

# Should Children Be Victims of Their Future? (Reflections on the Implementation of Child Rights through Legal Terms)

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## Abstract

A child is everyone who is in process of growing up being an adult. Through the process, children face various challenges that require supporting system their neighborhood such as culture. Currently, children are risky to become victim of violence including sexual violence. This study raises the question, how culture in the context of "using terms" for sexual violence would protect children? In order to find out the answer, this study used the literature review approach. The primary data sources are court decisions concerning sexual violence on children. Furthermore, it also used literatures concerning culture which support the measures to stop sexual violence against children in Indonesia. As findings, it shows that a) The use of the term for sexual violence against children in Indonesia cannot provide maximum protection for child victims; b) there are development in legal terms for sexual violence both internationally and regionally concerning sexual violence; c) Indonesian government has programs to protect child victims of sexual violence through the Child Friendly City program (*Kota Layak Anak-KLA*). Finally, this study suggests that Indonesian government either executive, legislative or judiciary should play an important role to achieve the principle of the best interests of children particularly for children who are victims of sexual violence in Indonesia

**Keywords:** Child, Sexual Violence, Victim, Culture, Protection;

## INTRODUCTION

Culture or social norms are rules which used to control human's behavior in the community which also known as a standard of community value[1]. The existence of culture or social norms in society is potentially cause violence against children, including sexual violence[2]. Based on data collected by *The Protection of Minors in the Church* and contained in Pope Francis' official speech in Italian at the end of the meeting titled "*The Protection of Minors in the Church*" which conducted on 21-24 February 2019 mentioned that more than 120 million girls represent the highest number of victims[3]. The data supported the statement which says in general the victims of sexual violence are dominated by girls[4].

The reported cases of sexual violence are an iceberg phenomenon[5]. One of the reasons why the number of sexual violence against children is smaller is the difference use of terms for sexual violence[6]. The use of terms refer to the terms which is using in

a community, further it is contained in the laws and regulations of a country or state[7]. The use of different terms of sexual violence has an impact on the type and severity of punishment for the perpetrator but not for the victim[8]. Victims would have same experience both material and immaterial losses, including shame, loss of self-esteem, low self-esteem, and/or excessive anxiety that is traumatic. there are other impacts namely sexual trauma, physical injury, unwanted pregnancy, behavioral changes, and sexually transmitted diseases[9]. In some cases even lead to suicidal idea, psychological impact and reproductive function disorders[10]. These situations could be worst for children who being sexual violence victims. Based on this description, there are two questions: (1) how does the culture of Child Protection able to support the growth and development of a child in Indonesia? (2) How does Indonesian government support the protection for child victims of sexual violence?

### **METODOLOGI**

The research questions were answered using the normative-prescriptive research method. According to Prof. M. Solly Lubis, this type of research was conducted to find suggestions or alternative solutions to one or more problems that are currently happening. Furthermore, it can be used when there are problematic things that require prescriptive problem solving. Here are two approaches of collecting data: (a) statutory approach and (b) case approach-the court decision are from District Court in Medan and L.Pakam of North Sumatera Province.

### **DISCUSSION**

Sexual violence is a form of human rights violation[11]. A book titled "Understanding the Convention on the Rights of the Child" states that the CRC contains the rules of rights as regulated in the Convention on Civil and Political Rights as well as the Convention on Economic, Social and Cultural Rights[12]. Since CRC is a combination of ICCPR and ICECSR, there are two kinds of violations, namely; (1) if the State takes legislative, administrative or other actions that it should not do, for example, torture or intercepts children's right to information, this is a real violation. (2) Non-compliance; if the State does not take other actions required by a Convention such as the CRC[13].

When the CRC came into force as international law in 1990, children were in bad situation and condition[14]. They worked in hard condition, engaged in petty crimes, prostitution, and begging. They experience neglect and ignorance, sexual exploitation and victims of drug abuse[14]. Children are subject as well as adults in the context of human rights including children who are victims of sexual violence[14]. A State which is a subject of international law and in the context of the CRC as the party, it means the state is obliged to fulfill the rights of the child. Article 4 of the CRC mentions the obligation of States parties to take legislative, administrative and other measures to implement the rights recognized in the CRC[15]. It further states that with regard to economic, social and cultural rights, States Parties should take the maximum possible efforts based on available resources, and if necessary, within the framework of international cooperation.

Indonesia is state party of CRC[16]. It ratified CRC as National Law[17]. The signing of the CRC was on January 26, 1990 followed by ratification on September 5, 1990[18]. Today, as a state party of the CRC, Indonesia has some laws and regulations to ensure the implementation of CRC in particular to apply the CRC's principles. These arrangements stated in; (1) the 1945 Constitution of the Republic of Indonesia, (2) Presidential Decree no. 36 of 1990 concerning Ratification of CRC (3) Law no. 23 of 2002 concerning Child Protection as amended by Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection.

