

Beyond the Shadows: Strengthening Legal Protection for Children with Disabilities Survivors of Sexual Violence

Siti Mutmainah

Faculty of Law, Universitas Widya Gama Malang, mutmainah02@gmail.com

ABSTRACT

This research discusses the legal protection of children with disabilities as victims of sexual violence in Indonesia. According to Law Number 35 of 2014, sexual violence is any sexual act that results in physical, psychological, or sexual suffering. Children with disabilities are vulnerable to sexual violence and require special protection. Although there are regulations governing the protection of children with disabilities, their implementation is still ineffective. This research uses the normative juridical method and collects data from laws and regulations, books, and the results of previous research. The results of this study show that legal protection for children with disabilities who are victims of sexual violence is still limited and needs to be strengthened with special assistance and proper accessibility.

Keywords: Legal Protection, Sexual Violence, Children with Disabilities.

INTRODUCTION

According to Law No. 35/2014, violence is any act against children that results in physical, psychological, sexual, and/or neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty.¹ Sexual violence is defined as any sexual act, attempt to commit a sexual act, comment or suggestion for sexual behavior that is not intentional or otherwise, the act of violation to have sexual intercourse by force to someone.² Sexual Violence is any act of degrading, humiliating, harassing, and/or attacking a person's body, and/or reproductive function, due to inequality in power relations and/or gender, which results in or can result in psychological and/or physical suffering, including those that interfere with a person's reproductive health and loss of opportunity to carry out education safely and optimally.³

The number of cases of sexual violence in Indonesia is not decreasing. Sexual violence occurs in all circles. Perpetrators of sexual violence today do not look at gender, physical, or anything else; even people with disabilities are victims of sexual violence. A child with a disability is a child who has privileges that are never possessed by children in general. Children who also have disabilities have an unfavorable position; in this case, what is meant by unfavorable is that children with disabilities experience a very large risk of experiencing

¹ E Subastian, P. W., & Rosnawati, "Legal Protections for Disabled Child Victims of Sexual Violence in Sidoarjo, Indonesia," *Academia Open* 8, no. 1 (2023), <https://doi.org/10.21070/acopen.8.2023.6198>.

² United Nations Human Rights Council, *Report on Sexual Violence and Disability, A/HRC/29/23 (2015)*, 2015.

³ <https://merdekadarikekerasan.kemdikbud.go.id/ppks/kekerasan-seksual/> accessed on 5 July, 5 2024

disturbances and criminal acts.⁴

So, the need for legal protection in the form of providing guarantees for security, peace, and comfort as a form of legal certainty for children with disabilities. To achieve justice, it is necessary to have equal rights before the law as for children with special abilities. The Government's efforts to protect children with special abilities who are victims of sexual crimes are guided by the rules of Law No.35 of 2014, but it is known that in reality, it has not been realized by existing laws, and there is still legal discrimination.⁵ As in decision Number 81/Pid.Sus/2021/Pn. Bbu, it is known that the Blambanganumpu District Court Judges stated that the defendant H. Rusdi bin H. Mustofa had been proven legally and convincingly guilty of committing the crime of rape which was committed continuously. In this decision, the panel of judges sentenced the defendant to 4 years imprisonment and ordered him to pay restitution to the victim witness MO bint Saripudin in the amount of Rp.8,575,000.00 (eight million five hundred seventy five thousand rupiah). The verdict of the panel of judges was much lighter than the recommendation of the public prosecutor, who in his indictment asked the panel of judges to declare the defendant HR was proven guilty and committed the crime of "Committing violence or threat of violence, forcing a child to have sexual intercourse with him or with another person which is done repeatedly so that it must be considered as a continuing act" as stated in the first indictment in violation of Article 76D Jo Article 81 paragraph (1) of Indonesian Law Number 17 of 2016 concerning Government Regulation instead of Law Number 1 of 2016 concerning the Second Amendment to Indonesian Law Number 23 of 2002 concerning Protection of Children Jo Article 64 paragraph (1) of the Criminal Code. The prosecutor demanded that the panel of judges sentence the defendant to 10 years imprisonment and a fine of Rp 1,000,000,000 (one billion rupiah) instead of 6 months imprisonment with the order that the defendant remain in custody. Kadiv. Child Protection of Karya Utama Legal Aid Institute (LBH-BKU) explained that the victim was a child with special needs or a child with intellectual disabilities. And he considered that the decision of the panel of judges in this case did not reflect a sense of justice for the victim, the victim's family, and the community.⁶

