



**LEGAL PROTECTION FOR GENDER AND CHILD-BASED SEXUAL VIOLENCE
VICTIMS BASED ON LAW NUMBER 12 OF 2022 CONCERNING SEXUAL
VIOLENCE CRIMES IN BANYUMAS REGENCY AREA**

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Abstract: The incidence of sexual violence is on the rise in Indonesia. In practice, victims of sexual violence frequently encounter discrimination across various domains. With the ratification of Law Number 12 of 2022 concerning Sexual Violence Crimes (SVCL), it is anticipated that victims of sexual violence will be able to secure assurances of justice and legal certainty, as well as opportunities for recovery. The purpose of this study is to analyze the implementation of the SVCL in the legal jurisdiction of Banyumas Regency. This research is categorized as field research. The method of data collection involved participant observation. The collected data was then analyzed using a series of steps including data reduction, data display, and data verification. This analysis was conducted by applying Chamblis and Seidman's theory on the operation of law within society. Based on the research findings, the Banyumas Child Protection and Empowerment Unit (UPTD PPA Banyumas) plays a pivotal role in the implementation of the SVCL concerning legal protection within the jurisdiction of Banyumas Regency. This encompasses various processes such as receiving community or victim complaints, as well as providing medical, psychological, and legal support. The legal support offered by UPTD PPA Banyumas encompasses procedures ranging from police investigations, prosecution by the attorney's office, to the evidentiary examination process in court.



Another form of legal protection extended to victims is the fulfillment of restitution. Restitution fulfillment is pursued with the assistance of the Witness and Victim Protection Agency (LPSK) through the trial's evidentiary process in court. This will serve as a fundamental legal consideration for judges in rendering verdicts concerning cases of sexual violence.

Keywords: Gender; Sexual Violence; Legal Protection.

Introduction

The incidence of sexual violence cases in Indonesia is becoming increasingly prevalent in the era of digitalization. The phenomenon of sexual violence can be likened to an iceberg phenomenon, where there has been an eruption of numerous cases of sexual violence uncovered in recent years. Such violence often befalls women and children. History has documented that women have consistently found themselves in disadvantaged positions in relation to men. They are frequently relegated to auxiliary roles, regarded as second-class beings, and even treated as subservient. The safeguarding of cases pertaining to women and children becomes a prioritized agenda, sought to be realized by the state through the assurance of women's and children's fundamental rights (Rosyadi & Fathoni, 2022). Regarding human rights, the government has formulated and ensured their existence within the Indonesian Constitution of 1945, Article 28, stating: "Every citizen has the right to a proper job and livelihood in accordance with humanity." Furthermore, this assurance is also upheld in Article 28D (1) of the 1945 Indonesian Constitution, which reads: "Everyone has the right to recognition, guarantees, protection, fair legal certainty, and equal treatment before the law."

The regulation of protection for women and children who become victims of violence is stipulated in Law Number 39 of 1999 concerning Human Rights. In the context of human rights protection, women and children also possess the same rights as all human beings on this Earth. Women and children have rights that are naturally inherent from birth, known as inherent rights. Without these rights, women cannot lead a normal life and develop as human beings. The state becomes the beacon of hope for its citizens to collectively achieve specific objectives. As a nation that upholds human rights, all forms of violence affecting anyone, in any form, must be eradicated.

The emergence of the Law on Sexual Violence is rooted in the suboptimal state of regulations concerning sexual violence. This encompasses the processes of prevention,



protection, access to justice, and recovery for victims of sexual violence. The deconstruction of the rights of victims of sexual violence in Law Number 12 of 2022 concerning Sexual Violence (SVCL) is aimed at ensuring the rights of victims of sexual violence. The enactment of the SVCL marks a significant advancement. This is evident through the restructuring of the rights of victims of sexual violence, which includes acknowledging and fulfilling the rights of victims, as well as the government's obligation to guarantee justice, legal certainty, and recovery for victims. Law Number 12 of 2022 concerning Sexual Violence, which has been ratified and promulgated, is one of the efforts to protect and realize the rights of women. The content of the law is related to various types of sexual violence present in the reality of Indonesian society, particularly cases of sexual violence within households, and is founded on gender equality, making it highly progressive (Juliansyahzen & Ocktoberinsyah, 2022).

