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## Legal Protection Arrangements for Children as a Victim of Criminal Rape Action in Household

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### ABSTRACT

Cases of criminal acts of decency experienced by children, from time to time are increasing. In Indonesia, in handling rape cases or immoral acts, victims are often placed as evidence, not as seekers of justice. This raises classic problems including philosophical problems, the legal protection it imposes as a current arrangement against children as victims of domestic violence has not been effective, Theoretical prolematics, the system adopted by the Criminal Procedure Code (KUHP) is retributive justice, which is a policy where the point of protection is the offender oriented rather than restorative justice which focuses on the protection policy for victims of crime and juridical problematics, policies whose point of protection is the offender oriented. The purpose of this research is to analyze and formulate arrangements for legal protection for children as victims of household rape in the future. This research is a normative juridical research, then the approach used is the statutory approach, concept approach, historical approach, case approach, and philosophical approach. Legal material analysis techniques are carried out in perspective. The results showed that to overcome systemic sexual violence against women, especially children, efforts are needed to change the legal system and breakthroughs so that the law accommodates the needs and interests of women victims of violence based on the experiences of victims of violence and how they deal with the legal process.

**Keywords:** Rape, victim, children, domestic violence.

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## 1. Introduction

The purpose of establishing an Indonesian state is to provide protection in the form of guaranteed rights through the rule of law with justice (Sudarto, 1986). The law is able to make democracy firmly against what is in accordance with the law and what is against the law, or what is allowed and not allowed. Criminal law is a reaction to actions that can cause damage to the social fabric, violations of the right to individuals, or acts against the law itself. Seeing the purpose of this criminal law, many parties criticize it by only aiming at the "interests of the perpetrators", both deterring it and returning it to a life that does not damage the order in society. Therefore, now many thoughts that want the scope of criminal law also need to provide legal protection to victims of crime. This is because the victim did not get enough attention. Call it a deterrent or deterrent effect obtained by perpetrators of crime has absolutely nothing to do with the recovery of the victim's condition (Theodora, 1995).

The low position of the victim in handling criminal cases was stated by Prassel in Mansur and Gultom (2008): Victim was forgotten figure in the study of crime. Victims of attitude, robbery, theft and other offenses were ignored while police, court and academicians were concentrated on known violators. In cases of rape or immoral acts, victims are often placed as evidence, not as seekers of justice. Victims in addition to physical suffering also suffer tremendous mental suffering from rape, feel lost in the future, even distance or distance themselves from their social environment. While the victim or his family actually still have to bear treatment in the hospital due to physical pain coupled with experiencing psychological disorders.

Cases of criminal acts of decency experienced by children, from time to time is increasing. This is very alarming. Based on data handled by the Indonesian Child Protection Commission and the National Women's Commission on Information and Complaints in 2018, there were 2,227 cases (CATAHU, 2018). It is the duty of the state to be able to provide a maximum sense of justice to protect and provide rights for children as victims of criminal acts of decency. Children need to get the protection that has been contained in statutory regulation.

Protection of children now has a legal framework with the issuance of Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection. The Child Protection Act is a tool in implementing the Convention on the Rights of the Child (CRC) in Indonesia. The law was based on four principles of the Convention on the Rights of the Child: non-discrimination, the best interests of children, the right to life, survival and development and the right to participate. In it regulates the basic rights of children to obtain identity, freedom, education, health services, entertainment and protection (Sidabalok, 2012).

Although there is Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, but its implementation has not proceeded as expected. This happens because of many factors, one of which is the absence of a clear model agreed by the parties concerned to deal with this problem. In its development to provide protection for children, both children as victims and children as witnesses, new laws have been formed as regulated in Article 90 paragraph (1) of the Republic of Indonesia Law No. 11 of 2012 concerning the Criminal Justice System for Children, explaining that child victims and Child witnesses are entitled to medical rehabilitation and social rehabilitation efforts, both inside and outside the institution, but the Law of the Republic of Indonesia Number 11 Year 2012 concerning the Criminal Justice System for Children until now has not been effectively applied. For this reason, this research is an attempt to find answers to the impasse that has occurred in the crime of decency in children.

This research will focus on the position of victims of decency in children in the perspective of criminal acts of domestic violence when viewed from the perspective of legislation (KUHP, Law No. 23 of 2002, Law Number 8 of 1981, Law Number 21 of 2007, Republic of Indonesia Law No. 26 of 2000, Law No. 23 of 2004, Law No. 13 of 2006, Government Regulation of the Republic of Indonesia Number 9 of 2008 and United Nations Protocol) in effect with reference to case data for 2011-2018 which is decided in the data handled Indonesian Child Protection Commission and Women's National Commission for Data on Information and Complaints, and discussed about the model that will be offered as an effort to protect victims of criminal offenses to children in Indonesia (including rules and law enforcement apparatus).