In this study, the researcher intends to discuss the juridical protection of children with disabilities as victims of sexual violence. The results of previous research play an important role in the progress of this research. The research becomes a reference or comparison material, so

⁴ Harian Pilar, "Putusan Kasus Pelecehan Seksual Anak Disabilitas. KY Didesak Periksa Hakim PN Waykanan," 2021, <https://www.harianpilar.com/2021/09/06/putusan-kasus-pelecehan-seksual-anak-disabilitas-ky-didesak-periksa-hakim-pn-waykanan/>.

⁵ Pemerintah Indonesia, "Undang-Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak," Pub. L. No. 35 (2014).

⁶ Harian Pilar, "Putusan Kasus Pelecehan Seksual Anak Disabilitas. KY Didesak Periksa Hakim PN Waykanan."

that the preparation of this article is still within the scope of discussing existing legal issues. So the previous research used is:

The first research was written by Andrie Irawan, entitled “Legal Protection for Women with Intellectual Disabilities Victims of Sexual Violence,” in the form of a legal journal. This research aims to know the form of legal protection for women with disabilities as victims of sexual violence in the Indonesian criminal law system by using normative juridical methods and a statute approach and case approach.⁷ The second research was made by Yusuf Saefudin, Fatin Rohmah Nur Wahidah, Rahtami Susanti, Lutfi Kalbu Adi, and Prima Maharani Putri entitled “The Crime of Sexual Violence and Legal Protection for Victims of Sexual Violence in Indonesia” in the form of a legal concept journal, Vol. 23 No. 1 (2023). This research aims to describe the various forms of acts that fall into the category of criminal acts of sexual violence. In addition, this research is directed to comprehensively examine what forms of legal protection for victims of sexual violence in Indonesia have been specifically regulated in Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence. The research method used is the normative juridical method. Where the main data comes from laws and regulations, legal concepts related to sexual violence. The approaches used are the statutory approach and the conceptual approach. The results showed, first, that there are twelve types of criminal acts of sexual violence regulated in the Criminal Acts of Sexual Violence Law. Second, Victims are entitled to Handling, Protection, and Recovery since the occurrence of Criminal Acts of Sexual Violence. Meanwhile, victims with disabilities are entitled to accessibility and reasonable accommodation for the fulfillment of their rights under the provisions of laws and regulations.⁸

Based on the background description that the author has described above, it is deemed necessary for a more in-depth study of the problem which can be formulated as follows: How is the legal protection of children with disabilities victims of sexual violence and what are the obstacles in providing legal protection to children with disabilities victims of sexual violence. Therefore, the purpose of this study is to reveal the legal protection of persons with disabilities as victims of sexual violence and to find out the obstacles in providing legal protection to children with disabilities who are victims of sexual violence.⁹

⁷ Komisi Nasional Disabilitas, *Laporan Tahunan 2023: Advokasi Hak Disabilitas Dalam Sistem Hukum* (Jakarta: Komnas Disabilitas, 2023).

⁸ P. M. Saefudin, Y., Wahidah, F. R. N., Susanti, R., Adi, L. K., & Putri, “Tindak Pidana Kekerasan Seksual Dan Perlindungan Hukum Bagi Korban Kekerasan Seksual Di Indonesia,” *Kosmik Hukum* 23, no. 1 (2023): 24, <https://doi.org/10.30595/kosmikhukum.v23i1.17320>.