Until now, the process of handling sexual violence victims has lacked a strong legal foundation, particularly concerning the restoration of victims' rights. Yosephus Mainake points out that various existing regulations such as the Criminal Code, Law on the Eradication of Domestic Violence, Law on Human Trafficking, and Law on the Protection of Witnesses and Victims emphasize more on the criminal aspects of the perpetrators (Muhammad, 2022). Consequently, the reconfiguration of provisions regarding victims' rights, as articulated within the articles of Law Number 12 of 2022 concerning Sexual Violence, can serve as a foundational legitimacy for law enforcement agencies and relevant parties to both protect and restore the rights of sexual violence victims.

The annual records of the National Commission on Violence Against Women (Komnas Perempuan) reveal approximately 339,782 complaints, a portion of which pertains to gender-based violence (GBV). Notably, 3,442 of these were reported to Komnas Perempuan. Violence in personal domains continues to dominate the reporting of GBV cases, comprising 99% or 336,804 cases. Komnas Perempuan's 2022 data on complaints illustrates sexual violence as a prevailing form of violence experienced by women (2,228 cases/38.21%), followed by psychological violence (2,083 cases/35.72%) (National Commission on Violence Against Women, 2023). On the other hand, Central Java Province ranks third nationally in terms of the highest instances of violence against women and children. Based on data from the Women's Empowerment, Child Protection, Population Control, and Family Planning Agency (DP3AP2KB) of Central Java Province,



sexual violence against children accounts for 46% of reported cases (Dinas Pemberdayaan Perempuan, Perlindungan Anak, Pengendalian Penduduk dan Keluarga Berencana Provinsi Jawa Tengah, 2023).

In 2022, a total of 1,125 cases of violence were recorded in Central Java, with 87.4 percent of the victims being women (amounting to 983 cases). Meanwhile, the number of cases involving violence against children, encompassing both boys and girls, reached 578 cases. This underscores that the prevalence of violence against women and children remains significant in Central Java. Data indicates that the highest instances of violence against children in Central Java occurred in Banyumas Regency, with a total of 54 reported victims of violence (Fauziah, 2022). Based on this, the researcher considers it important to conduct research in Banyumas Regency.

With the enactment of the 2022 SVCL, society is wholly dependent on the efforts of the government and the entire law enforcement apparatus to address cases of harassment and sexual crimes against children. In Banyumas Regency, there is the Women's Empowerment and Child Protection Agency, which has a mission to enhance the quality of life for women and child protection, as well as to reduce all forms of gender-based and child violence. Therefore, it is intriguing to examine how the protection of female and child victims in Banyumas Regency is approached from various angles, including governance, legal processes in criminal cases, the protection of women and children by law enforcement during the investigative process by the police, and the trial phase up to court decisions by the panel of judges.

Legal protection for victims of sexual violence in Indonesia is still minimal and lacks strong legal certainty, particularly in terms of evidence presentation in court. Legal protection for victims of gender-based and child sexual violence is an essential aspect in safeguarding human rights and societal well-being. With the existence of the Sexual Violence Criminal Law, the implementation of this law, particularly observing the forms of legal protection for women and children at the reporting level in the Women's Empowerment and Child Protection Agency of Banyumas Regency, the investigation process by the Police, and the legal considerations by the judges in court verdicts, especially in Banyumas Regency, which houses two District Courts, namely the District Court of Banyumas and the District Court of Purwokerto, is interesting to be examined.

The implementation of the Sexual Violence Criminal Law through the examination of various court verdicts in cases of sexual violence is intriguing to be studied.



Particularly, concerning several aspects such as whether the judges' verdicts have accommodated the existence of the sexual violence criminal code, whether the verdicts of the Purwokerto and Banyumas District Courts have upheld gender justice, and whether these verdicts have a legal protection impact for women and child victims of sexual violence.

