Indonesia does not only occur in areas prone to violence but also occurs in the family and school environment. Perpetrators of sexual violence against children are also not only carried out by other people who are not recognized but also by people who are known, close to, and trusted by children. Sexual violence threatens the safety of children in Indonesia, who are in a very vulnerable position in almost all social areas. The high cases of sexual violence against children illustrate the lack of attention from the government. The practice of sexual violence

will have a negative impact on children. It will not only damage the future physically but will also damage the child's mental and psyche, such as major depressive disorder, which can carry over into adulthood. 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 become a perpetrator of sexual violence against children or sexual violence. The ability of the perpetrator to control the victim, either by deception or threats and violence, makes it difficult to avoid this crime. Data recorded at the Indonesian Child Protection Commission (KPAI) shows that the highest cases of sexual crimes against children in 2021 came from 536 cases (62%) of children as victims of sexual abuse and 285 cases (33%) of children as victims of sexual violence. Children as victims of same-sex sexual abuse in 29 cases (3%) and children as victims of sexual violence, rape/sexual intercourse in 9 cases (1%).

In connection with the crime of sexual violence against children in South Sulawesi Province, several cases can be seen, including first case number 258/Pid.Sus/2019/PN.WTP, a father who molested his biological child, was charged with Article 81, paragraph 3 jo. Article 76 D RI Law No. 35 of 2014 concerning changes to RI Law no. 23 of 2002 concerning Child Protection, with a sentence of 15 (fifteen) years imprisonment; Second, case number 8/PID.SUS-ANAK/2017/PN.PLP deliberately committing deception, a series of lies, or persuading a child to have intercourse with him is charged with Article 81 paragraph (2) RI Law No. 35 of 2014 concerning changes to RI Law no. 23 of 2002 concerning Child Protection, with a prison sentence of 4 (four) years. Third, case number 146/Pid.Sus-Anak/2015/PN.MKS, a father who molested his biological child, was charged with Article 81 paragraph 3 of RI Law No. 35 of 2014 concerning changes to RI Law no. 23 of 2002 concerning Child Protection, with a sentence of 5 (five) years imprisonment.

Crimes of sexual violence against children this is like the phenomenon of an iceberg "On the surface, it looks only a few, but on the bottom, there are very many" That's how criminal acts of sexual violence against children are increasingly being explored the more and more they appear. Both the child and the mother are unable to even have the courage and willingness to report the actions suffered by the child, so it is not uncommon for the mother and child to seem to be trying to cover up what happened to them. There are many factors behind the background of mothers, children and other family members

covering up cases that befall them, including cases that befall children are considered a disgrace to the family. It is undeniable that Indonesian national law has regulated the protection of victims of criminal acts, but the laws governing the legal protection of victims of criminal acts that have existed so far are still partial, whose existence is scattered in various laws and regulations so that they only apply to certain crimes. There are three aspects that must be considered in understanding the obstacles faced by victims, namely aspects of substance, structure, and legal culture. At the substance level, although there is an emphasis on the right to protection from violence and discrimination, some types of sexual violence are not yet recognized by Indonesian law. As the Criminal Code (KUHP) only regulates sexual violence in the context of physical form and mere intercourse. At the structural level, law enforcement agencies have begun to create special units and procedures to handle cases of violence against children, including forms of sexual violence that are regulated by law. However, units and procedures in law enforcement agencies are currently not available at all levels of implementation and are not yet supported with adequate facilities and perspectives for handling victims. At the level of culture or legal culture, there are still people's perspectives on the morality of sexual violence. As a result, the attitude towards the case does not show empathy for the victim's child and even tends to blame the victim. Questions such as what to wear, where to be, at what time, and how to do it are some of the questions that are often asked in cases of sexual violence. This kind of question not only shows the lack of a victim's perspective but is also a form of judging the victim and causing the victim to experience violence again (re-victimization). Besides that, in Haryanto Dwiatmodjo's journal, Prasel said<sup>1</sup>:

"Victim was a forgotten figure in the study of crime, a victim of assault, robbery, theft and other offences were ignored while police, courts, and academicians concentrated on knowing violators". "The victim is a forgotten figure in the study of crime; victims of assault, robbery, theft and other offences are ignored while police, courts and academics concentrate on known offenders." Seeing the description above, it can be said that the position of the victim in a crime is not easy to solve from a legal

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<sup>1</sup> Dwiatmodjo, Haryanto. "Implementation of Legal Protection for Children Who Become Victims of Crime in the Legal Area of the Banyumas Court", *Journal of Legal Dynamics*, Vol. 11 No. 2, May 2011.

point of view. The problem of the interests of victims of criminal acts has received less attention for a long time because the object of attention is still more focused on how to give punishment to the perpetrators of crimes, which is inherent in the retributive theory. The theory of absolute punishment or retributive theory originates from the Hammurabi era, where in law, attention was more focused on the problem of the penological aspect, namely how to make the perpetrators of crimes punishable in accordance with the actions proven to have been committed, resulting in attention being neglected regarding the resolution of the problems experienced by victims. In this retributive theory, it emphasizes a policy whose point of protection is the offender (offender oriented). Besides that, also in a statement by Randy E. Barnett and John Hegel stated that<sup>2</sup>: "Crime is regarded as an offence against the state. The damage to the individual victim is incidental, and its redress is no longer regarded as a function of the criminal justice process. The victim is told that if he wants to recover his losses, he should hire a lawyer and sue in civil court. The Criminal Justice System is not for his benefit but for the community's. Its purposes are to deter crime, rehabilitate criminals, punish criminals, and do justice, but not to restore victims to their wholeness or to vindicate them." "Crime is considered as an offence against the state. The victim's individual loss is incidental in nature, and compensation is no longer considered a function of the criminal justice process. The victim was told that if he wanted to recover his losses, he had to hire a lawyer and sue in civil court. The Criminal Justice System is not for its own sake but for society.

The purpose is to prevent crime, rehabilitate criminals, punish criminals, and do justice, but not to restore victims to their integrity or to defend them." Victims of criminal acts can experience a second time as victims, namely victims physically as well as material victims as a result of the criminal justice process. Meanwhile, the purpose of punishment must be to provide benefits to many people, not only certain people (perpetrators), but the law must be able to guarantee the true happiness of the greatest number of people (the greatest happiness of the great number). If the criminal justice system is studied in more depth through the products of legislation in Indonesia, it does not really include protection for victims of

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<sup>2</sup> Barnett, Randy E., dan John Hegel III, eds., *Assessing the Criminal: Restitution, Retribution, and the Legal Process*, Cambridge: Ballinger Publishing Company, 1977.

criminal acts in particular. Regarding the implementation of criminal law, the victim of a crime in the criminal justice system (criminal justice system) position is given very less attention. Besides that, Robert Reiff also said: "The victim of a criminal act is only considered as a supplementary legal subject, not as a legal subject that must be protected in priority but only seen as nothing more than evidence". "Victims of criminal acts are only considered as complementary legal subjects, not as legal subjects that must be prioritized but only seen as nothing more than evidence". As a result, the participation of victims of criminal acts in the justice system is seen as a party that is not very important for their existence, and there is no adequate remedy to restore the victim's position to its original state. Criminal acts are violations of the public interest which are included in public law, and reactions to criminal acts become the monopoly of the state as a representation of the public or society. This view dominates the practice of criminal law, which results in people who are victims of and suffer the consequences of criminal acts being ignored by the criminal justice system.