⁹ Saefudin, Y., Wahidah, F. R. N., Susanti, R., Adi, L. K., & Putri.

This research is expected to be useful and contribute and add to the knowledge of academics related to knowledge about the legal protection of sexual violence against children with disabilities.¹⁰

METHOD

The research method used is a normative juridical research method. Normative juridical research is a method of approach that is carried out starting from the legal aspects and systematics of the contents of existing legislation.¹¹ The approach used is a statutory approach. Then this research uses secondary data. The data sources used in this research include primary legal materials in the form of related laws and regulations, secondary legal materials, and tertiary legal materials. The data collection techniques used in this research are literature studies sourced from laws and regulations, books, official documents, publications, and research results. The data obtained is verified and analyzed descriptively-analytically.¹²

RESULTS AND DISCUSSION

A. Legal Protection for Children with Disabilities Victims of Sexual Violence

The victim of crime is the party who suffers the most in a criminal offense, but does not get as much protection as the law gives to the perpetrator of the crime as stated by Andi Hamzah: "in discussing criminal procedural law, especially about human rights, that there is a tendency to discuss matters relating to the rights of suspects without paying attention to the rights of victims."¹³ Legal protection of crime victims as part of community protection can be realized in various forms, such as through the provision of restitution and compensation, medical services, and legal assistance.¹⁴

By the mandate of the law, people with disabilities certainly get the same rights as non-disabled people. A person with a disability is any person who experiences physical, intellectual, mental, and or sensory limitations for a long period who, in interacting with the environment, may encounter obstacles and difficulties to participate fully and effectively with other citizens based on equal rights.¹⁵

Legal protection for victims with disabilities cannot be carried out as it should be for victims of criminal acts in general, because it requires assistance for victims who not only understand the criminal cases faced by victims from a legal perspective, but also about the needs

¹⁰ Harian Pilar, "Putusan Kasus Pelecehan Seksual Anak Disabilitas. KY Didesak Periksa Hakim PN Waykanan."

¹¹ J Efendi, J., & Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris* (Jakarta: Kencana, 2018).

¹² Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

¹³ Suharsil, *Perlindungan Hukum Terhadap Anak Dan Perempuan* (Depok: PT. Raja Grafindo Persada, 2016).

¹⁴ Suharsil.

¹⁵ Subastian, P. W., & Rosnawati, "Legal Protections for Disabled Child Victims of Sexual Violence in Sidoarjo, Indonesia."

of people with disabilities themselves. People with special needs, or commonly called disabilities, are just a difference, not a disability or abnormality. People with special needs (disabilities) live with special characteristics and differ from people in general. Because of these different characteristics, they require special services to obtain their rights as humans living on earth in general.¹⁶

Legal protection arrangements for children with disabilities in Law Number 35 of 2014 concerning Child Protection are covered in several articles, namely Article 59 paragraph (2) letter (i), which contains “special protection for children with disabilities”.¹⁷ Article 70 contains “Special Protection for Children with Disabilities as referred to in Article 59 paragraph (2) letter (i) is carried out through efforts: treating children humanely by the dignity and rights of children, fulfilling special needs, providing equal treatment with other children to achieve the fullest possible social integration and individual development and social assistance”. Article 76A letter (b) states that “everyone is prohibited from discriminating against children with disabilities”. Therefore, the articles above can be used as a reference for the protection of children with disabilities who are victims of sexual violence.¹⁸

In Law Number 8 of 2016 concerning Disabilities, Article 5, paragraph (3) states that children with disabilities have the right to:¹⁹

- a. Receive protection, especially against discrimination, neglect, abuse, exploitation, and sexual violence and criminal acts;
- b. receive care and treatment from family or foster parents to ensure maximum growth and development;
- c. Protection in making decisions;
- d. Behavior that is by humanity and human dignity and rights;
- e. Meet special needs;
- f. Meet special needs;
- g. Meet the needs of children with disabilities;
- h. Meet the needs of children with disabilities. Behavior that is by humanity and human dignity and rights; IFulfill special needs;
- i. Equal treatment with other children to ensure maximum growth and development; and

¹⁶ Subastian, P. W., & Rosnawati.

