



Balinese Local Wisdom's Perspective on Legal Protection for Children as Victims and Perpetrators of Sexual Abuse

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Abstract

Introduction to The Problem: The low quality of child protection based on the perspective of Positive Law in Indonesia has drawn much criticism from various elements of society who seem to prioritize the interests of victims compared to perpetrators of rape. Because without optimal protection, children will only become victims of a society that tends to be patriarchal. Therefore, the concept of restorative justice based on local wisdom is one of the solutions in legal protection for victims and children who commit sexual harassment towards minors who prioritize recovery.

Purpose/Objective Study: This study aims to understand, explain, and analyze the existence of legal protection for victims and children who sexually abuse minors from the perspective of Balinese local wisdom.

Design/Methodology/Approach: This article is the result of legal research, with statutory approaches, conceptual approaches, and case approaches. The types of legal materials used in this research are primary legal materials, secondary legal materials, and tertiary legal materials.

Findings: Legal protection for children based on local wisdom is a form of settlement that can be used against children as victims and children as perpetrators referring to the provisions of Article 1 number 6 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The protection in question is the existence of traditional village institutions in Bali as an effort to protect children.

Paper Type: Research Article

Keywords: Children; Sexual Harassment; Legal Protection; Local Wisdom

Introduction

Every human being has the desire and goal to have a child as the next generation, which guarantees the continued existence of the nation and state in the future. Article 1, Section 1 of Law No. 35 of 2014 concerning Child Protection explains that "a child is someone below 18 years old, even the one who is still in the womb". Parents are the most significant people in early childhood; the household is their primary learning environment (Sugiarto, 2021). Suppose a child receives less attention from his immediate environment. In that case, it is easy for him to commit acts that deviate from society's legal norms, starting from juvenile delinquency and eventually leading to criminal acts that require severe legal action (Haryono, 2016).

The less optimal role of parents during the development of children and adolescents has adverse effects, such as increasing delinquency in children and adolescents (Rumiyani, 2021). In its development, Indonesia has had special regulations regarding child protection, namely Law Number 4 of 1979 concerning Child Welfare and Law Number 3 of 1997 concerning Juvenile Court. They were subsequently replaced by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection (Wahyudi, 2015).

Sexual violence is one of physical violence, which includes criminal acts. Perpetrators of sexual violence do this to satisfy forced desire. Acts of sexual violence are not only in the form of forced sexual intercourse but other activities such as groping and even the act of staring. It follows Orange and Brodwin's narrative in the Journal of Psychology Early Prevention Toward Sexual Abuse on Children, which explains that sexual violence in children is coercion, threats, or deception of a child in sexual activity (Sari, 2015). This sexual activity includes staring, feeling penetration (pressure), abuse, and rape. The impact of sexual violence on children can be physical (cuts, tears on the hymen), psychological (mental trauma, fear of embarrassment, anxiety, and suicidal ideation or attempts), and social (cynical treatment from the people around him, fear of being involved in associations). According to Article 1, Section 1 of Law Number 12 of 2022, Crimes of Sexual Violence are "acts that fulfill the elements of a crime as regulated in this law and other acts of sexual violence as regulated in the law as long as it is determined in the law."

Meanwhile, suppose someone commits violence or forces a child to have intercourse. In that case, the perpetrator will be imprisoned for a minimum of 5 (five) years and a maximum of 15 (fifteen) years. Hence, the perpetrators of sexual harassment and sexual violence carry the same threat. The important element of sexual harassment is the unwillingness or rejection of any form of attention of a sexual nature, so it can be actions such as whistling, words, or comments which, according to local culture or manners (*rasa susila*) are normal, the occurrence of sexual violence to children can be caused by various factors that influence it so complex. In general, it can be stated



that the factors that cause sexual crimes against children are divided into 2 (two) parts, namely (Syahputra, 2018):

