



Victimological Study of Sexual Violence against Children in Buleleng Regency

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Abstract

The purpose of the study was to explain and describe the role and position of children as victims of sexual violence in Buleleng Regency; and describe and explain the rights and obligations of children as victims of sexual violence in Buleleng Regency. Legal research with an empirical type and a description nature is used in research. The data needed to support the research, sourced from the main data sourced from the field and the second data sourced from the literature. Data were collected by document study techniques, observations and interviews. Non probability sampling or non random sampling techniques are used as data collection techniques and purposive samples are used as determinants of the sample to be used. In this study, the data was processed and analyzed qualitatively. The results obtained and the discussions carried out show that the role of victims who are a child from the existence of sexual violence in Buleleng Regency can be classified as latent or predisposed victims, provocative victims, and unrelated victims. Meanwhile, his position in criminal acts is that children are absolutely victims. The rights obtained by victims who are children due to the occurrence of sexual violence in Buleleng Regency are to have the right to be handled professionally, get protection, and be restored as before becoming a victim since the occurrence of the criminal act of sexual violence, while the obligation is to support all efforts and processes of fulfilling various rights owned can be realized effectively and efficiently.

1. Introduction

Laws and regulations in Indonesia that regulate child protection, there is an understanding of child care which is interpreted as a gift of God and has a position and self-esteem as a person. Children have a strategic role, special traits and characteristics

that of course in the future can guarantee the existence of the nation and state.¹With the roles, traits and special characteristics possessed by the child as referred to, it is necessary to have broad opportunities for children to develop and grow well in terms of mental and physical aspects and what is their rights can be protected and guaranteed for the welfare of children without discrimination, with the aim that children can fulfill their responsibilities in the future as generations that continue the struggle to achieve the goals and ideals of the nation and state.²

The child as a gift of God Almighty and a social being is inherent in him the most basic right, namely the right to live, free, develop, and be protected as well as various rights that are actually attached to everyone. Human rights are not only obtained when they are born or come out of the belly of a mother who is pregnant with them, even since they are in the womb, they are inherent in the so-called human rights.³The human rights inherent in everyone, especially children, have been guaranteed and protected under the law. In the Constitution of the State of Indonesia, there are also provisions contained in Article 28B regarding the protection of children which basically become a philosophical reference to the laws and regulations under it that regulate child protection, expressing the understanding of children which is interpreted as a gift of God and has a position and self-esteem as a person. With this, children should be protected from various kinds of discrimination and violence for the survival, growth, and development of each child.

Human rights as possessed by adults are actually also owned by every child, which means that children are not necessarily just parties who take part in thinking and participate in taking various concrete steps to protect their rights. This is because, children as individuals who do not have enough physical, mental and social maturity. Thus, when compared to adults, children will be more at risk of the impact of violence, especially sexual violence.⁴Sexual violence committed by children against child victims today can start from associations that do not pay attention to norms such as courtship or special relationships that are established between young men and women who often justify sexual behavior as a courtship activity hence the tendency to have sex outside of marriage can occur.⁵

Sexual violence against minors can certainly result in psychologically negative impacts and also children who are victims can be disturbed in their development and growth. The psychological impact on children will give birth to displayed trauma which can then give birth to unhealthy attitudes, such as inferiority, trauma, excessive fear, impaired mental development, and ultimately result in the child's mental retardation. This situation is likely to be a bad memory for victims of sexual violence, especially children. In addition to this, the victim also finds it difficult to believe in others so that

¹ Yasa, I.W.B., Mangku, D.G.S., & Yuliantini, N.P.R. (2022). Tinjauan Viktimologi terhadap Penyalahgunaan Narkotika oleh Anak di Kabupaten Buleleng. *Jurnal Komunitas Yustisia*, Vol. 5 No. 1, p. 14, DOI: <https://doi.org/10.23887/jatayu.v5i1.45924>

² Djamil, M. N. (2013). *Anak Bukan Untuk Dihukum (Catatan Pembahasan UU Sistem Peradilan Anak (UU-SPPA))*. Jakarta: Sinar Grafika, p. 8

³ Irawan, C. (2019). *Perlindungan Hak-Hak Anak dan Hambatan Dalam Pelaksanaannya Menurut Undang-Undang Nomor 17 Tahun 2016 Tentang Perlindungan Anak*. Skripsi. Program Studi Ilmu Hukum Universitas Muhammadiyah Palembang, p. 1

⁴ Nashriana. (2011). *Perlindungan Hukum Pidana Bagi Anak di Indonesia*. Jakarta. PT. Raja Grafindo Persada.

