

Sexual Violence Against Children from the Perspective of International Law

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Abstract . The case of sexual violence against children from the perspective of international law highlights the importance of protecting children from all forms of sexual exploitation and sexual abuse. The purpose of this paper is to understand the forms of international law rules regarding cases of sexual violence against children and how international law prosecutes the perpetrators. The discussion of cases of sexual violence against children shows that these cases have serious and widespread impacts, with nearly 1.7 billion children worldwide experiencing violence. To address this issue, it is necessary to strengthen the legal framework that considers all behaviors related to Child Sexual Abuse and Male Sexual Abuse (CSAM) as criminal acts. Increasing resources in law enforcement, cooperation with the private sector, education, and relevant research are also important to increase our awareness of sexual violence. The conclusion that can be drawn is that children are indeed a new generation that will continue the continuity of nations and states, so it is only fair for us and law enforcement to ensure that all human rights of children are fulfilled.

Keywords : children, sexual violence, human rights.

INTRODUCTION

Discussion of sexual violence against children from the perspective of international law shows the importance of protecting children from all forms of sexual exploitation and sexual abuse. Children as human beings who grow and develop need to have their rights protected in living their lives, every child throughout the world is trying and understanding the values that apply in society. In society, children often become victims of adult crimes, one of which is sexual violence, especially against women.

According to *United Nations Women* , it is estimated that 35% of women worldwide experience violence at some point in their lives. The same thing is experienced by children, namely based on a report entitled "*Ending Violence in Childhood: Global Report 2017*", violence against children occurs almost universally, namely as many as 1.7 billion children throughout the world experience violence, such as *bullying*, fighting, sexual violence from home and school. (Hilmi, 2019)

For 13 years, it is said that violence against children received little attention, this finally moved the government to create legislation, Law Number 3 of 1997 concerning juvenile justice. Apart from legal institutions that can provide protection for children from criminal

attempts, child protection is also needed, so Law no. 23 of 2002 by the government regarding child protection. (Ira Aini Dania, 2020) `

Cases of sexual violence against children are considered serious crimes that violate children's rights and the principles of international law. International law stipulates that UN member states are responsible for protecting the rights of children from all forms of sexual exploitation and exploitation. In this context, international law sets minimum standards by member countries to protect children's rights, one of which is the right to freedom from sexual violence. The obligation of a state to take effective action against perpetrators of sexual acts, protect children from cases of sexual violence, and report all cases of sexual violence to the child rights committee.

The instrument formed by the UN is the Convention on the Rights of the Child which is usually abbreviated as KHA or in foreign languages *the United Nations on the Rights of the Child* which is abbreviated as UN-CRC as an effort to protect children from acts of violence. This protocol was adopted and opened for signature, ratification and accession by UN General Assembly resolution number 44/25 of 20 November 1989, which came into force on 2 September 1990. In this convention the rules for the protection of children from sexual violence are contained in articles 19 and 34 of the CRC . (MacPherson, 1989)

Apart from UN-CRC, there are also legal instruments related to sexual violence against children, although they are not explicitly regulated. One of the legal instruments in question is the 1998 Rome Statute of the International Criminal Court (*Rome Statute of the International Criminal Court 1998*). In the Rome Statute, the rules for sexual violence against children are regulated in articles 7, 8, 42, 43, 54 and 68. (Todres et al., 2009)

In Indonesia alone, the number of victims of sexual violence in a month is estimated to be around 30 cases reported by the victims directly to Indonesian counseling. As many as 60% of the victims experienced light violence in the form of verbal abuse and the remaining 40% experienced physical and sexual violence. (Ira Aini Dania, 2020) Sexual violence in Indonesia is very worrying, adults tend to hurt children to vent their emotions, without ever thinking about the child's own physical and mental health. This form of treatment will cause harm to the psychological development of minors, it is not uncommon for these children to experience serious trauma when they see adults. This treatment is called *child abuse*, a cruel act committed by an adult or older person against a minor. The crime of *sexual abuse* is rarely found when a child is not yet two years old, this violence is not found in the first eighteen months of birth, although there are several cases violence was found against girls aged around six months.

