

# The Criminal Action of Rape Against Child According to Indonesian Law Number 35 of 2014

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## The Criminal Action of Rape Against Child According to Indonesian Law Number 35 of 2014



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**ABSTRACT:** Currently the Indonesian people are actively working on fixing very important issues regarding Human Rights (HAM) in all aspects of life, especially child protection in Indonesia. The criminal act of rape against a child is one of the most important legal issues to be studied. Protection can be given in the form of granting the right to protect children in various ways, one of which is by formulating and implementing Law Number 35 of 2014 as a substitute for Law Number 23 of 2002 concerning Child Protection.

Some of these problems are as follows: 1) What is the legal arrangement for the crime of rape against children? 2) How is the application of the law against the perpetrators of child rape? 3) What are the efforts to deal with the criminal act of rape against children? In writing this thesis, the author uses a normative juridical approach, meaning that the existing problems are studied based on the applicable laws and regulations and literature related to these problems and to find answers to these problems.

**Conclusion:** 1) The legal arrangements for the crime of rape against minors have been accommodated in Law Number 35 of 2014 concerning Child Protection, which was previously regulated in Law Number 23 of 2002. 2) The perpetrators of the crime of rape against children are subject to imprisonment and fines, 3) Efforts that can be made to provide legal protection for victims of rape: rehabilitation efforts, efforts to protect identity from reporting through the mass media and avoiding labeling, providing guarantees for the safety of witnesses and expert witnesses, both physically and mentally, as well as social.

**Suggestions:** 1) We recommend that efforts to protect children be prioritized and continue to be pursued in order to avoid the crime of rape. 2) The government must provide facilities and infrastructure for the recovery of child victims of rape, so that victims can continue their lives in the future. Society must participate in supporting child victims of rape violence to get legal protection, so that the Indonesian nation becomes a country that succeeds in creating a prosperous society based on humanity.

**KEYWORDS:** Crime of Rape, Children, Child Protection, juridical approach.

### I. INTRODUCTION

To maintain security and comfort within the scope of society, Indonesia carries out development in various fields, one aspect of development is development in the field of law, which is highly expected by all Indonesian people, according to the provisions in the 1945 Constitution that the Unitary State of the Republic of Indonesia is a legal state. To uphold the rule of law and to uphold the rule of law in order to achieve the goals of the Republic of Indonesia, namely to create a just and prosperous society based on Pancasila.

Along with the development of society from various aspects ranging from politics, economics, culture, law and others, the State is also trying to follow the flow by providing various rules and laws to adapt the development of people's lives. Legal issues also develop along with the development of problems that occur in society, the Indonesian nation besides experiencing rapid development in the field of law since the New Order era ended, has experienced developments in the fields of education, culture and technology, but the public realizes or does not realize that development does not always have an impact positive, but can have a negative impact that results in the emergence of a crime. What is referred to by the term "crime is a part of social

(Month) life, lives, and is inseparable from daily human activities of robbery, rape, fraud, mugging, and various forms of similar behavior, showing social dynamics, a normal form of social life".

Various crimes committed by criminals are in line with developments and progress in every country, especially in Indonesia. The victims are not only the government, private institutions and the community, but children can also become victims of crimes such as violence, trafficking, exploitation, neglect, sexual crimes and so on.

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Good law does not only depend on principles, the systematic formulation of articles, and existing sanctions, but also depends on the implementation procedures and on the people as executors and supporters of the law itself. The role of law enforcement officials in uncovering and resolving cases of criminal acts of rape is professional with high intellectual maturity and moral integrity. Children are national assets and as the next generation of the nation that must be protected and welfare must be guaranteed. In society, a child must get protection from all forms of violence and crime that can endanger the safety of the child. In accordance with the National goals of the Indonesian Nation which are clear in the Preamble to the 1945 Constitution in the fourth paragraph, namely "to protect the whole nation and Indonesia's bloodshed, promote public welfare, educate the nation's life and participate in carrying out world order".