⁵ Sari, A.N.D & Larossa, B.N. (2014). Analisis Peranan Korban Dalam Terjadinya Kejahatan Seksual terhadap Anak Ditinjau dari Viktimologi. *Recidive*, Vol. 3 No. 1, p. 62, DOI: <https://doi.org/10.20961/recidive.v3i1.40482>

the violence experienced tends to be hidden or become a secret because there is fear and is threatened with a worse risk if it reveals that an unkind event has happened to him. Moreover, the child feels that he has made a mistake and from these mistakes the child considers as a disgrace that can embarrass the surname.⁶

Related to sexual violence, especially those that occur to children, in Indonesia there are actually regulations that regulate efforts to prevent children from becoming victims of sexual violence which of course is a signpost for everyone to comply with it. The regulations in question are such as Law Number 17 of 2016 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2016 concerning Child Protection into Law which is the latest amendment to the previous Child Protection Law. Article 15 letter (f) of the law stipulates the right of children to receive protection from sexual violence. In other words, the provision provides for the right of the child to be protected from sexual violence. Then in the Child Protection Law, precisely in Articles 21 to 26, it is regulated about the implementation of protection carried out by parents or guardians, families, the state through the central government, local governments and the general public. Then the provisions regarding the prohibition for everyone to commit sexual violence committed against children are regulated in article 76D of the Child Protection Law, where it is determined that the prohibition for everyone to commit violence, threats, or coercion to have intercourse with children either with himself or for others. Then in Article 76E it is also regulated regarding the prohibition for any person to commit and allow violence or threats, and coercion, fraud, lies, or persuasion against children with the aim of molesting.

Although there are regulations that regulate the occurrence of sexual violence which is a big problem for children, sexual violence still occurs frequently in Indonesia. Sexual violence that occurs in Indonesia, especially affecting children, does not only occur in vulnerable places but also occurs in places that are supposed to provide protection for children such as in the family environment, children's educational environments such as schools. Perpetrators of child sexual violence are also not only carried out by other people who are not recognized, but also carried out by people who are recognized, close, and trusted by the child. This indicates that children are threatened with their safety and the child's position is in a vulnerable position wherever the child is active. One form of violation of human rights is the violation of the rights of a child with sexual violence which can certainly threaten the future of the next generation of the nation and state, so that this form of violence must be categorized as an extraordinary crime. Sexual violence that results in a child becoming a victim can be interpreted as an act that can damage the most important and valuable asset of the state, because the future of the country depends on the children of the present.⁷

Quoting CNN Indonesia, the Ministry of Women and Children Empowerment (PPA) recorded 14,517 cases of child violence throughout 2021. Of these, nearly half constitutes sexual violence. The large number of cases of children experiencing sexual violence is currently one of the serious problems that can threaten the young shoots of the Indonesian nation. Sexual violence that causes victims from among children who are the successors of the nation will receive an impact, both physically and psychically. This phenomenon does not rule out the possibility of causing widespread adverse impacts

⁶ Noviana, I. (2015). Kekerasan Seksual Terhadap Anak: Dampak Dan Penanganannya Child Sexual Abuse: Impact And Handling. *Sosio Informa*, Vol. 01, No. 1, p. 18, DOI: <https://doi.org/10.33007/inf.v1i1.87>

⁷ Waluyo, B. (2011). *Viktimologi (Perlindungan Korban dan Saksi)*. Jakarta: Sinar Grafika, p. 70

on society. Not only the rights of a child cannot be fulfilled optimally related to sexual violence, the obligations of children are also very important to be optimized so that sexual violence is not easy to do and occur.⁸ Another problem that arises is that cases of sexual violence remain an iceberg phenomenon. Of the many surveys and studies conducted 80% (eighty percent) will not report. This means that the more cases uncovered are the responsibility of the state to respond appropriately to them. This is because the risk that will be received is greater when reporting than if you don't.⁹

There are many cases of sexual violence that exist in big cities and have even begun to occur in small cities in every province to the district level. The place where this research was conducted was Buleleng Regency. From the data collected from the Bali Regional Police, Buleleng Resort, it can be seen that children who face the law as victims of sexual violence in the jurisdiction of the Buleleng Police from year to year experience fluctuations. The data on sexual violence that occurs against children that have been acted upon/processed in the last 5 (five) years, namely as follows.

Table 1. Data on the Number of Sexual Violence Cases in Buleleng Regency
Source : Report of the Women and Children Empowerment Unit of the Buleleng Police

No.	Year	Number of Cases
1	2017	25
2	2018	29
3	2019	32
4	2020	14
5	2021	16

In the data listed in the table above, it can be understood that children who experience sexual violence have experienced fluctuations in the last five years, namely from 2017 to 2021. Thus, it can be understood that there have been cases of sexual violence that have increased from 2017 to 2019, where in 2019 it became the highest point of the number of sexual violence as a case. Then sexual violence decreased in number in 2020 and the number of violence increased again in 2021. The fluctuation in the number of sexual violence is of course influenced by certain factors, which are caused by the legal awareness of the community and in terms of optimizing law enforcement. However, the number of sexual violence certainly shows that there is still sexual violence, especially for children in Buleleng Regency.

From the number of sexual violence that has become a case, especially for children in Buleleng Regency above, there is an example of sexual violence which is a case that occurs in Buleleng Regency as it happened in 2021, namely the case of perverted videos in Buleleng where in the video there are 4 (four) male actors who are suspects and 1 (one) woman who is 12 years old is a victim. As reported, an obscene video circulated allegedly committed by junior high school students in Bali, who had sexual relations with a group. From the results of an investigation conducted by the Women and

⁸ Anonime. (2022). 14.517 Kasus Kekerasan Anak Terjadi Sepanjang 2021. Tersedia pada <https://www.cnnindonesia.com/nasional/20220120030219-20-748827/14517-kasus-kekerasan-anak-terjadi-sepanjang-2021/amp>. (Diakses pada tanggal 10 Maret 2022).

