
THE ROLE OF KPAI ON THE HUMAN RIGHTS OF CHILDREN AS VICTIMS OF RAPES IN EDUCATIONAL ENVIRONMENTS

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ABSTRACT

The purpose of this paper is to be able to find out about what are the forms of violations of rape against children in the educational environment and explain how the role of the KPAI in the human rights of children who are victims of rape in the educational environment. The approach method used is normative juridical with qualitative writing. The educational environment is one of the places that are prone to rape of children which is known together that the educational environment should be a safe and comfortable place for children to seek knowledge. The role that KPAI has on the human rights of children as victims of rape in the educational environment is expected to make the child still able to become the next generation of the Indonesian nation by means of mental, physical, and social recovery from the child in order to recover, through Law Number 17 of 2016 Second Amendment to Law Number 23 of 2002 concerning Child Protection with its basic form such as enabling victims to continue their education without having any fear of acts of rape that have occurred before in their educational environment

KEYWORDS

KPAI; Children's Rights; Rape; Educational Environment



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INTRODUCTION

Rape is an act carried out by individuals or groups of individuals by forcing the victim to vent the sexual desire of the perpetrator. Rape is a form of sexual violence in which sexual violence is an act that is categorized as an unnatural sexual relationship and behavior that results in serious losses and impacts for the victim. (Ni Made Dwi Kristen, 2014) Rape victims do not know the gender of men or women, do not know the age of adults or children, it can be said that rape victims

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can happen to anyone. However, children are the ones who have more opportunities to become victims of rape. In 2021 it was recorded that the highest complaints of sexual crimes against children came from the type of children as victims of obscenity, namely 536 cases (62%), and children as victims of sexual violence rape/intercourse 285 cases (33%). (Chandra Iswinarno, 2022)

Apart from not knowing gender and age, rape also does not look at the environment where it is known that rape can occur anywhere, especially if the victim is a child, the educational environment is one of the places. Rape can occur in the educational environment due to internal and external factors. Internal factors can come from the perpetrators or victims, but the internal factors from the perpetrators of rape are factors that have an important role. While external factors can come from a place and time where the environment/place of the perpetrator and the victim affects the occurrence of acts of rape such as being in quiet or dark places that create opportunities and possibilities, as well as time becomes one of the external factors because in terms of In the educational environment, many activities are carried out during school hours (morning to evening) indicating that rape does not look at the time even though it is daytime, this dispels the view that rape only occurs at night because in reality rape in the educational environment occurs at night. school activity. (Dudung Mulyadi, 2018)

The problem of rape that occurs in the educational environment is still a lot going on. During January to July 12 cases of sexual violence were recorded, of which 3 (25%) schools were under the authority of the Ministry of Education, Culture, Research, and Technology and 9 (75%) education units under the authority of the Ministry of Religion. Of the 12 cases, 31% of sexual violence occurred in boys and 69% occurred in girls. (Mutia Yuantisya, 2022)

The educational environment that should be a learning platform for students to shape the morals and character of the nation's children has actually become an uncomfortable and unsafe place for children (Fldzah Hani Mufidah, 2020) who are victims of rape.

In the educational environment, the main responsibility is the educators regarding everything that happens to their students because the educators have been given the trust by the parents of students to become parents when they are in the educational environment. Many of these cases actually involve educators as perpetrators of sexual violence against their students.

Rape must become a public problem and no longer just a private matter because rape is clearly an immoral act which in addition to violating children's human rights, also causes physical, mental and social suffering to children. (Iwan Setiawan, 2018)

The existence of rape cases that make children as victims, even in large numbers and for a fairly long period of time in the educational environment, needs to be a very serious concern for many parties, especially the state. The state as a protective umbrella and can provide protection for every citizen who is a victim of actions that occur in the territory of his country. It has been stated in the Convention on the Rights of the Child that children, students, have the right to be free from inhumane acts. The state party shall take all necessary steps to ensure that school discipline is regulated in such a way as to be consistent with the human dignity of the child.