1. Internal factors are factors contained within the individual. It is specifically seen in the individual, and things that have a relationship with sexual crimes include:
 - a. Psychological Factors. Psychological conditions or abnormal self- states of a person can encourage a person to commit a crime. For example, an abnormal sexual appetite can cause perpetrators to commit rape against child victims without realizing their state;
 - b. Biological Factors. In reality, human life has various kinds of needs that must be met. There are three types of biological needs, namely food needs, sexual needs and protection needs. The need for sex is the same as other needs that demand fulfillment.
 - c. Moral Factor. Moral is an important factor in determining the emergence of crime. Moral is often referred to as a filter against the emergence of deviant behavior. Rape happens because the morale of the perpetrators is very low. Just like the latest case in East Jakarta, where a father with the initials YS had the heart to rape his biological child 35 times and have intercourse with the child.
2. External Factors. External factors are factors that come from outside of perpetrators, as follows:
 - a. Socio-Cultural Factors. Increased cases of immoral crimes or rape are closely related to socio-cultural aspects. As a result of modernization, an increasingly open culture and association that is increasingly free;
 - b. Economic Factors. Difficult economic conditions cause a person to have a low level of education which will impact whether the job obtained is good or not. In general, someone who has a low level of education tends to get a job that is not feasible. The state of the economy is a factor that directly or indirectly affects the main points of people's lives. As a result, there has been an increase in crime, including rape cases;
 - c. Mass Media Factor. The mass media is a means to gain information about sexual life. News about the crime of rape, which is often openly informed and dramatized, is generally described as the perpetrator's satisfaction. Things like this can stimulate mentally evil readers to get the idea of committing rape.

Rape cases are rife in Indonesia because the existing law in Indonesia in regulating rape cases lacks a legal reform that can burden the sanctions of the perpetrators who do it. For this reason, the Indonesian people urge the government to enact laws and regulations governing rape, especially rape against minor (Apriyansa, 2019). Sexual violence against children has received attention from many people because sexual violence against children is the highest level compared to physical and psychological violence, which is confirmed by information from the National Commission for Child Protection.

Denpasar: The Bali Regional Child Protection Supervision and Implementation Commission (KPPAD) recorded hundreds of children in legal cases throughout 2017-

2020. Both being the perpetrator and the victim. "In total, there are 746 children who face the law both as victims and who commit criminal acts or children who conflict with the law," said KPPAD Bali member Ni Luh Gede Yastini, in a written statement, Saturday, January 2, 2021. As many as 400 children are in trouble with the law. Another 346 children were victimized. Children with problems with the law are most charged with theft, including violent theft such as begal.

Meanwhile, children as victims are most likely to be sexually abused or abandoned. In 2020, KPPAD Bali still found several cases of children facing the law. One of them is the child victim of sexual abuse. Several cases of sexual violence in the past year have not been resolved. The legal process is hampered because the visum is charged to the victim. KPPAD Bali also found that the results of cases of sexual violence against children were opened in public spaces. "Even though this will greatly affect the victims of violence. Services needed are both medical, psychological, and legal assistance to recover the victim's condition. As the data presented above, sexual violence against children is increasing, so appropriate strategies are needed to prevent and deal with victims of violence, especially victims of child sexual violence. "The low quality of child protection in Indonesia's psychology of children and families is a part we need to address," said Yastini.

KPPAD Bali supervises the legal process of children involved with the law so as not to deviate from the Child Protection Law and the Juvenile Criminal Justice System Law. However, there were still findings of violations of the rules for children that conflicted with the law. "One of them is that there are still findings of publication of children's identities carried out in public spaces," said Yastini. Based on data from the Ministry of Women's Empowerment and Child Protection (Kemen PPPA), until 2017, the number of violence against women and children increased sharply, namely in 2012, reaching 18,718 violence, then increasing to 54,041 violence in 2017. Furthermore, data on violence against women and children in February 2018 showed 374 cases of violence.

The picture of the amount of violence shows that children are the most vulnerable group to violence and exploitation. In this case, the government must provide optimal protection and services needed by childhas drawn criticism from various elements of society (Bahewa, 2016). The question that often arises is to what extent the government has attempted to provide (legal) protection for children so that children can obtain guarantees for their survival and livelihood as part of human rights. Based on provisions of Article 20 of Law No. 23 of 2002 concerning Child Protection, those who are obliged and responsible for implementing child protection are the state, government, community, family and parents, where lately, there has often been a crime of sexual violence against children, and the most severe crime of sexual violence is currently committed not only by adults but also by children. In this case, children can be said to be victims or perpetrators of acts (Sania, 2020).