The process of resolving cases of sexual violence in Indonesia is closely tied to the interests of law enforcement agencies, one of which is the judiciary. Judges play a role in rendering decisions on perpetrators through court verdicts, which are one of the legal products that uphold justice. The regulations within the Sexual Violence Criminal Law stipulate that proof can be established with only one piece of evidence, while according to the Criminal Procedure Code (KUHAP) based on the negative theory of *Wetelijk*, it is stated that there should be a minimum of two pieces of evidence and the judge's conviction. This becomes intriguing to study, particularly regarding how judges, as legal enforcers in Indonesia, make decisions in cases amid the disparity between the legal aspects expected (*das sollen*) and the application of law within society (*das sein*).

Based on the aforementioned problem background, the researcher will discuss and focus on the legal protection of gender-based and child victims of sexual violence with the presence of the VCLS, specifically within the legal jurisdiction of Banyumas Regency as the subject of this study.

Discussion

Legal protection, according to Philipus M. Hadjon, is a subjective condition that signifies the necessity for certain subjects to promptly acquire resources, aimed at ensuring the continued existence of legal subjects guaranteed and safeguarded by the law, so that their strength is organized in the process of decision-making, both at the individual and group levels (Prakoso, 2016). According to Maidin Gultom, child protection is believed to encompass all efforts carried out based on justice within society to achieve a state where children can exercise their rights and obligations, thus facilitating their normal physical, mental, and social development (Gultom, 2014).

However, with the presence of Law Number 35 of 2014 Amendment to Law Number 23 of 2002 concerning Child Protection, it has not been able to eradicate or even reduce the number of cases of violence against children, leading to the deprivation of their rights. Violence, as defined by Law Number 35 of 2002 Amendment to Law Number



23 concerning Child Protection, refers to any action against a child that results in physical, psychological, sexual, and/or neglect-related suffering or distress, including threats, coercion, or the unlawful deprivation of freedom (Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection).

According to Presidential Instruction Number 9 of 2000, gender equality is a perspective or concept that upholds the freedom to develop the personal abilities of individuals (both males and females) and to make choices without being limited by stereotypical biases and rigid gender roles, enabling everyone to enjoy the outcomes of development and have equal opportunities without discrimination. Furthermore, in Presidential Instruction Number 9 of 2000, gender justice is defined as a process of being fair to both men and women. The process of fairness referred to is a condition in which women and men can compete to attain positions, roles, or positions that are fair for all parties involved in the process. To achieve this gender justice, the principles of result-based management and treatment-based management are employed. Result-based management is a term used to describe the outcomes stemming from different processes to achieve equal outcomes. The differences in processes mentioned refer to other considerations that may not be suitable for men but are appropriate for women, and vice versa. It can be said that result-based management involves fairness by considering the specific conditions experienced by one gender. On the other hand, treatment-based management is about seeking equal treatment or opportunities for both men and women without needing to consider other factors (Dampaka et al., 2023).

Legal protection against sexual violence is crucial to ensure that the handling process of sexual violence cases, from investigation to court verdict, aligns with the gravity of the impact experienced by victims. To address how victim protection is implemented in the Banyumas Regency, the researcher employs field research methodology, conducting direct interviews with relevant entities, including the Population Control and Family Planning Agency, Women's Empowerment and Child Protection (DPPKBP3A), the Regional Technical Implementation Unit for Women and Child Protection (UPTD PPA), Banyumas Police Department's Women and Child Service Unit (PPA), and judges from the Purwokerto and Banyumas Regency Courts.

DPPKBP3A stands for the Population Control and Family Planning Agency, Women's Empowerment and Child Protection of Banyumas Regency. Based on interviews with the Head of the Women's Empowerment Division, it was explained that



with the enactment of the SVCL, the agency's role has been reinforced by establishing the UPTD PPA, which focuses on safeguarding women and children. The Women's Empowerment Division's authority in the economic sector, post-victimization of sexual violence, plays a role in empowering victims to continue their economic activities, as victims of sexual violence often fall into the category of vulnerable women. This empowerment training is accommodated by the government and financed through cooperation with various institutions, including the Bank Indonesia (E.H., personal communication, July 17, 2023).