To protect human rights, the state must be built on the principle of the rule of law so that there is an instrument to monitor and prosecute in case of human rights violations and to put the people as the determinant in the life of the state. (Sabila, Bustamam, & Badri, 2019) The rule of law in Indonesia cannot be separated from the regulation of human rights itself, especially in the *ground norm*, namely the Fourth Amendment of the 1945 Constitution of the Republic of Indonesia (UUD 1945). (Amalia & Dewi, 2018)

Indonesia as a state of law in this case seeks to provide protection for cases involving children, including cases of sexual violence against children, one of the efforts of the government is the establishment of the Indonesian Child Protection Commission (KPAI). KPAI is one of the independent institutions that was formed to provide all protection efforts from the many kinds of problems involving children, from preventing them to providing solutions to problems that occur to children. KPAI was formed under the mandate of Law no. 23 of 2002 concerning Child Protection which later became Law no. 17 of 2016 concerning the Second Amendment to Law no. 23 of 2002 concerning Child Protection, which in Article 74 provides an explanation (1) In order to increase the effectiveness of supervision of the implementation of the fulfillment of Children's Rights, with this Law an independent Indonesian Child Protection Commission is established; (2) If necessary, the Regional Government may establish a Regional Child Protection Commission or other similar institutions to support the supervision of the implementation of Child Protection in the regions.

Seeing the cases that occurred, it raises the question of how the role of KPAI as an independent institution authorized in terms of providing child protection for children's human rights as victims of rape in the educational environment

RESEARCH METHOD

This writing uses a qualitative normative juridical method. Normative juridical research is research that refers to legal norms contained in legislation and court decisions and norms that live in society. (Abdullah Sulaiman, *Methods of Writing Legal Studies, Printable To* (Jakarta: Postgraduate Law Program, Islamic University Jakarta, 2010), p. 25. The nature of this writing is qualitative with descriptive type.

The data collection technique used is to collect library data (*library research*) in the form of primary and secondary data to be studied later in order to obtain solutions to existing problems. (Sandu Siyoto and M Ali Sodik, *Basic Research Methodology, 1st edn* (Yogyakarta: Media Literacy Publishing, 2015), p. 11-12.

RESULTS AND DISCUSSION

1. FORMS OF VIOLATION OF RAPE OF CHILDREN IN EDUCATIONAL ENVIRONMENT

Throughout 2021 to 2022, several cases have emerged involving educators as perpetrators of raping their students that occurred in the educational environment. In 2021 appears cases of rape committed by caregivers as well as teachers at Islamic boarding schools in Bandung against 13 female students. The case was successfully revealed after the West Java Regional Police received a report from the parents of one of the victims. It was revealed that 9 babies had been born from 8 victims. There are even victims who give birth up to two times.

The age range of the victims is between 14-20 years. Not only that, it was revealed that the child born to the victim was recognized as an orphan. These children are also a tool to ask for funds from several parties. Victims were also forced and employed as construction workers to build Islamic boarding schools in the Cibiru area. ([Kompas.com, 2021](#)) Until then on April 4, 2022, the defendant was sentenced to death by the Panel of Judges chaired by the Head of the Bandung High Court, Herri Swantoro, who read out 10 points in the verdict. ([Febriyan, 2022](#))

In 2022 there was a case involving the leader of one of the Islamic boarding schools, namely WA in Sukabumi, who violently assaulted 3 female students at his Islamic boarding school. Victims from WA were aged 15 to 18 years. One of the victims admitted that WA had forced him 20 times. The modus operandi of the perpetrator is to say that he will cure the disease and provide assistance to the parents of the victims who are in trouble. ([Eko Sutriyanto, 2022](#))

Rape is included in the category of violation of human rights because it is very clear that this act deprives the victim of absolute rights and destroys her dignity as a human being. With regard to the cases above, it is clear that the perpetrators carried out these acts of rape with full awareness in themselves, seeing the period of time that was committed along with the number of victims.