### II. METHOD AND EXPERIMENT

#### A. Problem Approach

In writing this thesis, the writer uses a normative juridical approach, meaning that the existing problems are examined based on the applicable laws and regulations and literature related to the problem and to find answers to these problems.

#### B. Sources of Legal Materials

- 1) Sources of Primary legal materials, namely all laws and regulations governing the Crime of Rape against children, including: Law Number 1 of 1946 concerning the Criminal Code (KUHP). Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Law Number 35 of 2014 in lieu of Law Number 23 of 2002 concerning child protection.
- 2) Secondary Law material sources are sources of material obtained through literature studies by studying literature and from the internet related to the problems that will be discussed.

#### C. Process of Collection and Processing of Sources of Legal Materials

The collection of all legal sources, whether obtained from primary or secondary legal sources, is carried out in stages, namely by clarifying and analyzing legal sources and at the same time formulating the results of the analysis in a conclusion.

#### D. Process of Collection and Processing of Sources of Legal Materials

Both sources of law obtained and analysis of sources of law, both sources of primary law and secondary sources of law are analyzed in a quantitative juridical manner, meaning that all sources of law obtained are based on what has been regulated in legal norms to answer existing problems.

### III. RESULT AND DISCUSSION

#### A. Legal Arrangements for Rape of Minors

Legal arrangements that discuss the protection of minors in Indonesia can be seen in Law Number 35 of 2014 concerning Child Protection which was previously Law Number 23 of 2002. Child Protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity, and receive protection from criminal acts of violence and discrimination.

Protection of minors is closely related to the five pillars namely, parents, family, community, government, regional government and the state. The five of them are linked together as organizers of the protection of minors. In its simplest form, child protection strives so that every child's rights are not harmed. Child protection is complementary to other rights guaranteeing that children will receive what they need so that children can survive, develop and grow. As stated in Article 20 of Law Number 35 of 2014 "The State, Government, Regional Government, Communities, Families, and Parents or Guardians are obliged to be responsible for the implementation of Child Protection."

According to Ahmad Kamil, basically child protection is the responsibility of parents, family, society, government and the state which is a series of activities that are carried out continuously for the protection of children's rights. Meanwhile, extra supervision of children, both personally and as part of society, needs to be done. Efforts to protect children's rights and prevent the entry of negative external influences that can interfere with child development. Meanwhile, what is meant by law as protection for the child itself is the law in a material sense. So it can be interpreted that the law in the material sense, hereinafter referred to as the law, is a written regulation that is generally accepted and made by legal central and regional authorities.

Talking about rape is no longer a taboo subject to discuss, however, not a few people are actually increasingly interested in news about rape. Rape is an act of crime which is considered very detrimental and disrupts the peace and life of the victim of rape. Often the overreaction comes from society and there is a negative view of the rape victim so that the rape victim becomes even more cornered.

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According to the Big Indonesian Dictionary, the word rape comes from the word perkosa which means or has the meaning of raping, or violating by using force. While the word rape is defined as the process, method, act of rape or violating it with violence. Rape is an absorption word from the Latin word rapere which means stealing, forcing, depriving, and/or taking away. Children as individuals who are still in the developmental stage when they experience the crime of rape certainly have a negative impact on the physical health and mental health of the victim. The negative impact on mental health that arises can be in the form of shame, anger, offense, feeling he is no longer worthy. In addition to this, children also experience depression or stress after the incident and there is a tendency when they grow up to become victims of rape again.

Minimum sentence requirements and maximum life imprisonment for perpetrators of rape should apply. Some even demanded the death penalty be imposed. Severe sanctions are intended to provide a deterrent effect for perpetrators of rape and to warn the public not to ever try to commit this crime. In addition to the problem of law enforcement and severe sanctions, the procedures for reporting complaints about rape victims must be carried out properly so that people feel protected. The government also feels the need to establish a kind of trauma center, at least at the district level, which can provide assistance and psychological guidance for victims of rape cases. Psychic trauma will leave scars for life. Our collective duty is to help restore the inner condition of the victims of the dark calamity that befell them.

