

# Legal Processes Of Child Sexual Violence Victims

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## **Abstract.**

*Study aims to find out how the legal protection efforts for victims of sexual violence-rape children and how the impact received by the child, and how the system of imposing sanctions received by perpetrators of the crime of rape whose age is also still under the age decided by the District Court. Surabaya. This study uses a normative juridical approach. In this research, the main source is legal material, not data or social facts. The legal materials consist of primary legal materials and secondary legal materials. The data analysis used is descriptive analysis, which begins with grouping the same data and information according to sub-aspects and then interprets to give meaning to each sub-aspect and its relationship to one another. From the results of the study, it can be concluded that legal protection for child victims of rape has not met expectations and is very worrying. Because they have to suffer prolonged trauma, due to the actions of the perpetrators. Meanwhile, the imposition of sanctions for perpetrators who are also minors, is considered still far from paying attention to the rights and negative negative consequences of the victim because the decision is considered not to be in accordance with the provisions and expectations.*

**Keywords:** Protection, impact and sanctions

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## **1. INTRODUCTION**

The crime of sexual violence-rape that afflicts Indonesian children is getting worse and worse, one of the perpetrators is their close friend or close relative, some are even their own parents. Parents who are supposed to protect their children so that their children can grow and develop properly do not give more attention to their children. Sometimes they even commit acts of violence that have a negative impact on children's development, both physically, spiritually, and socially.

Violence that befalls children is not only physical and psychological violence, but they are also victims of sexual violence, meaning that they become a means for depraved desires, whether perpetrated by their families or by certain parties. Arif Gosita stated that *legal* needs to be sought for the continuity of child protection activities and to prevent abuses that have undesirable negative consequences in the implementation of child protection.[1]

Handling this problem is not only carried out by the government and law enforcement officials, but the community should also participate in conducting supervision, as an early prevention effort against crimes against children.

Children are creations of God Almighty, who need to be protected for their self-esteem and dignity and guaranteed the right of life to grow and develop according to their nature. Therefore, all forms of treatment that interfere with and destroy their basic rights in various forms of inhumane use must be eliminated without exception.

The data that the author collects from several media in Surabaya, Early March 2022. It is stated that in 2014, around 859 rape cases occurred in East Java. 75 percent of them are experienced by children, whether rape is committed by peers, neighbors, or family. Meanwhile, 13 percent of violence against children occurs in the form of sexual harassment, 6 percent of violence during courtship. And 3 percent of trafficking cases. This case occurs because many adults take advantage of underage children. In addition, there is a culture that ignores sexual behavior that tends to like children. In this case, the existence of a regulation or law on violence is still not enough to reduce violent behavior, and the law that regulates sexual violence that can fulfill the rights of victims is still there isn't any yet.

An example of a case that the author can convey in accordance with research that has been carried out at the Surabaya District Court is, a criminal act of sexual violence-rape that occurred against minors involving perpetrators who are also minors. The perpetrator should be suspected of having committed a criminal act, rape, as referred to in Article 285 Jo 287 KUBP Jo Article 81 paragraph 1 and 2 of Law no. 23 2002 concerning Child Protection, hereinafter referred to by the authors as the Child Protection Act, and the Criminal Code, which the authors shall refer to as the Criminal Code. Based on the foregoing, the authors want to know what protections and impacts are received by victims of underage rape.

## II. METHODS

This study uses a normative juridical approach. In research or study of normative legal science, activities to explain the law do not need data support or social facts, because normative legal science does not recognize social data or facts, only legal materials are known. So to explain the law or to find meaning and give value to the law, only legal concepts are used and the steps taken are normative steps. The approach that the researcher takes is based on the rules and theories relating to the criminal case of rape against children, which is regulated in accordance with the Child Protection Law and the settlement of cases of rape against children in the Surabaya District Court in accordance with the Criminal Code.

## III. RESULT AND DISCUSSION

To reduce the crime of rape against minors, it is necessary to have a regulation, which for every violator can be subject to sanctions or punishments, namely "a criminal punishment". ". So, a person who is convicted means that he is undergoing a punishment to account for his actions which are considered unfavorable and endanger the public interest. The severity of the punishment that must be carried out by a person to account for his actions depends on the crime committed by that person.

Sanctions according to the Big Indonesian Dictionary are dependents (actions, punishments, etc.) to force people to keep agreements and comply with statutory provisions, while according to Criminal Law Terminology, criminal sanctions are legal consequences of violating criminal provisions in the form of criminal and/or action.[2]

The legal dictionary explains that sanctions are the result of an act or a reaction from another party (human or social organization) for an act of someone who has harmed another person or party. [3] The determination of sanctions in a criminal act is not merely a technical matter of legislation, but is an inseparable part of the substance or material of the legislation itself.

The system of imposing sanctions needs serious attention, given the various limitations and capabilities of criminal law in tackling crime. Moreover, there is often a tendency in legislative policy products that criminal law is almost always used to frighten or secure various crimes that arise in various fields. This kind of phenomenon gives the impression that it is felt to be imperfect, maybe even tasteless if a statutory product does not have criminal provisions (sanctions).

