



# Juridical Review of the Role of the Witness and Victim Protection Agency (LPSK) in Protecting Child Victims of Sexual Violence in the Family Environment

Nurjannah Nasution

Fakultas Hukum

Universitas Sumatera Utara, Jalan Dr. T. Mansur No.9, Padang Bulan, Kec. Medan Baru, Kota Medan, Sumatera Utara 20222

E-mail: [nurjanah@gmail.com](mailto:nurjanah@gmail.com)

## Abstract

Based on Article 1 point 5 of the Witness and Victim Protection Act, the Witness and Victim Protection Agency (LPSK) is an authorized institution to provide protection and other rights to witnesses and / or victims as referred to in this law. The problems in this research are how, first, the regulation of protection against violence that occurs in child victims of sexual violence in the family environment and how the role of Witness and Victim Protection Institutions in providing protection for child victims of sexual violence and how the rights of witnesses and victims of violations happen. The purpose of this study was to determine the legal provisions against sexual violence against children in the family environment and to determine the role of witness and victim protection agencies and the obstacles faced in disclosing cases of sexual violence against children in the family environment. The research method used in writing this thesis is normative legal research by studying and analyzing primary data in the form of laws and regulations, secondary data in the form of law books and related legal journals, related theses, and tertiary data in the form of websites. website from the internet. Protection and supervision of child victims of sexual violence after amendments to the law on protection of witnesses and victims, Article 5 regulates the rights of witnesses and victims.

**Keywords:** Role of LPSK, Child victims of sexual violence, family environment.

## A. Introduction

Children are creatures created by God Almighty, since in the womb the child already has the right to life and freedom and has received good protection from parents, family, community, nation and state.<sup>1</sup> Children are the next generation of the Indonesian nation, have rights and obligations and are able to develop the state and nation of Indonesia. Children are the capital of development that will maintain and sustain the development of the nation<sup>2</sup>. Therefore, children must be cared for and treated well so that the children's future is bright and able to achieve their goals. Given the importance of the role of children, children's rights are expressly regulated in the Constitution which states that the state guarantees every child the right to continuous protection from violence and discrimination.

Child protection is a business that creates conditions where every child can exercise their rights and obligations. Child protection is a manifestation of justice in a

<sup>1</sup> Abdussalam, *Hukum Perlindungan Anak* (Jakarta: Restu Agung, 2007), hal.1.

<sup>2</sup> Arif Gosita, *Masalah Perlindungan Anak* (Jakarta: Akademi Pressindo, 1985) hal. 123.

society, thus child protection must be endeavored in various fields of national and state life<sup>3</sup>. However, in reality it is often inappropriate, children as the weak party often get violent treatment by irresponsible parties to get benefits that violate the rights of children that must be accepted as human beings.

Violence against children by irresponsible parties is a problem for every country. In Indonesia, cases of sexual violence have increased every year. The victims are not only adults but now they have also reached adolescents, children and even toddlers. Many girls become victims because the perpetrators feel safer to do their actions because they tend to be based on the socio-cultural conditions of the community which still underestimate the existence of women and children<sup>4</sup>. According to the Indonesian Child Protection Commission (KPAI) in 2011 alone there were 2,275 cases of violence against children, 887 of which were child sexual violence. In 2012, there were 3,871 cases of violence against children, 1,028 of which were sexual violence against children. In 2013, out of 2,637 violence against children, 48 percent or around 1,266 were sexual violence against children<sup>5</sup>. Based on data from Komnas Perempuan, explained that in 2015 there were around 6,499 cases of sexual violence, including against children. And for 2016 the KPAI claims an increase in the level of violence against children<sup>6</sup>. So, looking at the data above, it is not an exaggeration if the National Commission for Child Protection has declared Indonesia an emergency of sexual violence against children. Whereas children are a mandate and a gift from God Almighty, which is inherent in them with dignity as a whole human being. Children also have human rights that are recognized by the people of the nations of the world. It is admitted that during their physical and mental growth, children need special care, protection, and legal protection, both before and after birth. It should be recognized that the family is a natural environment for children's growth and well-being. Whole and harmonious development of the child's personality requires a happy, loving and understanding family environment<sup>7</sup>. But ironically, according to the results of monitoring and evaluation of the KPAI in 9 provinces, it shows that 91 percent of children are victims of violence in the family environment, 87.6 percent in the school environment and 17.9 percent in the community<sup>8</sup>. This includes sexual violence against children. So the assumption that states that sexual violence against children often occurs when the child is outside the supervision of the family and educational environment is wrong. Due to the fact that children are vulnerable to becoming victims of sexual violence in the home and school environment. The environment that knows these children is quite close. Which means, the perpetrators of violence against children actually come from those who are close to the children. Sexual abuse of children mostly occurred in the home alone with the offender's close family and family

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<sup>3</sup>Ibid., hal 18

<sup>4</sup> Sri Esti Wuryani Djiwandono, *Konseling Dan Terapi Dengan Anak Dan Orang Tua*, (Jakarta: PT. Gramedia Widiasarana Indonesia, 2005) hal 87