⁹ Maharani, T. (2021). Menteri PPA: Kasus Kekerasan Seksual Ibarat Fenomena Gunung Es. Tersedia pada <https://amp.kompas.com/nasional/read/2021/12/29/14020101/menteri-ppa-kasus-kekerasan-seksual-ibarat-fenomena-gunung-es>. (Diakses pada 11 Maret 2022).

Children's Service (PPA) unit of the Buleleng Police, the video was recorded on Tuesday, December 7, 2021 at around 10.30 WITA in a house in one of the villages in Tejakula District, Buleleng Regency, Bali. the 12-year-old female victim was in turn 4 underage children. The case is still under investigation and the acts were committed on a consensual basis. However, considering that the case involves a child as a victim, legal remedies will still be taken by prioritizing child protection laws.¹⁰

With the existence of cases as described above, of course, it can be known that the results of the investigation conducted by the Buleleng Police PPA Unit have a consensual basis in the sexual violence case. This means that the perpetrator of sexual violence is not absolutely committing sexual violence, but there is also the involvement of the victim in the sexual violence case. Although the Child Protection Act does not recognize the term consensual for copulation and obscenity against children, even if it is carried out on a consensual basis, the child's position remains as a victim even if the child who requests intercourse or is molested by others. The thing to consider is that the Child Protection Law is a law that protects children from all forms of copulation, be it consensual, provocation, especially if there is coercion.¹¹

Based on conceptual analysis and empirical conditions as described above, it has strategic value to be studied. Given the sexual violence that can cause child victims, of course, in the development of children towards their future, this is a serious problem, especially if these children are not equipped with sufficient sex education for them. Such a complicated problem cannot be put on one party alone such as the family or the government alone, but as parents, legal structures and the entire community, strong cooperation is needed in an effort to deal with these problems. Judging from the problems that exist in Buleleng Regency, a study is needed on the role and position as well as the rights and obligations of victims who come from among children who are caused by sexual violence to occur in Buleleng Regency.

The state of the art of this research refers to previous relevant studies which are then used as guidelines as well as examples for research conducted. Articles used as guidelines or references sourced from various existing scientific journals, especially regarding sexual violence that occurs in children, are studied from a victimological point of view. The article in a scientific journal entitled "Legal Studies and Victimology in cases of sexual violence against children in Indonesia" written by Raden Muhammad Arvy Ilyasa with results that show that there are many cases of sexual violence in Indonesia and are quite severe, especially those that put a child as a victim. As a country of law that upholds human rights, Indonesia must carry out an absolute thing, namely providing protection for children as mandated in the state constitution. As a tangible manifestation of the development of a country's regeneration, one of the guarantees of human rights is the protection of children. It is known that the personality, environment, relationship between victims and perpetrators, education on moral crises in society, technological advances, and mass media are factors that cause children to become victims of acts of sexual violence. Seriousness is needed in arranging protection for the emergence of

¹⁰ Kadafi, M. (2021). Kasus Video Mesum di Buleleng, 4 Pemeran Laki-Laki Jadi Tersangka. Tersedia pada <https://m.merdeka.com/peristiwa/kasus-video-mesum-di-buleleng-4-pemeran-laki-laki-jadi-tersangka.html>. (Diakses pada 11 Maret 2022).

¹¹ Hasanah, S. (2018). Pelaku Persetubuhan Karena Suka Sama Suka, Bisakah Dituntut?. Tersedia pada <https://www.hukumonline.com/klinik/a/persetubuhan-anak-dibawah-18-tahun-dengan-orang-dewasa-lt50692e475ef42>. (Diakses pada 11 Maret 2022).

children as victims due to sexual violence, considering that the child's future will be destroyed, because there is psychic and mental trauma due to the occurrence of sexual violence that befalls children. In accordance with the study of victimology, a change in the aspects of law enforcement is needed in arranging the protection of children from the threat of violence which is more oriented towards child sexuality, which in this case is positioned as a victim. The goal is that this country can be guaranteed its sustainability by creating the next generation of the nation that can be relied on and responsible.¹²

The journal entitled "Analysis of the Role of Victims in the Occurrence of Sexual Crimes Against Children In Terms of Victimology (Case Study of the Semarang High Court Decision Number: 50 / Pid.Sus / 2012 / PT.Smg)" written by Awaliyah Nur Diana Sari and Betha Noor Larossa with results showing that the role of the victim is an act or behavior carried out by the victim with his awareness or negligence, participate in the emergence of victims due to criminal acts. The factors are inherent in the victim so that trigger the role of the victim are the factors that determine the success or failure of the criminal act to occur. certain situations and conditions in the victim have the potential to also stimulate and encourage the perpetrator to commit criminal acts. In the case in the Semarang High Court Decision Number: 50 / Pid.Sus / 2012 / PT.Smg. what the author discusses, the reality of the perpetrator's romantic relationship (courtship) with the victim which is a condition that stimulates the perpetrator to commit sexual crimes on the victim by persuading and threatening. The characteristics of the victim who are easily persuaded and the tired mental and physical state are factors in the occurrence of sexual crimes which can be said to be the role of the victim.¹³

Articles related to research on the study of victimology on sexual violence that causes children as victims are still limited to producing general or not detailed studies on the role and position and rights and obligations of children who are domiciled as victims as a result of sexual violence. Moreover, the results of the research in the journal were carried out in the scope where this research was carried out, namely Buleleng Regency, so that it can be concluded that the journal does not study and discuss how the role and position and rights and obligations of children as victims of sexual violence in Buleleng Regency.