There are four principles to ensure the child protection, namely: (1) the principle of non-discrimination, (2) the principle of the best interests of the child, (3) the principle of survival, growth and development, and (4) the principle of child participation. The explanation part of Law no. 35/ 2014 concerning Amendments to Law No. 23 / 2002 concerning Child Protection states that the state- national and local government, community and parents are obliged to provide protection and ensure the fulfillment of child rights in accordance with their duties and responsibilities.[19] Protection of children must be implemented based on human rights principles, namely; respect, fulfillment and protection. Indonesia has a significant moment in legislation namely Law No 16/ 2019 concerning Amendments to Law 1 of 1974 concerning Marriage. This Law is the embodiment of the fulfillment of State-Compliance Obligations on CRC. Law 16 of 2019 abolishes discriminatory arrangements for the different minimum age for marriage between male and female. Today the minimum age to get married is 19 years old both for male and female. Furthermore, Law 16 of 2019 embodies the mandate of Article 28B paragraph (1) of the 1945 Constitution, and Article 28B paragraph (2) of the 1945 Constitution regarding the protection and fulfillment of children's rights.

The implementation of Law 16 of 2019 concerning Amendments to Law 1 of 1974 concerning Marriage is still a doubt. Child marriage still occurs as a solution for female victim of sexual violence cases against children[20]. It contribute some disadvantages since the children are in the process of growing and developing[21]. Therefore, children must be protected from all risks of violence, especially sexual violence. This is very important considering that the disclosure of cases of sexual violence crimes is very complicated since it is related to the traditions and culture or religious opinions in a community[22]. In Indonesia it is taboo to talk about sex in front of other people[23]. It can be seen by the lack of writings about violence and sexual exploitation of children[24]. A form of taboo that has a negative impact on children's growth and development and requires immediate efforts from the Indonesian government[25].

### ***Disadvantage(s) of the used term of sexual violence in Indonesia***

Law No. 17/2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1/ 2016 concerning the Second Amendment to Law No. 23/2002 concerning Child Protection. This regulation is present and emphasizes the need for heavier criminal sanctions and fines for perpetrators of crimes against children[25]. Providing of heavier punishment, especially for perpetrators of sexual crimes has an aims to provide a deterrent effect[26]. It also to encourage a concrete measure to restore the child's physical, psychological and social life[27].

In fact, the existence of heavier penalties for perpetrators of sexual violence against children did not have an impact in reducing the number of sexual violence cases. The number of sexual violence against children is increased and being more complex. Perpetrators of sexual violence against children are not only adults but also children[28]. It showed that the victims known the perpetrators such as their boyfriend, child's peers, including children with disabilities.

In applying the theory of sexual violence that is important to use the words or terms that are equal[29]. The terms or words which used will affect the way how to conceptualize, prioritize and deal with the problem. Inconsistent use of language and terminology will affect the application of laws and policies on similar problems. Inconsistently in using the terms for sexual violence can be seen in arrangements at the international level and ASEAN level. Article 19 of the CRC only mentions sexual abuse while the General Comments add an explanation of the concept of sexual harassment

and exploitation. Sexual abuse and Exploitation includes: (a) the encouragement or coercion of a child to engage in unlawful or psychologically harmful sexual activity.

Article 34 of the CRC mentions Sexual abuse and sexual exploitation as an encouragement or coercion of a child to engage in sexual activity that violates the law (unlawful sexual activity). Meanwhile, the ASEAN Regional Action Plan for the Elimination of Violence against Children (ASEAN/RPA/EVAC) discusses the definition of sexual violence as sexual activity or attempts at sexual activity carried out by adults on children. Including acts of persuading or coercing, threatening or urging a child to engage in sexual activity. Although children who are sexually abused may not experience violence or physical restrictions, they will not escape the psychological impact. Sexual activity by a child with another child, if the child abuser uses coercion, threats or other means of coercion, is also considered sexual violence or abuse. Sexual violence includes, but is not limited to, the following flirting, rape and sexual violence.

Referring to the CRC (Article 34) and the ASEAN Regional Action Plan for the Elimination of Violence against Children which is a follow-up to the Declaration on the Elimination of All Forms of Violence against Women and Children within ASEAN, several elements must be considered in implementing the fulfillment of the rights of children who are victims of sexual violence, namely: (a) Any sexual activity taking place; (b) There is an urge or coercion to engage in unlawful or psychologically harmful sexual activity (Article 19 of the CRC); (c) There is encouragement or coercion of a child to perform sexual activities that violate the law-unlawful sexual activity (Article 34 of the CRC); (d) Any act of persuading or coercing, threatening or urging a child to engage in sexual activity (ASEAN Regional Action Plan).