¹⁷ Indonesia, Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak.

¹⁸ Indonesia.

¹⁹ Komisi Perlindungan Anak Indonesia, *Kajian Tematik: Perlindungan Anak Disabilitas Korban Kekerasan* (Jakarta: KPAI, 2022).

- j. Equal treatment with other children to achieve social integration and individual development;
- k. Receive social support or assistance. Receive social support or assistance.

Article 9 explains that “the right to justice and legal protection for disabilities includes the right: to equal treatment before the law, to be recognized as a legal subject, to own and inherit movable or immovable property, to control financial matters or appoint people to represent their interests in financial matters, to gain access to banking and non-banking services, to gain accessibility in judicial services, to all protection from pressure, violence, persecution, discrimination, and or deprivation of property rights, to choose and appoint people to represent all interests in civil matters in and out of court, to have their intellectual property rights protected”.²⁰

Persons with disabilities in legal proceedings. According to Section 27 subsection (1), witnesses and/or victims with disabilities may be accompanied by their parents, legal guardians, and/or companions. Under Section 66, victims with disabilities are entitled to accessibility and reasonable accommodation to exercise their rights under the provisions of the law, unless the law provides otherwise. Section 70f sets out the victim’s right to remedy, provision of reasonable accessibility and accommodation for victims with disabilities.²¹ With the existence of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, it is hoped that it will be able to balance the government’s seriousness in dealing with the growing problem of sexual violence in Indonesia. The Criminal Acts of Sexual Violence Law is a legislative reform that aims to prevent and overcome all forms of sexual violence and protect and save victims of sexual violence. It is expected that children with disabilities can be protected, and the rights of children with disabilities can be realized.²²

The crime of sexual violence is one of the criminal acts that disturbs the community, efforts to reduce the crime of sexual violence are a shared responsibility and must be carried out by all parties, both government and society, and it is known that other causes of sexual violence against persons with disabilities stem from a lack of parental supervision, victimization and factors that make children with disabilities look weak.²³ Law enforcement in court is one of the efforts to have a burden in efforts to enforce the law; the judge is in court. The role of judges in providing appropriate and fair decisions in cases of sexual violence is expected to reduce the

²⁰ Indonesia Pemerintah, “Peraturan Pemerintah Nomor 39 Tahun 2020 Tentang Akomodasi Yang Layak Untuk Peserta Didik Penyandang Disabilitas,” Pub. L. No. 39 (2020).

²¹ Arif Gosita, *Masalah Korban Kejahatan: Kumpulan Karangan* (Jakarta: Akademia Pustaka, 1985).

²² Andika Ramadhan, “Tantangan Penegakan Hukum Terhadap Pelaku Kekerasan Seksual Anak Disabilitas,” *Rechtsvinding* 10, no. 2 (2021): 189–204.

²³ Komisi Perlindungan Anak Indonesia, *Kajian Tematik: Perlindungan Anak Disabilitas Korban Kekerasan*.

increase in criminal acts of sexual violence.²⁴

B. Obstacles in Providing Legal Protection for Children with Disabilities Victims of Sexual Violence.

Child protection is established to ensure the fulfillment of children's needs so that they can live, grow, develop, and participate optimally with human dignity, and receive protection from violence and discrimination for the realization of quality, noble, and prosperous children.²⁵ The importance of protecting victims of crime is not only for victims of crime, but also for victims of abuse of power.²⁶ The issue of justice and human rights in criminal law enforcement is not a simple task to be realized. Many events in the life of the community show that these two things lack serious attention from the government, even though it is very clear in Pancasila, as the philosophy of life of the Indonesian Nation, the issue of humanity and justice has a very important place as a manifestation of the Precepts of fair and civilized humanity and social justice for all Indonesian people, One example of the lack of attention to the issue of justice and human rights in criminal law enforcement is related to the legal protection of victims of crime.²⁷

