

ARTICLE

Sociological Juridical Review Regarding The Protection of Children's Rights as Witnesses in Criminal Acts of Abuse Committed by Children at the Investigation Stage

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Abstract

Background: Witnesses are a form of evidence that is valid according to law because it is used to reveal a fact. The witness's statement can be extracted by the investigator, namely at the investigation stage. If the witness is a child, their rights are protected as regulated in Law No. 23 of 2006 concerning Child Protection.

Purpose: This research aims to find out how children's rights are protected, the obstacles to providing protection, and efforts to overcome barriers to delivering protection rights for children as witnesses due to the crime of sexual abuse committed by children at the investigation stage in the jurisdiction of the Kepanjen Resort Police.

Methods: This research uses a sociological juridical approach, data collection techniques in the form of interviews with investigators, and direct observation at the PPA Unit of the Kepanjen Police and Children who have been witnesses as a place for collecting primary data to carry out document studies in the form of official documents, reports and regulations used.

Findings: The results reveal substantial inconsistencies in the age of criminal responsibility, limited compliance with the UN Convention on the Rights of the Child, and inadequate consideration of psychological maturity in determining culpability.

Theoretical and Practical Implications: Research results show that in investigations of child abuse cases, children as witnesses have received guaranteed rights under the law.

Originality/Novelty: The obstacles faced are classified as internal and external obstacles. So that in the future, PPA will tighten supervision and establish better cooperation with the government.

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Keywords:
child abuse, witness,
investigation, children
rights, child protection .

INTRODUCTION

In Indonesia, many criminal acts still occur, and there are various kinds. However, despite this, the perpetrators, victims, or witnesses involved in a criminal act must still receive legal protection from the Indonesian state so that they are free from intervention from various parties so that what they do, experience, and know can be revealed as valuable facts. However, the victims or witnesses of a crime here do not only happen to adults; some children experience being victims, perpetrators, or witnesses. However, whatever a child does, the child must receive special treatment and not be the same as adults, considering that children here have mental and physical characteristics that differ from adults, especially when children conflict with the law.

Based on (Law Number 23 Year 2022 About Child Protection, 2002), children are those who are still under 18, including those who still in a womb. Children are a mandate from the Almighty God in whom the essence and dignity of being a complete human being is inherent. Because children here are the next generation of the Indonesian nation, the mental and physical care for the development of these children must receive more attention so that children can develop and grow in society both mentally and physically and are also able to become the nation's next generation of quality. The Constitution of 1945 article 28B paragraph 2 also stated:

“Every child shall be entitled to viability, to grow up, and to develop as well as be entitled for protection against violence and discrimination¹”.

Nonetheless, children's growth is affected by several factors, such as environment, family, friends, and experiences – especially the bad experiences that caused trauma (Asmadi et al., 2020). One of the traumatic experience's children might have is being sexually abused. The KEMENPPA report shows that most sexually abused victims are 6-17 years old (KEMENPPA, 2023).

Hence, these conditions could lead to several traumas, especially in the investigation process as a witness or victim. Nonetheless, children's growth is affected by several factors, such as environment, family, friends, and experiences – especially the bad experiences that caused trauma. One of the traumatic experience's children might have been being sexually abused. The KEMENPPA report shows that most sexually abused victims are 6-17. Hence, these conditions could lead to several traumas, especially in the investigation process as a witness or victim. In any case of child abuse, children should be obliged to become witnesses in a healthy mental condition. Hence, the investigation team should provide a safe environment and keep their dignity as stated in Law 34 Year 2014 about Child Protection (Jamaludin, 2021).

In this regard, quoted from (Avissa, 2023), one example of a recent case involving the protection of children's rights as witnesses, this is the case of CDO abuse by MDS, which involved AG. In this case, AG is a witness who is 15 years old, which means he is still a minor. However, protection regarding complete identity, photos and other personal information is wholly distributed on social media. The leaked data then proves that there

¹ The Constitution of The State of The Republic of Indonesia of The Year 1945, article 28B paragraph 2

were violations of the Law on the Child Criminal Justice System (Law No. 11/2012) committed by the investigative team during the investigation process.