Rape is an act that robs the victim of the dignity and worth due to acts carried out on the basis of coercion and/or threats. Rape cases that make children as victims are acts that violate human rights, whether the number of victims who are raped is small or large, it is still an act that violates human rights.

Related _ Regarding human rights violations, human rights have a number of principles, namely [Eko Riyadi, Human Rights Law: International, Regional, and National Perspectives, 1st edn \(Depok: Rajawali Pers, 2018\), p. 25-31. :](#)

1. Universal Principle (*Universality*)

The universal principle is that all individuals, in all parts of the world anywhere, no matter what religion, citizen country, language, ethnicity, regardless of political and anthropological identity, and regardless of their disability status, they have the same rights as human beings.

2. Principle of Indivisibility (*Indivisibility*)

This principle means 'all' HAM is equally important and therefore not allowed issue certain rights or rights group of its components.

3. Principle of Interdependence (*Interdependent*)

This principle means that one group of rights will often be fulfilled depending on the fulfillment of other rights.

4. Principle of Interrelated (*Interrelated*)

This principle is understood that is, all human rights are component not separate from the others.

5. The Principle of Equality (*Equality*)

Equality is assumed to be a very fundamental human rights principle.

6. Principle of Non-Discrimination (*Non-Discrimination*)

Discrimination is defined as a situation where the same situation is treated differently and/or different situations are treated the same.

7. Principles of Human Dignity (*Human Dignity*)

The main objective of the agreement and codification of human rights law is to ensure that all individuals can live with dignity. All individuals must be respected, treated well, and assumed to be valuable.

8. Principles of State's *Responsibility*

Fulfillment, protection and respect for human rights are the responsibility of the state. The main actor who is burdened with the responsibility to fulfill, protect and respect human rights is the state through its government apparatus.

The Basic Laws of the Republic of Indonesia of 1945 have been contain A number of human rights , viewed from a macro definition of human rights , will be more assertive if other laws and regulations are followed that can harmonize with the development of society and the international community. (Setiaji & Ibrahim, 2018)

case of Herry Wirawan, who raped 13 female students and employed his victims, in addition to violating the 1945 Constitution of the Republic of Indonesia, he also violated Law Number 39 of 1999 concerning Human Rights . It is clear in Article 29 paragraph (1) of the Human Rights Law that every individual is entitled to self- preservation, family, honor, dignity, and property rights. Then Article 30 that every Individuals have the right to a feeling of security and peace along with guard on the threat of fear of use Act or not act something. Article 33 paragraph (1) each Individuals have the right to be free from torture, punishment or cruel, inhuman, degrading treatment and human dignity, as well as Article 35 of each Individuals have the right to live in the people 's order as well as a peaceful, safe, peaceful state, respecting, protecting and fully carrying out human rights and basic human obligations in accordance with in this law.

In addition, the perpetrator's actions also violated Law no. 17 of 2016 Second Amendment to Law No. 23 of 2002 concerning Child Protection, in which in the Herry Wirawan case most of the victims were underage. In Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection, previously one of the amendments focused on the weighting of criminal sanctions against perpetrators of sexual violence against children. However, the amendment to the law has not significantly reduced the level of sexual violence against children, so the state needs to take optimal and comprehensive steps by not only giving weighting criminal sanctions, but also implementing forms of prevention such as chemical castration, installing electronic detection devices, and rehabilitation for offenders. (Wakhid Rendy Saputro and Ira Alia Maerani, 2021)

Children have human rights that must be fulfilled, protected, and guaranteed by parents, family, society and the state. In the case of Herry Wirawan violating Article 9 paragraph (2), every child has the right to safeguarding the education unit from sexual crimes and violence carried out by educators, staff, fellow students, and/or other parties. The case occurred in an educational environment, where the victims lived in Islamic boarding schools which were also used as places for them to study and the perpetrators of the rape were also educators at the pesantren.