The fate of victims of criminal acts can be likened to those who experience natural disasters, and the criminal justice system does not care about the fate of people who suffer from natural disasters. The state (which in this case is represented by the police and prosecutors) has a very dominant role in criminal law as a legitimate representative of society to defend the public interest; in fact, it has taken over the role of the victim as a party suffering from a crime. The dominant role of the state is not followed by clear legal arrangements regarding the legal relationship between victims of crime and the state. So whatever and however the actions or steps taken by the police or prosecutors are considered as the steps and actions desired by the victim of a crime. The relationship between the victim of a crime and the state, which in this case is represented by the police and prosecutors, is described as an indirect relationship that does not give rise to real legal consequences. It is very much different when compared to the relationship between the suspect (perpetrator) and his legal adviser (advocate), where the relationship between the two subjects is woven in a direct relationship so that it will produce definite and directed legal consequences. Real evidence of legal protection that is unequal when viewed from the treatment of perpetrators of criminal acts; for example, since the beginning of the examination process, their rights have been protected, and perpetrators of criminal acts have the right to obtain free legal assistance from

the state for those suspected of committing certain crimes, get good treatment, be kept away from torture, even the right to ask for compensation when an error occurs in the process of examining a criminal case, in short, all the rights and attributes attached to perpetrators of crimes as human beings are packaged in the Criminal Procedure Code. There are many legal theories that discuss the protection of perpetrators and the rights of suspects, defendants and convicts so that the perpetrators of criminal acts are increasingly protected and vice versa, resulting in victims being increasingly neglected. Police, prosecutors and judges are considered representatives of victims of criminal acts who deal directly with perpetrators of criminal acts. What has been done by the public prosecutor as a representative of the state in prosecuting the perpetrators of criminal acts is considered sufficient in resolving the problem of criminal acts. A scene that is often encountered how is when a victim who has been examined in court is as if he is not the person who has been harmed anymore. There is a tendency of the state to ignore victims of criminal acts, so this is very ironic considering how important it is to provide protection for the constitutional rights of victims who have been harmed by perpetrators. The description above shows that criminal law is appropriate, must be reviewed and must look at wider interests, focused on not only retaliation for the perpetrators of criminal acts but also the interests of victims of criminal acts, which deserve attention. Based on the description of the background above, it attracted the interest of researchers to raise the topic of research on legal protection for child victims of sexual violence against children.

## **RESEARCH METHODS**

### **Research Type**

The type of research used in this study is empirical legal research (field), namely research conducted with an approach to legal reality in society. This research is based on the presence of symptoms in the form of a gap between expectations (das sollen) and reality (das sein) in the field of law.

### **Population**

Population is a generalized area consisting of objects/subjects that have certain qualities and characteristics determined by the researcher to be studied and then conclusions drawn. Based on this explanation, the population in this study is all Indonesian



people who are legal subjects.

### **Sample**

The population of this study was 100 people, including 20 people from the Police/Investigators, 20 victims/families, 20 judges/prosecutors, 20 advocates, and 20 people from the community. Sampling was carried out by purposive sampling at Polres.

### **Data source**

#### **Data Primer**

Primary data sources are a number of respondents who are called research informants. This informant is taken in a certain way from the parties who, because of their position or ability, are considered to be able to present the problem that is used as the object of research. The techniques used to determine informants include:

- a) Purposive Sampling Technique is a way of determining the number of informants before the research is carried out by clearly stating who the informant is and what information is desired from each informant.
- b) The Snow Ball Technique is a way of determining informants from one informant to another, which is carried out when the research is carried out until a number of informants are reached who are considered to have represented the various information needed.

#### **Data Seconds**

The second data source used by researchers is secondary data, namely data obtained not directly from the object of research but through a second person either in the form of an informant or through relevant literature, namely literature, theory, books, documents, internet, and print media, and legislation.

#### **Data Collection Techniques**

Data collection is the recording of events or things and descriptions or characteristics of some or all elements of the population that will support or support research. In order to obtain the data as expected, the data collection process is the researcher will collect data in two ways, namely:

1. Library Research Method (Library). This method is research conducted to collect some data by reading and exploring the literature related to the problem being discussed.

2. Field Research Method (Field Research). Field research method (Field research) is research conducted in the field with direct observation in three ways, namely:
  - a) Observation, namely systematic observation and recording of the symptoms studied. Direct observation was carried out on subjects as they were in the field; in this study, observations were made at the South Sulawesi Police Office on investigators. Observations used by researchers in this study are unstructured observations.
  - b) In-depth interviews (in-depth interviews), in which the author conducts questions and answers and direct dialogue with parties directly related to the issues discussed. The type of interview that will be used by the researcher is an open interview; the researcher uses this interview so that the informant's conversation is free to explore the intent of the questions asked. Of course, researchers are still looking for the focus of the problem in question. In this process, the researcher also felt that the answers to be given by the informants outside the questions were additional data.
  - c) Documentation, that is, researchers collect data by observing documents and archives provided by related parties in this case.