Indonesia, as a country, to ensure the law enforcement should not only consider based on the availability of laws and regulations but also related to the way how the law enforcer implements the law and legal facilities. Furthermore, law enforcement also depends on the legal culture of the community where the law will apply[30]. In the context of Law Enforcement, cases of sexual violence are closely related to the integrated criminal justice system. Basically, the integrated criminal justice system has 4 sub-systems, namely: (1) the investigation sub-system (2) the Prosecution sub-system (3) the judicial and sentencing sub-system, and (4) the sub-system of implementing decisions/criminal[31].

In Indonesian, there is no explicit and clear definition of the crime of sexual violence. The Criminal Code (*Kitab Undang Undang Hukum Pidana-KUHP*) as the basic legal rule for criminal acts includes sexual violence is available in the Morals Chapter which regulates rape and molestation-*Pencabulan*[32]. Unfortunately, this act of sexual violence is considered a violation or crime against the norms of morality or decency that apply in Indonesian society and is not considered a form of crime against the integrity of the body of women, including children[33].

According to *Komnas Perempuan*, Indonesia only had a definition of sexual violence (violence against women) in the context of crimes against the dignity of women after the enactment of Law No. 23/ 2004 concerning the Elimination of Domestic Violence. Meanwhile, in the international context, the existence of legal definitions for a number of sexual crimes against children, it turns out that there is still considerable confusion around the use of terms related to sexual exploitation and sexual abuse of children. Even where the same term is used, there is often disagreement as to what it actually means, leading to the use of the same word to refer to different actions or situations. This has created significant challenges for policy and program development, legislation development, and data collection, leading to erroneous responses and limited and ineffective methods for measuring impact or setting targets. In the context of international or trans boundary child sexual exploitation and abuse, these difficulties are even greater[33].

An example of how the use of the term sexual violence has a negative impact on child victims of sexual violence is seen in the Court Decision Number 49/Pid.Sus-Anak/2018/PN.Mdn. Perpetrators run away with a girl without permission from her parents or guardians. They went out of the province-North Sumatera Province. Based on the chronology of the case, the Perpetrator and Victim were known each other since 2017. They played together and live nearby. According to the perpetrator, they were in a relationship. This statement was rejected by the victim which said that they did not in relationship. Before they leave to another province, the perpetrator sent a message on Facebook. They made an appointment. The victim met the perpetrator and his friend at a hotel. The victim would like to go to another province since the perpetrator promised that she will get much money when they arrived in Pekanbaru. Due to this promise, the victim did not ask permission from her parents. While outside the province, the perpetrator and the victim were ordered to beg by the perpetrator's friend. There are important point in order to protect victims of sexual violence, namely: (a) the victim is still a junior high school student. Due to this experience, she should be drop out of school. (b) The law enforcer-police officer (s) did not belief victim's statement concerning how many times has the victim been sexually assaulted. The Police officer(s) more considered the information from the perpetrator who said that he did it once.

As consequence, the perpetrators convicted on the Criminal Code Article 332 paragraph (1) of the Criminal Code in conjunction with Law No. 11/ 2012 concerning the Juvenile Criminal Justice System. This case shows that the law enforcement more focuses to protect the perpetrator rather than the victim. The judges did not consider the victim's rights. In cases of sexual violence this finding is common in Indonesia as also shown in the Court Decision Number 71/ Pid. Sus-Anak/ 2018/ PN Lbp. This court decision showed how the judges focused on the future of the perpetrator rather than the victim of sexual violence. Furthermore, this finding is strengthened by the results of FGD which involved Law Enforcement Officials. It revealed that the Judge was more focused on Law No 11/ 2012 concerning the Juvenile Criminal Justice System (*Sistem Peradilan Pidana Anak/SPPA*) since the perpetrator is a child too. The Law No 11/ 2012 mandates law enforcers to implement Diversion and Restorative Justice. The FGD's participants mentioned that this condition based on the reason that the regulation on the rights of victims of sexual violence in the SPPA Law and the Child Protection Act is limited. Furthermore, lack of understanding of law enforcement institutions in Indonesia also became a problems related to determine the criminal elements[34].