2. Research Method

Research on "Victimological Studies on Cases of Sexual Violence in Children in Buleleng Regency" is a type of legal research with empirical studies. As a form of research in the field of law, this research is carried out directly in the field or research place where in the research, studies and analysis of the work of law in people's lives are carried out, for this reason, it is referred to as empirical legal research.¹⁴ The nature of this study is descriptive with the aim of providing an overview of things in a certain area and at a

¹²Ilyasa, R.M.A. (2022). Kajian Hukum dan Viktimologi dalam Kasus Kekerasan Seksual di Indonesia. *Ikatan Penulis Mahasiswa Hukum Indonesia Law Jurnal*, Vol. 1 No. 2, p. 40, DOI: <https://doi.org/10.15294/ipmhi.v2i1.53748>

¹³ Sari, A.N.D & Larossa, B.N. *Op. Cit.*, p. 66

¹⁴ Ishaq. (2020). *Metode Penelitian Hukum Penulisan Skripsi, Tesis, Serta Desertasi*. Bandung: Alfabeta, p. 70

certain moment.¹⁵The data needed to support the research, sourced from the main data sourced from the field and the second data sourced from the literature. Data were collected by document study techniques, observations and interviews. Non probability sampling or non random sampling techniques are used as data collection techniques and purposive samples are used as determinants of the sample to be used. In this study, data is processed and analyzed qualitatively in order to be understood and interpreted easily by describing data in a quality and comprehensive manner in the form of a word order that has been arranged, reasonable, not contradictory, and effective.¹⁶

3. Result and Discussion

3.1 The Role and Position of Children as Victims of Sexual Violence in Buleleng Regency

Victimology comes from the words “*victima*” and “*logos*” which are Latin. *Victima* means victim while *Logos* means science. In simple terms victimology means the science of the victims of crimes.¹⁷Victimology was initially focused on studying victims of crimes (special victimology). That is, the scope of materials studied in special victimology is the victim of conventional crimes and also the victims of unconventional crimes.¹⁸Victimology can contribute thoughts to understand the victim's relationship and his relationship with the perpetrator in order to seek prevention of various forms of victimization, uphold justice and improve welfare for parties directly or indirectly involved in a victimization, both as structural and non-structural victims.¹⁹Related to the benefits of victimology, the knowledge used to study these victims can be used to examine the role and position of victims from the existence of violence against children, especially in terms of their sexuality in Buleleng Regency.

Victims viewed from the perspective of the level of involvement of the victim in the occurrence of crimes. Through this perspective study, Lilik Mulyadi mentioned several typologies of victims, namely: (a) nonparticipating victims are those who deny/reject crimes and criminals but do not participate in crime prevention; (b) latent or predisposed victims are those who have a certain character likely to be victims of certain offenses; (c) provocative victims are those who give rise to crimes or trigger crimes; (d)participating victims are those who are unaware or have different behaviors so it is not difficult to establish themselves as victims; and (e) false victims are those who are victimized because of themselves.²⁰

The results of the research conducted at the research site by conducting observations, interviews, and document studies, it can be understood that the occurrence of sexual violence that causes children to be victims in Buleleng Regency has a systematic role. In existing cases shows that children as victims have behaviors that tend to have a role in

¹⁵ Zellatifanny, C.M. & Mudjiyanto, B. (2018) Tipe Penelitian Deskripsi Dalam Ilmu Komunikasi (The Type Of Descriptive Research In Communication Study). *Jurnal Diakom*, Vol. 1 No. 2, 83-90, p. 84, DOI: <https://doi.org/10.17933/diakom.v1i2.20>

¹⁶ Ishaq. *Op. Cit.*, p. 73

¹⁷ Waluyo, B. *Op. Cit.*, p. 9

¹⁸ Widiartana, G., (2014), *Viktimologi Perspektif Korban Dalam Penanggulangan Kejahatan*, Yogyakarta: Cahaya Atma Pustaka, p. 2-3

¹⁹ Sunarso, S., (2014), *Viktimologi Dalam Sistem Peradilan Pidana*, Jakarta: Sinar Grafika, p. 61-62

²⁰ Mulyadi, L., (2007), *Hukum Acara Pidana: Normatif, Teoritis, Praktik dan Permasalahannya*. Bandung: PT. Alumnus.

the occurrence of criminal acts both consciously and unconsciously due to the situation and conditions possessed by victims of sexual violence, namely those is still a child. Even though victims of violence, especially in the sexuality shutter with the category of children in Buleleng Regency have a tendency to participate in non-criminal occurrences, it is absolutely the position of the victim of sexual violence who is a child to remain as a victim of a criminal act.

Children as victims who have a tendency to participate in the occurrence of criminal acts as referred to above are statements or opinions expressed by informants from the Buleleng Police Who stated that in cases regarding sexual violence that occur in Buleleng Regency, it shows that there are children as victims who have an active role in the occurrence of sexual violence, especially those that occur in cases of fellow children with consensual conditions that common in romantic relationships or courtships. Meanwhile, in general, children as victims have no role at all or are absolutely victims. The occurrence of sexual violence is caused by the weak condition of the child as a victim both in terms of physical and mental aspects that he has, so children are very vulnerable to being victims of sexual violence due to the weakness of the child as referred to is used by the perpetrator.²¹

Regarding the role of children as victims of sexual violence in Buleleng Regency as described above, if studied from the point of view of victimology or science that studies victims, an understanding of the typology of crime victims is needed. Muladi stated that the victim is any person (individual or group) who has experienced suffering in the form of physical and mental losses, emotions, economic or disorder in substance related to his fundamental rights through acts or commissions in each country where the criminal law is violated.²² Thus, victims of sexual violence who are children in Buleleng Regency have suffered both physical and mental losses. Meanwhile, if it is associated with the role of victims of sexual violence who are still children in Buleleng Regency, then the typology of victims that can be classified as latent or predisposed victims and provocative victims.