The implementation of victim protection measures in Banyumas Regency involves collaboration with existing networks, particularly with Margono District General Hospital for physical and psychological support services, as stipulated in Article 77 of the SVCL. This article outlines the tasks and functions of UPTD PPA, which can collaborate with various entities and institutions, including:

- a. Community health centers, hospitals, and other healthcare facilities;
- b. Technical implementation units responsible for social affairs;
- c. Detention centers, correctional institutions, and correctional facilities;
- d. Police;
- e. Public prosecutor's office;
- f. Court;
- g. Technical implementation units of the agency responsible for protecting migrant workers;
- h. Regional offices of the ministry responsible for religious affairs;
- i. Regional offices and technical implementation units of the ministry responsible for law and human rights;
- j. Regional Representative Office of the Indonesian Witness and Victim Protection Institution (LPSK);
- k. Social Welfare Implementation Institutions;
- l. Community-Based Service Providers;
- m. Other institutions.

This collaboration aligns with the principles of the SVCL and enhances the protection and recovery of victims by involving various relevant parties from healthcare, law enforcement, legal institutions, social services, and more.



The assistance provided by UPTD PPA as a legal protection effort for victims includes direct support for the victims and their guardians through advocacy. In terms of advocacy, this is carried out by accompanying children during their interactions with the police, in accordance with Law Number 11 of 2012 on the Juvenile Justice System. This law mandates the provision of assistance to children who are victims or in conflict with the law (Law Number 11 of 2012 concerning the Juvenile Justice System). Advocacy is carried out through accompanying the victims throughout the process of reporting and trial until the legal process is concluded. Once these processes are completed, UPTD PPA proceeds to create a case record, which is a compilation of the outcomes of the support provided during the victim's accompaniment. This record includes psychological assessments, results of psychiatric support for the child, and an assessment of the child's readiness to face the trial. The handling of support in this manner is in accordance with Law Number 11 of 2012, which indicates that UPTD PPA's handling of juvenile cases follows proper procedures and prioritizes the best interests of the child (Lefaan & Suryana, 2018).

The Women and Children Protection Unit (PPA) within the Criminal Investigation Unit (Satreskrim) of Banyumas Regional Police is a regional technical unit responsible for providing protection services for women and children facing issues such as violence, discrimination, special protection needs, and other related matters within the jurisdiction of Satreskrim Banyumas Regional Police. The PPA Unit of Satreskrim Banyumas Regional Police is tasked with delivering protective services for women and children who encounter problems related to violence, discrimination, special protection needs, and other issues within Satreskrim of Banyumas Regional Police. Additionally, the PPA Unit of Satreskrim Banyumas Regional Police is also responsible for leading, coordinating, and managing protection services for women and children within Satreskrim of Banyumas Regional Police. In carrying out its duties, the PPA Unit of Satreskrim Banyumas Regional Police collaborates with relevant agencies such as the police, social services, and hospitals.

Based on the data compiled by the PPA Unit of Satreskrim Banyumas Regional Police, the provided data represents instances of violence addressed by Banyumas Regional Police concerning cases of violence against women and children. Upon analyzing the data provided, it is evident that sexual violence is predominant, particularly in the year 2022, with the highest number of cases being sexual violence



involving child rape. In the year 2023, from January to July, the most prevalent cases were related to child molestation. It can also be deduced that violence against children is predominant, given the prevalence of cases of sexual violence in Banyumas Regency.

The implementation of victim protection within the PPA of Banyumas Regional Police, particularly during the investigation process by the police, still does not purely adhere to the SVCL due to the lack of uniform dissemination to the police force. As a result, the police still refer to the Child Protection Law while incorporating elements of SVCL. Although there has been no recent regulation from the Presidential Regulation (PP) regarding SVCL, the police have started integrating its principles with other laws. Consequently, during the investigation process, the police prioritize the Child Protection Law while adapting to the requirement of presenting two pieces of evidence as outlined in the Indonesian Criminal Procedure Code (KUHAP).

Based on the working theory of Banyumas Regional Police, particularly the Satreskrim PPA Unit, as the law enforcement agency responsible for enforcement, especially during the investigation process, the focus is on using the legal framework to hold perpetrators of sexual violence accountable. The implementation of victim protection at the PPA Unit of Banyumas Regional Police, according to researcher observations and interviews with informants, involves cooperation between sexual violence victims and the UPTD PPA Banyumas for victim protection. In conclusion, all services and protection for victims are concentrated within the UPTD PPA Banyumas Regency, including legal services, which entails providing assistance to victims from the investigation phase to their court appearances. Victims have the right to receive facilitation assistance from UPTD PPA Banyumas.

