

## THE POSITION OF EVIDENCE OF TESTIMONIALS OF WITNESSES WITH DISABILITIES (MINORS) IN RAPE CASES IN THE PROOF PROCESS AT INVESTIGATION LEVEL

(Study at the PPA Unit of the Surabaya Police Criminal Investigation Unit)

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**Abstract**— The purpose of this study was to determine the strength of the evidence of rape victims in cases of rape of children with disabilities and to find out the inhibiting factors of the police against child witnesses with disabilities during the investigation process by the Surabaya Polrestabes. In this study the authors used empirical or sociological legal methods using a qualitative approach. Based on the research results, it is proven that the strength of the testimony of children with disabilities is the same as other normal children as long as the witness has the quality of being a witness and is assisted by an interpreter and psychiatrist who is neutral and impartial. This is due to the quality of the witness, not the physical limitations of the witness. The inhibiting factors of the police towards children with disabilities are witnesses not wanting to tell stories, and being proactive and difficult to control which results in delays in the investigation process, witnesses are not fluent in using sign language, and the unavailability of supporting facilities such as braille, (sign language translators), and refusals persons with disabilities as witnesses.

**Keywords**— *Evidence, Witness Statement, Rape, Inhibiting Factor*

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## I. INTRODUCTION

The human rights issue that is being discussed and is in the spotlight of society throughout the world is violence against women and children, violence against women and children is an act that damages the order of human values, as well as the dignity of life of the nation and state, that is why violence against women and children is an act which violates human rights. Violence against women and children can be characterized as any act inspired by gender differences that ends in physical, sexual or emotional pressure, including threats of coercion or intentional loss of freedom. It involves actions that occur in public as well as private spaces.

The state must provide legal protection and certainty to those at risk of experiencing violence, especially children with special needs. Because of their physical differences from normal humans, people with disabilities are more vulnerable to all types of violence, including sexual harassment. They also face a lot of discrimination from various groups. Usually the perpetrators target child victims with disabilities because they are considered physically helpless, and it is likely that the victim will find it difficult to report because it is thought that the strength of their testimony cannot convict the perpetrator of the rape. The strength of the testimony of children with disabilities who have obstacles in hearing and speaking makes it difficult for victims to report their cases to the police. The reason is that it was felt that the police were unable to understand what the victim said in his report.

Children with disabilities are more vulnerable to experiencing sexual violence, this is proven by Data from the Online Information System for the Protection of Women and Children (SIMFONI PPA) showing that there have been 987 cases of violence against children with disabilities experienced by (264 boys), and (764 children women) throughout 2021.

Data on cases of sexual violence against children with disabilities recorded in the PPA Unit of the Surabaya Police Criminal Investigation Unit shows that there have been 6 cases of sexual violence in the last three years starting from 2020-2022 in the Surabaya area. In 2020, (3 cases) of sexual violence against children with disabilities were recorded. In 2021, (2 cases) of sexual violence against children with disabilities were recorded. In 2022, (1 case) of sexual violence against children with disabilities was recorded [1]. Based on data that the author obtained from the Surabaya Police, it shows that cases of sexual violence against children with disabilities have decreased, from initially increasing to decreasing. This is an interesting

topic to discuss in the research if viewed from the perspective of the data that the author has obtained while conducting observations and interviews with the ranks of the PPA Polrestabes Surabaya unit, this is the first step for law enforcement officials to minimize cases of sexual violence in the Surabaya area. And from interviews that the author has conducted with investigators from the Surabaya Police PPA unit, what is unique in this case is the legal position of children with disabilities and other children who are victims of sexual violence cases. Children with disabilities have the same legal standing as other normal children, only the difference in this case is that children with disabilities are accompanied by a language translator appointed by the Surabaya Police to accompany the process of reporting the case experienced by the victim.