According to Muzakir (2001) the Judicial System through the products of Indonesian laws and regulations, especially the Criminal Procedure Code (the Criminal Procedure Code Book promulgated in Law Number 8 of 1981) which is the basis of the operation of the Criminal Justice System, has not actually included, against what is implied in the 1945 Constitution of the Republic of Indonesia and the state philosophy of the Pancasila. This raises the classic problem, that the Criminal Justice system as a basis for the settlement of criminal cases does not recognize the existence of victims of criminal acts as justice seekers, a victim of a crime will suffer again as a result of the legal system itself, because victims of criminal acts cannot be actively involved as in civil proceedings, a criminal case cannot be brought directly to the court itself but must go through the designated agency (police and prosecutors).

Meanwhile, the interests of victims of criminal acts have been represented by state instruments namely the police and prosecutors as investigators, investigators, public prosecutors, but the relationship between victims of criminal acts on the one hand with the police and prosecutors, on the other hand, is symbolic; meanwhile the relationship between the defendant and legal counsel in principle is purely in the legal relationship between service users and service providers governed in civil law. The police and prosecutors act to carry out state duties as representatives of victims of crime and or the community, while legal advisors act on the direct power of the defendant acting on behalf of the defendant himself (Soeparman, 2007).

The above description shows that the Criminal Justice System should be reviewed and must see a broader interest, not only focused on retaliation for the perpetrators of the crime but also the interests of the victims of the crime should be noted. The existing protection in the Criminal Procedure Code more protects the rights of the perpetrators of crime than the rights/interests of victims of criminal acts, for that matter the provisions that protect / pay attention to the interests of the victims can only be stated in pretrial and combined claims for compensation, in other words the system adopted by the Criminal Procedure Code is retributive justice, which is a policy whose point of protection is the offender oriented rather than restorative justice whose focus is the protection policy for victims of crime (victim oriented) (Nashriana, 2011).

Children need legal protection that is different from adults. The physical and mental children of the under-mature and mature children that underlie the need for different treatment of children. Children need to get a protection that has been contained in a statutory regulation (Koesparmono, 2007). The form of protection provided by the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, based on Article 17 paragraph (2) and Article 18 only in the form of the child's confidentiality, legal assistance and assistance others, that the meaning of confidentiality is no further explanation. In a general explanation of the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, among others, it is stated that although the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights has stated about children's rights, the implementation of the obligations and responsibilities of parents, family, community, government and the State, to provide protection to children still need a law regarding child protection as a juridical basis for the implementation of these obligations and responsibilities. Thus, the formation of the law was based on the consideration that child protection in all its aspects.

Based on the background description of the problem above, this research was conducted to find out how is the legal protection for children as victims of rape in the household in the future?

## 2. Research method

This type of research is normative or doctrinal legal research. Doctrinal research is research that provides a systematic explanation between regulations explaining areas of difficulty and possibly predicting future development (Marzuki, 2011). Normative or doctrinal legal research is also referred to as library research or document study because this research is conducted or is aimed only at written regulations or other legal materials (Soekanto and Mamudji, 2004). This study uses several approaches to obtain comprehensive research results, including the regulatory approach, the concept approach, the historical approach, the case approach, and the philosophical approach. In other words, in this

study the researcher will see the law as a closed system that has the characteristics of comprehensive, all-inclusive and systematic (Ibrahim, 2006).

This study uses primary legal materials (consisting of laws and court decisions), secondary legal materials (consisting of books in the field of law, research results, seminar papers, scientific works, articles and the results of other people's opinions related to the object research), and tertiary legal materials (consisting of the Big Indonesian Dictionary (KBBI), legal dictionaries, etc.). The technique of searching primary and secondary legal materials is done by studying literature and internet searching (Rahardjo, 2000). The analysis technique in this research is carried out using the deduction method, which is Inventory and identification of laws and regulations, then an analysis of the case is carried out by interpreting the law, then conclusions can be drawn from the results of the analysis (Abdlatif and Ali, 2010).

### **3. Results and discussion**

#### **3.1 Regulation of the rights of child victims in crimes of rape in domestic violence**

Violence has become a phenomenon in people's lives in Indonesia. Violence occurs not only in public areas, but also rife in domestic areas that give birth to domestic violence. The condition of victims of domestic violence such as that turned out to be still dilemmatic after the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Because, if the wife and child who experience violence in the household report her husband to the police it is feared that the husband will be more abusive towards him after the wife returns to her home because there is no legal protection from the police and or court. Harum Pujiarto (1999) says that there are even some wives who are victims of domestic violence prefer to withstand the suffering of violence they experienced because they feel worried about his future if her husband is dealing with law enforcement.

According to the author, that the perpetrator of a crime (convict) must be directly responsible for the interests of the victim by providing material compensation. This provision is relevant to the protection of victims of domestic violence that are regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which stipulates criminal penalties for convicted domestic violence. In addition, it is necessary to have the principle of "protection of security" from the state against the safety of victims of crime, as well as the "rehabilitation principle" of physical and psychological health of victims of crime in general and victims of domestic violence in particular. Without the support of security and rehabilitation protection, victims do not get the maximum benefit from law enforcement against perpetrators of crime.