#### **Data Analysis Technique**

The most important factor in research to determine the quality of research results is data analysis. The data that has been obtained after going through the data processing mechanism then determines the type of analysis so that later the collected data can be more accountable. In this research, the data analysis technique used is a qualitative deductive data analysis technique. According to Jhonny Ibrahim<sup>3</sup>, deductive qualitative analysis is drawing a conclusion from a general problem to concrete problems in society. The data collected from research results, both primary data and secondary data, are then analyzed qualitatively and discussed in the form of elaboration by giving meaning according to the applicable laws and regulations.

#### **Operational definition**

1. Legal Protection is the protection of human rights so that they do not become victims of sexual violence crimes.
2. Child is someone who is not yet 18 (eighteen) years old.

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<sup>3</sup> Ibrahim, Jhonny., Normative Legal Theory and Research, Malang: Bayu Media Publishing, 2008.

3. A victim is someone who suffers both material and physical losses and takes a long time to return to their original state.
4. Sexual violence is a form of violence that results in physical, psychological and sexual misery or suffering.
5. Legal aid is a service of providing assistance by acting as an advocate for someone involved in a criminal case or as a proxy in civil or state administrative cases before the court (litigation) and or giving advice outside the court (non-litigation).
6. Rehabilitation is an activity or process to help sufferers who have serious illnesses or disabilities that require medical treatment to achieve maximum physical, psychological and social abilities.
7. Supervision is the process of setting work performance measures and taking actions that can support the achievement of the expected results in accordance with the performance that has been achieved.
8. Prevention is a process or way to prevent similar incidents from happening again
9. The legal substance is related to the applicable laws and regulations, which have binding power and become guidelines for law enforcement officials.
10. Legal structure is a pattern that shows how the law is implemented according to its formal provisions.
11. Legal culture is a human attitude (including the legal culture of law enforcement officials) towards the law and the legal system.
12. Facilities and infrastructure are anything that can be used as a tool in achieving goals or objectives, while infrastructure is everything that is the main support for the implementation of a process (business, development, project).
13. Optimal is a process to achieve ideal results.

## **RESEARCH RESULTS AND DISCUSSION**

### **The Nature of Legal Protection for Victims of Sexual Violence Against Children**

Protection for children to get treatment and opportunities according to their needs in various fields of life so that in providing legal protection for children by the government must be based on the Principles of Children's Rights, namely respect, fulfilment and protection of children's rights. The government has passed Law Number 23 of 2002 concerning Child Protection,

amending Law No. 35 of 2014 concerning child protection. Child protection is carried out based on the principle of non-discrimination, the best interests of the child, and the right to live, grow and develop. The definition of a child according to Law No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in Article 1 Number 1 is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. That means some youths, namely someone aged 16-30 based on Law Number 40 of 2009 concerning Youth, can still be categorized as children. Data recorded at the Indonesian National Commission for Child Protection states that in 2019 there were 11,057 cases of sexual violence against children, of which there were 6,454 cases of sexual violence against children. In 2020 cases of violence against children increased to 11,279 cases, including sexual violence against children there were 6,980 cases. Likewise, in 2021, there were 11,952 cases of violence against children; out of this number, the violence experienced by children was sexual violence, namely 7,004 cases. This means that 58.6% of cases of violence against children are cases of sexual violence against children.

In the data above, both in cities and regencies, it can be seen that there have been fluctuations in the number of cases of sexual violence against children in the last three years, namely from 2019 to mid-2021. It can be observed that there has been an increase in the number of cases of sexual violence against children in 2021, where in 2021, it will be the highest point in the number of cases of sexual violence. Then, there was a decrease in sexual violence, namely in 2020 in Makassar City, Bone Regency and Bantaeng Regency. Fluctuations in the number of sexual violence are, of course, influenced by certain factors, both from the point of view of public legal awareness and in terms of optimizing law enforcement.