From this background, the author is interested in conducting an empirical study and discussing the strength of evidence from witnesses with disabilities in the investigation process at the police level with a thesis entitled "**The Position of Evidence from Witnesses with Disabilities (Minors) in Rape Cases in the Evidence Process Investigation Level (Study at the PPA Unit of the Surabaya Police Criminal Investigation Unit).**"

## II. METHODS

Empirical or sociological legal research which aims to study and analyze how law functions in people's lives is the research method that the author uses.

### A. Data source

Primary legal materials are legal materials that are authoritative. Primary legal materials used include [2]:

1. The 1945 Constitution of the Republic of Indonesia;
2. Criminal Code (KUHP);
3. Criminal Procedure Code (KUHAP);
4. Law Number 39 of 1999 concerning Human Rights;
5. Law Number 19 of 2011 concerning Ratification of the Rights of Persons with Disabilities;
6. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System;
7. Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims;
8. Law Number 8 of 2016 concerning Amendments to Law Number 4 of 1997 concerning Disability Protection;

9. Republic of Indonesia State Police Regulation Number 8 of 2009 concerning the Implementation of Standard Human Rights Principles in Carrying Out the Duties of the Republic of Indonesia State Police.

## **B. Secondary Data**

To carry out a deeper review and understanding of existing primary legal materials, secondary legal sources were collected for the purpose of resolving the problems faced in the form of interviews, literature, journal articles, expert opinions, data in this research and internet sites related to this research. .

### **A. Data Collection Methods**

The author uses data collection techniques and processing legal materials by:

1. Observation, carried out by collecting data by directly observing phenomena that occur in the field, tracked carefully to identify symptoms that occur in the field
2. Interviews, carried out by means of interviews or using conversation strategies to collect information and interview findings will produce qualitative data. This interview was conducted with the source: Surabaya Police PPA Officer by interviewing Mrs. Ipda Tri Wulandari, Head of the Surabaya Police Women's and Children's Services Sub-unit.

## **B. Data Analysis Method**

In an effort to use descriptive analysis techniques to solve problems, the data will be summarized and examined in relation to the current problem, thereby producing a conclusion.

## **III. RESULT AND DISCUSSION**

### **A. Strength of Evidence of Rape Victim's Statements in Cases of Rape of Children with Disabilities at the Investigation Level**

Evidence is something that shows that a claim or argument is true. Evidence, on the other hand, is a tool used to support a party's claims before the court (Bewisjemiddle). According to M. Yahya Harahap, the use of evidence is an acceptable requirement for the method of determining the accuser's guilt. This is also in accordance with the Indonesian idea of proof, known as the doctrine of proof against the law. valid data that complies with the rules and can be used to prosecute violations.

The strength of testimony (degree of evidence) from a witness' statement can be considered valid as evidence that has valid strength value if it meets the following two categories.

#### **a. Formal Requirements**

Formal requirements are requirements related to the subject, namely the person who will provide testimony. Formal requirements consist of:

- a. Must take an oath or promise;
- b. Witnesses must be adults;
- c. The witness has no memory problems;
- d. Witness statements must be given at the court hearing;
- e. The testimony of a single witness is considered insufficient;
- f. Statements from several independent witnesses.

#### **b. Material requirements**

Material requirements are requirements that refer to the content of the information given by the witness. Material requirements refer to Article 1 point 27 of the Criminal Procedure Code and Article 185 paragraph (1) of the Criminal Procedure Code and the explanation. Conclusions can be drawn:

- a. Any witness statement that goes beyond what he himself heard during a criminal incident that occurred, or information that goes beyond what the witness saw or felt during the incident, cannot be assessed or used as evidence.
- b. Testimonium de auditu or witness statements obtained by hearing from other people cannot be accepted as evidence.
- c. Opinions or lies made by witnesses as a result of thinking do not constitute testimony. (Article 185 paragraph (5) KUHAP).

