

# The Criminal Sanctions of Child Rape with Implications of Impacts Suffered by the Victims

Beni Prihatmo<sup>\*)</sup>, Gunarto Gunarto <sup>\*\*) and Amin Purnawan<sup>\*\*\*)</sup></sup>

<sup>\*)</sup> Civil and State Administration Section/Prosecutor, E-mail: [beniprihatmo82@gmail.com](mailto:beniprihatmo82@gmail.com)

<sup>\*\*) & <sup>\*\*\*)</sup> Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang</sup>

---

## Abstract.

*This research aims to examine and analyze the existence of criminal sanctions for rape against children in terms of justice for child victims. In this paper, the author uses a normative juridical method with research specifications in the form of descriptive analysis. Based on the discussion, it is concluded that although the legal instruments are owned, but in the course of child protection it has not been able to run effectively because there is still overlap between sectoral laws and regulations related to children. The need for heavier criminal sanctions for perpetrators of crimes against children, to provide a deterrent effect, and to encourage concrete steps to restore the physical, psychological and social aspects of child victims of crime. The second amendment to the Child Protection Law, which was carried out through the enactment of the Perppu, was intended to address the phenomenon of sexual violence against children, provide a deterrent effect on perpetrators, and prevent sexual violence against children. The government feels the need to add to the main punishments that are threatened with the perpetrators in the form of capital punishment and life imprisonment, as well as additional penalties in the form of announcing the identity of the perpetrators. In addition, it also adds provisions regarding actions in the form of chemical castration, installation of electronic detection devices, and rehabilitation.*

*Keywords: Child; Criminal; Rapists; Sanctions; Victim.*

---

## 1. Introduction

The Unitary State of the Republic of Indonesia is one of the big countries that prioritizes applicable legal provisions. The positive rule of law that applies in Indonesia is clearly an important component in building a safe, peaceful and peaceful life.<sup>1</sup> As in the Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, which has confirmed that Indonesia is a state of law, this phrase is contained in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia with the will of the law. The fourth paragraph of the Preamble to the 1945 Constitution, which is the constitutional basis of this country, states that one of the goals of the state is to create general welfare and educate the nation's life.<sup>2</sup>

In addition to the rule of law, Indonesia is also a country that upholds human rights, including children's rights, which are marked by guarantees for the protection and fulfillment of children's rights in the 1945 Constitution of the

---

<sup>1</sup>Sumaryono and Sri Kusriyah. (2020). *The Criminal Enforcement of the Fraud Mode of Multiple Money (Case study Decision No.61 / Pid.B / 2019 / PN.Blora)*, Jurnal Daulat Hukum: 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8811/4075>

<sup>2</sup>Sulistiyawan Doni Ardiyanto, Eko Sopyonyono, and Achmad Sulchan. (2020). *Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination*, Jurnal Daulat Hukum: 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8409/4067>

Republic of Indonesia and several provisions of laws and regulations both national and international.<sup>3</sup>The concrete form of the Government in providing protection to everyone, especially to children as regulated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, namely "Everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law" and Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely "Every child has the right to survive, grow, and develop and has the right to protection from violence and discrimination".<sup>4</sup>

Various kinds of criminal acts that take place in the public, including the crime of rape. Rape is one of the crimes that has recently been reported in newspapers, magazines and other mass media, which has experienced a relatively serious increase. Currently, the crime of rape is a crime that gets enough attention among the public.<sup>5</sup>Often newspapers or magazines and social media report the crime of rape. If you study the actual history of this type of crime from the past or it can be said as a form of classic crime that will always follow the development of human cultures themselves, it will always exist and develop all the time.

In Indonesia, cases of rape crime have increased every year, the victims are not only from adults but now have penetrated into teenagers and even children. Most of the victims of rape cases are minors who are helpless and afraid to fight back. The rise of rape cases against children is often caused by technological advances. The circulation of pornographic material through the mass media, among others, is channeled through print, television, internet, feature films, and cell phones.