Legal protection for victims of criminal offenses received less attention from the law, both material criminal law and criminal procedural law (formal criminal law) compared to the legal protection of suspects and defendants. This was influenced by several factors, including: (1) legal factors, (2) legal awareness of victims, (3) supporting facilities, (4) human resources. The existence of a statutory regulation in a legal system is crucial to the realization of an orderly law, because the law is the main source of law (Mansur & Gultom, 2008).

Therefore, even though Law Number 23 Year 2004 concerning the Elimination of Domestic Violence, there are already many victims who do not report their cases to the police because, among others (1) shame, reluctance with extended families, disgrace if known to many people. This reason arises due to the understanding of some members of the community, that violence experienced by a wife is due to the mistakes of his own wife; (2) a large dependence on actors (husband) economically; and (3) relating to the performance of law enforcers in handling cases is a consideration of women to report violence that occurs to them (Mansur & Gultom, 2006).

According to this law, parameters for the elimination of violence in household are based on four principles, namely (a) respect for human rights; (b) gender justice and equality; (c) non-discrimination; and (d) victim protection. In Article 4 of the law, it is explained that one of the goals of eliminating violence in household is to prevent all forms of violence in the household. Thus, it is expected that various acts of domestic violence that are rife in Indonesia so far can be eliminated and can be eliminated wherever possible in people's lives. Relevant to the principles and objectives of the eradication of domestic violence that are expected, the law has specifically regulated the method of resolving acts of violence in households that lead to efforts to protect victims. In this regard, the

method for resolving domestic violence consists of five parts, namely (1) the rights of victims of domestic violence; (2) government and community obligations; (3) victim protection; and (4) victim recovery; and (5) resolution of domestic violence through the application of legal sanctions. Thus, protection of victims of domestic violence receives serious attention in this law.

In line with the formulation in several articles on the protection of victims of domestic violence in Law Number 23 of 2004 concerning the Elimination of Violence, the author will analyze the protection of victims of domestic violence at a preventative stage. Protection of victims of domestic violence at a preventive stage is carried out through temporary protection and protection by the court, as well as advocacy for victims of domestic violence. Legal protection for wives who are victims of domestic violence according to this law is (1) temporary protection; (2) establishment of a protection order by the court; (3) the provision of Special Service Rooms (RPK) at the police station; (4) providing safe houses or alternative dwellings; (5) the provision of legal consultation by advocates against victims at the level of investigation, prosecution and examination at a court hearing (Arif, 2008).

Thus this law specifically regulates (*lex specialis*) concerning the protection of victims of domestic violence. In this connection the process of protecting victims of domestic violence in the early stages takes the form of temporary protection. The process of obtaining temporary protection is regulated in Article 16 of this law, that;

- 1) Within 1 x 24 (one time twenty-four) hours from the date of knowing or receiving reports of domestic violence, the police must immediately provide temporary protection to victims.
- 2) Temporary protection as referred to in paragraph (1) is given no later than 7 (seven) days after the victim is received or handled.
- 3) Within 1 x 24 (one time twenty-four) hours from the date of granting protection as referred to in paragraph (1), the police are required to request a letter stipulating a protection order from the court.

Protection of victims of domestic violence according to Law Number 23 of 2004 also includes curative efforts or rehabilitation of victims through assistance from social volunteers, medical staff and advocates. As part of psychological protection, victims need assistance, both related to the spiritual services of spiritual guides, as well as advocacy in the legal process. For spiritual services, based on Article 24 of this Law, the spiritual guide is required to provide an explanation of rights, obligations and to strengthen the faith and piety of the victim. Specifically for victims' recovery efforts, services provided can be obtained from health workers, social workers, volunteer assistants and/or spiritual mentors (Article 39).

Because of one factor causes husbands to violence against their wives and children, is the low submissiveness of the husband and/or the low patience of the wife. Article 40 of this Law states that (1) health workers must examine victims according to their professional standards; (2) in the event that the victim requires treatment, health workers must restore and rehabilitate the health of the victim. The health check includes physical and psychological health as part of the recovery of the victim's health. Relevant to this Article 41 of Law Number 23 Year 2004 mandates that social workers, volunteer assistants, and/or spiritual mentors must provide services to victims in the form of counseling to strengthen and/or provide security for victims. Victims of domestic violence need to get advocacy from volunteer assistants, especially if cases of domestic violence experienced by victims are processed legally.

According to Article 23 of Law Number 23 Year 2004, it is stated that in providing services, volunteer assistants can:

- a. Inform the victim of their right to get one or more accompanying persons;
- b. Accompanying victims at the level of investigation, prosecution, or court examination by guiding victims to objectively and completely describe the violence in the household they experienced;
- c. Listen empathetically to all the victims' statements so that the victim feels safe accompanied by a companion; and
- d. Provide actively psychological and physical reinforcement to the victim.