If we go back a little to 2009-2011, there were similar cases related to violations of the protection of children's rights as witnesses in investigations. A report by the KPAI Commissioner stated that in 2011, there were 261 complaints regarding children being abused in conflict with the law. In addition, media coverage regarding this matter also touched the figure of 86,000 (Commissioner of KPAI, 2014). As a result, it was necessary to carry out a re-assessment in that year regarding how children's rights as witnesses were fulfilled during the investigation process.

Based on these conditions, this research was designed to find out how child protection rights are practiced in the investigation process in the Kepanjen resort police area, with a Case Study of Obscenity No. LP/256/VIII/2010/Jatim, at Kepanjen Malang Police.

RESEARCH METHOD

This research serves to find out and analyze the rights of child protection, obstacles implementing child protection and its efforts to overcome the barriers to children as witnesses in the crime of sexual abuse committed by children at the investigation stage at the Kepanjen Police. The method used in this research is sociological juridical, namely elements of the legal science and sociological approaches, which are pursued through systematic and controlled research based on an evidentiary framework to confirm, expand and explore or obtain data directly from the field regarding the object under study, both primary data as main data and secondary data as supporting or complementary data.

RESULTS

1. Development of Obscenity Cases in Kepanjen Police

Table 1. Number of Obscenity Cases in Kepanjen Police 2009-2010

Settlement	Number of cases in 2009	Number of cases in 2010
Arraignment	44	50
Investigation	10	14
Total	54	64

Source: secondary data, 2011

From the table above, we can see that in 2009, the number of cases completed at the court level reached 44 while only ten were conducted at the investigation level with the total number of sexual abuse cases in 2009

reaching 54 while in 2010, there was an increase in the number of sexual abuse cases completed at the court level. The court got 50 cases, while those assembled at the court level were 14, with 64 cases occurring in 2010, more than the previous year.

Case Position

To get to know more about how investigation team implement the children rights this case would give some examples (Case Study of Obscenity No. LP/256/VIII/2010/Jatim, at Kepanjen Malang Police) as follow:

"On 8 August 2010 around 12.00 WIB, DK (4.5 years old) daughter of SA (43 years old). R (7 years old) came to DK's house looking for his friend Rz (7 years old). But there's only DK and S (7 years old) in her house, hence R carry DK to her grandfather's room to play. Nonetheless, it turns out that R is sexually harassing DK. Then, DK told her mom about the accident. Yet, R doesn't admit his action while on 9 August DK's family went to R's house. By this condition, on 10 August this case was reported to police".²

From the case above, we can see that S's position is very unfavourable because, by chance, Sarah was in the house, so S was asked to be a witness by the victim's family. This is reinforced by S's confession as follow:

"Actually, I don't want to be a witness because I feel afraid of Robi's family. Because Robi's family is also my neighbour, I'm worried that if Robi's family threatens me because of this". ³This is how PPA take a role, which handles children's and women's issues, is needed when the child conflicts with the law and even more so when the child becomes a witness.

2. Protection Regarding The Rights Of Children as Witnesses in Criminal Acts of Sexual Abuse Committed by Children at The Investigation Stage

Protection regarding the rights of children S as witnesses to criminal acts of sexual abuse committed by children R at the investigation stage is as follows;

Treat children humanely under the child's dignity and rights: treating children humanely is the state's responsibility. Under any circumstances, the child must be treated following the child's dignity, and the child's rights must also be fulfilled, especially when the child conflicts with the law. Therefore, investigators must also be careful in conducting investigations into a child. Stated by Yuli's: "*Investigators must treat children fairly without discriminating between ethnicity, race and religion because every child in the eyes of the law is the same so that children do not feel isolated. This is done to maintain children's social development so that it remains good. When a child becomes a witness, the child is free to convey his opinion according to what he knows, and his level of intelligence, and the investigator tries to understand what the child is saying without making it difficult for the child.*"⁴

Provision of accompanying officers from an early age: providing child support officers from an early age is very necessary, considering that children cannot fend for themselves, and apart from looking after the children in the accompaniment, they can also act as

² Interview with Bripka Puji Lestari, as assistant investigator for the Child and Women's Protection Unit and data processed

³ Interview with Brigadier Erlehana, Police BAP in relation to LP No. Pol: LP/256/VIII/2010/Jatim/Polres Malang 20 July 2011 and processed by the author

⁴ Interview with Inspector Yuli Puspa, Head of the Child and Women's Protection Unit, July 20 2011 and data processed

translators. Apart from that, the complement can also monitor whether the child's rights have been fulfilled, so the accompaniment must also understand what children's rights are. Early witness assistance is regulated in the Convention on the Rights of the Child (KHA), which the UN General Assembly adopted in 1989, article 37 b, which states that every child whose liberty is deprived has the right to immediate access to legal aid and other appropriate assistance, and also the right to deny lawful deprivation of freedom before a court or other competent, independent and just authority and of immediate judgment regarding any such action.