From the data obtained, the highest percentage of *sexual abuse cases* falls on children aged 6-12 years (33%) and the lowest percentage falls on children aged 0-5 years (7.7%). Meanwhile, in 2002 in the United States cases of sexual violence against children reached more than 88,000 cases. Research shows that every year 1% of children have experienced sexual violence, where 12-25% of victims are girls and 8-10% are boys under 18 years of age. It can be estimated that almost 100,000 children experience sexual violence every year (Kellogg, 2005) .

International law recognizes the existence of *the International Criminal Court (ICC)* and *the International Court of Justice (ICJ)* where these institutions will try perpetrators of sexual violence against children. This article will analyze how international law regulates cases of sexual violence in the world through an article entitled "Sexual violence against children in terms of international law".

RESEARCH METHOD(S)

The type of research that the author uses is normative juridical research using a statutory approach and a conceptual approach that examines statutory regulations relating to cases of violence against children, from a conceptual perspective discussing the importance of providing legal protection for victims of sexual violence against children. According to Soerjono Seokanto and Sri Mamudji, normative juridical research is research carried out by examining library materials and statutory documents. (Zainuddin Ali, 2021) Material obtained comes from Google Scholar, Sribd, and other web pages.

FINDINGS AND DUSCUSSION

Definition of Sexual Violence

Cases of sexual violence have basically been known to the international community since World War II. This condition occurred when the Batavia Trial was held in order to judge Japanese soldiers who committed sexual violence against Dutch women in 1948. Cases of sexual violence against children according to international law refer to acts involving children in a sexual context, such as sexual torture, indigestion. , and other sexual deviations. International law identifies sexual violence as unlawful acts committed against children, by adults, either individually or in groups, either in a single incident or a series of acts over a long period of time.

International law emphasizes the importance of protecting children from all forms of abuse, including sexual violence. International law also sets standards that other countries must

meet to protect children from sexual violence, This standard includes the state's obligation to take effective action to prevent, identify, report and handle cases of sexual violence against children, as well as provide protection and support to victims.

In international law, sexual violence can include various crimes such as: rape, sexual slavery, forced prostitution, forced pregnancy and forced sterilization. The aim of the perpetrator carrying out sexual violence is to control, humiliate and humiliate the victim. The majority of victims are women and children, but it is not uncommon to find cases of sexual violence against men, although such cases are rarely reported and researched. (Female, nd)

According to WHO there are several types of sexual harassment, including:

1. Marital rape (ritual rape) or in a dating relationship
2. Rape committed by a stranger
3. The rapes committed during the war were systematic
4. Unwanted advances or sexual harassment, coercion into sexual relations as a form of reward
5. Sexual harassment of people with disabilities
6. Sexual harassment of minors (Paradias & Sopyono, 2022)

In international law there is a convention regarding children's rights which was established on 20 November 1989 and entered into force on 2 September 1990. Furthermore, this convention was approved by the Indonesian government using Presidential Decree Number 36 of 1990 which discussed the ratification of the convention on children's rights on 25 August 1990. The contents of this convention are about the state's obligation to guarantee and protect the rights of every child without unfair treatment regarding race, gender, skin color, male or female, where the person comes from, nationality, nationality, wealth, physical abnormalities, birth and other status. In addition, the state is also required to take appropriate measures to ensure that children are protected from all forms of discrimination or punishment based on the status, beliefs of the child's parents, legal guardians or family members. (FAUZIAH REZKI SERIES, 2019)

The 1989 Convention on the Rights of the Child has two articles that discuss sexual violence against children, article 19 and article 34. The following is a description of the article in question:

Article 19 paragraph (1) States Parties must take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or bullying, neglect or reckless care, discrimination or exploitation,

including sexual abuse, while in the care of a parent, legal guardian or other person, anyone who has authority over the care of the child

Article 19 paragraph (2) regulates that protective measures as referred to in article 19 paragraph 1, must include effective procedures for establishing social programs to provide the necessary support for children and those who care for children, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of child abuse cases for the judicial process. (*Legal Frameworks for Combating* , 2008)

Article 34 stipulates that States Parties undertake to protect children from all forms of sexual exploitation and sexual abuse. To this end, States Parties in particular should take many concerted national, bilateral and multilateral measures to prevent:

1. Inducement or coercion of a child to engage in unlawful sexual activity;
2. Exploitative use of children in prostitution or other unlawful sexual practices; And
3. Exploitative use of children in pornographic performances and materials. (MacPherson, 1989)

In the Rome Statute, the rules regarding sexual violence against children are contained in articles 7, 8, 42, 43, 54 and 68. The following is a description of the articles in question:

Article 7 paragraph 1 (g) of the purpose of this Statute regulates that crimes against humanity *means* that the attack is carried out as a widespread or systematic attack directed at the civilian population, which includes rape, sexual slavery, forced prostitution, forced pregnancy, sterilization force, or any other form of sexual violence of comparable severity;

Article 8 paragraph 2 (b) (xxii) regulates *war crimes*, namely committing rape, sexual slavery, forced prostitution, forced pregnancy, as explained in article 7 paragraph 2 (f), forced sterilization, or all forms of bullying. other sexual matters which constitute a serious violation of the Geneva Conventions;

Article 8 paragraph 2 (e) (vi) regulates armed and non-armed conflicts including rape, sexual slavery, forced prostitution, forced pregnancy, as explained in article 7 paragraph 2 (f) forced sexualization, or all other forms of sexual abuse which constitutes a grave violation of the Geneva Conventions;

Article 42 paragraph 9 regulates that the Public Prosecutor will appoint advisors with legal expertise on certain issues, including, but not limited to, sexual violence, gender violence, and violence against children.

Article 43 paragraph 6 regulates that the Registrar must form a Victim and Witness Unit within the Registrar's Office. In consultation with the Prosecutor's Office, the Unit shall provide security protection and arrangements, counseling and other assistance to witnesses, victims

appearing before the Court, and other persons who are at risk due to testimony provided. The unit should include staff with expertise in trauma, including trauma related to sexual violence.

Article 54 paragraph 1 (b) stipulates that the Prosecutor must take appropriate steps to ensure effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender and health, as well as considering the type of crime, especially those involving sexual harassment, gender violence or violence against children.

Article 68 paragraph 1 regulates that the court must take appropriate steps to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. Accordingly, the Court must take into account all relevant factors including age, gender, health and the nature of the crime, in particular, but not limited to, sexual violence, gender violence or child abuse. Prosecutors must take such action especially during the investigation and prosecution of the crime. These actions must not harm or conflict with the defendant's rights, and must not conflict with the principles of a fair and impartial trial.

Article 68 paragraph 2 stipulates that as an exception to the principle of general examination set out in article 67, the Court may, to protect victims and witnesses or defendants, conduct each stage of the trial in camera or allow the presentation of evidence electronically or by other special means. In particular, these measures must be implemented in cases of victims of sexual violence or in cases where children are victims or witnesses. (Todres et al., 2009)

Nowadays, we are starting to see that cases of sexual violence are increasing day by day. Rape involves a double violation, namely a person's physical and mental health and secondly their sexual autonomy. Apart from that, the number of sexual violence increases from year to year, including non-invasive sexual acts. As a result of the many cases of sexual violence throughout the world, the International Criminal Court, namely *the Rome Statute*, was created.

The Rome Statute consists of 123 countries around the world which together form *the International Criminal Court (ICC)*. *The Rome Statute* significantly expands the categories of sexual violence that are clearly defined in international law, which is neutral. This means that it can occur in both women and men. *The Rome Statute* explains that rape, sexual slavery, forced pregnancy, forced sterilization, and so on are included in sexual violence with extraordinary levels of impact depending on the circumstances. (Lewis, 2009)

Reporting of cases of sexual harassment is very poor, and surveys in the United States usually show an alarming reporting rate of 10-16%. Hungary is the country with the lowest reporting of 28 European countries, namely 2.1% reporting, around 100,000 people per case. This is inversely proportional to Indonesia, according to data from the National Commission

on Violence Against Women in 2022, sexual violence that occurred against women was 38.21% (2,228 cases) and psychological and mental violence was 35.72% (2,083 cases). This shows that Indonesia is in a worrying condition regarding the danger of sexual violence compared to other countries. (Deputy for Protection of Women's Rights, 2020)

Legal protection for children who are victims of sexual violence must be taken seriously. The legal protection that must be given to children includes several concepts:

1. The concept of Restorative Justice, which is a process where the victim and the perpetrator meet in the same room and discuss how to resolve the violations committed by the perpetrator against the victim in order to achieve interests in the future.
2. The concept of diversion, namely the resolution of cases of children who are found to have committed sexual abuse by transferring it from a criminal format process to a resolution in a friendly/peaceful manner between the perpetrator and the victim. Where the process is accompanied by the family or community, where in this action there must still be a child's social advisor, police, prosecutor or judge. (Law et al., n.d.)