The worrying crime of rape is a crime whose victims are minors, because this will affect the psychological development of the child and cause trauma for the rest of his life. The perpetrators of the crime of raping children are often people who are known to the victim and some even have family relationships. It is possible that the perpetrator is an outsider and is not known to the victim. The reaction that arises is that the community views that cases of rape against children must be processed and tried as fairly as possible. The perpetrators must be severely punished because they have damaged the future of the child and can even cause psychological harm to the development of the child.

Rape victims have the potential to experience severe trauma because the rape incident is a shock for the victim. Psychological shock can be experienced at the time of rape or after it. Often the perpetrators of this crime of rape are people who are well known to the victim. Often the perpetrators of this crime of rape are people who still have a family relationship with the victim, but it is possible that the perpetrators of the crime of rape are strangers or outsiders.

---

<sup>3</sup>Ari Yudistira and Widayati. (2021). *The Investigation Process of Prospective Children in Criminal Action*, Jurnal Daulat Hukum: 4 (1),

url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/13695/5374>

<sup>4</sup>Didi Wahyudi Sunansyah, and Aryani Wirasari. (2020). *Effectiveness Of Allotment Penalty Imposed By Judge In The Case Of Children For A Child Protection As Victims (Case Study at State Court of Sumber)*, Jurnal Daulat Hukum: 3 (1), url:

<http://jurnal.unissula.ac.id/index.php/RH/article/view/8483/3939>

<sup>5</sup>Wahid Abdulah. (2001). *Perlindungan Terhadap Korban Kekerasan Seksual*, Bandung, PT Rafikah Aditama, p.7

A good punishment depends on the implementation procedure and on the human being as the implementer and supporter of the law itself, not only on the principles, the systematic formulation of the articles, and the existing witnesses. Therefore, the role of law enforcement officers in uncovering and resolving cases of criminal acts of rape is demanded by professionals who are accompanied by intellectual maturity and high moral integrity. This is necessary so that the judicial process in resolving cases of criminal acts of rape can obtain justice and the perpetrators are subject to appropriate criminal sanctions. Because it has damaged the future of the victim, it can even have a bad effect on the psychological development of the child.<sup>6</sup>

From the things described above, the author's intention arises to establish the purpose of writing, namely to examine and analyze the existence of criminal sanctions for rape against children in terms of justice for child victims.

## 2. Research Methods

To conduct an assessment in this writing, the author uses a normative juridical method. The specifications of the writing were carried out using a descriptive analytical approach. The data used for this writing is secondary data. To obtain the data in this paper, secondary data collection methods were used which were obtained from literature books, laws and regulations, as well as the opinions of legal experts. The data that has been obtained is then analyzed by qualitative analysis.

## 3. Result and Discussion

The worrying crime of rape is a crime whose victims are minors, because this will affect the psychological development of the child and cause trauma for the rest of his life. The perpetrators of the crime of raping children are often people who are known to the victim and some even have family relationships. It is possible that the perpetrator is an outsider and is not known to the victim. The reaction that arises is that the community views that cases of rape against children must be processed and tried as fairly as possible. The perpetrators must be severely punished because they have damaged the future of the child and can even cause psychological harm to the development of the child.

Criminal sanctions consist of two words, namely sanctions and criminal. Sanctions mean threats, in the form of criminal threats (*strafbedreiging*) and have a duty so that the norms that have been stipulated in the law and the law are obeyed as a legal consequence of the violated norm.<sup>7</sup>Sanctions are also interpreted as the result of an act or a reaction to other things that are done by humans or social organizations.

In essence, sanctions aim to restore the balance of the social order that has been disturbed by violations of the rules in their original state. According to GPHoefnagels that sanctions in criminal law are reactions to violations of laws that have been determined by law, starting from the detention of suspects and

---

<sup>6</sup>E. Sumaryono. (2012). *Etika Profesi Hukum*, Aneka Ilmu, p.65

<sup>7</sup>Bambang Pernomo. (1993). *Asas-Asas Hukum Pidana*, Ghalia Indonesia, Jakarta, p. 36

prosecution of defendants to the sentencing by judges.<sup>8</sup> Meanwhile, criminal comes from the word straf (Dutch), which is basically suffering (nestapa) which is intentionally imposed or imposed on someone who has been proven guilty of committing a crime.<sup>9</sup> So, criminal sanctions are one of the most effective means used to tackle crime. So it can be concluded that criminal sanctions are tools that are owned to deal with major crimes or dangers as well as to face threats.