Regarding restitution rights for victims, victims are informed of their rights. However, whether victims choose to request restitution or not depends on their personal decisions. For restitution claims, the PPA Unit of Satreskrim Banyumas Regional Police collaborates with the Witness and Victim Protection Agency (LPSK). This aligns with the provision in Article 31 of SVCL, which mandates that the investigators coordinate with LPSK regarding restitution rights requested by sexual violence victims. In addressing cases of sexual violence against women, Banyumas Regional Police demonstrate that justice and the protection of victims' rights are essential considerations in dealing with cases of sexual violence in Indonesia.



Gender-based legal protection is conceptualized as a struggle for equality, highlighting that both men and women have equal rights. Addressing this issue can be resolved through two concepts: the first is a structural concept involving Law Enforcement Agencies as the primary executors in dealing with sexual violence issues, and the second is a cultural concept that necessitates awareness and participation from society to protect and prevent discriminatory incidents.

In gender analysis, the theory of intersectionality can serve as a foundation to comprehensively understand the role of gender in a phenomenon and identify additional factors influencing gender roles. Intersectionality theory can be employed to devise more inclusive solutions to address gender injustice. By applying intersectionality theory to gender analysis, we can better comprehend the gender dynamics within a phenomenon and identify gender injustices that may affect specific groups. Furthermore, we can seek more comprehensive solutions to address gender inequality, taking into account additional factors such as race, social class, or sexual orientation.

By considering intersectionality theory in gender analysis, a more comprehensive understanding of gender roles within a phenomenon can be achieved, and gender inequalities that may be experienced by specific groups can be identified. Additionally, this approach allows for the exploration of more inclusive solutions to address gender injustices (Anggaunitakiranantika, 2022).

Efforts to provide legal protection to victims constitute a struggle for human rights, and this protection takes the form of reparations (recovery of victim's conditions, compensation for damages borne by the State due to the perpetrator's inability to provide compensation) and restitution (compensation paid to the victim or their family as a third-party wrongdoer). In practice, the rights that should be fully granted by the law sometimes do not align with the victims' expectations due to the proximity of law enforcement officials to the perpetrator rather than the victim. Such a scenario can occur when there is an interest involved, and it is crucial to note that victims, as legal subjects, should have an equal standing before the law (equality before the law). In some cases, the realization of these rights provided by the law might not align with the victims' expectations due to various factors, such as the relationships between law enforcement officials and the involved parties. This disparity can emerge when the interests of different parties conflict with the victim's rights. Despite this, it is essential to uphold the principle of equality before the law, which asserts that every individual, including



victims, should be treated equally under legal processes, regardless of their background or social status.