Latent or predisposed victims are those who have a certain character and tend to be victims of certain violations.²³ That is, child victims in sexual violence in Buleleng Regency as the results of the research described above show that in general sexual violence which is a case that occurs against children is caused by weakness both physically and mentally owned by children, so that it is used by individuals as perpetrators of sexual violence to carry out their actions and with the weaknesses possessed by the child results in vulnerable children becoming victims of sexual violence. Meanwhile, provocative victims are those who cause crime or trigger crime.²⁴ That is, in cases of sexual violence that occur in Buleleng Regency, especially with the background of children as perpetrators and victims who usually occur in consensual cases due to romantic relationships or courtship have a tendency for both boys and girls to trigger sexual violence. However, most of the cases handled by the Buleleng Police show that there are girls as victims who have a more active role in the occurrence of sexual violence. Thus, it can be said that the victim himself triggers the occurrence of sexual violence.

²¹ Ismadi, Miranti Hanindya. (2022). *Tinjauan Viktimologis Terhadap Anak Dalam Tindak Pidana Eksploitasi Ekonomi & Seksual (Studi Kasus Putusan Nomor 1033/Pid.Sus/2020/Jkt.Utr)*. S1 thesis, Universitas Kristen Indonesia.

²² Muladi. (2005). *HAM dalam Persepektif Sistem Peradilan Pidana*. Bandung:Refika Aditama.

²³ Mulyadi, L., *Op. Cit.*

²⁴ *Ibid.*

Then if viewed from the perspective of the responsibility of the victim itself, the typology of victims according to Stepen Schafer that corresponds to the results of the research obtained is unrelated victims. Unrelated victims are people who are victims who do not have a relationship with the perpetrator, in other words, someone can become a victim because they have the potential to.²⁵ This is closely related to the position of children who are in conflict with the law by being a victim due to sexual violence, where in the process of law enforcement the victim is not found guilty or absolute as a victim of criminal acts committed by the perpetrator, so legal claims are directed to the perpetrator of the criminal act.

Regarding the position of children who are victims due to the occurrence of sexual violence in Buleleng Regency, informants from the Buleleng Police Provide information on the bring of victims who are children, especially women from the existence of sexual violence, whether they participate or have a role or not in the occurrence of sexual violence, are still declared as victims, this is in accordance with applicable legal provisions. In addition, in handling sexual violence as a case, especially those that occur in children, the Buleleng Police Works professionally in conducting investigations and investigations in order to obtain optimal results in order to create a sense of justice for children who are victims due to sexual violence.

However, in sexual violence as one of the cases that occurs against a child, in the occurrence of this case both the perpetrator and the victim who love children and between the perpetrator and the victim both have a role in it, the Buleleng Police in determining who is the perpetrator or victim is based on gender. This means that in a sexual violence that occurs and results in children becoming victims, there is a tendency for judgments on girls and children who are perpetrators of sexual violence tend to be directed at boys. This is because girls have a weaker position than boys. However, in handling sexual violence as a case that occurs and is carried out by children so as to cause child victims, it is still carried out professionally, this is to ensure that boys or girls who will later be the perpetrators or victims. Meanwhile, in cases of sexual violence, where the perpetrator is a legally capable person and the victim is a child, it has been confirmed that the child remains a victim and the perpetrator is still held criminally responsible.

In relation to the results of research on the position of children as victims of sexual violence in Buleleng Regency as described above, it can be analyzed that the absolute position of children as victims of acts committed by people who are adults or legally capable in cases of sexual violence that have occurred in Buleleng Regency is based on the Child Protection Law. Although the perpetrator and the victim have consensual copulation that usually occurs in romantic or courtship, the provisions of the law still state that this includes acts of sexual violence. This is because, in the regulations on child protection in Indonesia, the term violence in the sexual realm is unknown, in other words, if an adult or a person who is already able to have sexual relations with a minor can be entangled by law by using the provisions stipulated in the Child Protection Law precisely in Articles 76D and 76E.²⁶ Where Article 76D provides for the prohibition for any person to commit violence or with threats with the aim of forcing a child to have sexual relations with him or with another person. Meanwhile, Article 76E provides for the prohibition for any person to commit violence or by threat, coercion, deceit, lies, or persuasion against a child for the purpose of committing or allowing an obscene act to be committed.

²⁵ *Ibid.*

²⁶ Hasanah, S. *Op. Cit.*

With the provisions regarding the legal noose against adult offenders who sexually assault minors as outlined above, it shows that whatever is the reason for a person who is an adult or legally capable person to perform copulation or obscenity against a child, either on a consensual basis or even the child wants to perform copulation or obscenity, then it can still be ensnared by the law or held criminally liable. In addition to cases of sexual violence between adults and children, there are also cases of sexual violence involving fellow children occurring in Buleleng Regency, most of which are based on consensual reasons. In such cases, an analysis of the applicable laws in Indonesia on the juvenile criminal justice system is needed. This is because, in the law, there is a provision that the entire process of resolving children's cases facing the law is called the juvenile justice system, where there are stages ranging from investigation to the stage of guidance after serving a criminal sentence in it.