In Indonesia, there has been a decline during the COVID-19 pandemic, and cases of sexual violence against children are quite high. Based on data from the SIMFONI (Online Information System for the Protection of Women and Children) of the Ministry of Women's Empowerment and Child Protection, as of January 1 to June 19 2020, there have been 3,087 cases of violence against children, including 852 physical violence, 768 psychological, and 1,848 cases of sexual violence. The COVID-19 pandemic has had an impact on various aspects of people's lives in terms of health, economy, society, Education, and politics.

Significant impacts also occur in the lives of children and their families. The COVID-19 pandemic has also had another impact, namely an increased risk of violence against children and their families. High levels of stress, family economic problems, as well as the application of isolation and quarantine policies that limit people's movements trigger the occurrence of violence. This increase in cases certainly requires adequate and affordable services for children and families who are victims of violence. There are many reasons why children are so vulnerable in emergencies or during the COVID-19 pandemic. This is caused by; children are still very dependent on adults for survival, and children are also vulnerable to being used by irresponsible parties. Children are also not yet able to make efforts to obtain their rights because development is immature, and children's knowledge of the rights they have is still limited. The COVID-19 pandemic, it also raised other problems. For example, children become vulnerable to violence and abuse, both physical violence and sexual violence. Privacy spaces are very limited, even non-existent. The isolation system and staying at home further increase the risk for children. In addition, the use of online media also increases the risk of children experiencing online sexual exploitation. Even though they know that they are experiencing unpleasant events, many children are silent and do not tell anyone about the events they are experiencing. The complexity of violence, such as persuasion, as well as the use of power and control relations by the perpetrator, affects the psychological condition of the victim.

Based on the theory of legal protection put forward by Philip M. Hadjon<sup>4</sup>, which consists of two protections, namely preventive protection and repressive protection. Preventive protection is protection given after the occurrence of a crime, especially sexual violence against children. Repressive protection is protection given or carried out before the crime occurs; the concept of repressive protection is prevention. The prevention in question is not providing opportunities or loopholes for individuals who will commit crimes of sexual violence targeting children as their objects. The protection of children is not only regulated by various laws and regulations but is also the obligation of society, individuals, the government and the state as mandated by law. Various deviant behaviours that exist today also occur as a result of social changes in society and various

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<sup>4</sup> Hadjon, Philip M., *Legal Protection for Indonesian People*, Surabaya: Knowledge Development, 1987.

developments in the dynamics of law enforcement. The importance of presenting a clear concept of justice in handling the problems of children who are victims of crime so that this measure of justice can give everyone what they are entitled to. One of the goals of the law is to realize justice; this is also related to the goals of the law, namely legal certainty, expediency and legal justice. Based on the theory described above, it can be interpreted that the process of implementing preventive measures depends on public awareness to resolve this crime. The community must be involved, not just wanting to take action. Therefore, the weight of preventive efforts lies in social or community awareness and responsibility. Meanwhile, repressive efforts in dealing with cases of sexual harassment and violence against children are in the form of criminal sanctions that have been regulated by Indonesia. Indonesian laws regulate sexual harassment as a crime that can be subject to criminal sanctions. Child monitoring agencies have been formed, such as the National Child Commission and the Indonesian Child Protection Commission, and many Non-Governmental Organizations have also been formed to protect the interests of children, as well as other agencies that must improve in conducting sexual Education for parents and children, and recovery services for victims. Recovery for victims includes legal, psychological and medical aspects. The juridical aspect is to provide lawyers to speak in court or consult outside the court. The psychological aspect is to restore the child's mental condition so that he recovers from trauma and attitudes back to socializing with society as well as recovery to prevent children from doing similar actions to other people. While the medical aspect is the recovery of injured or damaged child's organs so that there is intensive care. In Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection, Article 69 A states, "Special protection for child victims of sexual crimes as referred to in Article 59 paragraph (2) letter j is carried out through the following efforts:

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

In the Child Protection Act, every child who becomes a victim of a crime of sexual violence must be protected. The rights of child

victims of sexual violence crimes are as follows:

### **Legal Aid**

The role of legal aid to a victim of a crime is very much needed, especially for child victims of sexual violence crimes, because a child who is dealing with law enforcers, for example, investigators, prosecutors or judges, is likely to feel afraid to express everything that happened to him as a victim. Legal aid is known as legal aid, which is the service of providing legal advice to people who are unable to obtain legal representation and access in court, both litigation and non-litigation, in a fair manner, so any legal action directed against the accused must also pay attention to his rights to obtain the truth. And justice following legal actions carried out without any discrimination. Provision of legal assistance to victims of crime must be provided whether requested or not requested by the victim. This is important to do considering the low level of legal knowledge of the majority of victims who suffer from this violence. The attitude of allowing victims of crime not to receive proper legal assistance can result in a further deterioration in the condition of victims of crime. In the Child Protection Act, not only children as perpetrators of criminal acts are entitled to legal assistance, but also children who are victims. Law No. 48 of 2009 concerning Judicial Power confirms that everyone who is involved in a case has the right to receive legal assistance, and those who cannot afford the costs are borne by the state. This UURI does not explain the meaning of "getting involved in a case", so according to the researcher's understanding, both the suspect/defendant, witness and victim are people who are involved in a case. So according to UURI, as a victim of a crime, they also have the right to get legal assistance. Article 59 A, namely Special Protection for Children as referred to in Article 59 paragraph (1), is carried out through efforts:

- a) Prompt treatment, including treatment and/or physical, psychological and social rehabilitation, as well as prevention of diseases and other health problems.
- b) Psychosocial assistance from treatment to recovery.
- c) Provision of social assistance for children who come from underprivileged families.
- d) Provision of protection and assistance in every judicial process.
- e) In Law No. 18 of 2003 concerning Advocates, it is emphasized that advocates are obliged to provide legal assistance free of charge to justice seekers who cannot

afford it. So actually, advocates should not refuse to provide legal assistance if someone needs it. Including children as victims of sexual violence crimes who are financially incapable; in fact, it is the obligation of a legal adviser to accompany them whether requested or not.

### **Protection Of Witnesses and Victims**

The form and type of protection is protection for physical, mental, and so on, which is carried out as follows through Article 34 of the Law on the Protection of Witnesses and Victims confirms:

1. Every victim of a human rights violation has the right to physical and mental protection from threats, harassment, terror and violence from any party.
2. This protection must be carried out by law enforcement officials and security forces free of charge.

Furthermore, in Government Regulation Number 2 of 2002 describes the forms of protection are:

1. Protection of the personal safety of victims or witnesses from physical and mental threats.
2. Confidentiality of the identity of victims and witnesses.
3. Providing information at the time of examination before the court without meeting the suspect.

The procedure for granting protection through Government Regulation number 2 of 2002 regulates procedures and mechanisms for protection, namely in Article 5 to Article 8, the essence of which is as follows:

1. Legal protection for victims and witnesses is carried out based on the following:
  - a. Initiatives of law enforcement officials and security forces, and services or
  - b. Petition submitted by the victim or witness.
2. Applications are sent to:
  - a. The National Human Rights Commission is at the investigative stage
  - b. Attorney, at the stage of investigation and prosecution.
  - c. The court, at the examination stage.
3. The request was submitted further to the security forces for follow-up. Apart from the victims and witnesses, of course, those who conveyed this were the National Commission on Human Rights, the prosecutor's office, and the courts. What the security forces meant was the Indonesian National Police.
4. Requests for protection can be submitted directly to the



security forces.

5. After receiving a request, law enforcement officials or security forces shall:
  - a. Clarification of the correctness of the application, and
  - b. Identify the form of protection required
6. Coverage is terminated when:
  - a. Upon the request concerned
  - b. Victims and/or witnesses die
  - c. Based on the considerations of law enforcement officials or security forces, protection is no longer needed.
7. Termination of protection must be notified in writing to those concerned no later than 3 (three) days before the trial is terminated
8. Victims and witnesses are not charged anything for the protection given to them. The budget of each law enforcement agency or security apparatus bears all costs.