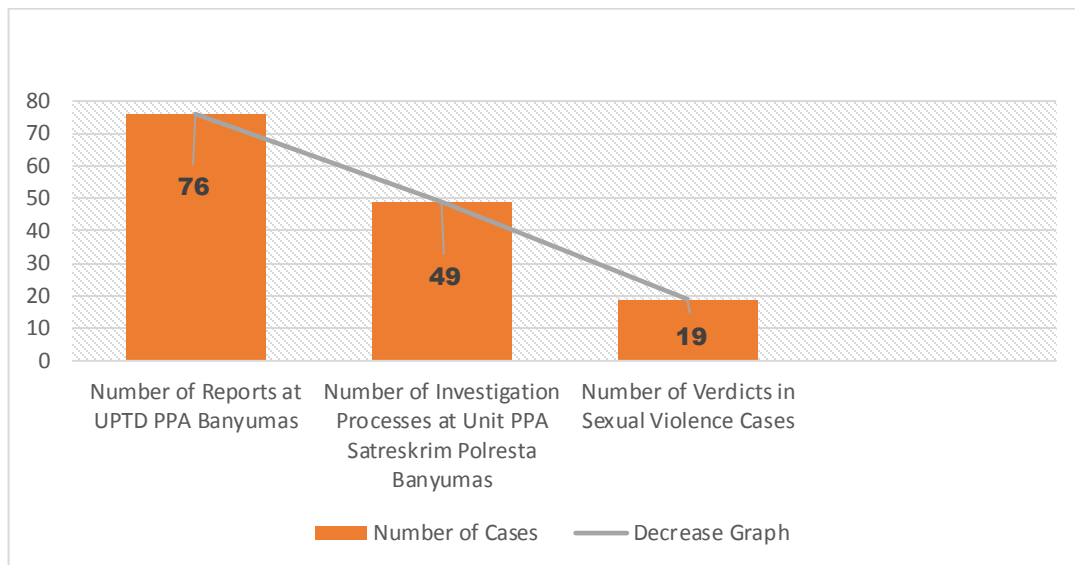


Figure 1. The Number of Sexual Violence Criminal Case Resolution Processes in Banyumas Regency for the Years 2022-2023: Reporting, Investigation, and Trial

The source of data for the study consists of judicial decisions, analyzed using a judge's decision analysis theory with an approach that aims to dissect the legal considerations employed by judges when determining fair and effective criminal verdicts. This approach encompasses the understanding of legal arguments utilized by judges in rendering their verdicts in specific legal cases. The analysis of judicial decisions involves several factors, including evidence and facts, the level of violence, victim's losses, public interest, victim testimonies, and prevailing legal policies. In the context of sexual violence cases within the Purwokerto and Banyumas District Courts, judges have applied various factors as considerations before pronouncing their verdicts, particularly the factor of victim's losses, encompassing both material and immaterial damages. This is evident through the implementation of victim protection measures, such as the provision of restitution rights facilitated by the Witness and Victim Protection Agency.

From the four institutions studied - UPTD PPA, Satreskrim Banyumas Regional Police, Purwokerto District Court, and Banyumas District Court - the analysis of the data reveals trends across the stages of reporting, investigation, and court proceedings. A decline in the number of cases is observed as the cases progress through these stages.



During the reporting stage, many sexual violence cases enter non-litigation processes such as counseling and mediation, leading victims to opt out of pursuing legal proceedings. The number of cases further decreases during the transition from investigation to court proceedings, partly due to the issuance of a Termination of Investigation Order (*Surat Perintah Penghentian Penyidikan* or SP3), resulting in a halt to trial hearings.

The implementation of the SVCL has not been widely employed in sexual violence case resolutions, primarily because the Police are awaiting implementing regulations for the law. As a result, current practice relies on the Indonesian Criminal Code (KUHP) and the Child Protection Law, which are then incorporated into the framework of the Sexual Violence Crime Law. Pure application of the Sexual Violence Crime Law in cases is yet to be witnessed. During court proceedings, judges follow the charges outlined by the Public Prosecutor, adhering to the relevant sections of the law. In cases of sexual violence, judges employ the Sexual Violence Crime Law specifically for the legal considerations of restitution, based on calculations provided by the Witness and Victim Protection Agency (LPSK).

Conclusion

The implementation of gender-based and child protection for victims of sexual violence within the legal jurisdiction of Banyumas Regency is based on research findings from four institutions: UPTD PPA, Satreskrim Banyumas Regional Police, Purwokerto District Court, and Banyumas District Court. The analysis of data reveals a trend in the number of cases from the reporting phase to the investigation phase and ultimately to the court proceedings, with a decline in the case numbers observed. In the reporting stage, UPTD PPA documented 76 cases of sexual violence. Subsequently, during the investigation phase, PPA Unit of Satreskrim Banyumas Regional Police handled 49 cases that proceeded to investigation. Out of these, 19 cases have undergone trial proceedings and received verdicts in the Purwokerto and Banyumas District Courts. Based on both the data from sexual violence criminal verdicts and the results of interviews, it can be concluded that the examination of sexual violence cases still relies on the Indonesian Criminal Code (KUHP) and the Child Protection Law. Judges have not yet incorporated the SVCL in their considerations since the Supreme Court has not issued implementing



regulations for SVCL due to its status as a *lex specialis*. However, in cases of sexual violence in the year 2023, judges employed the SVCL for legal considerations concerning the victim's restitution rights, with the restitution amount determined based on calculations provided by the Witness and Victim Protection Agency (LPSK).

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