Based on the legal regulation on the juvenile justice system which became known as the SPPA Law as referred to above, regarding cases of consensual sexual violence are not regulated in detail, as the guidelines of the law determine that children who are suspected of committing criminal acts with the provision that they are not yet 18 years old but have been 12 years old are referred to as children who are in dispute with existing and applicable laws. Meanwhile, children who are subject to criminal damages physically, mentally and/or economically with the provision that they are not yet 18 years old are referred to as victims' children. That is, the child can be said to be at odds with the existing law and applies according to the SPPA Act must not be 18 years old but already 12 years old, so that the child can be categorized as a victim must be under 18 years old.²⁷

In addition to age as a guideline for categorizing a conflict committed by a child against the law both as a perpetrator and victim of a criminal act by a child, the SPPA Law does not regulate gender in a criminal realm action involving the perpetrator or victim. So in the case of sexual violence between children based on consensual or any reason should not look at the gender effectiveness in determining whether the boy or girl is designated as the perpetrator or victim. But often, men who are designated as perpetrators and criminally processed, with the wrong assumptions of law enforcement in interpreting children's behavior in relationships try to control and control other parties or are known as Abusive.

Abusive is always attached to boys, even though in criminological theories it never justifies certain sex as a perpetrator of violence. The abusive element starts from the lowest level, namely persuasion, deceit, threats of violence and violence. If one of the elements above exists then the perpetrator can be categorized as having met the abusive element. Then the elements can be attached to anyone, both male and female, and when one of the elements is met then, a person can be categorized as having committed sexual violence so that criminal liability is attached to him.²⁸ Thus, the stigma of law enforcement officials who tend to determine that in sexual violence which is one of the legal cases with the emergence of victims from among children in it are girls and the

²⁷ Mardiana, D. & Senjaya, O. (2021). Pertanggung jawaban Pidana Terhadap Anak Sebagai Pelaku Tindak Pidana Persetubuhan Berdasarkan Sistem Peradilan Pidana Anak. *Kertha Semaya: Journal Ilmu Hukum* 9 (2), p. 301-313, DOI: <https://doi.org/10.24843/KS.2021.v09.i02.p1>

²⁸ Sofian, A. (2017). Pertanggung jawaban Pidana Anak Sebagai Pelaku Kekerasan Seksual Terhadap Anak. Tersedia pada <https://business-law.binus.ac.id/2017/08/29/pertanggungjawaban-pidana-anak-sebagai-pelaku-kekerasan-seksual-terhadap-anak/> (Diakses pada tanggal 17 Juni 2022).

perpetrators from boys are not appropriate. Although girls are considered vulnerable and weak, in cases of sexual violence involving fellow children, the cases still should be investigated properly and professionally. Therefore the fulfillment of the criminal element, the perpetrators of criminal acts, especially sexual violence, can be determined appropriately in order to create a sense of justice for society.

3.2 Rights and Obligations of Children as Victims of Sexual Violence in Buleleng Regency

Victimology as a science that studies victims, of course, requires the study of victims. The concept of victim in the context of human rights violations is very broad, where the understanding is not only someone who experiences the direct consequences of a crime but there is also the immediate family or direct dependents of the victim and people who suffer losses from the onset of the victim. There is a declaration of interpreting a fundamental right in which it is contained the basic principles of justice for victims of a crime and abused power, namely (a) the victim has the right to be accessible to the flow or mechanism of justice and in the case of indemnification for the loss of the victim; (b) the victim has the right to claim compensation from the perpetrator or a third party; (c) the victim and his family have the right to be compensated if the victim suffers physically or psychologically from the crimes committed to him; and (d) the victim has the right to obtain health insurance through the receipt of medical, social, and psychological assistance.²⁹

Relying on the Convention on the Right of The Child which formulates principles of children's rights aimed at protecting the rights of children, Indonesia, which ratified the convention, formulated the rights of children in national law, one of which is the Juvenile Criminal Justice System Law. In the Juvenile Criminal Justice System Law, provisions are contained that state that the victim's child is a child who is not yet 18 years old who experiences physical, mental, and/or economic loss due to criminal acts.³⁰ The child victim as referred to is a child who has rights and obligations as a legal subject based on the Juvenile Justice System Law, which means that the child as a victim has rights and obligations that must be fulfilled by the perpetrator of the crime, the state, and other related parties.

The results of the research conducted at the research site by conducting observations, interviews, and document studies, it is known that the rights possessed by children as victims of sexual violence in Buleleng Regency are entitled to treatment, protection, and recovery since the occurrence of the criminal act of sexual violence. This is in accordance with data collected from the Buleleng Police through informants from the PPA Unit and the Buleleng Regency Social Service through social workers as informants and the results of observations made at the research site.