Thus, the existence of these volunteer assistants serves to guide victims to objectively and completely explain the violence in the household they experienced. For this reason, the volunteer companion is tasked with listening empathetically to all the victims' accounts so that the victim feels

safe accompanied by a companion. The same advocacy also needs to be given advocate to victims at the level of examination of the court hearing. Relevant to this thought in Article 25 of Law Number 23 of 2004 explained: In terms of providing protection and services, advocates are required to: a). provide legal consultation which includes information on victims' rights and the judicial process; b). assisting victims at the level of investigation, prosecution, and examination in court sessions and assisting victims to fully describe the domestic violence they experienced; or c). coordinate with fellow law enforcers, volunteer advocates, and social workers so that the judicial process runs as it should.

To maximize the process of protection for victims of domestic violence Article 18 Government Regulation Number 4 of 2006 concerning the Implementation of Cooperation in Recovery of Victims of Domestic Violence mandates that in certain cases, health workers, social workers, volunteer assistants and/or spiritual mentors can establish cooperation with: a). the police, to report and process perpetrators of domestic violence; b). advocate, to help victims in the judicial process; c). other law enforcement agencies, to assist victims in proceedings in court hearings; d). National Commission on Violence Against Women; e). Indonesian Child Protection Commission (KPAI); f). Certain parties desired for the benefit of the victim.

### **3.2 Service standards for child victims in rape in domestic violence**

Domestic violence acts in Indonesia over a long period of time tend to be latent so that they are rarely exposed. As a result, it is more a simple event that is less interesting than a social fact that should get special attention and earnest handling from the community and government. Violence in Indonesian households everywhere still continues with the number of cases and the intensity that tends to increase every day. The Indonesian print and electronic mass media have never even been quiet about the latest news and information about domestic violence, including in the homes of celebrities. In the meantime, the Legal Aid Institute for the Women's Association for Justice (LBH APIK) released a report on May 12, 2014 that saw 83 cases of domestic violence occur during the first four months of 2015 in the Greater Jakarta area. Most of the cases were husband's violence against his wife. The women victims of violence experienced physical, psychological and economic violence because they were not supported or blackmailed, and sexual violence or a combination of these. The case ended in divorce (30 cases), criminal (9 cases), mediation (6 cases), and marriage consultation (38 cases). This covert violence has only been taken seriously and entered into a crime with criminal penalties since 2004 in accordance with Law Number 23 of 2004 after it became more rife with multiple consequences resulting in fatalities (Fanani, 2008).

Sexual violence such as rape is a form of domestic violence with victims who can be men as well as women. Criminologists (Dermawan, 2007) often say that statistics on rape crime, including in the household, are like an iceberg. These statistics of violence are far smaller than the actual number of rapes that occurred. In an open society, not all rape cases are revealed, especially in smaller units such as families.

Implementation of the Domestic Violence Act in an effort to uphold the law affiliated with concrete efforts to prevent domestic violence, including (Fakih, 2008):

1. Strengthening Social Networks

Households formed from the nodes, the members in it are actually social structures that reflect social networks that are bound to specific types of relations such as values, visions, and shared ideas and descent. Ideally, it is the specific types of relations that bind actors in the household consisting of members such as husband, wife, children and so on in a strong relationship. Thus, the power and domination of one over another which becomes the cause of domestic violence will disappear by itself along with the loss of domestic violence.

2. Understanding Local Culture Wisdom

No member in the household lives without the basic values that shape his personality and that directs him to think and behave. These basic values can be sourced from religious teachings or traditions or local culture in the surrounding environment.

3. Strengthening Family Economic Foundations and Buildings

Living a small family life in a high level of market seems to be no longer suitable in an increasingly complex life with a series of demands that must be met. The complexity of life does not only apply in urban areas but also in rural areas with a number of similarities and differences. Life

burden that is too heavy can lead to an emotional imbalance that triggers domestic violence. Therefore, all members in a household according to their abilities must make efforts that can strengthen the foundations and economic structure of their family. The main responsibility is indeed on the shoulders of the husband.

#### 4. Practicing Religious Teachings

Religion, especially Islam, is a teaching that is the source of all sources of value. As a teaching, and not a value system, the values contained in the teachings of Islam are implemented in the lives of both personal, family and national and state life.

### 3.3 General overview of child victims in crimes of rape in domestic violence in Indonesia

At present sexual violence against children is a crime that has received enough attention in the community. Often in newspapers or magazines, sexual violence is reported. As is well known that in today's social development, many rape crimes occur especially among the weak economic community. According to Article 3 of Law 23 of 2002 in conjunction with Law 35 of 2014 contains important aspects, namely: guaranteed and fulfilled children's rights; fulfillment of human dignity and dignity; child protection from violence and discrimination; the realization of quality children, noble and prosperous. While the basic principles of the Convention on the Rights of the Child include: non-discrimination; the best interests of the child; the right to life, survival and development; respect for children's opinions.

According to Article 59 of Law 23/2002 jo Law 35/2014, it is explained that the government and other state institutions are obliged and responsible to provide special protection, namely: children in emergency situations; children in conflict with the law; children from minority and isolated groups; children are economically and/or sexually exploited; trafficked children; children who are victims of drug abuse; abducted children, sales and trafficking; child victims of physical and/or mental abuse of children with disabilities; and child victims of mistreatment and neglect.