The violations that occurred in this case clearly injured, robbed, damaged, harmed the victims, because the rights inherent in them that should be respected

and protected by others were taken without any sense of humanity at all. Humans who are equipped with reason and conscience should be able to use them properly in social life, even more so for those who are more mature, they can set good examples in educating and teaching what is appropriate and what is inappropriate to do to children as the next generation. Attitude about Human rights are derived from religious teachings, universal moral values, and the noble values of the nation, as well as based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

The truth is and basic human rights _ human needs, meaning every human/person can enjoy their human rights. Man is a whole person who does not dissolve / does not lose his identity / personality as a human being, he has rights to himself apart from other individuals . [Effendi Masyhur, Human Rights: In National and International Law \(Bogor: Ghalia Indonesia, 2016\), p. 47.](#)

Problems related to human rights are humanitarian problems, related to how to cope, not only recognizing human dignity, but also about how far the human dignity of each person can be felt by all individuals, there is no difference. The principle of recognition and protection of human rights is part of the principle of legal protection. The term human rights in Indonesia is often equated with the term natural rights, basic human rights. ([Aswandi & Roisah, 2019](#))

Its relation to human rights is not only to uphold and provide biological needs (housing, clothing, and food) but also to provide needs and mental and spiritual freedom (rights, obligations, and responsibilities) for every human being equally. Recognition of human rights is not just a means, but one of the most fundamental goals of organizing the life of the entire community. ([Pangaribuan, 2017](#))

2. KPAI as the Protector of Children's Rights in the Educational Environment

According to Article 1 point 1 of Law no. 17 of 2016 Second Amendment to Law No. 23 of 2002 concerning Child Protection states that child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and protection from violence and discrimination.

Described in Article 22 that the state, the Government, and the Regional Government have to and is responsible for providing support for facilities, infrastructure, and the existence of human resources for the implementation of Child Protection. In addition, the state is also obliged to guarantee the implementation of children's rights by protecting, fulfilling, and respecting children's rights. The state formulates, implements and supervises policies in the field of implementing child protection. These laws also explain that the responsibility for protecting children is not only shared by the state, but also belongs to parents, families, and the people.

Article 15 states that every child has the right to get protection from many things, such as protection from abuse in political activities; involvement in armed conflicts; involvement in social unrest; involvement in events that contain elements of violence; involvement in war; and sexual crimes. Children are the trust and gift of God Almighty, which is inherent in the dignity and worth as a whole human being. ([Sustainable, 2017](#)) Children can act based on their own thoughts, feelings and desires, but the environment has a very big influence on the formation of children's behavior, which is why children must be guided,

nurtured, and protected by parents, teachers, families and existing adults. around it is needed by the child for the development process. M. Nasir Djamil, *Children Are Not To Be Punished* (Jakarta: Sinar Graphic, 2013), p. 11. Child is component that can not be separated from the purpose of state protection and as a human investment in the national development process. (Hamamah, 2015) Children include groups of citizens who are vulnerable at the same time individual the elderly , the poor, pregnant women , and disability namely protection for This vulnerable group is entitled to more treatment and protection related to their specificity. (Hertianto, 2021) Children have personality autonomy, which cannot be seen in a weak, passive, and accepting position, but is an autonomous person (having desires, experiences, imagination, aspirations, uncertain options similar to adults). Djamil, *OpCit. Thing.* 29-31. Children become the generation that holds the successor to the ideals of the nation's struggle and become human resources for national development. (Nabella Puspa Rani, 2018)

Problems related to child protection are complex and give rise to various kinds of further problems, which cannot always be solved individually, but must be jointly resolved, and the solution is a shared responsibility.

Child protection is a result of interaction because of the interrelation between existing phenomena and mutual influence. Therefore, if we want to know whether there is good or bad child protection, right or wrong, then we must pay attention to which phenomena are relevant, which have an important role in the occurrence of child protection activities.

Protecting children is protecting humans, is building a complete human being. Child protection activities are legal actions that have legal consequences, so legal guarantees are needed for child protection activities. Legal certainty must also be sought for the continuity of child protection activities and prevent fraud that will cause unwanted negative impacts in the implementation of child protection activities.