Providing special facilities and infrastructure means anything that can be used to achieve a goal or objective—tool; media, for example, mosques. Infrastructure is the primary support for the implementation of a process. In providing facilities and infrastructure, an investigator who understands the child's psyche and the investigator can design and deliver what is needed so that the child feels at home and is not afraid in the PPA Unit room. Disclosed by S (witness): "*The PPA Unit room has a television, dolls, cartoon pictures stuck on the walls, flowers, and excellent seats. Sarah feels at home and doesn't get bored in the PPA Unit room because, at home, there are no televisions and dolls like in the PPA Unit*". Based on information obtained by the author from investigators and witnesses, here the witness feels at home and is not bored because the investigator has provided the necessary things to maintain the child's mental state so that he does not feel afraid and the witness feels entertained by what is in the PPA Unit room.

Protects from threats: It is indispensable and even mandatory for investigators to protect witnesses from threats because threats to witnesses can come at any time. Apart from that, the houses of witnesses and perpetrators are very close together. Therefore, investigators must be able to protect children through temporary accommodation for witnesses—during the investigation process. According to Article 2, point 4 of Law no. 4 of 1979 regulates children's rights: '*Children have the right to protection from the environment which can harm or hinder average growth and development.*⁵

Provide personal security protection: children as witnesses need protection from private security, which means disturbances that come when the child is in the police or outside the police, so this can also disrupt the witness's activities, which were previously normal and become abnormal. Facilities and infrastructure are essential for witnesses and investigators to obtain something optimal in examining children in conflict with the law and to support the expediting of the examination process so that it can be completed quickly and precisely.

Provide information without pressure: in providing information or testimony regarding a criminal act, the party providing the data must be in a condition that is not under pressure from any party, or the witness can be called a neutral person, especially as the witness is a child who must be given more privilege than adults considering that

⁵ Law no. 4 of 1979 Article 2, point 4

children are the next generation of the nation. So, it is hoped that the legal process will not interfere with the witness' development. Said by Mrs. Yuli: "*To enable the witness to give information without pressure from anyone, the investigator gives freedom of opinion and carries out activities according to the wishes of the child witness and provides a comfortable place that does not give the impression that the investigator is asking for information.*" 'Apart from that, the investigating witness must pay attention to the witness' condition first before asking whether the witness is in good health or not, and the question must be conveyed in smooth and gentle language so that the witness does not feel pressured into answering the questions asked by the investigator.

To avoid questions that are felt to be swooping in or cornering the witness to answer, the investigator must have a method that makes it seem like the child does not feel asked. Witnesses also have the right not to ask questions that are considered to be cornering or questions that dive into the witness, such as forcing questions or directly asking questions that have been given a choice answer by the investigator because these questions are considered to lead the witness because if an alternative explanation is given, then this is when the investigator can predict the witness answer, then the witness's response. S said: *"After being asked for my name and other identities (religion, school, parents' names) and who knew about the incident, I was only told to tell what I learned. I then told the story from the beginning about what I knew about the incident that DK experienced."*⁷

3. Obstacles in Providing Protection of Children's Rights as Witnesses in Criminal Acts of Obscenity Committed by Children at the Investigation Stage.

Internal Constraints:

In providing legal assistance officers, investigators always collaborate with LBH or expert psychologists, even though the witness is accompanied by his grandfather and his neighbor, but the proposal for cooperation is sometimes difficult to realize because the system for carrying out such cooperation takes a long time to receive a response while the investigator. The time limit for the investigation process is also 20 days and can be extended to 30 days for child witnesses. Sometimes, the witness's companion scolds the witness until he cries for various reasons, namely because the witness does not immediately provide information to the investigator because he is still embarrassed or afraid. Investigators cannot monitor the treatment carried out by the accompanying witness when they are no longer at the police station to see whether the treatment carried out by the companion is humane and under the child's dignity.