In Indonesia, Law No. 8 of 2016 provides legal protection for persons with disabilities as victims of sexual violence. Article 52 of Law No. 8 of 2016 stipulates that persons with disabilities who are victims of sexual violence have the right to the same protection and legal assistance as other people.²⁸ In addition, in the investigation and court process, persons with disabilities have the right to adequate accessibility, both in terms of information and facilities. However, there are still several obstacles or barriers to providing legal protection for persons with disabilities as victims of sexual violence. Quoting from several previous studies, there are obstacles faced by law enforcement officials and related agencies due to several factors, from internal and external to each agency.²⁹

Internal obstacles are obstacles that come from within law enforcement officials and related agencies. These obstacles are the lack of awareness and understanding of law enforcement officials in handling cases of sexual violence against persons with disabilities, lack of competent judges who do not yet have child certification.³⁰ External barriers are obstacles that

²⁴ Disabilitas, *Laporan Tahunan 2023: Advokasi Hak Disabilitas Dalam Sistem Hukum*.

²⁵ *Op.cit*

²⁶ Komisi Perlindungan Anak Indonesia, *Kajian Tematik: Perlindungan Anak Disabilitas Korban Kekerasan*.

²⁷ United Nations, "Convention on the Rights of Persons with Disabilities (CRPD)" (2006).

²⁸ Imran Hanafi, "Implementasi Keadilan Restoratif Dalam Sistem Peradilan Pidana Anak," *Jurnal Hukum & Pembangunan* 50, no. 3 (2020): 523–38.

²⁹ Suharsil, *Perlindungan Hukum Terhadap Anak Dan Perempuan*.

³⁰ Dionysius Calvin Sulistio *et.al* (2023) "**Pemberatan Pidana dalam Tindak Pidana Kekerasan Seksual Terhadap Penyandang Disabilitas**" *Mimbar Keadilan* Vol 16(2)

come from outside law enforcement officials and related agencies. In this case, there are several external obstacles faced by law enforcement officials, the Social Service and the Office of Women's Empowerment and Child Protection, in the implementation of legal protection for children with disabilities who are victims of sexual violence, namely in the form of obstacles in digging up information on victims of sexual violence, Judges or authorities often have difficulty communicating with children with disabilities, which can limit their ability to dig up information needed to handle the case. In addition, there is still stigma and discrimination against people with disabilities that can hinder the investigation and court process.³¹

To address these issues, efforts need to be made to increase awareness and understanding of law enforcement officials in handling cases of sexual violence against persons with disabilities, as well as ensuring that adequate accessibility is available for persons with disabilities in the investigation and court process. In addition, it is also necessary to conduct socialization to reduce discrimination and negative stigma against people with disabilities, so that they can get the same legal protection as other people.

CONCLUSION

Children with disabilities in cases of Criminal Acts of Sexual Violence have the same rights as non-disabled victims, but require special protection due to their vulnerability. Legal protection for victims with disabilities is regulated in various laws, including Law No. 35 of 2014 on Child Protection, Law No. 8 of 2016 on Persons with Disabilities, and Law No. 12 of 2022 on Sexual Violence. Law enforcement efforts in court must also consider the special needs of victims with disabilities, including assistance by their parents, legal guardians, and/or companions, and personal judgment by the law and regulations on the proper consent of persons with disabilities. With these various regulations, it is hoped that victims with disabilities can be protected and obtain justice in cases of sexual violence crimes. With these various regulations, it is hoped that victims with disabilities can be protected and obtain justice in cases of sexual violence crimes.