### **Implementation of Legal Protection for Crime of Sexual Violence Against Children in South Sulawesi**

#### **Preventive Legal Protection**

The concept of child protection covers a very broad scope, in the sense that child protection is not only about the protection of the child's body and spirit but also about the protection of all his rights and interests, which can guarantee proper growth and development, both spiritually, physically and socially. When positioning children as the younger generation who will continue the noble ideals of the nation, as future national leaders and as a source of hope for the previous generation, it is necessary to get the widest possible opportunity to grow and develop properly both spiritually, physically and socially. Child protection is an effort and activity of all levels of society in various positions and roles who are fully aware of the importance of children for the nation and the nation in the future. Philipus M. Hadjon argues that legal protection for the people is a concrete form of government action that has both preventive and repressive characteristics. Legal protection is the sense that, in terms of its preventive nature, has the intent and purpose of providing preventive action against the occurrence of a problem which becomes a reference for the government in being cautious about taking a decision based on discretion and legal protection in the sense that in terms of its repressive nature has the intent and purpose of providing preventive measures against the occurrence of a problem includes handling

it within the scope of the judiciary. Acts of violence against children in Indonesia began to receive harsh scrutiny from various groups when many private television stations broadcast it vulgarly on criminal programs, such as rape cases committed by the victim's family or someone close to the victim, sodomy cases, trafficking children to be exploited into commercial sex workers to murder.

### **Repressive Legal Protection**

There are so many phenomena of violence and crimes against children that are being scrutinized by various groups. This is considered an indicator of poor legal instruments and child protection. Based on Law Number 23 of 2002 Article 20 concerning child protection, those who are obliged and responsible for implementing child protection are the state, government, community, family and parents. Articles 21 and 25 in this Law also further regulate child protection. And responsibility towards children. Law Number 23 of 2004 concerning the elimination of domestic violence in article 2 regarding the scope of this article also includes the existence of children to be protected from domestic violence. Legal protection for children is also implicit in the law on protecting witnesses and victims. Law Number 13 of 2006 in article 5, paragraph 1 points a namely, "a witness or victim has the right: to obtain protection for the safety of his personal, family and property, and to be free from threats relating to testimony that will be, is being, or has been given". The general provisions of this article describe the family and the child being one of its members. The above legal instruments are proof that the law in Indonesia pays attention to the existence of children. The thing that must be understood again to prevent violence against children is the principle of protecting children. The principle of non-discrimination, the principle of the best interest of the child, the principle of the right to life, the survival and development of children, and the principle of respecting the views of children.

### **Factors Influencing Legal Protection for Victims of Sexual Violence Against Children in South Sulawesi**

Based on the results of research conducted by the authors, there are 3 (three) factors that influence the legal protection of debtors in information technology-based money-lending agreements, namely legal substance factors, legal structure factors, and legal culture factors.

#### **Legal Substance Factors**

Another aspect of the legal system is its substance. What is meant by the substance are rules, norms, and real human behaviour patterns that are in that system. So the legal substance concerns the applicable laws and regulations, which have binding power and become guidelines for law enforcement officials. Legal substance, according to Friedman, is "Another aspect of the legal system is its substance. By this is meant the actual rules, norms, and behavioural patterns of people inside the system...the stress here is on living law, not just rules in law books." "Another aspect of the legal system is its substance. By this, we mean the rules, norms and actual behaviour patterns of people in the system... the emphasis here is on living laws, not just rules in law books." The rule of law is a manifestation of the state's commitment to providing protection to its citizens. The rule of law is the basis and reference for carrying out constitutional efforts to present rights that are not given or taken away from legal subjects who should receive them. Structural weaknesses will basically impact substance, namely regarding regulations in legislation.