There are still many cases of sexual violence that occur in Indonesia, children's rights have not been fulfilled under the legislation, and children's rights have not been fulfilled to the fullest, especially children from minority and isolated groups. It means that the existence of the Child Protection Law has not been balanced by the implementation of child protection (Supriyanto, 2015). Legal protection is regulated in the form of regulation and its application. It is expected to guarantee the fulfillment of children's rights so that they can live, grow, develop, and participate optimally per human dignity. In addition, to get protection from all kinds of acts of violence, injustice, neglect, discrimination, exploitation, and other negative actions for the sake of creating strong children of the nation as the next generation in the future (Fitriani, 2016).

In Indonesia, especially in Bali Province, problems that occur which include child growth and development are very threatening to the child's future which will make children not know that they are victims of harmful actions and deprive them of their human rights. Within the scope of government, following the function of legislation, which is owned by the Regional People's Representative Council of Bali Province to regulate the protection of the people in various laws and regulations. Especially regarding the protection of children is regulated in the provisions of the Provincial Regional Regulation on child protection, namely Regional Regulation No. 6 of 2014 concerning Child Protection. The provisions of Article 9 paragraph (2) state that the implementation of child protection includes: fulfillment of the right to survival, fulfillment of the right to growth and development, fulfillment of the right to participate, and fulfillment of the right to get protection against violence and discrimination.

Concerning the right strategy for preventing and dealing with victims of child sexual violence, community involvement is needed. In this context, community involvement is understood as the involvement of indigenous villages. Article 1 Section 8 of Bali Provincial Regional Regulation No. 4 of 2019 concerning Customary Villages in Bali (Perda concerning Customary Villages in Bali) states that customary villages are units of customary law communities in Bali that have territory, position, property, traditional rights, traditions and social manners of community life inherited from generation to generation in the bonds of sacred places and have the authority to regulate their households. In this case, the role of traditional villages is very large in realizing the quality of the nation's children. The involvement of indigenous villages in realizing the quality of the children can, of course, be done with various prevention efforts against sexual violence in children. Based on the above issues, it is necessary to conduct an in-depth study related to the extent of the role of the community, in this case, to protect and prevent sexual violence against children that occurs in its area. This study is very important and relevant considering that child sexual violence in Bali is increasing and requires appropriate strategic efforts to prevent sexual violence in children. Here it is also necessary to focus on the extent of indigenous villages' involvement in efforts to prevent sexual violence against children. Therefore, the

formulation of the problem raised in this article are: How character building based on local wisdom in Bali in minimizing deviation by children? What are the legal protection efforts for children as victims and perpetrators of sexual abuse?

Methodology

This article results from legal research because the law is considered autonomous. Its application is not determined by factors outside the law but by the law itself. Based on these assumptions, the law is considered perfect and final, so it remains to be implemented (Barus, 2013). The approach used the statutory, conceptual, and case approaches concept. The types of legal materials used in this research are primary legal materials, secondary legal materials and tertiary legal materials. The main legal materials used in this research are the 1945 Constitution of the Republic of Indonesia, Law No. 35 of 2014 concerning Child Protection, and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Secondary legal materials consist of books and scientific papers related to this research, while tertiary legal material is obtained through articles on the internet related to this research. The legal material obtained and collected through research is analyzed using a normative approach. Namely, the legal material that has been collected is inventoried and analyzed using a theoretical approach and criminal law principles that refer to statutory regulations (Yuliantini, 2022).