The reasons for cases of sexual violence were not reported by victims to law enforcement officials to be processed by the Court due to several factors, including victims being embarrassed and not wanting to disgrace their own being known by others, or victims feeling afraid because they had been threatened by the perpetrators that they would be killed if reporting the incident to the police. This of course affects the mental/mental development of the victims and also affects the process of law enforcement itself to create a sense of justice for victims and the community.

The victim factor plays an important role in being able to resolve or resolve this rape case, this requires the courage of the victim to report the incident that happened to the police, because in general the victim is threatened with rape from the perpetrator and this makes the victim afraid and traumatized. The granting of protection to children as victims are based on Law Number 11 of 2012 Concerning the Criminal Justice System for Children (SPPA), in addition to the SPPA Law, the protection of victims' rights is also based on Law Number 35 of 2014 concerning Amendments to the Law Number 23 of 2002 concerning Child Protection and Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

The following will describe child rights in the juvenile justice system Act and other relevant laws. According to Law Number 11 of 2012 concerning the Juvenile Criminal System regulates the rights of children. However, according to the author, the law regulates more about the rights of children as perpetrators of crime, which are contained in Article 3 to Article 88.

The rights of children as victims explicitly are only regulated in 2 articles. Namely Article 90 and Article 91 (rights granted in the form of social and medical rehabilitation efforts, guarantee of physical, mental and social safety, ease of obtaining information. Based on the description, according to the Author, it is time for the SPPA Law to be revised. Because wherever the victim has equal rights before the law, especially children as victims. The position of the victim must be balanced with the perpetrators or witnesses. According to the author, criminal law is too old-fashioned if it is too oriented towards perpetrators, because criminal law must follow the development and dynamics of modern law now. The victim is no longer marginalized.

The crime of sexual violence against children is one form of violence against children which is an example of the vulnerability of the child's position, primarily to the sexual interests of men. Sexual images of girls who have been placed as male sexual objects have far-reaching implications on children's lives, so they are forced to always face violence, coercion and physical and psychological

torture. Attention and protection to the interests of victims of sexual violence both through the criminal justice process and through certain social care facilities is an absolute part that needs to be considered in criminal law and social policy policies, both by the executive, legislative and judiciary bodies as well as by social institutions which exists. The task of resolving crimes that occur is closely related to the task of the two system components, namely the Police and the Prosecutor (at the prejudicial stage) and the Court (at the judicial stage). The relationship between the Police and the Prosecutor himself is mainly related to the task of investigating a criminal offense.

Law Number 23 of 2004 concerning the Elimination of Domestic Violence, states the protection of victims' rights, as stipulated in Article 10: Victims are entitled to:

- a) Protection from family, police, attorney's office, court, advocate, social institution, or other party either temporarily or based on the stipulation of a protection order from the court;
- b) Health services according to medical needs;
- c) Handling specifically related to the confidentiality of the victim;
- d) Assistance by social workers and legal assistance at every level of the inspection process in accordance with statutory provisions; and
- e) Spiritual guidance service.

Recovery of victims of domestic violence needs to be done immediately considering domestic violence can cause physical and psychological suffering. Republic of Indonesia Government Regulation Number 4 of 2006 concerning Implementation and Cooperation in Recovery of Victims of Domestic Violence, Article 1: In this Government Regulation what is meant by:

- a. Victim recovery is all efforts to strengthen victims of domestic violence so that they are more empowered, both physically and psychologically.
- b. Recovery is all actions that include services and assistance to victims of domestic violence.
- c. Assistance is all actions in the form of counseling, psychological therapy, advocacy, and spiritual guidance, in order to strengthen the victims of domestic violence themselves to solve the problems they face.
- d. Cooperation is a systematic and integrated way between recovery providers in providing services to recover victims of domestic violence.
- e. Recovery organizers are health workers, social workers, volunteer assistants, and/or spiritual mentors.
- f. Minister is the minister whose scope of duties and responsibilities is in the field of women's empowerment.

To support this implementation, it is necessary to regulate the implementation and cooperation of victims recovery by determining the duties and functions of each and the obligations and responsibilities of health workers, social workers, spiritual guides and volunteer assistants. As a form of protection for children in Indonesia, lawmakers, through legislation (positive law), such as the Criminal Code (KUHP), Law Number 23 Year 2002 as amended by Law Number 35 of 2014 concerning Amendment to Law Number 23 of 2002 concerning Child Protection, Act Number 23 of 2004 concerning the Elimination of Domestic Violence, and Law Number 11 of 2012 concerning the Criminal Justice System for Children which absolutely provides various forms of legal protection relating to the problem of protecting children from acts of sexual violence.

The form of child protection provided by the Child Protection Act and the Elimination of Domestic Violence and the Criminal Justice System for Children is an adoption, compilation, or reformulation of the form of child protection that has been regulated in the Criminal Code. In the Criminal Code there are several articles that provide protection for children against sexual violence, protection for children is shown by providing criminal sanctions for perpetrators. This is stated in the Criminal Code in the following articles:

- a. The issue of intercourse is regulated in Article 287, Article 288, article 291
- b. Obscene acts are regulated in Article 289, Article 292, Article 293, Article 294, Article 295, article 298.