ECPAT Indonesia has experienced concerning this difference understanding[35]. When the police arrested a man who bought sex services from a girl under 18 years old and detained him on charges of having sex with a minor by including Article 81 of Law No 35 / 2014 concerning Child Protection. When the case file was completed and sent to the local Prosecutor's Office, it turned out. The prosecutor did not find the right elements to ensnare the perpetrators. As consequence, the prosecutor returned and rejected all the alleged articles because no criminal elements were violated in this case. The Prosecutor thought that the perpetrator did not persuade the child to have sexual intercourse. In contrary, the victim who contacted the perpetrator and offered sexual services to get money. Based on this wrong understanding, the Prosecutor rejected all of the allegations contained in the examination of the case file[36].

The description above shows that rape experienced of a child was ignored since there are other terms that can be used to punish to the perpetrators.[37] The terms shows in; (a) Decisions Court Number 49/Pid.Sus-Anak/2018/PN.Mdn concerning asked a child to run away according to the Criminal Code Article 332 paragraph (1). Article 287 of the Criminal Code is not considered even though the victim has provided the information as stated in the case file. (b) Decision Court Number 71/ Pid. Sus-Anak/ 2018/ PN Lbp which

despite using Article 81 paragraph (2) to determine the perpetrator's actions against the victim, namely "Everyone who intentionally commits a trick, a series of lies, or persuades a child to have intercourse with him or with another person", the punishment given is more focused on fulfilling the rights of the perpetrator not to the victim who was previously promised to be married by the perpetrator. This decision also considers the existence of a peace effort made by the perpetrator's family to the victim in the form of an offer to marry between the perpetrator and the victim. An action if taken becomes sexual violence in other forms, namely forced marriage or child marriage which has an impact on the victim's future.

### ***Development of sexual violence terminology***

The term of sexual violence which are available does not protect children[38]. This situation appeared in Indonesia and internationally. The absence of consensus at the international level on what terms or language should be used has impacted global efforts to collect data and identify various modalities of sexual exploitation and sexual abuse of children[39]. Confusion in the use of language and terms has the potential to damage and weaken advocacy work and cooperation between governments and institutions. Translating terms into different languages poses further challenges. Without a clear conceptual understanding of the terms and agreement on their meanings, accurate translation in various languages is essential.

Over the last 10 years, people working for the prevention and elimination of sexual exploitation and sexual abuse have had to deal with new terms such as live streaming of child sexual abuse. At the same time, terms such as child prostitution and child pornography are increasingly being criticized and replaced by alternative terms, which are considered less harmful or stigmatizing the child. It is not clear whether and how these novelties and changes in terminology lead to different approaches or actions. There is a growing concern that changes to existing provisions, particularly applicable legal provisions, may cause confusion or lack of understanding. In fact, the use of this term may hinder the effective prevention and elimination of child sexual exploitation, unless this change occurs jointly by a large number of child protection actors across the country [40].

At the initiative of ECPAT, The Interagency Working Group was formed to develop a set of Terminological Guidelines to protect children from sexual exploitation and sexual abuse. The invaluable commitment and input of the Working Group members led to the adoption, in Luxembourg, of the Guidelines presented in the document known as the Luxembourg Guidelines. The aim of the Luxembourg document is to provide all individuals and institutions working for the prevention and elimination of all forms of sexual exploitation and sexual abuse of children with guidelines for understanding and using various terms and concepts they may encounter in their work [41].

The Luxembourg Guidelines state that it is hoped that it will be disseminated, and that all actors will familiarize themselves with the meaning and possible uses of the terms and concepts presented in the Guidelines. The repeated use of the term will contribute to the more effective protection of children from all forms of sexual exploitation and sexual abuse [42]. Important words can influence how we conceptualize problems, prioritize problems, and respond to them. Inconsistent use of language and terminology can lead to inconsistent enforcement of laws and policies on the same issue. Despite the existence of legal definitions for a number of sexual crimes against children, there remains considerable confusion around the use of various terms related to sexual exploitation and sexual abuse of children. Even when the same term is used, there is often disagreement as to what it actually means. This leads to the use of the same word to refer to different

actions or situations. As a result, this difference in meaning creates significant challenges for policy and program development, legislation development, and data collection. This ultimately results in poor response and limited and ineffective methods for measuring impact or setting targets.

At the beginning of this sub-chapter it has been mentioned that differences in interpretation and/or absence of the term sexual violence also occur in Indonesia. This is due to Indonesia is not English speakers. So that the interpretation of the texts of international conventions or treaties often has different meanings such as the term sexual violence. In the context of international/cross-border child sexual exploitation and abuse, these difficulties are even greater. The impact that cannot be ignored is the impact on victims of sexual violence, especially children. The Luxembourg Guidelines on the term sexual violence against children refer to terms defined by international and/or regional legal instruments. Recent years have shown that much has changed in the terminology used in the field of child protection. This condition is a result of using the Internet to carry out various forms of sexual exploitation and/or harassment such as online grooming and live streaming of sexual exploitation/or abuse. Meanwhile, international standards such as the CRC have not yet reflected all of this new phenomenon.