Results and Discussion

Balinese Local Wisdom-Based Character Formation in Minimizing Deviations by Children

Socio-cultural changes occur due to cultural contact between countries. Cultural contact can be interpreted as a meeting between new values and old values that dominate each other and are very influential at the surface structure level, namely at the attitude and behavior patterns, as well as at the level of deep structure, namely changes in value systems, views on life, philosophy, and beliefs (Suwardani, 2015). Modernization erodes local culture to become Westernized. Puritanism often regards culture as a syncretic practice to be avoided. As long as it does not conflict with norms, local culture must always be maintained to strengthen the character of the nation's children (Wigunadika, 2018).

Local culture is a culture that indigenous people highly respect. For culture to remain strong, it is necessary to instill a love for local culture, especially in the regions, in the next generation and to straighten out the nation's struggle. One way that can be processed is by integrating local cultural wisdom values in the learning process, like extracurricular or student activities at school, for example, by optimally applying Local Cultural Wisdom-Based Character Education. Many local wisdom values can be used to strengthen character education. Each region certainly has its own culture with various pearls of wisdom in it (Winangun, 2020). Character education is a system of instilling character values in school members, including knowledge, awareness or



will, and actions to carry out these values towards God Almighty, oneself, others, the environment, and nationality.

Character is the values of human behavior related to God Almighty, oneself, fellow human beings, the environment and nationality, which are embodied in thoughts, attitudes, feelings, words and actions based on religious norms, laws, manners, culture and customs (Dewi, 2020). The character represents a person's identity that shows his submission to applicable rules or moral standards and reflects his thoughts, feelings and inner attitudes, manifested in the habit of speaking and acting. Local wisdom is an accumulation of knowledge and policies that grow and develop in a community representing its theological, cosmological and sociological perspectives. Efforts to build character education based on the local wisdom of the Balinese people from an early age through education are considered the right step, whereas character education can be interpreted as an effort to encourage students to grow and develop the competence to think and stick to morals principles in life and have the courage to do right, even though faced with various challenges. Character education is not limited to the transfer of knowledge about good values but extends to ensuring those values remain embedded and integrated into thought and action.

School is a formal institution that forms the basis of education. Education in schools is part of the national education system, which is very important in improving human resources. Through education in schools, it is hoped that it will produce quality Indonesian human resources (Wigunadika, 2018). Local wisdom-based character education implemented in Bali can be seen from the direction of the policies and programs of the Bali Provincial government, namely Nangun Sat Kerthi Loka Bali. The meaning of Nangun Sat Kerthi Loka Bali is to maintain the sanctity and harmony of Bali's nature and its contents in order to create a prosperous and happy Balinese krama life, at the same time, towards the Balinese krama and gumi life following Bung Karno's Trisakti principles, namely political sovereignty, economic independence, and personality in Culture (Dewi, 2020). The visions of these programs are intended to lead to a New Era of Bali by fundamentally and comprehensively organizing Bali's development which includes three main aspects, namely nature, manners and Balinese culture based on the values of Tri Hita Karana, which are rooted in the local wisdom of Sat Kerthi. The value of other Balinese local wisdom concepts can be used to instill character values in early childhood to prevent children from deviant acts. Based on this philosophy, it can be stated that to achieve prosperity, peace and harmony, humans must always establish a relationship with the Almighty (God Almighty), with fellow human beings, and with the natural environment in which humans live.

The elements of Tri Hita Karana include Parhayangan, which means a harmonious relationship between humans and God, Pawongan, which means a harmonious relationship with fellow human beings, and Pamahan, which means a harmonious relationship between humans and the environment, to achieve a happy and

harmonious life. The three elements of the relationship need to be applied in everyday life to achieve a more harmonious life. Humans cannot live without interaction with other humans and the environment. In addition, the relationship with God teaches individuals to follow noble values and morals. In practice, Balinese local wisdom-based character education for early childhood requires a separate strategy. The strategy is habituation and strengthening (Dewi, 2020).