In order to develop business activities for child protection, we must be alert and aware of the undesirable consequences that cause victims, losses due to the implementation of child protection that is irrationally positive, irresponsible and useless. Therefore, efforts must be made to have something that regulates and guarantees the implementation of child protection. It must be prevented, so that the regulation of various child protection efforts itself does not guarantee child protection and even causes various other negative deviations. Arif Gosita, *The Problem of Victims of Crime* (Jakarta: Faculty of Law, University of Indonesia, 2007), p. 204-205 <<https://doi.org/BL00012900001>>.

Some of the rationale as the basis for the problem of child protection, among others, are as follows:

1. Meaning, attitude and action

The right understanding or meaning of child protection is expected to make us behave and act appropriately in dealing with and overcoming problems related to child protection issues. The right understanding can provide a strong positive motivation in carrying out child protection activities. Based on the right understanding can also make policies and work plans better and can be implemented.

2. Understanding about humans

The problem of child protection is a human problem which is a social reality. The image or understanding of humans and humanity is the dominant factor in dealing with and solving child protection problems which are problems of human life. Understanding that those who are the object and subject of services in child protection activities both have rights and obligations; a person's motivation to participate diligently and persistently in child protection activities; the view that every child is natural and has the right to mental, physical, social protection from his parents, members of society and the state, the views of these statements are clearly based on an appropriate understanding or image of humans. Those who are protected and those who protect and anyone who is involved in the issue of child protection are our fellow human beings who have the same dignity and worth as humans, and who are with us in a society.

Those who have the right image of humans and humanity will better understand what it means to build a whole person, which also includes child protection activities. Disseminate and spread the right understanding of humans if you want to successfully implement child protection. Improper understanding of humans is one of the inhibiting factors for developing justice and welfare activities in general and child protection activities in general, and child protection activities in particular.

3. Understanding of justice

With regard to child protection, it is necessary to have an understanding of proper justice, which supports child protection activities. A person's sense of justice will affect the continuity of child protection activities. "Justice is a condition where everyone can exercise their rights and obligations rationally, responsibly and usefully". If justice is related to child protection, it can be said that where there is justice, there should also be good child protection. Children are protected to be able to carry out their rights and obligations rationally, responsibly and usefully. Rational means reasonable, reasonable, but the rationale can be positive or negative; being responsible means being accountable horizontally (towards fellow human beings) and vertically (to God), being accountable to others and to oneself; useful means useful for other people, society, nation, and oneself.

4. Interaction Results

Interactive review expands the people responsible for or the people involved in the occurrence of an action and event. Child protection efforts are said to be a result of interaction because of the interrelation between existing phenomena and their mutual influence. So with regard to the issue of child protection, it is necessary to pay attention to the relevant phenomena, which factors hinder or support the existence of child protection efforts.

The social relations that exist in society are the relationships between the roles of individuals in society, so that roles are regulated by existing norms. KPAI has a role to carry out its duties on issues related to children in contact with the law (ABH). A role includes at least 3 things, namely (Sri Hartini, 2017) :

- a. Roles include norms associated with a person's position or place in society;
- b. Role is a concept of what individuals can do in society as an organization;

- c. The role that can be said as individual behavior that is important to the social structure.

KPAI as an institution protecting children's rights has carried out activities as regulated in Article 76 of Law no. 17 of 2016 concerning the Second Amendment to Law no. 23 of 2002 concerning Child Protection, the KPAI is tasked with:

- a. Supervise the implementation of the protection and fulfillment of children's rights;
- b. Provide input and suggestions in the formulation of policies regarding the implementation of child protection;
- c. Collecting data and information regarding child protection;
- d. Receive and review public complaints regarding violations of children's rights;
- e. Mediating disputes over violations of children's rights;
- f. Cooperating with institutions formed by the community in the field of child protection; and
- g. Provide reports to the authorities regarding alleged violations of this Law.