Based on information or opinions obtained from the Buleleng police informants and the results of observations made at the Buleleng Police PPA Unit, it is known that the rights obtained by children as victims of sexual violence in Buleleng Regency are to receive professional treatment, the identity of the child as a victim of sexual violence is kept secret, get assistance from the Buleleng Police in collaboration with parties from the

²⁹ Yulia, R., (2015), Menggugat Pemenuhan Hak Korban Pelanggaran Hak Asasi Manusia Masa Lalu, *Jurnal Hukum PRIORIS*, Vol. 4 No. 3, p. 266-267

³⁰ Dewi, D.M.A.P. & Utama, I.M.A., (2018), Hak-Hak Anak Sebagai Korban Dalam Undang-Undang Sistem Peradilan Pidana Anak Dikaitkan Dengan Pendekatan Keadilan Restoratif, *Kertha Wicara: Journal Ilmu Hukum*, p. 1-5

Buleleng Regency Social Service and parties from the Center Integrated Services for Women and Children Empowerment (P2TP2A) of Buleleng Regency, there is a special place for handling children in which there are supporting facilities to ensure comfort for children or meet proper standards for children during the case handling process. However, the problem that still occurs in Buleleng Regency is related to the fulfillment of the rights of victims of sexual violence, namely related to the absence of a safe house for victims of sexual violence, especially children.

In addition to the data collected from the Buleleng Police as described above, data as support in answering the formulation of existing problems also came from the Buleleng Regency Social Service through existing social workers and was used as an informant in this study. This is so that the data collected not only comes from one agency but there is data obtained from other agencies for validation of research data. Based on what was obtained through interviews with informants from the Buleleng Regency Social Service, it is known that the rights of children as victims of sexual violence in Buleleng Regency are to obtain social rehabilitation, receive assistance, get security, fulfill basic rights for children as victims of sexual violence both from the sources of nutrition, education and comfort of the child as a victim, and cooperate with P2TP2A in terms of recovery of children victims of sexual violence who suffer physically and mentally through medical and social rehabilitation with the aim of restoring the victim's condition due to the criminal act of sexual violence which fell on the child. In addition, the rights of children as victims of sexual violence in Buleleng Regency are very secret, both in the handling process and when deposited in temporary storage.

In an effort to fulfill the rights of children as victims of sexual violence in Buleleng Regency, informants from the Buleleng Regency Social Service also stated that safe houses as a place of centralized handling have not been realized by the Buleleng Regency Government through P2TP2A as a sector leader or who has responsibility regarding the safe house, so that it becomes an obstacle in efforts to contain and recover children as victims of sexual violence. However, the efforts made by the Buleleng Regency Social Service through social workers made efforts by placing children as victims of sexual violence in the Children's Social Welfare Institution (LKSA) in Buleleng Regency.

In addition, there are obstacles in handling children as victims of sexual violence in Buleleng Regency, namely insufficient human resources with a very large area of Buleleng Regency and a very high rate of sexual violence against children. The human resources in question are law enforcement officers both in the realm of the police, prosecutors, and courts, as well as in the Buleleng Regency Social Service and P2TP2A Buleleng regency. This is evidenced by the lack of competent human resources or have passed the competency test that is indeed able to handle children's problems. With this lack of human resources, of course, it can hinder or suboptimal handling of children as victims of sexual violence in Buleleng Regency.

In relation to victims of sexual violence, especially children's rights, in the law on sexual violence promulgated in 2022 with number 12, there are provisions that give consideration to sexual violence in which the act results in the human rights of a person being violated, crimes against the dignity of humanity, and forms of discrimination that must be abolished. Sexual violence is increasingly prevalent in society, which has a tremendous impact on victims. These impacts include physical, mental, health, economic, social and political suffering. The impact of sexual violence is further strengthened when victims are part of economically, socially, and politically marginalized societies, or those with special needs, such as children and persons with

disabilities. To overcome this, the state has an obligation to fulfill the victim's right to handling, protection, and recovery since the occurrence of the criminal act of sexual violence and is carried out in accordance with the conditions and needs of the victim.

Thus, law enforcement officials, in this case the police and related agencies such as the Social Service Office and P2TP2A of Buleleng Regency as a state tool, have generally fulfilled the state's obligations in fulfilling the rights of victims, but based on existing empirical facts, efforts to fulfill the rights of victims of sexual violence, especially in Buleleng Regency, there are still obstacles. The obstacle in question is the implementation of existing laws and regulations, such as the absence of a safe house for victims of sexual violence. The absence of a safe house in question is not a new problem, but a problem that has not been resolved for a long time. This is evidenced from the results of previous research from Author Ni Putu Rai Yuliantini and Dewa Gede Sudika Mangku with the title "Legal Protection of Child Victims of Sexual Violence" which shows that the implementation of Buleleng Regency Regional Regulation Number 5 of 2019 concerning Protection of Women and Children from Violence has not run optimally because there are several facilities and services for victims of sexual violence that have not been fulfilled such as the unavailability of houses safe in Singaraja City.³¹

The results obtained from the study as described above show that child victims from the existence of sexual violence in Buleleng Regency have not been fulfilled optimally. In addition, there are also constraints on human resources that are lacking and do not meet the standards of handling children. Apart from the various problems or obstacles that exist related to child victims of sexual violence in Buleleng Regency to fulfill what is their right, according to Van Boven quoted by Rena Yulia, it is stated that:

"The rights of victims are the right to know, the right to justice, and the right to reparation (recovery), which is a right that points to all types of remedies both material and nonmaterial for victims of human rights violations. These rights have been contained in various applicable human rights instruments and are also contained in the jurisprudence of international human rights committees and regional human rights courts."³²