With the existence of the Child Protection Law, especially Article 81, it can be said that Article 287 of the Criminal Code can no longer be applied to perpetrators of rape committed against children, because Article 81 of the Child Protection Law has specifically regulated the provisions of the material criminal offense of sexual intercourse. done to children. So in this case Article 81 of the Child Protection Act is "lex specialist derogate lex generalis" from Article 287 of the Criminal Code where in the application of law for sexual offenses committed against children, the use of Article 81 of the Child Protection Act must take precedence over Article 287 of the Criminal Code. Maidin Gultom, the protection of children's rights is essentially a direct regulation in legislation.<sup>10</sup>

The minimum sentence requirements and maximum life imprisonment should apply for perpetrators of child rape. Some even demand the death penalty. Heavy sanctions are intended to provide a deterrent effect for perpetrators of child rape and to warn the public not to ever try to commit this crime.<sup>11</sup> In addition to law enforcement issues and severe sanctions, the procedure for reporting complaints of rape victims must be carried out properly so as to make the public feel protected. The government also seems to need to establish a kind of trauma center, at least at the district level, which can provide psychological assistance and guidance for victims of rape cases. Psychological trauma will carve a lifelong inner wound.

To protect children from perpetrators of raping minors, on May 25, 2016, President Joko Widodo signed PERPPU No. 1 of 2016 concerning the second amendment to the UUPA and now it becomes Act No. 17 of 2016, by providing heavier legal sanctions, namely the provisions on the main weighting of imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty years), the perpetrator is sentenced to death , for life, can be imposed with the following conditions: if it causes more than one victim, causes serious injury, mental disorder, infectious disease, impaired or lost reproductive function, and/or the victim dies. Also provides additional penalties in the form of identity announcements, chemical castration, installation of electronic detection devices that aim to find out the whereabouts of ex-convicts. Looking at the data above, it can be concluded that the crime of sexual violence (rape) is increasing, so that the government provides legal breakthroughs by providing heavier criminal sanctions, even the special law on child protection has changed twice with the issuance of PERPU no. 1 of 2016 Article 81.

<sup>8</sup>Hoefnagels. (1973). *The Other Side of Criminology*, Kluwer-Deventer, Holland, p. 115

<sup>9</sup>Adami Chazawi. (2014). *Pelajaran Hukum Pidana Bagian 1*, Jakarta: Rajawali Pers, p.67

<sup>10</sup>Maidin Gultom. (2014). *Perlindungan Hukum Terhadap Anak dalam Peradilan Pidana Anak di Indonesia*, PT. Refika Aditama, Jakarta, p.35

<sup>11</sup>Eva Achjani Zulfa. (2011). *Pergeseran Paradigma Pemidanaan*, Lubuk Agung, Bandung, p. 51

Even though the legal instruments have been owned, in the course of the child protection process it has not been able to run effectively because there is still overlap between sectoral laws and regulations related to children. Furthermore, the Government has made changes to the Child Protection Law by ratifying and enacting Act No. 35 of 2014 concerning Amendments to the Child Protection Act. Amendments to the Child Protection Act are made to further emphasize the need for heavier criminal sanctions for perpetrators of crimes against children, to provide a deterrent effect, and to encourage concrete steps to restore the physical, psychological and social status of child victims of crime.

The number of cases of sexual violence against children has become the basis for the government to enact Government Regulation in Lieu of Act No. 1 of 2016 concerning the Second Amendment to Act No. 23 of 2002 concerning Child Protection. One of the reasons for the enactment of the Perppu is that the criminal sanctions imposed on perpetrators of criminal acts of sexual violence against children have not provided a deterrent effect and have not been able to comprehensively prevent the occurrence of sexual violence against children. So it is felt that it is necessary to immediately amend Act No. 23 of 2002 concerning Child Protection as amended by Act No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection.