To avoid the occurrence of crimes against children, especially sexual violence, Law Number 35 of 2014 concerning Amendment to Law Number 23 of 2002 concerning Child Protection emphasizes and gives obligations and responsibilities to the State, Government, Regional Government, Community,



Family and Parents or Guardians in the implementation of child protection regulated in Article 20 CHAPTER IV Obligations and Responsibilities and furthermore in Articles 21-26 of this Law explain in detail each of the roles and duties of the State, Government, Regional Government, Community, Family, and Parents or Guardians in the organization of child protection. In Article 54 of Law Number 35 of 2014 concerning Amendment to Law Number 23 of 2002 concerning Child Protection explains that: Article 54 Paragraph (1) reads: Children within and within the education unit are obliged to get protection from acts of physical violence, psychic, sexual crimes, and other crimes committed by educators, educational staff, fellow educating participants, and/or other parties. Article 54 Paragraph (2) reads: Protection as referred to in paragraph (1) is carried out by educators, education personnel, government officials, and/or the public. The protection provided is intended that every child in an educational environment, namely the school, has the right to get protection from parties related to child protection issues.

Furthermore, Law Number 35 of 2014 concerning Amendment to Law Number 23 of 2002 concerning Child Protection contains prohibitions on acts that violate the rights of children regulated in Chapter XIA consisting of Articles 76A-76D which contain acts which is prohibited for children. Specifically for the prohibition of committing sexual violence is regulated in Articles 76D and 76E Henceforth when there are people who violate existing prohibitions, commit crimes and violate children's rights in the prohibition set out above in this case committing sexual violence against children then that person will subject to criminal sanctions to account for their actions that have been regulated in Article 81 and Article 82 of Chapter XII concerning Criminal Provisions in this law.

The legal rules described above, are forms of legal protection provided by positive laws in Indonesia for children both in preventing the occurrence of acts of sexual violence against children as well as providing special protection for children who are victims of sexual violence and have been stated in written form (in the form of law) in which prohibits people from committing sexual violence accompanied by criminal threats for those who commit and the necessity for those involved in it (parents, family, community, state, government and regional government) to participate in efforts to provide protection for children. Protection of children in conflict with the law (child offender) in essence has also received special protection in the case of children in criminal proceedings and before entering into justice contained in international conventions as in the articles described above in the Convention on the Rights of the Child.

The form of protection provided is not only protection for children as victims, but also for children who are in conflict with the law (child offenders). Considering children are seen as special subjects in law, the laws and regulations contain various specialties concerning children, namely the specificity of the legal treatment of children both as victims and perpetrators. Because seeing the reality now reported in the mass media, that children are not only victims of sexual violence but are also the perpetrators of these acts, and this is done by children against their peers. Thus those who commit sexual violence are given criminal sanctions (penalties) in accordance with the applicable law as a form of legal policy for the crimes they have committed.

Imposing sanctions (punishment) in Law Number 23 Year 2002 is felt to have not been able to cope with the occurrence of acts of sexual violence against children by seeing the reality such as the many examples of cases that have been described above, so it is necessary to change or revise by adding, reducing or even eliminating some this article is amended in Act Number 35 of 2014 concerning Amendment to Act Number 23 of 2014 concerning Child Protection. The change occurred in the provision of criminal sanctions (punishment) for perpetrators of sexual violence who were initially threatened with imprisonment of at least 3 (three) years in prison and a maximum of 15 (fifteen) years in prison and a fine of Rp. 60,000,000.00 (sixty million rupiahs) is changed to a minimum of 5 (five) years in prison and a maximum of 15 (fifteen) years in prison and a fine of Rp. 5,000,000,000.00 (five billion rupiahs).

With the changes that occur in improving the quality of law, it can give a positive impression in terms of repeating sexual violence by increasing the sanctions (penalties) against the perpetrators so as to cause a deterrent effect in them so as not to cause crimes against children, especially sexual violence against children in Indonesia.

Obstacles to handling domestic violence began during the investigation. Police Investigators (Polri) face obstacles due to the strong perception of the community that domestic violence is a personal problem or a household problem, so it is not feasible for interference by others or the police.

Women (wives) because they have soft feelings of conscience and thick Eastern customs and culture, have the heart to give back to their husbands or ex-husbands by reporting their actions to the police, even though they have hurt and tortured them both physically and psychologically.

The obstacles of law enforcement in implementing protection against victims of domestic violence need to be immediately overcome by the government by increasing cooperation with the community so that victims who experience domestic violence are brave to report the events they experienced and in order to provide legal protection to victims so that they are free from fear and all forms of threats of physical and psychological violence.

It is also necessary to disseminate and disseminate information about guaranteeing the protection of victims through legal counseling in the community, especially where the level of domestic violence increases from the number of cases that occur. Enforcement of criminal sanctions against perpetrators of domestic violence is a repressive action to provide a deterrent effect for the perpetrators of crime and for other parties as a learning not to do the same.