The obstacle experienced by investigators in providing these facilities and infrastructure is because the PPA Unit room is still too small and cramped even though every day lots of people come to the PPA Unit room, either as people with problems or students who are conducting research, so the PPA Unit space is felt to be inadequate. Wide.

⁶ Interview with Inspector Yuli Puspa, Head of the Child and Women's Protection Unit, July 20 2011 and data processed

⁷ Interview with Sarah Febiyanti Date 14 July 2011 and data processed

Apart from that, the use of existing infrastructure, such as dolls, is sometimes damaged and lost somewhere because after the toys are made, they are not returned to their place, so indirectly, the infrastructure is reduced.

The child feels afraid at home because the child's house is close to the perpetrator, so he immediately runs home when he meets the perpetrator's family. This becomes an obstacle for investigators in protecting from threats if something happens to the child and can cause mental or physical harm because investigators cannot supervise. The child continuously because when the child is at home, the family is watching over him.

Sometimes journalists look for information when the child and family, after the examination is finished, wait and interview the child, so sometimes investigators don't know about this because it is beyond monitoring.

Child witnesses are difficult for investigators to control. After all, when they are given the freedom to speak and do activities as they please, they are not in the PPA Unit room because they run around or still want to go to other places in the Kepanjen police station because, at that age, the child is still inquisitive. The witness also sometimes chooses another investigator he feels is suitable for him so that sometimes the chosen investigator is also busy providing services to guests who come to the PPA Unit. The number of investigators still needs to be increased, namely, only seven people, considering that so many cases are being handled.

Not all investigators ask questions that are not ensnaring, but sometimes, one or two investigators feel these questions corner the witness. Apart from that, the witness still feels embarrassed and afraid of the investigator, so the questions given by the investigator have to be interspersed with joking or seducing the witness, so it takes quite a long time to approach witnesses.

In fulfilling the witness's right to obtain a new residence, the obstacle is that the PPA Unit still needs a temporary place (safe house) specifically for the witness. Apart from that, even if the PPA Unit itself is used as a temporary residence for the witness, it can still be considered unsuitable because the witness is a child. Even though the place has been designed from a child's perspective, the area is judged differently at night and is no longer suitable as a temporary residence for child witnesses.

In providing replacement money for transport to witnesses or their replacements, sometimes investigators need to think about it because so many cases are being handled. Apart from that, sometimes the investigators don't want to give replacement money because sometimes because the amount is not too significant, investigators feel uncomfortable asking for compensation for the transportation money

External Constraints:

The witness does not have a cell phone, so if she sends a notification letter, it is feared that the investigator will forget. Sometimes, they don't even think about it because the presence of the witness only takes a few days, and there is much work, so more often, the

notification is via cell phone. However, the witness and her family do not have a cell phone. So, it is difficult for the police to provide information regarding the case's progress.

The witness and accompanying witness did not receive compensation for transport money from the investigator. This is undoubtedly very detrimental for witnesses and companions. When he went to the investigator, all transportation costs were paid by the witness's companion, even though the companion himself was also classified as a person who could not afford it, so when he came to the police station the second time, the companion felt that he had difficulty in terms of money because the money would be used for daily needs.

S (the witness) was forced to miss school for 2 (two) days because she had to fulfil a summons from the investigator to provide information at the police station for 2 (two) days because, at the first meeting, Sarah felt that the investigator was still not ready to provide information so it was postponed to the next day. So Sarah needed to catch up on her studies with her other school friends.

The infrastructure provided by investigators still needs to be completed, so entertainment for children in conflict with the law, such as Sarah, a witness, is considered lacking. Apart from the few dolls provided, the provision of mineral water is also non-existent because it does not rule out the possibility that the witness may also feel thirsty as well as the investigator. Must explain that the pick-up car used must be a car that does not have police symbols on it because the witness and companion think that the vehicle used to pick up the witness is a police car, so the companion believes that the case will spread because many residents will ask questions when the police car enters the village.

4. Efforts to Overcome Obstacles in Providing Protection of the Rights and Obligations of Children as Witnesses in Criminal Acts and Abuse Committed by Children at the Investigation Stage

Overcoming Internal Constraints:

The investigator tried to comfort the child witness so that the child would not cry and comforted him by giving him a stuffed toy in the upper room, which the investigator had provided. Apart from that, the investigator also gave advice and understanding to the companion not to scold the child because this could hamper investigations.