From a legal perspective, everyone has the same degree and equality in the eyes of the law, including people with disabilities, this equality is stated in Law no. 19 of 2011 concerning the Convention on the Rights of Persons with Disabilities, Article 5. This law allows persons with disabilities to participate in the investigation process, become witnesses in their own defense, and defend their statements.

The same rights and recognition are given to people with disabilities as other citizens. Persons with disabilities are individuals who are vulnerable to cases of sexual violence [3]. This is also reinforced by the data submitted to the Surabaya Police, where the data on the number of criminal acts involving child victims at the PPA Unit of the Surabaya Police Criminal Investigation Unit in the period 2020-2022 is as follows:

No.	Cases	2020	2021	2022	Total
1.	Violence Against Children (Article 80 of Republic of Indonesia	16 cases	38 cases	24 cases	96 cases

	Law No. 17 of 2016				
2.	Sexual intercourse with children (Article 81 of Republic of Indonesia Law No. 17 of 2016)	53 cases	53 cases	36 cases	142 cases
3.	Child Abuse (Article 82 of Republic of Indonesia Law No. 17 of 2016)	27 cases	51 cases	28 cases	88 cases
	<b>TOTAL</b>	<b>96 cases</b>	<b>142 cases</b>	<b>88 cases</b>	<b>326 cases</b>

**Table 1**

**Data on the Number of Crimes Victims of Children, PPA Unit, Satreskrim Polrestabes, Surabaya**

In the table above, it can be concluded that data on violence against children in 2020 amounted to (16) cases, in 2021 there were (38) cases and in 2022 there were (24) cases. The total number of cases of violence against children registered at the Surabaya Police was (96). Data on the number of criminal acts of sexual intercourse against children in 2020 amounted to (53) cases, in 2021 there were (53) cases and in 2022 there were (36) cases. The total number of cases of sexual intercourse with children was (142). Data on the number of criminal acts of sexual abuse against children in 2020 amounted to (27) cases, in 2021 there were (51) cases, and in 2022 there were (28) cases. The total number of cases of child abuse was (88).

From this data it can be concluded that the most cases submitted to the Surabaya Police involving minors were cases of sexual intercourse with children, from the number of data on cases of sexual intercourse with children (6) cases included children with disabilities. This data was also confirmed by the Head of the PPA Sub-unit for the Surabaya Police, Mrs. Ipda Tri Wulandari, through an interview on April 14 2023. Data on the number of criminal acts of rape against children with disabilities at the PPA Polrestabes Surabaya Unit included:

No.	Entry Matters	2020	2021	2022
1.	Rape of Children with Disabilities	3	2	1

**Tabel 2**

**Data on the Number of Rape Crimes Against Children with Disabilities in 2020-2022. Data Obtained from Interview Results on April 14 2023**

This is also confirmed by data submitted to the Surabaya Police, where these cases were at their peak in 2020, numbering (3) cases, in 2021 there were (2) cases, and in 2022 there were (1). The total data on rape of children with disabilities is (6) cases. Of the total data on rapes against children with disabilities in 2020, the cases have reached the stage of submitting files to the court. Cases in 2020 experienced long obstacles because the Surabaya Police in 2020 did not have adequate advice and infrastructure to support cases involving children. people with disabilities. In 2021, the case has reached the stage of being delegated to the prosecutor's office. In 2021, the case experienced obstacles in collecting evidence and statements from child witnesses who were rape victims often changed, which hampered the investigation process. In 2020, the case reached the stage of investigation and collecting evidence. The case experienced problems because the child victim with disabilities experienced acute depression and emotional changes which made the victim require medical treatment for emotional recovery for more than 4 months. This data has been acknowledged by the Head of the Surabaya Police PPA Sub-unit, Mrs. Ipda Tri Wulandari, that children with disabilities are vulnerable to sexual crimes.