### B. Application of the law to perpetrators of rape of minors

Rape or in English (rape) is a form of violence against sexualism, this violence can be categorized into physical, mental, emotional violence and very frightening things that can be experienced by victims. Rape is a penetration or intercourse in the form of coercion to insert one's own genitals into another person's property, namely here a woman where the act is unwanted or without consent because it is an act followed by coercion both physically and mentally. Rape is a bad act because: a. Contrary to values in society such as morals and religion.

b. Make women tormented and feel pain

c. Violating the human rights of others

Every act that violates the rule of law will be subject to sanctions, whether in the form of administrative, fines or criminal. In the case of rape itself which is a criminal offense, we will find criminal sanctions in the regulation. The criminal sanction itself is a punishment which is a causal relationship, where the cause is a case or an act committed which violates norms or rules and the consequence is the law, the person affected by this consequence will be subject to sanctions in accordance with the actions committed such as sanctions in the form of going to jail, fines or subject to other penalties from the authorities who determine.

Criminal sanctions are basically a guarantee to rehabilitate or restore the behavior of the perpetrators of these crimes, but it is not uncommon that criminal sanctions are actually threats created to deal with human habits that like to violate (Andrisman, 2009). The purpose of punishment is actually carried out so that efforts to prevent the commission of crimes in the future or in the future, the purpose of holding punishment is necessary to know the legal nature of the crime. In the context of Hugo De Groot's words "malim passionist propter malum actionis" namely evil suffering as a result of evil deeds.

A form of the criminal act of rape can be seen in the provisions in the Criminal Code, more specifically in article 285 of the Criminal Code (KUHP), which reads that anyone who forces a woman or girls to have sex with him without any marital ties, by means of violence punishable by up to twelve years in prison.

Furthermore, sexual violence is also regulated in Law Number 23 of 2004 Article 46 concerning the Elimination of Domestic Violence regulates sexual violence, namely that everyone can be sentenced to imprisonment for 12 years or a fine of R.36,000,000.00 (three six million rupiahs) if it is proven that he has committed an act as referred to in Article 8 letter a of this Law. Referring to the currently problematic RKUHP, specifically Article 480 paragraph (1) and paragraph (2), as of 28 August 2019 which will soon be ratified by the DPR RI, perpetrators of rape of their legal partners can be sentenced to a maximum of 12 years in prison.

The phenomenon of rape crimes often and frequently occurs in society, for that we must be vigilant and more careful in carrying out activities inside and outside the field. An example of a rape case against a woman that occurred in Bali that occurred in Sanur near an inn, where the victim and the perpetrator knew each other through a chat application, the victim who did not accept the perpetrator's actions finally reported it to the authorities, after which further investigation was carried out. From this we know that social media is also influential in the development of sexual crimes that occur. For this reason, media users must be wise in social media. Because the perpetrators can do anything to realize their intentions, so we must be smart in carrying ourselves and interacting with the people around us, both directly and indirectly through messaging applications.

On the basis of the Criminal Code (KUHP) and the Law on the Elimination of Domestic Violence regarding sexual violence experienced by every woman, especially regarding the imposition of sanctions imposed on the perpetrators of crimes, it is hoped that the perpetrators will get a deterrent effect on the actions and cases they commit. have done. From an institutional standpoint,



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especially the Integrated Service Center for the Empowerment of Women and Children (P2TP2A), it is hoped that they will be more alert in providing protection, service and guidance to the community regarding cases that are happening around us, especially rape cases. Usually the victims will experience quite severe trauma after experiencing this event, for this reason an approach by experts who are specialized in their field such as psychiatrists or psychologists is very important, as well as the role of those closest to them such as family or parents for example.