The types of sanctions for each form of crime are different, but what is clear is that all sanctions in criminal law must remain oriented towards the purpose of the punishment itself. Meanwhile, on the other hand, the purpose of sentencing or imposing sanctions is still the center of attention. Professor of Criminal Law at the University of Victoria, Canada, Gerry A. Ferguson regrets that there is no clear consensus on the theory of punishment that actually underlies the purpose of punishment.[4] It can be concluded that sanctions are an important part of the criminal system, because their existence can provide direction and considerations regarding what should be used as sanctions in a criminal act.

process of resolving cases of sexual violence-rape has been carried out. Starting from investigation, investigation, witness examination, case title and determination of suspect status and so on. The evidence presented in this trial has been legally confiscated according to law, because it can be used to strengthen evidence. Based on the description of the elements of the indictment mentioned above, the public prosecutor believes that the defendant RM has been legally and convincingly proven guilty according to law guilty of committing a crime "intentionally committing a ruse, a series of lies, or persuading a child to have intercourse with him or with other people. Aggravating things: As a result of the defendant's actions, witness

EK suffered trauma; The defendant's actions damaged the future of witness EK. Mitigating factors: The defendant behaved politely in the trial and regretted his actions. The defendant confessed frankly what he had done. Based on the description above, the public prosecutor in this case:

Law no. 3 of 1997 concerning Juvenile Court, requires that every District Attorney have a Child Public Prosecutor to handle children's problems in the prosecution process in court. However, if the District Attorney does not have a Child Public Prosecutor, because no one has met the specified requirements, the task of prosecuting cases is borne by the Public Prosecutor who usually carries out prosecution duties for criminal acts committed by adults. [5] Judging from the aspect of child protection, it can be said that children do not get protection, if the prosecution is not carried out by the child public prosecutor and it is feared that the objectives of child protection will be ignored, because the person concerned does not understand the child's problem, and it is feared that legal actions will be taken in the prosecution. does not reflect the principles of child protection.

According to the Criminal Procedure Code, children in the trial process have many rights. The rights of children in the trial process are:

1. The right to receive notification to come to court;
2. The right to receive summons to attend court hearings;
3. The right to obtain an explanation of what is being charged.
4. The right to give information freely to judges.
5. The right to have an interpreter or translator;
6. The right to seek or present witnesses;
7. The right to obtain a derivative of a letter of determination related to the authority of a court;
8. The right to object to the jurisdiction of the court or the charge cannot be accepted or the

indictment must be withdrawn.

9. The right to ask questions of witnesses;
10. The right to confront each other with witnesses;
11. The right to file a defense against criminal charges;
12. The right to be present when the judge's decision is read;
13. The right to obtain an explanation of their rights after the verdict is read;
14. The right to receive excerpts of court decisions.

In addition to these rights, other children's rights in the trial process are:

1. The right to a trial that is closed to the public;
2. The right to a report on the results of community research from the community hall that

describes the lives of children.

3. The right to be accompanied by a legal advisor;
4. The right to legal counsel in court in his case;
5. The right to a family atmosphere in the trial process;
6. The right to wise and educated punishment;
7. The right to file legal remedies;
8. The right to receive guidance from social workers.

rights of the child in the prosecution process include the following:

1. Determining the period of detention of a child only from the point of view of the urgency of the examination;

2. Make an indictment that the child understands;
3. Immediately delegate the case to the Court;
4. Carry out the judge's decision with the soul and spirit of coaching or carry out rehabilitation;
5. The right to obtain protection from threats, persecution, extortion from legal parties;
6. The right to obtain facilities for prosecution;
7. The right to be accompanied by legal counsel.

Based on the trial, evidence and verdict, the Judge stated that the defendant RM, had been legally and convincingly proven to have committed a crime: "Intentionally, with the threat of violence, forced a

minor to have intercourse with him". The judge sentenced him to imprisonment for 3 (three) years, a fine of Rp. 60,000,000,- (sixty million rupiah), susidair 3 (three) months of confinement. Determining the period of detention that has been served by the defendant who was sentenced, stipulating that the defendant remains in detention, charging the defendant a court fee of Rp. 5,000, - (five thousand rupiah), stipulates evidence in the form of; 1 (one) blue short jeans, 1 bra, 1 panties, 1 t-shirt, 1 jacket returned to witness EK

Consideration in the application of criminal sanctions for children is to hope that while in a juvenile prison, the child concerned will receive guidance and education from supervisors in correctional institutions.

Based on the description above, it can be seen that the basis for the judge's consideration of imposing criminal sanctions on children who are perpetrators of the crime of rape is to fulfill the rights of victims who have been harmed by the perpetrators. In addition, the judge's consideration in making decisions on children who are perpetrators of rape is also that the perpetrators who are considered young and still have a long future will have a deterrent effect and will not repeat their actions again.

#### IV. CONCLUSION

The government with existing laws and regulations does not provide protection for victims, especially for child victims of rape as the most disadvantaged party who also needs protection for their rights that have been violated. The involvement of victims in the criminal justice system only adds to the prolonged fear, helplessness and disappointment because they are not given sufficient protection. Child protection is beneficial for children and their parents as well as the government, so coordination of child protection needs to be held in order to prevent an imbalance in child protection activities as a whole. The sentence handed down by the judge against the perpetrator was deemed to be very light and not in accordance with the impact and trauma suffered by the child victim of rape caused by the perpetrator of the rape. Because children who are victims of rape are the most difficult group to recover because the psychological suffering in rape victims is quite severe, their souls become unstable and it is difficult to forget the case that happened to them. What he did in the midst of his surroundings felt burdened by the disgrace that was inherent in him\_himself, as well as efforts to build social relations are not based on the victim's self-confident spirit. Placement of criminal sanctions by judges against child perpetrators of the crime of rape must be in accordance with the justice system. In making a decision, the judge should also pay attention to the rights of the victim and not only pay attention to the rights of the perpetrator, because after all it is the victim who is the most harmed in this matter. The role of the judge in this matter will be considered successful if in passing a decision, the rights of the perpetrator and the victim are both underage.

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