In addition, there are several rights of victims stated by experts, namely as follows.³³

- (1) From his suffering, the victim has the right to get compensation, in accordance with the ability to compensate the victim and the extent of the victim's role/participation/involvement in the crime, delinquency, and deviation;
- (2) The right to refuse compensation to be given by the perpetrator is absolutely owned by the victim because the compensation in question may not be desired by the victim and for the benefit of the perpetrator as well;
- (3) Entitled to compensation for his heirs if the victim dies as a result of such acts; Entitled to coaching and rehabilitation;
- (4) Entitled to re-title;
- (5) The right to refuse to be a witness if it will endanger the victim;

³¹ Yuliantini, N.P.R & Mangku, D.G.S. (2021). *Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual. Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan*, Vol. 6 No. 2, p. 348, DOI: <http://dx.doi.org/10.17977/um019v6i2p342-349>

³² Yulia. R. (2010). *Viktimologi, Perlindungan Hukum terhadap Korban Kejahatan*. Bandung: Graha Ilmu, p. 55

³³ Gosita, Arif. (1989). *Masalah Perlindungan Anak*. Jakarta: Akademika Pressindo, p. 86-87

- (6) Entitled to protection from threats from victim-making threats when reporting to be a witness;
- (7) Eligible for legal counsel assistance; and
- (8) The right to use legal remedies (*recht middelen*).

The rights of victims as referred to are rights obtained by victims that refer to expert opinions before the existence of laws governing the rights of victims, especially children as victims caused by sexual violence. The rights of children or victims of sexual violence are currently regulated in laws and regulations on child protection, the juvenile criminal justice system, and the crime of sexual violence, and if it is related to the results of research on the fulfillment of the rights of children as victims arising from the existence of sexual violence in Buleleng Regency as explained above, then it can be said that its implementation has been relevant. However, looking at the obstacles related to children with what is their right as a victim of sexual violence in Buleleng Regency, of course, the rights obtained by children as victims have not been fully realized optimally.

The results obtained from conducting research in a predetermined place by conducting observations, interviews, and document studies, it is known that victims arising from sexual violence in Buleleng Regency, especially in children, have an obligation, especially when fulfilling their rights as victims, namely providing information for the purposes of investigation and investigation or law enforcement processes, being a good child, being able to follow the rules that exist in the institution or place of recovery of the child as a victim. The obligations of children as victims as referred to are not necessarily in the nature of suppressing or actually increasing the suffering of children as victims of sexual violence in Buleleng Regency, but these obligations exist or are given to support the process of fulfilling the rights of victims such as handling, protection and recovery.

In addition, in fact, the obligations given or attached to children as victims of sexual violence in Buleleng Regency are used as a counterweight to the rights they get. This is in accordance with the expert opinion which states that there are obligations that must be fulfilled by the victim, namely as follows.³⁴

- (1) Not alone in making victims by holding retaliation or known as vigilantism;
- (2) Participating with the community prevents deeds, and the casualties are even more;
- (3) Preventing the destruction of the victim-maker either by oneself or by others;
- (4) Participate in fostering victim-makers;
- (5) Willing to be nurtured or nurture oneself not to be a victim again;
- (6) Does not demand compensation that is inconsistent with the ability of the victim-maker;
- (7) Providing an opportunity for the victim maker to compensate the victim according to ability; and
- (8) Be a witness if you do not endanger yourself and there is a guarantee.

The obligations of victims as referred to above are obligations that refer to expert opinions stated before the existence of laws and regulations regarding victim obligations. The obligations of victims, especially children who are victims of sexual violence, are not currently explicitly regulated in a rule of law. Thus, the obligation in question is only as a counterweight or not necessarily as something that must be done by force. This aims to avoid physical or mental stress for the victim, so that the victim's

³⁴ *Ibid.*, p. 87

recovery goal becomes unsuccessful. However, in order to support related parties in recovering the victim himself, as a victim, of course, he must participate in this matter.

4. Conclusion

The conclusions of the results obtained by conducting research which are then discussed with various existing concepts and theories as explained show that the role possessed by children who are victims of violence in the sexual realm in Buleleng Regency can be classified as latent or predisposed victims, which means those who have a certain character tend to be victims of certain violations, provocative victims which means those who cause crimes or trigger crimes, and unrelated victims which means there is no relationship between the perpetrator and everyone who is the victim, these people can become victims because they do have the potential to become victims. Meanwhile, the position of children as victims of sexual violence in Buleleng Regency, namely absolute children as victims of acts committed by adults or legally capable people in cases of sexual violence that have occurred in Buleleng Regency is based on the provisions of the applicable law in Indonesia regarding child protection, but in cases of sexual violence in Buleleng Regency between fellow children tend to use a gender perspective, where boys tend to be perceived as perpetrator and girls tend to be perceived as victims. The rights obtained by victims arising from sexual violence in Buleleng Regency, especially for children, are entitled to be handled, protected, and restored to the previous stability obtained since the occurrence of the criminal act of sexual violence, while the obligations of child victims arising from sexual violence in Buleleng Regency, especially against children when fulfilling their rights as victims, namely providing information for the purposes of investigation and investigation or law enforcement processes, become a good child, able to follow the rules that exist in the institution or place of recovery of the child as a victim.

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