### C. Efforts to deal with the criminal act of rape of minors.

The crime of rape can be classified as a crime with violence, because usually this crime is accompanied by violence or threats of violence. Soerjono Soekanto quoted by Mulyana W. Kusuma, the causes of violent crime are:

- a) There is an object orientation that creates a desire to get material easily.
- b) There is no channeling of the will and there is a kind of mental pressure on a person.
- c) Courage to take risks.
- d) Lack of feelings of guilt and bad example.

With regard to the protection of victims of crime, it is necessary to establish an institution that specifically handles it. Adequate information needs to be conveyed in advance about what rights the victim and his family have, if in the future they experience suffering as a result of the crime that befell them. Efforts that can be made to provide legal protection for child victims of rape are:

- a) Rehabilitation efforts, within and outside the institution;
- b) Efforts to protect against reporting identity through the mass media and to avoid labeling; granting security guarantees for witness victims and expert witnesses, both physically, mentally and socially; and
- c) Provision of accessibility to obtain information regarding the development of cases.

Legal protection for children who are victims of rape reveals that a child who is a victim of a crime has the right to receive rehabilitation from the government both physically and mentally, spiritually and socially. As a witness, the victim is the responsibility of the government, and the child who is a victim has the right to always know the progress of the case he is facing, including the right to be notified if the perpetrator has been released or released from prison if he has been convicted. If they are not punished, for example because of insufficient evidence, victims should be given access to protection so that the perpetrators in all its forms do not retaliate. Coordination with the police must be carried out, so that the police immediately ask for the assistance of this institution when they receive reports of acts of violence against women. These institutions need to be supported at least by social workers, psychologists, lawyers and doctors.

In conditions where this is not possible, efforts must be made to place people with qualifications that are closest to the professionals above, with the intention that this institution can achieve the desired goals properly. Funding for this institution must start from the government itself, both central and regional, and of course it can involve the local community both individually and in groups.

Special Protection for Child victims of sexual crimes as referred to in Article 59 paragraph (2) letter j is carried out through several efforts, namely:

- a. education about reproductive health, religious values, and moral values; Reproductive health is complete physical, mental and social well-being in all matters related to reproductive systems and functions, as well as processes and not just conditions that are free from disease and disability. Meanwhile, religious values are the content or substance of a teaching to obtain the goodness of the world and the hereafter which is applied in everyday life.
- b. social rehabilitation: Social rehabilitation itself is a process that is intended for someone who is not only experiencing impaired physical and mental functioning, but also for someone who is experiencing impaired functioning in social situations, to their satisfaction or needs, in a particular context in a wider community environment.
- c. psychosocial assistance during treatment until recovery; Psychosocial assistance is a combination of psychological treatment and social treatment. This alloy unifies psychological treatment that is based on the victim's interpersonal understanding with socio-cultural issues that surround the victim's life in society.
- d. providing protection and assistance to each level of the examination stage starting from the investigation, the prosecution stage, up to the examination before the court.

### IV. CONCLUSION

1. Legal arrangements for the crime of rape of minors have been accommodated in Law Number 35 of 2014 concerning child protection, which was previously in Law No 23 of 2002.

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2. The perpetrator of the crime of rape of a minor is punishable by imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of Rp. 300,000,000.- (three hundred million rupiah) and a minimum of Rp. 60,000,000.- (sixty million rupiah)
3. Efforts that can be made to provide legal protection for victims of the crime of rape are: rehabilitation efforts, both within the institution and outside the institution, efforts to protect against identity reporting through the mass media and to avoid labeling, providing guarantees of safety for victims and expert witnesses whether physical, mental or social.

### SUGGESTIONS

1. We recommend that efforts to protect minors be prioritized and continuously strived to prevent criminal acts of rape against minors from occurring in the future.
2. It is suggested to the government to provide facilities and infrastructure for the recovery of child victims of underage rape, so that victims can continue their lives in the future. It is suggested to the community that they should also support child victims of violence (rape) to get legal protection, so that the Indonesian nation becomes a successful country for the welfare of society based on humanity.g.

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