The term of sexual activity is very often used in the definition of child sexual abuse and exploitation without an explanation of its scope. The CRC which was passed in 1989 does not have an explanation about the definition of sexual activity. This explanation is contained in the additional Protocol to the CRC on the sale of children, child prostitution, and child pornography (OPSC) in 2000. Unfortunately, the OPSC only mentions sexual activity explicitly but fails to explain what it really is). Intended in the arrangement. This leaves a potential loophole in international law as “non-explicit-non-explicit” with respect to sexual activity[43].

In protecting children from sexual exploitation and sexual abuse, it seems important to focus on actions that jeopardize the sexual integrity of the child. The Luxembourg Guidelines provide a definition of sexual activity as explicit and non-explicit sexual activity that causes harm. The following are some definitions in international legal instruments regarding sexual violence against children that are legally binding[44]:

a. 1989: The CRC does not define “sexual violence”, but includes “sexual abuse” in its definition of “violence” in Article 19 and specifically addresses protection from sexual exploitation and sexual harassment in Article 34

b. 2011: Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (“Istanbul Convention”) refers to “sexual violence” in Article 36. In addition, Article 3 of the Convention explicitly expands the scope of instruments for including girls under 18 years old.

c. Non-binding instruments using the term “sexual violence” are increasingly used in resolutions of the United Nations General Assembly (UNGA) and the Human Rights Committee (HRC). Some examples are included below.

- 2010: HRC Resolution A/HRC/13/L.21 on the Rights of the Child: The Fight Against Sexual Violence.

- 2011: UNGA Resolution 66/140 on the Girl Child mentions sexual violence against children.

- 2011: UNGA Resolution 66/141 on *the Rights of the Child, Paragraph 23*, states that *rape and other sexual violence against children*[45].

- 2011: CRC Committee General Comment No. 13 concerning *the Right of the Child to Freedom from All Forms of Violence* give the following definition: *sets forth a broad definition of violence against children which includes sexual abuse and exploitation. It further defines sexual abuse and exploitation as including “(a) The inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity;*

*(b) The use of children in commercial sexual exploitation; and (c) The use of children in audio or visual images of child sexual abuse; (d) Child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage. Many children experience sexual victimization which is not accompanied by physical force or restraint but which is nonetheless psychologically intrusive, exploitive and traumatic.[46]*

Establish a broad definition of violence against children that includes sexual abuse and exploitation. It further defines sexual harassment and exploitation as: (a) The inducement or coercion of a child to engage in unlawful or psychologically harmful sexual activity; (b) The use of children in commercial sexual exploitation; and (c) the use of children in audio or visual images of child sexual abuse; (d) Child prostitution, sexual slavery, sexual exploitation in travel and tourism, human trafficking (within and between countries) and the sale of children for sexual purposes and forced marriages. Many children experience sexual victimization that is not accompanied by physical force or restraint but which is psychologically disruptive, exploitative and traumatic.

d. 2013: The Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in the Association of South-East Asian Nations (ASEAN) refers to the part of preamble... to the need to “prevent and protect [women and children] from and respond to all forms of violence, abuse and exploitation [...] including women and children who are sexually exploited[47]”.

The Declaration on the Elimination of Violence against Women and the Elimination of Violence against Children in the Association of Southeast Asian Nations (ASEAN) refers in its Preamble to the need to “prevent and protect [women and children] from and respond to all forms of violence, abuse and exploitation [ . ..] including sexually exploited women and children”. Although the term violence is often used in connection with some forms of physical action, the original meaning of violence signifies that the act has a marked or strong effect[48]. While English dictionaries often refer to violence as physical use of force. It is also recognized that violence means actions or words intended to injure people.

Indeed, it is increasingly recognized that violence against children can be not only physical but also psychological and sexual. The notion of using the term sexual violence has been used primarily when referring to adults, often in relation to gender-based violence and in public health discourse, and is often associated with rape.

The Declaration on the Elimination of Violence against Women, adopted by the United Nations General Assembly (UNGA) in 1993, defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical or sexual harm or suffering for women, including threats of such acts, coercion or arbitrariness, deprivation of liberty, whether occurring in public or private life”. This definition includes, but is not limited to, physical, sexual and psychological violence that occurs in the family. The definition of violence also includes beatings, sexual abuse of girls in the household, violence related to dowry, marital rape, female genital mutilation and other traditional practices that are harmful to women. Non-partner violence and exploitation-related violence; physical, sexual and psychological violence that occurs in the general population, including rape, sexual harassment, sexual harassment and intimidation in the workplace, in educational institutions and elsewhere. Trafficking of women and forced prostitution; and physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs.