The perpetrators targeted rape victims of children with disabilities under the age of children with disabilities who were victims of rape in the 2020-2022 period which were handled by the Surabaya Police, including:

No.	Age of children	Entry matters
1.	8 years Age	2020 year
2.	11 years age	2020year
3.	13 years age	2020year
4.	10 years age	2021year
5.	10 years age	2021 year
6.	14 years age	2022 year

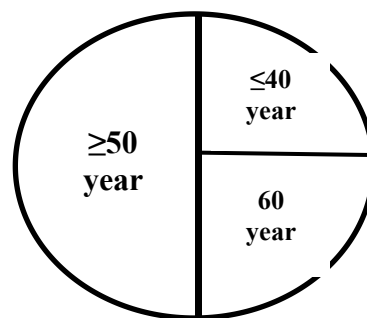
**Table 3**

**Age of children with disabilities who were victims of rape handled by the Surabaya Police from 2020-2022**

The table above shows that in 2020 there were three cases filed at the Surabaya Police regarding rape of children with disabilities, namely children aged 8 years, 11 years and 13

years, then in 2021 there were two cases filed at the Surabaya Police regarding rape against children. people with disabilities in children aged 10 years and 10 years, then in 2022 there was a case filed at the Surabaya Police regarding the rape of children with disabilities in children aged 14 years. The ages of the victims are said to be only between 1-3 years between one victim and another, which is considered to be a very early age for children with disabilities [4]. From the table above, it can be concluded that cases of rape of children with disabilities admitted to the Surabaya Police have decreased.

The decrease in the number of victims with disabilities is also influenced by the performance efforts of law enforcement officials, especially the Surabaya Police, in thoroughly investigating rape cases experienced by children with disabilities, the number of rape victims experienced by children with disabilities is also influenced by the age level of the perpetrators of rape, which is on average The average age is:



**Image Diagrams**

#### **Age of Perpetrator of Rape of Children with Disabilities at Surabaya Police Station Interview with Mrs. Ipda Tri Wulandari April 14 2023**

Diagram gambar diatas menunjukkan usia pelaku dibawah dari 40 tahun lebih sedikit daripada usia pelaku diatas 50 tahun hal ini ditunjukkan dari diagram lingkaran yang menggambarkan setengah lingkaran tersebut terdapat pada usia diatas 50 tahun, sedangkan untuk usia 60 tahun berjumlah lebih banyak daripada usia kurang dari 40 tahun dan usia 60 tahun berjumlah lebih sedikit daripada usia diatas 50 tahun. Jadi kesimpulannya bahwa kebanyakan pelaku dari anak penyandang disabilitas berusia diatas 50 tahun.

The diagram above shows that the age of perpetrators under 40 years old is less than the age of perpetrators over 50 years old. This is shown in the circle diagram which depicts a half circle. There are more people aged over 50 years old, while those aged 60 years old are more than those aged less than 40 years old. and those aged 60 years are fewer in number



than those aged over 50 years. So the conclusion is that most perpetrators of children with disabilities are over 50 years old.

The motives of perpetrators of rape against children with disabilities are very diverse, as explained by Mrs. Ipda Tri Wulandari in an interview on April 14 2023. A number of motives for perpetrators of sexual crimes, especially rape of children with disabilities, include:

1. Children with disabilities are considered physically weak and powerless to fight the perpetrator.
2. The perpetrator wants a sensation of sexual intercourse that is different from other normal people.
3. Past trauma in the perpetrator, where the perpetrator was also a victim of rape in the past, this is what makes the perpetrator take out his trauma on other victims.
4. The perpetrator assumes that the victim or child with disabilities apart from being physically helpless, the victim is also helpless legally and in society, why are so many perpetrators claiming that children with disabilities cannot speak, cannot communicate fluently, are hyperactive, aggressive, autistic and so on , this is what makes the perpetrator above the law, because the perpetrator feels that law enforcement officers will not believe the victim's statement.
5. According to the perpetrator's view, children with disabilities attract his attention, thereby giving rise to feelings of sexual desire in the perpetrator

#### 1. Parenting patterns in childhood.

Apart from that, when giving statements, the perpetrators admitted that they did not feel completely guilty towards the victims and their families, the perpetrators also admitted that the trauma in the past could be realized and the perpetrators were also quite satisfied with what had been done. The perpetrator also thinks that children with disabilities have unfavorable stereotypes in society. Children with disabilities often experience discrimination, even when in conflict with the law. As a result, the principle of equality before the law is often violated.