Ethical behavior and positive character will become the child's daily behavior through the habituation strategy. Teachers and parents must always be consistent in applying the rules that have been set for children. However, teachers and parents must still provide space for movement for children to do activities. Reinforcement strategies are intended to motivate or encourage children verbally and nonverbally. This reinforcement can encourage children to show attitudes considered good by their environment. Everyone, including early childhood, needs recognition for himself and his behavior. Verbal praise will create a sense of pride and be appreciated by the environment. A happy early childhood will be achieved when their actions are praised and declared good by teachers, parents and adults around them. It will make the child do the same activity. Nonverbally, when a child shows good behavior, for example, not disturbing other friends who are praying, the child can be given a stamp in the form of a sticker, applause star, thumbs up or something else (Wardhani, 2020).

Along with the rapid progress of the times, the development of students at the Early Childhood Care and Education (ECCE) level needs serious attention because, from this age, a person's character is easier to form. The concept of character education can be seen in the example of noble character, which means knowing one's potential, which is characterized by values such as reflective, confident, rational, logical, critical, analytical, creative, innovative, independent, responsible, love of knowledge, patient, honest, fair and humble. In general, there are five strategies that ECCE teachers need to consider in instilling attitudes in children. First, children are introduced to good behavior and values (knowing the good). Second, children are invited to think and understand why certain things are good and others are bad (thinking the good). Third, children are invited to feel the benefits if the behavior is well applied (experience the good). Fourth, children are invited to behave well (acting on the good). Fifth, children are accustomed to applying a good attitude at every opportunity (habituating the good).

Bali holds the potential of timeless local wisdom, containing values that can be applied in character education. One of this local wisdom is Tri Hita Karana. In the world of education, especially ECCE, Tri Hita Karana is very relevant to be implemented to form a good character of students. Tri Hita Karana comes from Sanskrit, where Tri means Three, Hita means prosperous, and Karana means cause. So Tri Hita Karana means Three Causes of Happiness. Tri Hita Karana contains three main elements, namely creating a harmonious relationship between humans and their God (Parahyangan), between humans and fellow humans (Pawongan) and between



humans and their environment (Palemahan). This concept can be implemented in various forms of learning activities and school activities. The teachings of Tri Hita Karana introduce the values of the reality of living together in terms of instilling religious values, cultivating social values, gender respect, instilling justice values, developing democratic attitudes, cultivating and showing the value of honesty, increasing attitudes and fighting power, developing attitudes of responsibility, and respect for the natural environment. The application of Tri Hita Karana's teachings from an early age is also important because, in early childhood, the brain experiences the fastest phase of development. The brain will retain any experiences or information that are most often repeated and discard those that occur only once without heightened emotional context.

The Urgency of Social Control Theory as the Foundation for Child Delinquency Management Policy in Bali

Social Control Theory, developed by Travis Hirschi, departs from an assumption that individuals in society that have an equal tendency to be "good" or "evil" more likely to disobey punishments or have incentives to break the law (Setiawati, 2021). A person's position is completely dependent on society. He becomes good if society makes it so and becomes bad if society makes it so. In addition to differences in explaining crime, social control theory is essentially not the same as criminological theories in general, which departs from the basic questions raised by this understanding related to deterrent elements that can prevent the emergence of delinquent behavior (behavior that is unacceptable socially) social among community members, especially teenagers.

Social control theory departs from a basic question that must be clarified through this theory. The basic question is, "Why do we obey society's norms" or "Why don't we commit deviations?". These basic questions reflect the idea that deviation is not a crime, which is seen as a problem. The main thing is obedience or adherence to societal norms. According to Travis Hirschi, four elements of social bonds exist in every society, namely:

1. First, attachment is the human ability to involve himself with others. Attachment is often interpreted freely with attachment. The first bond is attachment to parents, attachment to the school (teacher), and attachment to peers;
2. Second, commitment is a person's attachment to conventional sub-systems such as school, work, and organization. Commitment is a rational aspect that exists in social bonds. All activities carried out by an individual, such as school, work. Activities in the organization will bring benefits to that person. These benefits can be in the form of property, reputation, and future.
3. Third, involvement is the activity of a person in the sub-system. If a person plays an active role in the organization, there is little tendency to deviate. The logic of this understanding is that if a person is active in all activities, that person will spend time and energy on these activities. So, he does not have time to think about

things against the law. Thus, all activities that can provide benefits will prevent that person from committing acts contrary to the law.