“Sexual violence” has become an important term in programming and policy-making, and is increasingly found in public discourse. When interpreted broadly, it has the advantage of being an all-encompassing term including all degrees of violence and all forms of suffering inflicted (physical, psychological, or sexual) as well as all types of action



(through contact, non-contact, by negligence). It is important for policymakers and legislators to, on the one hand, pursue an integrated approach to protect children from all violations of human dignity and their sexual integrity, and on the other, to monitor and act to prevent and respond to new forms of violence. Sexual relations and to adopt all necessary measures to ensure the effective protection of children, including providing appropriate referral mechanisms.

The terms “sexual abuse” and “sexual exploitation” are defined in international law and remain important when dealing with violations of the rights of children of a sexual nature. In many domestic legal systems, as well as in EU law,<sup>[49]</sup> the use of violence may represent a factor that exacerbates sexual crimes against children. Sexual violence can also be a form of torture or other cruel, inhuman or degrading treatment or punishment in certain circumstances. UN Convention against Torture and Others.

Cruel, inhuman or degrading treatment or punishment states that “‘Torture’ means any act that causes severe pain or suffering, whether physical or mental, intentionally done to a person for a specific purpose such as obtaining from him or a third person. information or confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is perpetrated by or at the instigation or with the approval or approval of a public official or other person acting in an official capacity”. The United Nations Committee against Torture has stated that it views “sexual violence and trafficking as a gender-based act of torture and within the scope of the Committee”, and has repeatedly linked sexual violence to torture<sup>[50]</sup>.

### ***The Development of the Term of Sexual Violence in Indonesia in Child Protection Efforts***

The state is a legal subject that is par excellence. J.L. Briery defines the state as an institution, as a forum where humans achieve their goals and can carry out their activities<sup>[51]</sup>. States have all legal competence, rights and obligations under international law<sup>[52]</sup>. According to Mochtar Kusumaatmadja, the state is a juridical construction, where in many state participations in various international agreements rights and obligations arise, but these rights and obligations cannot be directly imposed on individuals, but through the state.

The personification of the state gives birth to the consequence of the birth of the concept of state responsibility (responsibility) for what the state does. The state's responsibilities include within and outside the boundaries of the State's jurisdiction. The principle that applies to the State is that in sovereignty there is an obligation not to abuse that sovereignty<sup>[53]</sup>. With this consideration, a State can be held responsible for all actions taken by the State. In addition, it must be realized that with the existence of a state that accepts a "social contract" from the people, the basic natural rights of citizens, which in the life of the state are protected and guaranteed not to be denied by anyone, including the state.

Paragraph (1) Article 19 of the CRC states that the existence of children who are victims of sexual violence is in the care of their legal guardians or any other person who takes care of the children. In addition to child victims receiving protection from exploitation violence including sexual abuse, children are also entitled to a family environment and alternative care as regulated in Article 20 of the CRC. This article states that a child who has lost his family environment, for example, becomes sexual violence (incest) by his father or uncle must obtain alternative maintenance from the State<sup>[54]</sup>. Alternative care further described in paragraph (3) includes child care, Islamic law of Kafala, adoption or if necessary placement in appropriate institutions for child care. Other rights of children

who are victims of sexual violence that must be considered are the right to education and the right to health.

Health rights for children who are victims of sexual violence will be related to their right to privacy when accessing health services after the occurrence of sexual violence. Several cases show that when children access health services in public health services, children often become victims again due to the attitude of service providers or the public who are present at service places that provide stigma. The protection that children need for their privacy is regulated in Article 16 of the CRC which reads: "No one will be subject to arbitrary and unlawful interference with his person, family, household or by letter of intent, as well as to unlawful attacks on his honor and reputation." Children have the right to legal protection against such interference or attacks.