All citizens, including persons with disabilities, have the right to equal treatment under the law, and persons with disabilities must be given the same opportunities as other citizens to enjoy their legal rights. the right to be accompanied by an interpreter, the right to be heard during criminal trials, the right to have all statements documented, the right to have

sign language-the ability of investigators to search for victims' cases, and the right to an impartial trial.

The Criminal Procedure Code (KUHAP) states that initially a witness can only testify based on what he himself saw, heard or experienced [5]. However, as time goes by, the definition of a witness has developed into anyone who has information whose quality meets the requirements of testimony.

It simply asks how witnesses explain their evidence in relation to children with disabilities and how law enforcement officials, such as investigators, public prosecutors and courts, can obtain this information quickly, clearly and impartially. A person who can function as a bridge, such as a sign language interpreter for disabled children, is required to assist disabled children and communicate with law enforcement officials. This is regulated in Article 178 of the Criminal Procedure Code (KUHAP). Since there is no requirement for interpreters to be sworn or not, there is an understanding from a legal perspective that expects every sign language interpreter to provide impartial and trustworthy testimony. This article regulates the judge's ability to appoint the closest person who understands the witness in the sense of being able to interpret the sign language of a child witness with a disability.

In addition, children with disabilities can choose their own interpreter during the investigation, or the investigator can propose a translator provided by the Surabaya Police investigators.

Based on the description above, the author is of the opinion that child witnesses with disabilities can testify with the same authority as other normal children, which is regulated in the Criminal Procedure Code (KUHAP), where witnesses are limited to seeing, hearing and experiencing themselves, but this happens [6]. an expansion of the meaning where every person has information in accordance with the requirements of testimony as long as they have the ability to testify and are accompanied by an objective and impartial translator and psychiatrist. In this case, it is also strengthened in Article 1 Paragraph (5) of Law Number 1 of 2012 concerning the Juvenile Criminal Justice System, which states that a child who is not yet 18 (eighteen) years old can provide information for the purposes of investigation, prosecution and examination at a court hearing regarding a criminal case that was heard about, experienced and/or experienced personally. This can be concluded that the testimony of children with disabilities is measured by the quality of their testimony, not by the physical limitations of the witness, when providing testimony in the investigation process.

As with child witnesses in general, the value of child witness testimony is influenced by the suitability of one child witness with other child witnesses, the suitability of child witness testimony with other evidence, and the reasons given by the witness for giving testimony. the way of life and morality of the witness as well as everything that in general can influence whether or not the witness's statement can be trusted. In this case, it is also regulated in Article 1 Paragraph (5) of Law Number 1 of 2012 concerning the Juvenile Criminal Justice System, where a child who is not yet 18 (eighteen) years old can provide information for the purposes of investigation, prosecution and examination at a court hearing regarding a criminal case that he heard about, experienced and/or experienced himself.

Giving testimony to a disabled child witness who uses a sign language interpreter during the examination is equivalent to giving testimony to someone who uses a foreign language interpreter, where the investigator can appoint an interpreter who must translate correctly. what the witness told the investigator when questioned.

The role of sign language interpreters in bridging the communication gap between witnesses and law enforcement officials, including police, prosecutors, prosecutors and judges, is very important for witnesses with disabilities.