4. Fourth, belief is a moral aspect of social bonds, which is certainly different from the abovementioned aspects. Beliefs are a person's faith in existing moral values. One's belief in existing norms leads to compliance (Siahaan, 2019).

As is the case in Bali, the perpetrators of child delinquency studied in Bali are very obedient and pious children, supported by strong social ties with high social activity. There are many cases of child delinquency, so it is natural that this is studied according to the theory of Social Control (Hasaniah, 2021). Although it is realized that this control theory initially mainly addresses juvenile delinquency for some high school students in America, further research has also been carried out in Bali. The study of juvenile delinquency in Bali was analyzed using a criminological theory approach, namely the social control theory put forward by Travis Hirschi, Permanent Professor of Sociology at the University of Arizona. The use of social control theory in this study was based on the fact that the culture (culture) of Indonesian society (especially Bali) still upholds the norms of decency and Eastern customary etiquette.

These four elements influence whether or not the social bonds of children/adolescents are closely related to society. To the extent that individuals show social ties to society, the question that arises among criminologists is how these bonds can be weakened or broken, which in turn gives birth to delinquent behavior (behavior that is not socially acceptable). Once one of the four elements weakens, that person will be "liberated," and that person's tendency to engage in delinquent behavior increases.

From the description above, it can be concluded that social control theory can be used to tackle juvenile delinquency, given that it has been described in detail. A social bond that seems clear from elements of social control such as attachment, commitment, involvement, and belief. Schools, community leaders, religious leaders, daily life and a community organization, and the already evident benefits can be well received by the results, supported by obedience to law and religion. This social control theory can inevitably be used to tackle child delinquency. Moreover, this theory is associated with Balinese culture with local wisdom such as Tri Hita Karana, which is local wisdom in overcoming child delinquency (Swardhana, 2015).

Legal Protection Efforts Against Children as Victims and Perpetrators of Sexual Harassment from Local Wisdom Perspective

The development of science and technology in the era of globalization greatly influences the behavior of the nation's children, which increasingly makes the values of the nation's character disappear. The existence of deviant behavior from children while in association with society impacts the quality of children as the next generation. Deviant behavior, often referred to as "mischief," is driven by a desire from the child (Prasetyo, 2020). It looks unethical if a crime committed by a child is



called a crime because children have very unstable mental conditions. The process of psychic stability produces a critical, aggressive attitude and shows behavior that tends to act to disrupt public order. It cannot be said to be a crime, but an unbalanced psychological condition causes delinquency, and the perpetrator is not yet aware of and understands the actions they have committed. A category of children's behavior makes children have to deal with the law, namely Status Offence. It is the behavior of juvenile delinquency that, if done by an adult, is not considered a crime, such as disobeying school or running away from home. The legal protection efforts for children who conflict with the law include protection of children as actors and Protection of Children as victims (Sania, 2020).

Protection of Children as Actors

Article 3 of Law No. 11 of 2012 provides an age limit for children who conflict with the law. The age limit for a child who conflicts with the law is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old. Article 3 of Law Number 11 of 2012 concerning the Juvenile Justice System clearly states children's rights in criminal justice. Children's rights must be protected at every level during the juvenile criminal justice process. Such protection is given as a form of respect for children's human rights. The protection of children in conflict with the law has undergone fundamental changes, namely strict arrangements regarding restorative justice and diversion. These arrangements are intended to avoid and distance children from the judicial process to avoid stigmatizing children in conflict with the law. In the provisions of Article 5 of Law Number 11 of 2012 concerning the Juvenile Justice System, it is clearly stated that:

1. The Juvenile Justice System must prioritize the Restorative Justice approach;
2. The Juvenile Criminal Justice System, as referred to in paragraph (1), includes:
 - a. Criminal investigation and prosecution of children carried out under the provisions of laws and regulations unless otherwise specified in this law;
 - b. Juvenile trials conducted by courts within the general court environment; and
 - c. Guidance, supervision and assistance while carrying out a crime or action and after serving a sentence or action.
3. In the Juvenile Criminal Justice System, as referred to in paragraph (2) letters a and b, it is mandatory to seek diversion. Article 6 of Law No. 11 of 2012 concerning the Diversion Juvenile Justice System aims to:
 - a. Achieving peace between victim and Child;
 - b. Resolving child cases outside the judicial process;
 - c. Prevent children from deprivation of independence;
 - d. Encouraging the community to participate; And
 - e. Instill a sense of responsibility in children.