Article 34 of the CRC is an article that specifically discusses children who are victims of sexual violence. This article is included in the Cluster of Children who need Special protection. States seek to protect children from all forms of sexual exploitation and sexual abuse. To achieve this objective, States Parties shall in particular take appropriate, bilateral and multilateral measures to prevent: (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; (c) the exploitative use of children in pornographic performances and materials

Table 1

Indonesia Law on Child Protection

No	Laws	Subject
	Law No. 3/1997	Juvenile Justice
	Law No. 20/1999	Ratification on Convention of ILO 138
	Law No. 39 / 1999	Human Rights
	Law No. 1 / 2000	Ratification on Convention of ILO 182
	Law No. 23/ 2002	Child Protection
	Law No. 13 / 2003	Labour
	Law No. 20 / 2003	National Education System
	Law No. 23 / 2004	Elimination of domestic violence
	Law No. 12 / 2005	Ratification on International Covenant on Civil and Political Rights
	Law No. 12 / 2006	Citizenship
	Law No. 13 / 2006	Witness and Victim Protection Agency
	Law No. 23 / 2006	Population administration
	Law No. 21/ 2007	Elimination of the Crime of Trafficking in Persons
	Law No. 24 / 2007	Disaster management
	Law No. 11 / 2008	Electronic Information and Transaction
	Law No. 44 / 2008	Pornography
	Law No. 11 / 2009	Social welfare
	Law No. 14 / 2009	Ratification on Protocol To Prevent, Suppress And Punish trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against transnational Organized Crime
	Law No. 36 / 2009	Health
	Law No. 9 / 2012	Ratification the Optional Protocol on the involvement of children in armed conflict
	Law No. 10 / 2012	Ratification Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
	Law No. 11 / 2012	Juvenile Criminal Justice System

Law No. 21 / 2014	Revision on Law No 13/2006 on Witness and Victim Protection Agency
Law No. 35 / 2014	Revision on Law No 23 /2002 concerning Child Protection
Law No. 17 / 2016	Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law

Source: Collected and managed from various sources

The table above shows that the implementation of CRC carried out by Indonesia in the legislative field in the form of Laws aimed at the welfare of children is quite a lot. But is the law in accordance with the steps expected by the CRC as stated in its articles? This question will be answered in the next description which will discuss the legislative steps taken by the Indonesian government.

### ***Law on Marriage***

Law Number 1 of 1974 concerning marriage states that the marriage age for female is 16 years while for male it is 19 years<sup>[55]</sup>. Based on the Executive Summary: Report on the Review of the Implementation of CRC in Indonesia, it is stated that one of the laws that violates the provisions and principles of CRC is Law No.1/1974 on Marriage<sup>[56]</sup>. The violations mentioned by the National Coalition for Monitoring the Rights of the Child related to the age at which female are allowed to marry are 16 years and male is 19 years. UU No. 1 /1974 concerning Marriage. However, those age can also get married as long as their parents want it and there is a permit from a legal marriage institution<sup>[57]</sup>. As conclusion, the UN Committee on the Rights of the Child observes the Concluding observations on the combined third and fourth periodic reports of Indonesia in paragraph 36 that the Committee urges Indonesia to seek effective measures to prevent and eradicate the practice of early marriage. Child or forced marriage, including all necessary legislative measures as well as awareness building and campaigning about the harms and harms resulting from child marriage<sup>[58]</sup>.

The problem raised, as long as it has not been revised, the old provisions will remain in effect or better known as 'limitative constitutional'. This means that before there is a change, the old provisions will still apply even though they are considered unconstitutional because they are not the same as the definition of a child in the Child Protection Act. This is clearly detrimental to children because child marriage is a form of sexual violence or is specifically included in harmful practices for children<sup>[59]</sup>. The thing that is a concern and must continue to be monitored by the Government of Indonesia, especially the Ministry of Women's Empowerment and Child Protection (Kemen PPA) is related to the waiting time of three years. After three-years, if it is not completed, the decision of the Legal Review on Law No. 1 of 1974 concerning Marriage will take effect automatically. The changes that must be made by the DPR RI are on Article 7 paragraph 1 of Law No. 1 of 1974 which states that the minimum age for marriage is 16 years for female and 19 years for male need to adjust to fulfill the child protection right<sup>[60]</sup>.

Based on the above description, the issuance of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage which contains the following considerations: (a) that the state guarantees the rights of citizens to form families and continue offspring through legal marriages, guarantees the rights of children for survival, growth, and development and the right to protection from violence and discrimination as mandated in the 1945 Constitution of the Republic of Indonesia; (b) that marriage at a child's age has a negative impact on children's growth and development and will result in the non-fulfillment of children's basic rights such as the right to protection from violence

and discrimination, children's civil rights, health rights, education rights, and children's social rights; it can be concluded that Indonesia has succeeded in implementing gender non-discrimination as mandated by the CRC and also CEDAW. In particular, the issuance of Law No. 16 of 2019 shows that Indonesia as a member country of the CRC has taken steps to internalize international legal instruments in the Indonesian legal system so that it is in accordance with Article 19 of the CRC.