In essence, children cannot protect themselves from various types of actions that cause physical, mental and social harm in various areas of life. [Maidin Gultom, Legal Protection of Children and Women \(Bandung: Rafika Aditama, 2012\), p. 68-69](#). Children as a vulnerable group have the right to get more attention from the state, every child has the right to get the right to protective measures because of his status as a minor to his family, community and state.

The role of KPAI is to provide protection for children, either as perpetrators or as victims in a problem, one of which is in the case of rape in the educational environment. Article 75 explains that:

- a. Conduct socialization of all provisions of the legislation relating to children, collect data and information, receive public complaints, evaluate and supervise violations of child protection;
- b. Providing reports, suggestions, inputs and considerations to the president in order to examine the contents of the article, the KPAI's duties can be further detailed as follows, conducting socialization and advocacy on regulations.

In relation to children's human rights, efforts are needed so that the enforcement of the implementation of the protection of children's rights in the educational environment can be realized, namely as follows ([Triwahyuningsih, 2018](#)) :

- a. Provide assistance by being a witness during the process of upholding children's rights.
- b. Provide support for victims of child rights violations to obtain restitution, compensation and rehabilitation.
- c. Provide information and report to law enforcement officers or institutions dealing with children's rights issues in the event of violations of children's rights.
- d. Support to be able to accept reconciliation if the human rights court gets deadlocked.

e. Not trying to hinder, complicate or interfere with the proceedings of human rights trials.

The role of KPAI also includes supervision of local governments, in which local governments also have an obligation to play an active role in preventing rape cases in the educational environment. The success of prevention efforts carried out by local governments is also a form of the success of the KPAI's role in protecting children's human rights.

KPAI's active role provides opportunities for all children to make changes in themselves to become more qualified individuals as the nation's successors, where children who are victims of rape in the educational environment are still eligible and have the right to get their rights in carrying out their lives. KPAI's active role in protecting children who are victims of rape in the educational environment includes not being allowed to carry out various forms of violence against fellow children, protecting the rights of children, upholding the rights and dignity of children without having to differentiate between class, race, ethnicity. and gender. (Dwi Puji Lestari, 2018)

To increase the effectiveness of monitoring the implementation of the fulfillment of children's rights, the Indonesian Child Protection Commission was created as a form of attention and protection of the state (Wigati Pulunggono and Munsyarif Abdul Chalim, 2017) , in which the KPAI has the authority to oversee and supervise the implementation of child protection carried out by relevant stakeholders. has an obligation to carry out child protection in accordance with loaded in Article 20 of the Child Protection Act.

The role of KPAI in terms of handling the recovery of child victims of rape in the educational environment by maintaining the rights of children to continue to receive rehabilitation from the government mentally, physically, spiritually, and socially, maintaining the privacy of victims from the outside environment so that victims feel protected, victims also have the right to continue Knowing the progress of the case at hand, the victim has the right to be notified if the perpetrator has been released from prison, and if the perpetrator is not sentenced due to insufficient or minimal evidence, the victim has the right to be given full protection to avoid possible retaliation from the perpetrator. (Maharani Kharisma Putri and Enny Ristanti and Nahdiya Sabrina, 2021)

CONCLUSION

Human rights are something that must be realized together by all humans that it is important for others to respect, respect and protect each other. Cases of child rape are included in the form of human rights violations, as it is known that children have full human rights within themselves. Children have protection of these human rights wherever they are, one of which is in the educational environment and all parties in that environment are obliged to respect, maintain, protect the human rights of children. The state is one of the parties that has the obligation to maintain, protect, and be responsible for the human rights of children. The form of protection from the state in respecting the human rights of children is the establishment of the Indonesian Child Protection Commission (KPAI) which has the authority and

purpose in the realm of children's rights to prevent and provide solutions to problems related to children's human rights. As a form of efforts to prevent rape in the educational environment, namely knowing what are the causes of many rapes in the educational environment and then trying to prevent these factors from happening easily. The role of the KPAI in the problem of rape in the educational environment seeks to make children who are victims and perpetrators still able to become better quality successors of the Indonesian nation with mental, physical, and social recovery from the child.

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