#### **A. Factors Inhibiting the Police Against Child Witnesses with Disabilities in the Investigation Process by the Surabaya Police**

The position of people with disabilities is vulnerable to crime, one of which is rape. Rape is the act of sexual intercourse accompanied by force. In cases of rape against people with disabilities, especially minors, the perpetrators often target child victims with disabilities because they are considered physically helpless, and it is likely that the victims find it difficult to report because it is thought that the strength of their testimony cannot convict the perpetrator of the rape. The strength of the testimony of children with disabilities who have obstacles in hearing and speaking [7]. Sign language interpreters are needed because the barrier between child witnesses and investigators makes it difficult for children with disabilities to provide information. In this way, investigators and witnesses can communicate effectively so that witness statements can be used as a reference in the examination.

A child with this disorder has a more frontal nature, excessive fear of new people who are considered urgent, and is very traumatized by recent events, which becomes a big challenge for investigators when the child witness with this disorder does not have an academic educational background. and not all of them can use sign language [8].

Internal factors of child witnesses with disabilities include:

1. The age of the witness himself is still very young so that the witness himself cannot yet differentiate between right and wrong;
2. The witness does not want to talk and is afraid of people he has just met;
3. The witness experienced psychological trauma;
4. The witness cannot understand the rights he has;
5. The witness cannot use sign language;
6. The witness is less confident about his shortcomings.

External factors from cultural conditions in society regarding cases of rape of children with disabilities include:

1. Lack of public response to cases of rape of children with disabilities;
2. Society often blames the victim (victim blaming);
3. Lack of public awareness regarding cases of rape of children with disabilities.

Obstacles to law enforcement officers include:

1. The witness does not want to talk, and is aggressive and difficult to control, which results in the investigation process being hampered;
2. The witness is not fluent in using sign language;
3. Not all investigators master sign language;

Barriers to facilities and infrastructure include:

1. Inadequate information system;
2. Unavailability of supporting facilities such as braille (sign language interpreter).

Obstacles from legal factors related to the ineffective fulfillment of rights for persons with disabilities include:

1. legal protection and accessibility of the judicial process. not yet fully realized;
2. Legislation has not yet accommodated the needs of persons with disabilities in the judicial process as a whole

In line with the description mentioned above, the author concludes that the government should facilitate people with disabilities in the form of formal education for people with disabilities who are less fortunate, the government is also expected to provide assistance in the form of material and competent teachers in providing formal education for people with disabilities so that there are no social gaps and restrictions [9]. between those with special needs and normal people and people with disabilities do not feel insecure about other normal people. And secondly, the government should formulate more specific

legislative arrangements regarding material construction and procedural law for people with disabilities. Because people with disabilities are a vulnerable group who have special obstacles and needs that must be understood in the legal system. In this way, people with disabilities can be equal before the law [10]. And thirdly, it is hoped that law enforcement officers will increase their understanding and knowledge about people with disabilities so that law enforcers cannot make equality based on the limitations of people with disabilities, ultimately their rights are marginalized and their position before the law is marginalized by the police, prosecutors, and even the courts. And fourth, it is hoped that the public will be more aware of cases involving children with disabilities.

#### IV. CONCLUSION

Based on the research results, it can be concluded:

1. The strength of the testimony of a child witness with a disability in the investigation process at the Surabaya Police, has the same evidentiary strength as the statement of a child witness who has a normal physique because as regulated in Article 27 paragraph 1 of the 1945 Constitution of the Republic of Indonesia which states that "Every citizen has the same position under the law and government and is obliged to uphold the law and government without exception."
2. The inhibiting factors for child witnesses with disabilities in the investigation process at the Surabaya Police are:
  - a. The witness did not want to talk, and was aggressive and difficult to control, which resulted in the investigation process being hampered;
  - b. The witness is not fluent in using sign language;
  - c. The unavailability of supporting facilities such as braille (sign language interpreter), as well as the refusal of people with disabilities to act as witnesses.
  - d. There is ambiguity and disharmony in legal regulations governing persons with disabilities;
  - e. Legal protection and accessibility of the judicial process. not yet fully realized;
  - f. The laws governing the rights of persons with disabilities in the judicial process are very contradictory to each other;
  - g. Legislation has not yet accommodated the needs

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