### ***Law on Child Protection***

Indonesia has Law No. 23 of 2002 on Child Protection. This law has been amended through Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning Child Protection. The second amendment is contained in Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment of Law No. 23 of 2002 concerning Child Protection into Law. Law No. 23 of 2002 on child protection. Law No. 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law regulates and emphasizes the need for heavier criminal sanctions and fines for perpetrators of crimes against children such as in Yuyun Case. Punishment of punishment, especially for perpetrators of sexual crimes, which aims to provide a deterrent effect, as well as to encourage concrete steps to restore the child's physical, psychological and social life<sup>[61]</sup>. The existence of heavier penalties for perpetrators of sexual violence against children did not have an impact on reducing the number of sexual violence. The situation of sexual violence against children is increasingly complex. Perpetrators of sexual violence against children are not only adults but also children. Several cases of sexual violence against children were carried out by the victim's boyfriend or peer who was still a child, including children with disabilities<sup>[62]</sup>.

### ***Child Friendly Culture and Environment in Indonesia***

General comment No. 13 (2011) concerning the right of the child to freedom from all forms of violence provides an explanation of the education measures implemented by the Indonesian government in the form of Child Friendly Schools (*Sekolah Ramah Anak-SRA*). This SRA policy is one of 26 indicators that must be met by a district/city to create a Child Friendly City (*Kota Layak Anak/KLA*). The implementation of KLA was introduced since 2006 by the State Ministry for Women's Empowerment and Child Protection (Kemeneq PPA).

KLA is a mandate of Law No. 35 of 2014 concerning Child Protection in Article 21 paragraph (5). This paragraph states that local governments can implement national policies in the implementation of child protection through the development of child-friendly cities. When referring to paragraphs 1-4 in article 21, it is known that KLA is a form of implementation of the obligations and responsibilities of the State and the Government to respect the fulfillment of children's rights regardless of ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status, birth order, and physical and/or mental condition. In particular, this Law provides a mandate to the Regional Government to carry out the implementation of Child Protection such as the Medan City government. This mandate is the integration of Article 4 of the CRC which has been ratified through Presidential Decree No. 36/1990 on the Ratification of the Convention on the Rights of the Child. In particular, KLA is regulated in the Regulation of the State Minister for Women's Empowerment (Menneq PP) No. 2/2009 concerning the KLA Policy<sup>[63]</sup>.

Furthermore, the regulation related to children regulated in the Regional Government Law stipulates that Women's Empowerment and Child Protection is one of the "Mandatory" Affairs of the Provincial Government and Districts/Municipal Governments that are Non-Basic Services. The Ministry of PPPA in 2009 issued Ministerial Regulation of PPPA No. 2 of 2009 concerning the KLA Policy, which was tested in 10 districts/cities. The final goal to be achieved is that by 2030 Indonesia has reached the condition of Indonesia Suitable for Children (Indonesia Layak Anak/IDOLA)[64]. In 2011, to accelerate the realization of Child-friendly Districts/Cities throughout Indonesia, the Ministry of Women's Empowerment and Child Protection issued four State Ministerial Regulations for Women's Empowerment and Child Protection, namely (a) Ministerial Regulation of PPPA Number 11 of 2011 concerning Child-friendly District/City Development Policies. . (b) Permeneg PPPA Number 12 of 2011 concerning Child Friendly Districts/City Indicators. (c) Permeneg PPPA Number 13 of 2011 concerning Guidelines for the Development of Child-friendly Districts/Cities. (d) Permeneg PPPA Number 14 of 2011 concerning Guidelines for Evaluation of Child-friendly Districts/Cities[65].

This Child Friendly School Guide also explicitly states that this program is based on:

1. Law Number 23 of 2002 concerning Child Protection and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2003 concerning Child Protection; Article 54 which reads: (1) Children in and within the education unit are required to obtain protection from acts of physical, psychological, sexual violence, and other crimes committed by educators, education staff, fellow students, and/or other parties; (2) The protection as referred to in paragraph (1) is carried out by educators, education staff, government officials, and/or the public."

2. Article 70 paragraph (2) states "Everyone is prohibited from treating children by ignoring their views in a discriminatory manner, including labeling and equality in education for children with disabilities

## **CONCLUSION**

This paper concludes as follows: a) The use of the term sexual violence is limited in providing maximum protection for child victims of sexual violence; b) The development of the term sexual violence internationally and regionally must be adopted by Indonesia to provide protection for child victims of sexual violence in the laws and regulations; c) There are efforts by the Indonesian government to support the future of child victims of sexual violence through the Child Friendly City (*Kota Layak Anak/KLA*) program. For this reason, to ensure a future for Indonesian children, especially victims of sexual violence, the Indonesian government should immediately legalize the draft of Law on the Elimination of Sexual Violence. One of the measure has been done through legalize the Law No. 16 / 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage.

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