After the letter summoning the witness is delivered to the investigating witness, the investigator also makes a letter of request to LBH, NGO or expert psychologist so that the assistance of the witness can be at the time desired by the investigator. When they have met either a member of the NGO, LBH or an expert psychologist, they request a person. Verbally so that in the future, they can quickly respond to the letter sent by the investigator to assist the child so that the child's problem is resolved quickly.

Investigators set up the UPPA Room every year to make it more exciting and add reading books for children and other toys that benefit children. Investigators are also trying to install DVDs and provide films appropriate for the child's age, such as Cartoon films.

Apart from being suitable for a child's development, it can also keep them from getting bored in the UPPA.

Collaborate with the child's companion to determine the child's development both mentally and physically, as well as more intensive supervision of the child witness and provide the investigator's cell phone number, which can later be used as a means of communication between the investigator and the child witness' companion.

Create public relations in the Kepanjen Police entrance sector, and every guest is required to report according to what is necessary for guests who will enter the Kepanjen Police Station, then check if they will join the PPA Unit and ask them for what purpose they are here and give advice to their companion not to tell about the case. to parties who feel it is not necessary to know about the issue, such as journalists, neighbours or strangers. It is thought that the case does not need to be known by parties who are not interested.

In any place where the child feels comfortable, the investigator tries to find loopholes so that he can tell the story to get the information he needs from the witness. The investigator must be more patient in treating the child so that the child feels he is being treated as he should. Apart from that, the investigator also tries to be a friend of the child witness. So that the shame that is in the mind can disappear.

The investigator is reminded and given direction by other investigators. The investigators are given guidelines for conducting interviews with witnesses, perpetrators or victims so that the questions asked by investigators are not entangling and are not always focused on those questions. Patience and experience are indeed needed when dealing with children when they conflict with the law. Sometimes, investigators also make mistakes, so investigators try to remind each other if one of the investigators is felt to have taken inappropriate actions towards children.

The investigator gave the cell phone number to the witness' companion, who was also the witness's neighbour and suggested that apart from the grandfather, the companion who was also a neighbour also supervised the witness because the companion was someone closest to the witness. So, the investigator's monitoring of witnesses is in collaboration with the companion. If something is felt to disturb or threaten the victim, the companion can contact the investigator.

The investigators are still trying to submit a request to the regional government to provide a new residence for the witness. In contrast, the witness is still involved in a judicial process and continues working with NGOs and LBH to ask for assistance so that the witness can be temporarily entrusted to them while waiting for the efforts of UPPA in applying to the surrounding regional government.

The investigator's efforts to overcome this obstacle are by reminding each investigator about reimbursement of transport money. And the head of the UPPA gave instructions to the investigators. If they want to replace the transport money, immediately contact the moderator of the UUPA, and the head of the UUPA will ask for the funds from the Administrative Police. In the case of changing the transport, the investigator can replace it

using their individual money first and can also report the replacement money to the head of the UPPA so that this does not harm the investigator and the companion or witness also does not feel disadvantaged because the transport money has been replaced.

Overcoming External Constraints:

IQ (Witness' mother) gave the investigator his cell phone number. Apart from that, IQ (Witness' mother) also asked for the investigator's cell phone number so that he could use his cell phone for further information. This is very important because if IQ (Witness' mother) and S feel that something needs to be reported, whether regarding the development of the case or security disturbances against S, then the cell phone is a medium of communication between S and the investigators.

To overcome the problem of transportation money, the Companion used part of the shopping money to fulfil the call for S. In contrast, the investigator did not reimburse the transportation money; Istikomah gave up because IQ (Witness's mother) did not dare to ask the investigator for the money.

After the judicial process was completed until the court decided, S was moved to a place far from the Gondanglegi hamlet, namely in the South Malang area, Bantur, Durmo village and her move was also not known to the people around her except for S's family and the victim who only knew of her whereabouts because it was to avoid the things that happened to S were because S's grandfather's house was quite close to the perpetrator. The family was no longer worried because S's was now safe.

IQ (Witness' mother) wrote a permission letter to the school because S had family matters. IQ (The witness' mother) did this because the school needed to learn about the problem.

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