In protecting children who conflict with the law, the settlement process is required to involve all parties, including the role of parents, family, community, government, and other state institutions that are obliged and responsible for improving children's

welfare, as well as special protection for the child concerned. The concept of restorative justice is known as the process of diversion.

In the diversion process, all parties involved in a particular crime jointly solve problems and create an obligation to make things better by involving victims, children, the community and related parties to find the best solution for children without any retaliation. In resolving cases of children in conflict with the law using a restorative justice approach, a settlement that involves all parties and jointly resolves cases and seeks the best solution to cases faced by children, thereby protecting children in conflict with the law that prioritizes the best interests of children.

Protection of Children as Victims

Protection of child victims of crime as stipulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Article 1, paragraph (2) states that child protection is all activities that guarantee and protect children and their rights so that they can live, grow and develop and participate optimally according to human dignity and dignity and receive protection from violence and discrimination.

To create a good and prosperous future for children, handling cases of children who conflict with the law, especially child victims, must be handled specifically repressive and preventive measures. Regarding child victims, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in Article 1 paragraph (4) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that: "Children who are victims of criminal acts, will be referred to as child victims, are children who are not yet 18 (eighteen) years old who experience physical, mental and economic losses caused by criminal acts." Furthermore, in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 90 paragraph (1) explains that child victims and children of witnesses are entitled to medical rehabilitation and social rehabilitation, both within and outside institutions". In addition to these rights, there are several rights of children as victims to receive medical and psychosocial rehabilitation assistance.

The increase in cases of rape by children is one of the negative effects of the influence of social media on adolescents and children ([Swardhana, 2015](#)). Apart from the reasons why there has been an increase in cases of rape by children that need to be highlighted next, is that there are also many victims of rape by children who are also children. Rape is a criminal act of a sexual nature that occurs when an individual forces another individual to have sexual intercourse by penetrating the vagina with the penis by force or using physical violence ([Rumiyani, 2021](#)).

Juridical and non-juridical protection needs to be carried out to ensure legal certainty and create justice for children as victims of rape crimes because, without optimal protection, children will only become victims of a society that tends to be patriarchal.



Legal remedies that can be taken provide protection and supervision of the victim if the victim receives threats from the perpetrator's family.

The next protective effort is from a non-medical perspective, namely, treating the victim's psychological state after the incident that leaves trauma to the victim. Implementing legal protection efforts for children as victims of rape committed by children and perpetrators of criminal acts against children under the age of eighteen have faced problems because perpetrators of criminal acts against children cannot be charged with punishment. In the juvenile justice system in Indonesia, legal remedies are the last efforts that can be done when a conflict occurs. It also occurs in case Number 138/Pid.Sus/2020/PN.Pti. Initially, the resolution of the conflict is carried out through mediation. Even though the impact on the victim of rape is too sadistic, it also harms perpetrators (Yuliartini, 2022).

The purpose of punishment should be prioritized in cases of child rape. How can this law save the victim and also reconstruct and fix the perpetrators of the crime? The second obstacle is how the parents of the perpetrators do not understand the child's psychological state and the way to solve the problem so that the child does not need to be punished, but this method does not seem very effective in providing a sense of justice for victims who are tormented due to trauma after the incident (Wadjo, 2020). In this case, the role of parents is very important to educate children so that children do not commit crimes. Second, the legal apparatus must counsel the community so that people dare speak out about the crimes against them.