One of the reasons for the enactment of the Perppu is that the criminal sanctions imposed on perpetrators of criminal acts of sexual violence against children have not provided a deterrent effect and have not been able to comprehensively prevent the occurrence of sexual violence against children. So it is felt that it is necessary to immediately amend Act No. 23 of 2002 concerning Child Protection as amended by Act No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection.<sup>12</sup>

The Perppu made changes to several provisions in the Child Protection Act. The changes occurred in two articles, namely Article 81 and Article 82. Article 81 which originally only consisted of 3 paragraphs was increased to 9 paragraphs, while Article 82 which originally only had 2 paragraphs has been added to become 8 verses. In addition, the Perppu also adds two new articles in the Child Protection Law, namely Article 81A and Article 82A. Article 81A consists of 4 paragraphs, while Article 82A has 3 paragraphs.

The second amendment to the Child Protection Law, which was carried out through the enactment of a Perppu, was intended to overcome the phenomenon of sexual violence against children, provide a deterrent effect on perpetrators, and prevent sexual violence against children. life imprisonment, as well as additional punishment in the form of announcing the identity of the perpetrator. In addition, it also adds provisions regarding actions in the form of chemical castration, installation of electronic detection devices, and rehabilitation.

Based on Article 81 of the Child Protection Act as amended by the Perppu, the death penalty can be imposed on perpetrators of sexual violence against children. The death penalty can only be imposed if the perpetrator of a crime as regulated in Article 76D of the Child Protection Act, if certain conditions are met in the form of: (1) more than one victim; (2) the victim was seriously injured; (3) the victim has a

<sup>12</sup>Gede Nyoman Gigih Anggara. (2015). *Perlindungan Hukum Terhadap Anak Sebagai Korban Kekerasan*, Kertha Wicara, 07 (05), p.255



mental disorder; (4) the victim suffers from an infectious disease; (5) impaired or lost reproductive function of the victim; and/or (6) the victim dies.

The death penalty that is threatened for perpetrators in the Perppu is very likely to be applied, considering that the conditions of application stipulated in the Perppu are very likely to be fulfilled. For that we still have to wait to find out who the perpetrators of the crime of sexual violence against children will be sentenced to death by the court, as an implication of the implementation of the Perppu. Considering that there are many parties (society) who want perpetrators of criminal acts of sexual violence (rape) against children to be sentenced to death.

Through the general explanation of the Perppu, the Government explained the reasons for the need to revise the Child Protection Law, the Government argued that the Child Protection Act as amended by Act No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection Children have regulated criminal sanctions for perpetrators of sexual violence against children, but the imposition of these crimes has not provided a deterrent effect and has not been able to comprehensively prevent the occurrence of sexual violence against children. To overcome the phenomenon of sexual violence against children, provide a deterrent effect on perpetrators, and prevent the occurrence of sexual violence against children, the Government feels the need to increase the main punishment in the form of capital punishment and life imprisonment, as well as additional punishment in the form of announcing the identity of the perpetrator.

Taking into account the editorial of Article 81, it can be understood that the death penalty for perpetrators who violate Article 76D of the Child Protection Act, alternatively is threatened with life imprisonment, or a minimum imprisonment of 10 (ten) years and a maximum of 20 (twenty) years. in the case of a criminal act causing more than 1 (one) victim, causing serious injury, mental disorder, infectious disease, disruption or loss of reproductive function, and/or the victim dies, as stated in paragraph (5).

The high number of victims of sexual violence against children, if left unchecked, can result in lost generation in the future.<sup>13</sup>In addition to children, women also experience a phenomenon that is not much different. The difficulty in providing protection to children and women is because they are structurally in a weakened position and therefore need protection from the state in the form of legal guarantees.<sup>14</sup>

There are 3 reasons why the Perppu is very necessary. First, there is an urgent situation and need to resolve legal issues, the number of victims of child sexual crimes is increasing, while the perpetrators are not deterred, in fact the perpetrators often repeat their actions without compassion for the victims. This requires deterrence as a preventive measure. In addition, the content of criminal articles against perpetrators of sexual crimes in Act No. 35 of 2014 concerning Child Protection is still relatively light. Because the maximum is only 15 years and