### **3.4 Regulation of the rights of child victims in the crime of rape in domestic violence in the future**

In the Convention on the Rights of the Child which has been ratified by Indonesia with Presidential Decree No. 36 of 1990 listed universal principles and international legal provisions concerning children which include: the right to survival (survival rights), the right to protection (protection rights), the right for development rights, the right to participate (participation rights).

According to Article 2 paragraphs 3 and 4 of the Law of the Republic of Indonesia Number 4 of 1979 concerning Child Welfare, it is clear that the child has the right to care and protection, both during the womb and after birth. The child has the right to environmental protections that can harm or hinder natural growth and development. Here shows how the law wants to protect the rights of children from the beginning of the incident and throughout the process of growth until adulthood.

With the constitutional foundation and operational basis for normative protection of children's rights is strong, ideally it must be reflected in the concrete implementation in daily life. The enactment of a law depends on all people in their community: whether they are willing or able to implement it or not. Weaknesses in child protection law, especially in terms of implementation, this is indicated by the many things or events that are detrimental to the physical and psychological damage to the child.

From the events or cases that occur, it can be seen that between actions that cause physical harm to children and actions that cause psychological harm to children are often so closely related, like the outward elements and inner elements of children that are so closely related to each other. With physical injury, he also hurt his mind.

Social reality shows that development activities aimed at improving the lives of the nation in fact on the other hand have led to paradoxical phenomena about children, they are recognized as the future of the nation and state, but at the same time become the most vulnerable population groups in defending their rights and are often sacrificed in the development process. Many things hamper the implementation of legal protection against children including them:

- a. Legal uncertainty about who is responsible for neglect of the service function to fulfill children's rights.
- b. There is no pattern of service in protecting children in accordance with the conditions and situation in Indonesia at this time.
- c. Bureaucracy that is still polluted by corrupt behavior causes the asynchronous between legal objectives and legal functions, and between legal principles and their implementation in the field.

The symptoms of the law as it shows the ineffectiveness of laws and regulations. The things that need to be done in the context of effective law in terms of protecting the interests of children are:

- a. Need to improve the legal material for child protection.
- b. Needs to improve institutions in charge of protecting children's rights services.
- c. Need to establish coordination between institutions whose main function is the protection of children's rights services.
- d. Need the right method for the socialization or promotion of the protection of children's rights.
- e. Need to raise funds for activities to protect children's rights.

f. Need to concretize the protection of children's rights.

Draft Law on the Elimination of Sexual Violence in 2016 The issue of protection of the rights of children victims of sexual violence has been regulated in the Bill on the Elimination of Sexual Violence in 2016 which is contained in several articles including the following: Articles 15, 16, 17, 18, 19, 20. Article 16 Protection witness and/or victim aims to provide a sense of security to witnesses and/or victims before, during and after the criminal justice process. Article 17 Witness rights are rights owned by witnesses in the criminal justice process for sexual violence as referred to in Article 1 number 7.

Efforts to change the paradigm of law against victims of rape in Indonesia would be the right momentum because legal development in the era of Legal Development, among others, aims to implement the preparation of a national (criminal) legal system. Even though the draft of the National Criminal Code (under the title: Crimes Against Public Violation, Chapter XVI Article 467) has been drafted, the draft provisions around criminal acts in the field of decency (not the type but legal construction) still require special study especially from the standpoint of criminology and victimization approaches (Atmasasmita, 1995).

At the level of law enforcement, victims of rape are often ignored, where the police and the criminal justice sub-system do not act in the interests of the reporting person, but their attention is on public order, towards actions that endanger the environment and efforts to limit the sources of disorder. Meanwhile, the interests of the victims both in their protection and in the success of the process of resolving criminal cases and more broadly in the wider interest of the interests of crime prevention on the one hand and on the other hand are for the interests of the perpetrators themselves. Criminals who have done good to their victims will be easier in terms of coaching, because then the perpetrators have felt done concretely to remove the stains caused by his crime. Criminal offense in the form of an obligation to provide compensation to the victim will develop the responsibility of the offender because in practice it requires the active role of the offender and also the victim itself (Utzman, 2010).

In connection with the importance of attention to victims of crime, in the formation of the National Criminal Code, the problem of protection of victims of crime needs adequate arrangements to help restore the socio-economic conditions of victims of crime and to resolve conflicts caused by the occurrence of a crime and to restore balance, and bring a sense of peace in the community as desired in the criminal objectives stated in the Criminal Code Concept.

The regulation of victims' rights (procedural and substantial), but still incomplete, including those that need further consideration or formulation:

1. In substance, compensation to the victim is still placed on the fault of the perpetrator alone, even though experience proves the existence of the victim but the perpetrator cannot be arrested, tried or finally released. This has the potential to fail in formulating the rights of victims (recognition as victims), and their recovery. So far, one of the problems in implementing the rights of victims is the incomplete regulation in the existing criminal procedure law.