Obstacles in handling criminal acts of sexual violence against children with disabilities as victims of sexual violence include the lack of awareness and understanding in handling cases of sexual violence against persons with disabilities, as well as difficulties in communicating with victims, so that digging up information from the child is quite constrained. The resolution of these obstacles requires efforts to increase awareness and understanding of law enforcement

³¹ Nadya Ariani **"PERLINDUNGAN HUKUM BAGI ANAK DISABILITAS KORBAN TINDAK PIDANA PELECEHAN SEKSUAL OLEH AYAH TIRINYA"** (Studi Putusan No.109/Pid.Sus/2020/PN.Pwd)" (Skripsi Sarjana, Fak.Hukum Univ.Islam Sultan Agung, Semarang 2023)

officials in handling cases of sexual violence against persons with disabilities, as well as ensuring that adequate accessibility is available for persons with disabilities in the investigation and court process.

The suggestions that can be given are as follows. Regarding the legal protection of children with disabilities as victims of criminal acts of sexual violence, there needs to be an intensive application of the government, law enforcement and society towards the rights of a disability, considering that a disability is a society that has deficiencies in terms of mental, sensory, intellectual and/or physical who often get less favorable treatment in their environment. Moreover, the government should educate all elements of society about the rights and protection of persons with disabilities, so it is hoped that awareness will grow in families and communities to treat children with disabilities as equals to other children.

REFERENCES

- Council, United Nations Human Rights. *Report on Sexual Violence and Disability, A/HRC/29/23 (2015)*, 2015.
- Disabilitas, Komisi Nasional. *Laporan Tahunan 2023: Advokasi Hak Disabilitas Dalam Sistem Hukum*. Jakarta: Komnas Disabilitas, 2023.
- Efendi, J., & Ibrahim, J. *Metode Penelitian Hukum Normatif Dan Empiris*. Jakarta: Kencana, 2018.
- Gosita, Arif. *Masalah Korban Kejahatan: Kumpulan Karangan*. Jakarta: Akademia Pustaka, 1985.
- Hanafi, Imran. "Implementasi Keadilan Restoratif Dalam Sistem Peradilan Pidana Anak." *Jurnal Hukum & Pembangunan* 50, no. 3 (2020): 523–38.
- Harian Pilar. "Putusan Kasus Pelecehan Seksual Anak Disabilitas. KY Didesak Periksa Hakim PN Waykanan," 2021. <https://www.harianpilar.com/2021/09/06/putusan-kasus-pelecehan-seksual-anak-disabilitas-ky-didesak-periksa-hakim-pn-waykanan/>.
- Indonesia, Pemerintah. Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak, Pub. L. No. 35 (2014).
- Komisi Perlindungan Anak Indonesia. *Kajian Tematik: Perlindungan Anak Disabilitas Korban Kekerasan*. Jakarta: KPAI, 2022.
- Muhaimin. *Metode Penelitian Hukum*. Mataram: Mataram University Press, 2020.
- Nations, United. Convention on the Rights of Persons with Disabilities (CRPD) (2006).
- Pemerintah, Indonesia. Peraturan Pemerintah Nomor 39 Tahun 2020 tentang Akomodasi yang Layak untuk Peserta Didik Penyandang Disabilitas, Pub. L. No. 39 (2020).
- Ramadhan, Andika. "Tantangan Penegakan Hukum Terhadap Pelaku Kekerasan Seksual Anak Disabilitas." *Rechtsvinding* 10, no. 2 (2021): 189–204.
- Saefudin, Y., Wahidah, F. R. N., Susanti, R., Adi, L. K., & Putri, P. M. "Tindak Pidana Kekerasan Seksual Dan Perlindungan Hukum Bagi Korban Kekerasan Seksual Di Indonesia." *Kosmik Hukum* 23, no. 1 (2023): 24. <https://doi.org/10.30595/kosmikhukum.v23i1.17320>.
- Subastian, P. W., & Rosnawati, E. "Legal Protections for Disabled Child Victims of Sexual Violence in Sidoarjo, Indonesia." *Academia Open* 8, no. 1 (2023). <https://doi.org/10.21070/acopen.8.2023.6198>.
- Suharsil. *Perlindungan Hukum Terhadap Anak Dan Perempuan*. Depok: PT. Raja Grafindo Persada, 2016.