---

<sup>13</sup>T. Prisbery. (2012). *Unjustified Punishment: Juvenile Consensual Sex Offenders and The Sex Offenders Registry*, BYU PreLaw Review. Vol.26, p. 107

<sup>14</sup>Friedrich Lösel dan Martin Schmucker. (2005). *The Effectiveness of Treatment for Sexual Offenders: A Comprehensive Metaanalysis*, Journal of Experimental Criminology, Vol 1, p. 117

it has not been effective in suppressing sexual crimes against children, the last one is the condition and complexity of this sexual crime requires legal certainty.

#### 4. Conclusion

Even though the legal instruments have been owned, in the course of the child protection process it has not been able to run effectively because there is still overlap between sectoral laws and regulations related to children. Furthermore, the Government has made changes to the Child Protection Law by ratifying and enacting Act No. 35 of 2014 concerning Amendments to the Child Protection Act. Amendments to the Child Protection Act are made to further emphasize the need for heavier criminal sanctions for perpetrators of crimes against children, to provide a deterrent effect, and to encourage concrete steps to restore the physical, psychological and social status of child victims of crime. The high number of victims of sexual violence against children, if left unchecked can result in lost generation in the future. In addition to children, women also experience a phenomenon that is not much different. The difficulty in providing protection to children and women is because they are structurally in a weakened position and therefore need protection from the state in the form of legal guarantees.

#### 5. References

##### Journals:

- [1] Ari Yudistira and Widayati. (2021). *The Investigation Process of Prospective Children in Criminal Action*, Jurnal Daulat Hukum: 4 (1), url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/13695/5374>
- [2] Didi Wahyudi Sunansyah, and Aryani Wirasari. (2020). *Effectiveness Of Allotment Penalty Imposed By Judge In The Case Of Children For A Child Protection As Victims (Case Study at State Court of Sumer)*, Jurnal Daulat Hukum: 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8483/3939>
- [3] Friedrich Lösel dan Martin Schmucker. (2005). *The Effectiveness of Treatment for Sexual Offenders: A Comprehensive Metaanalysis*, Journal of Experimental Criminology, Vol 1
- [4] Gede Nyoman Gigih Anggara. (2015). *Perlindungan Hukum Terhadap Anak Sebagai Korban Kekerasan*, Kertha Wicara, 07 (05)
- [5] Sulistiyawan Doni Ardiyanto, Eko Sponyono, and Achmad Sulchan. (2020). *Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination*, Jurnal Daulat Hukum: 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8409/4067>
- [6] Sumaryono and Sri Kusriyah. (2020). *The Criminal Enforcement of the Fraud Mode of Multiple Money (Case study Decision No.61 / Pid.B / 2019 / PN.Blora)*, Jurnal Daulat Hukum: 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8811/4075>
- [7] T. Prisbery. (2012). *Unjustified Punishment: Juvenile Consensual Sex Offenders and The Sex Offenders Registry*, BYU Prelaw Review. Vol.26

##### Books:

- [1] Adami Chazawi. (2014). *Pelajaran Hukum Pidana Bagian 1*, Jakarta: Rajawali Pers
- [2] Bambang Pernomo. (1993). *Asas-Asas Hukum Pidana*, Ghalia Indonesia, Jakarta
- [3] E. Sumaryono. (2012). *Etika Profesi Hukum*, Aneka Ilmu
- [4] Eva Achjani Zulfa. (2011). *Pergeseran Paradigma Pemidanaan*, Lubuk Agung, Bandung
- [5] Hoefnagels. (1973). *The Other Side of Criminology*, Kluwer-Deventer, Holland
- [6] Maidin Gultom. (2014). *Perlindungan Hukum Terhadap Anak dalam Peradilan Pidana Anak di Indonesia*, PT. Refika Aditama, Jakarta
- [7] Wahid Abdulah. (2001). *Perlindungan Terhadap Korban Kekerasan Seksual*, Bandung, PT Rafikah Aditama