2. Compensation for victims of crime is placed on the perpetrators of crime. This means that the formula in the Criminal Code Bill only bases that the perpetrators of crimes are obliged to pay damages, and release state obligations. Yet in a number of cases, many perpetrators of crimes are economically poor people, and do not have the ability to pay compensation. In fact, victims of crime really need compensation for their lives. The absence of the role of the state at all, will complicate the fulfillment of the rights of victims, if the perpetrators really are not economically capable. It should be added provisions regarding the challenge of state responsibility in certain cases, as part of the moral accountability of the state for failing to protect its citizens from crime. The responsibility of this country can take over the role of the perpetrators in providing compensation, with the aim of ensuring that victims receive recovery.

3. One of the victims' rights that needs to be considered is how to formulate right to participation, the right of victims to participate in the existing judicial process. This right is very important to encourage the renewal of criminal procedure based on the rights of victims.

In general, the Criminal Code Bill has led to an improvement in the criminal justice system. A number of the above weaknesses can be improved by providing a strong foundation related to the direction and objectives of establishing a new criminal procedural law, strengthening the rights of victims, and synchronizing with various existing laws and regulations. Simply stated, in the Draft Penal

Code to avoid repetitive arrangements, a number of rights that have been regulated in other laws, for example the Law of the Republic of Indonesia Number 31 of 2014 concerning Protection of Witnesses and Victims do not need to be rearranged, only harmonized and added matters technical nature.

In the concept of legal protection for victims of crime, also contained several legal principles that require attention. This is because in the context of criminal law, the principle of law must color both material criminal law and formal criminal law. The legal partisanship of the victim who seems unbalanced compared to the suspect or the defendant, can be seen from the existence of several laws and regulations that give privileges to the suspect or defendant compared to the victim. When a person is suspected of committing a crime, from the moment the questioner is questioned to the verdict handed down by the judge, the legal protection of the suspect (defendant) is always attached. When the person is arrested, it must be accompanied by an arrest warrant as well as mentioning what crime was alleged, while in the investigation process, the suspect is permitted to be accompanied by a legal advisor. Likewise, when a suspect is detained, the period of detention is limited for a certain period. Even after the defendant was convicted by the judge, he was still given the opportunity to submit other legal remedies, such as an appeal and review. The conditions were very different from the victims. When questioned as witnesses at the investigation and court levels, it was often found that victims had to come in person without obtaining adequate security or escort from the security forces. This condition does not only occur in small cases, but in large cases (cases that are of public concern), such as murder, terrorism, crime/human rights violations, victims often have to go to court themselves. Meanwhile, the potential for violence against witnesses (victims) is very high, especially if the perpetrators are sentenced to maximum punishment by the court, for example subject to 12 years imprisonment, or life imprisonment, or death penalty. When the victim was asked for information in court, it seemed that the victim was merely being used as a tool to corroborate what the prosecutor had charged.

Therefore, even though Law No. 23/2004 has existed, there are still many victims who do not report their cases to the police because, among others (1) shame, reluctance with extended family, disgrace if known to many people. This reason arises due to the understanding of some members of the community, that the violence experienced by the wife is due to the wife's own mistakes, (2) a great dependence on the perpetrators (husband) economically; and (3) relating to the performance of law enforcers in handling cases is a consideration of women to report violence that occurs to them.

#### **4. Conclusion**

The concept of the meaning of legal protection that is applied as the current regulation of children as victims of rape in the household today, namely the protection of the rights of the suspect has ruled out the protection and sense of justice of the victim. The limited regulation on sexual violence in the Criminal Code also causes many cases of sexual violence that cannot be prosecuted, so that perpetrators cannot be charged and sexual violence continues. The limitations of the legal umbrella that protect women and children from sexual violence are cause for concern, because the Constitution and a number of laws and regulations in Indonesia have guaranteed the need for special treatment of efforts to promote, respect, fulfill and protect the rights of women and children in Indonesia.

Restorative justice mechanisms in the penal and non-penalty facilities are two effective and efficient mechanisms in providing a balance of interests between the interests of the perpetrators, victims and the interests of the criminal justice system. Restorative justice of non-penal means through mediation is a preferred mechanism because it is the norm setting of the community's local wisdom. If this mechanism fails, restorative justice through the means of punishment by imposing conditional penalties and additional crimes becomes a tool of justice for child victims as victims of rape in the household.

Regulations on legal protection for children as victims of rape in the future, namely efforts to change the legal system to address systemic sexual violence against women, especially children, and breakthroughs so that the law accommodates the needs and interests of women victims of violence based on the experiences of victims of violence and how they deal with the legal process. Arrangement of legal protection for children as victims of rape in the future household Still needed improvements to the draft of the 2012 Concept Criminal Code Law which contains the fulfillment of the right to

restitution and compensation. Even though additional criminal provisions have been arranged for compensation, but it still needs to be reinforced in strengthening the force of restitution, recognition and legal guarantees that the state will take over responsibility for compensation if restitution cannot be obtained from perpetrators of crimes against children as victims of rape in the household and The legal reform was realized in a comprehensive manner, which included, among others: arrangements on preventing sexual violence, forms of sexual violence, victims' rights, including remedies, criminal justice procedural law, including proof, monitoring of the elimination of sexual violence and punishment.

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