Suppose viewed from the perspective of local wisdom, especially in Bali, where customary criminal law in Indonesia is not regulated in the Criminal Code or other criminal laws and regulations, the existence of rules regarding customary criminal law is still implicitly recognized in the constitution (UUD 1945), as well as in several other laws. According to the author, customary criminal law does not need to be included or regulated in the provisions of the Criminal Code or the Constitution, considering that Indonesia has various cultural tribes. Against Balinese Customary Crimes which do not have an equivalent in the Criminal Code, a Penal Mediation mechanism can be carried out with the help of Customary Institutions (such as Banjar with Customary Offices/ Dinas. Desa Adat with Bandesa Adat), with the policies of each sub in the Criminal Justice System. The models used to settle customary cases by the criminal justice system are informal mediation, community panels or courts, and family and community group conferences. Balinese customary crime. Returning to legal protection from the perspective of local wisdom in Bali, namely legal protection for children involved in legal problems, the procedure must be carried out carefully so that children still get maximum protection from traditional villages.

Regarding restorative justice, according to the meaning of restorative justice, it is regulated in Article 1 point 6 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which reads as follows: "Restorative Justice is the settlement of

criminal cases involving perpetrators, victims, families of perpetrators/ victims, and other related parties to jointly seek a fair solution by emphasizing restoration to the original situation and not retaliation. "Law enforcement officials, families, and the community must seek a settlement process outside the courtroom through diversion based on a Restorative Justice approach." With reference to Article 8 paragraph (1) of the Juvenile Criminal Justice System Law, restorative justice is the approach used in the implementation of diversion, namely the settlement of juvenile criminal cases by deliberation involving the child and his parents/guardians, victims and parents/guardians, social counselors, and professional social workers (Wartayasa, 2020). However, this diversion process can only be carried out for crimes punishable by imprisonment under seven years and is not a repetition of a crime under the provisions of Article 7 of the Law on the Juvenile Criminal Justice System (Ristina, 2018). Settlement of child cases that are applied to Balinese customary law should be processed through a process outside the criminal justice version), which is an informal mechanism model that represents demands for the interests of children in traditional villages, child cases so that this kind of settlement model needs a matching alternative solution. as is the case with using Penal Mediation with the help of Traditional Institutions (such as Banjar Adat with Adat/ Departmental Offices, Traditional Villages, with Subdistrict MDA, Regency/ City MDA, Provincial MDA).

Penal mediation can carry out customary Crimes with the policies of each sub in the Criminal Justice System. The models used to settle customary cases by the criminal justice system are informal mediation, community panels or courts, and family and community group conferences. Furthermore, in settlement of a general criminal case or specifically for customary crime, a settlement mechanism is built in the form of cooperation between customary institutions and the criminal justice sub-system in implementing the settlement mechanism, oriented towards children obtaining the value of restorative justice when dealing with the law through regional regulations based on local wisdom.

Conclusion

The visions of these programs are intended to lead to a New Era of Bali by fundamentally and comprehensively organizing Bali's development which includes three main aspects, namely nature, manners and Balinese culture based on the values of Tri Hita Karana, which are rooted in the local wisdom of Sad Kerthi. The value of other Balinese local wisdom concepts can be used to instill character values in early childhood to prevent children from deviant acts. Based on this philosophy, it can be stated that to achieve prosperity, peace and harmony. Humans must always establish a relationship with the Almighty (God Almighty), fellow human beings, and the natural environment in which humans live.

Article 3 of Law No. 11 of 2012 provides an age limit for children who conflict with the law. The age limit for a child who conflicts with the law is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old. Then the provisions of Article



3 of Law Number 11 of 2012 concerning the Juvenile Justice System clearly state children's rights in criminal justice. Protection of child victims of crime as stipulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Article 1, paragraph (2) states that Child Protection is all activities that guarantee and protect children and their rights so that they can live, grow, develop and participate optimally according to human dignity and dignity and receive protection from violence and discrimination.

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Declarations

- Author contribution : Author 1: Initiated the research ideas, instrument construction, data collection, analysis, and draft writing. Author 2: Revised the research ideas, literature review, data presentation and analysis, and the final draft. Author 3: Improve the journal, starting from the abstract. Author 4: Improve the journal, starting from the introduction, content, to conclusion.
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