CONCLUSION AND RECOMMENDATION

Sexual violence against children with the aim of seeking sexual satisfaction carried out by adults or older children, where the child is not old enough according to legal permission. Violence based on gender, especially against women and girls, must receive special attention because it has the potential to threaten a person's life, moreover, almost 75% of cases of sexual violence are experienced by women. Sexual violence often occurs in environments close to the victim, such as family and friends. Apart from that, protection for children also needs to be improved, and countries participating in the UN should provide strict sanctions against perpetrators of sexual violence. Some children who experience sexual violence may or may not show any signs and symptoms, therefore special attention is needed.

REFERENCES

- Deputi Bidang Perlindungan Hak Perempuan. (2020). Protokol Penanganan Kasus Kekerasan terhadap Perempuan di Masa Pandemi Covid-19. *Kementerian Pemberdayaan Perempuan Dan Perlindungan Anak, Bidang PHP Kemen-PPA, Deputi UNFPA DKI Jakarta, P2TP2A Penyedia layanan, Forum Pulih, Yayasan*, 1–37.
- Hilmi, M. F. (2019). Kekerasan Seksual dalam Hukum Internasional. *Jurist-Diction*, 2(6), 2199. <https://doi.org/10.20473/jd.v2i6.15949>
- Hukum, F., Islam, U., Jl, I., Km, K., Yogyakarta, S., & Email, I. (n.d.). *DARI ASPEK HAK ASASI MANUSIA*. 1–18.

- Ira Aini Dania. (2020). Kekerasan Seksual Pada Anak. *Ibnu Sina: Jurnal Kedokteran Dan Kesehatan - Fakultas Kedokteran Universitas Islam Sumatera Utara*, 19(1), 46–52. <https://doi.org/10.30743/ibnusina.v19i1.15>
- Kellogg, N. (2005). The evaluation of sexual abuse in children. *Pediatrics*, 116(2), 506–512. <https://doi.org/10.1542/peds.2005-1336>
- Legal Frameworks for Combating*. (2008). 1–74.
- Lewis, D. A. (2009). Unrecognized Victims: Sexual Violence against Men in Conflict Settings unde...: EBSCOhost. *Wisconsin International Law Journal*, 27(1), 1–49. <https://web-a-ebscobhost-com.ezproxy.haifa.ac.il/ehost/detail/detail?vid=1&sid=129858ef-9b3e-436c-a0c1-a705bdd1a927%40sessionmgr4006&bdata=JnNpdGU9ZWWhvc3QtbGl2ZSZzY29wZT1zaXRl#AN=502092392&db=ift>
- MacPherson, S. (1989). The Convention on the Rights of the Child. *Social Policy & Administration*, 23(1), 99–101. <https://doi.org/10.1111/j.1467-9515.1989.tb00500.x>
- Paradiarz, R., & Soponyono, E. (2022). Perlindungan Hukum Terhadap Korban Pelecehan Seksual. *Jurnal Pembangunan Hukum Indonesia*, 4(1), 61–72. <https://doi.org/10.14710/jphi.v4i1.61-72>
- Perempuan, D. A. N. (n.d.). *Sebuah Resource Book untuk Praktisi i ii*.
- SERI REZKI FAUZIAH. (2019). *Lex Et Societatis Vol. VII/No. 9/Sept/2019 54 PERAN PBB DALAM PERLINDUNGAN HAK ASASI MANUSIA MENURUT KAJIAN HUKUM INTERNASIONAL* Oleh : Natanael Christian Henry Gurinda. VII(9), 54–61.
- Todres, J., Wojcik, M. E., & Revaz, C. R. (2009). Appendix III. Optional Protocol To The Convention On The Rights Of The Child On The Sale Of Children, Child Prostitution And Child Pornography. *The United Nations Convention on the Rights of the Child: An Analysis of Treaty Provisions and Implications of U.S. Ratification*, 2171, 339–347. <https://doi.org/10.1163/ej.9781571053633.i-376.122>
- Zainuddin Ali. (2021). Metode Penelitian Hukum, Jakarta. In *Sinar Grafika*. https://books.google.co.id/books?id=y_QrEAAQBAJ&pg=PA17&hl=id&source=gb_s_toc_r&cad=1#v=onepage&q&f=false