The weakness of the substance of the positive law that regulates the legal protection of victims of sexual violence against children is that the existing regulations are unclear and not strict, which will open up opportunities for law enforcers to carry out an interpretation in accordance with their respective lines of thought, which can open gaps for misinterpretation that interferes with the implementation of a just law. What's more, if the rule of law does not yet exist, then law enforcers will look for another legal basis that they think is more appropriate to apply in that incident. In efforts to protect the law against children, harmony or coherence is needed between various regulations of different degrees. Incompatibility between the rule of law can affect law enforcement. In Friedman's theory, the legal substance is also referred to as a substantial system that determines whether or not the law can be implemented<sup>5</sup>. The substance also means products produced by people who are in the legal system, whether in the form of decisions issued or new rules drawn up. The substance also includes living law, not just the rules contained in the law books. The paradigm that has been developed is that the function of the Child Protection Law is still limited to the realm of prosecution of perpetrators of

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<sup>5</sup> Friedman, Wolfgang., *Theory and Philosophy of Law Composition I Critical Review of Legal Theory*, (Jakarta, PT Raja Grafindo Persada, 1990.

sexual violence against children, not on preventive or preventative measures. The principle is that a legal instrument must function as an engineering tool. So the Child Protection Law must focus on efforts to protect the law, not only limited to prosecution in the practical realm but has a concept that is able to formulate the problem fundamentally, what is the specific and practical role of all parties in the rule of law there must be action, starting from the smallest unit of the family, the scope of Education, non-government organizations (NGOs), Local and Central Governments.

### **Legal Structure Factors**

The legal structure is the institutionalization of legal entities. According to Friedman, the legal structure is referred to as a structural system that determines whether or not the law is implemented properly<sup>6</sup>. The legal structure is the level or arrangement of law, law enforcement, legal institutions, courts and lawmakers. This legal structure is founded on three independent elements: First, the technical system, namely the whole of the rules, principles and principles of law that are formulated into a system of meaning. Second, Intellingen, namely institutions (institutions) and law enforcement officials, are all operational elements (law enforcement). Third, beslissingen en handelingen, namely decisions and concrete actions, both from legal officials and members of the community. However, it is only limited to decisions and actions that have a relationship or are in a relationship that can be carried out with this understanding system. A descriptive quantitative assessment of the legal structure factor is carried out, like the assessment of legal substance.

### **Legal Culture Factors**

Legal Culture or legal Culture includes the values that underlie applicable law, which are abstract conceptions of what is considered good, what should be obeyed, and what is considered bad should be avoided. These cultural values can be translated into rules and views in attitudes and actions as a series of final values to create social reform (law as a tool of social engineering) and maintain and maintain social control to create peace in the social life of society. The legal Culture

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<sup>6</sup> Friedman, Lawrence M., *American Law: An invaluable guide to the many faces of the law, and how it affects our daily lives*, NewYork: W.W. Norton & Company, 1984.

(system) includes the values that underlie applicable law, values which are abstract conceptions of what is considered good (to be embraced) and what is considered bad (to be avoided). These values are usually two values that reflect two extreme conditions that must be harmonized.

### **Conclusion**

Based on the explanation described in the previous chapters regarding the Legal Protection of Victims of Sexual Violence Against Children in South Sulawesi, it can be concluded as follows:

1. The essence of legal protection for victims of sexual violence against children is the fulfilment of children's rights in guaranteeing a better future life.
2. The implementation of legal protection for child victims of sexual violence in South Sulawesi, both preventively and repressively, has not been effective because it still does not prioritize the interests of children as victims of sexual violence and on the contrary, it actually makes children victims for the second time.
3. Factors that influence legal protection for victims of sexual violence against children are legal substance, legal structure and legal Culture.

### **Suggestion**

The recommendations or suggestions offered by the author regarding legal protection for victims of sexual violence against children in South Sulawesi include;

1. In terms of the legal structure, it is necessary to increase the understanding of law enforcement officials to provide legal protection for children as victims of sexual violence.
2. It is necessary to change the rule of law as a substantive factor related to the rehabilitation of child victims of sexual violence in South Sulawesi
3. There is a need to increase legal counselling to the public regarding the steps that must be taken when dealing with children as victims of criminal acts of sexual violence.

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