<sup>5</sup> Komisi Perlindungan Anak Indonesia (KPAI) (On-Line), tersedia di <http://bakohumas.kominfo.go.id>, diakses pada 7 Mei 2014

<sup>6</sup> Kasus kekerasan terhadap anak (on-line) tersedia di <http://news.metrotvnews.com/peristiwa/yNL88ZyN-kpai-klaim-Kasus-kekerasan-pada-anakmeningkat>

<sup>7</sup> Keluarga (on-line) tersedia di <http://www.depkes.go.id/article/view/16040400003/menkes-mari-bersama-sukseskan-germas-dankeluarga-sehat.htm>

<sup>8</sup> Kekerasan terhadap anak meningkat (on-line) tersedia di <http://www.kpai.go.id/berita/kpai-pelaku-kekerasan-terhadap-anak-tiap-tahun-meningkat>

acquaintances<sup>9</sup>. In the above criminal cases of sexual violence against children, they are the weak party both mentally, physically and mentally. What children should get is protection, supervision and affection from their parents, family and the people around them. The problem of sexual violence in Indonesia, especially against children, needs more intensive and serious attention. This is because there is a tendency that child victims are often neglected by competent institutions in the criminal justice system which should provide adequate attention and protection based on the law. This should not have happened as the victim still has the right to be treated fairly and her rights are protected<sup>10</sup>. On 25 May 2016 President Joko Widodo signed Perpu Number 1 of 2016 concerning the Second Amendment to Law 23 of 2002 which was ratified into Law Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 Concerning the Second Amendment to Law Number 23 Year 2002 Concerning Child Protection Becomes Law. In the interests of protecting the occurrence of violence against children which is increasing significantly. According to the president, sexual crimes against children are a threat that endangers the lives of children as well as disturbs the sense of comfort, tranquility and public order.

He never wanted anyone to become a victim of a sexual crime, especially if the perpetrator of sexual violence was someone in his own family environment. The Criminal Code prohibits and provides threats for adults (parents) to commit obscene acts to children under their care. The Criminal Code classifies children under the care of parents,<sup>11</sup> that is:

- a. Biological children;
- b. Step child;
- c. Huge child;
- d. Pet;
- e. Children who are entrusted to their parents to be supported, educated and cared for;
- f. A bachelor / virgin under his care who is immature.

The KUHP prohibits the six groups of foster children from being molested by adults or their parents. Child sexual violence can be in the form of pre-sexual contact between children and older people as well as direct sexual contact between children and older people.<sup>12</sup> According to Rita Serena Kalibonso, if the perpetrator has a family relationship with the victim, especially if he is the victim's own father, it will be more difficult to reach the victim, let alone process it legally. People know that they tend to keep the victim from going through the legal process, the victim's mother cannot be expected to help because she is afraid of her husband and family. In fact, in the legal process, a child less than 12 years old must be accompanied by a parent or guardian<sup>13</sup>. In the case of incestuous relations committed by a father to his daughter, the

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<sup>9</sup> Arif Gosita et.al, *Perlindungan Terhadap Anak Korban Kekerasan Di Indonesia (Menyelami Usul Kebijakan)*, (Medan, 2001)

<sup>10</sup> Mien Rukmini, *Aspek Hukum Pidana dan Kriminologi (Sebuah Bunga Ramai)*, (Bandung: PT.Alumni, 2006) hal 1.

<sup>11</sup> Ismantoro Dwi Yuwono, *Application of Law in Cases of Sexual Violence Against Children* (Yogyakarta: Pustaka Yustisia Publisher, 2015) pp. 34-35

<sup>12</sup> Abu Huraerah, *Child Abuse (Kekerasan Terhadap Anak)* edisi revisi, (Bandung: Nuansa, 2007) h. 48.

<sup>13</sup> Mein Rukmini, *Op.cit.*, hal 2

perpetrator threatens not to support his family or even divorces the victim's mother<sup>14</sup>. One of the obstacles in eliminating sexual violence in the family environment is that there is still an opinion in society that considers violence in the family environment to be a disgrace that must be covered up.<sup>15</sup> What is meant by protection here is protection against various kinds of victimization that can cause mental, physical and social suffering to a person. Apart from that, protection for victims is to be able to exercise their rights and obligations in a balanced and humane manner.<sup>16</sup> The increasing number of child victims of sexual violence perpetrated by their own families is increasingly concerning and the absence of follow-up on the problem has made more children become victims, and the lack of the role of the family to protect their children puts children in a difficult situation because they do not have shelter. In order to carry out reforms regarding the fulfillment of human rights and legal protection for victims of violent crimes including victims of sexual violence, the Witness and Victim Protection Agency was formed or in short, LPSK is an independent Indonesian institution established based on Law Number 31 of 2014 Calm Amendments to Law Law Number 13 of 2006 concerning Protection of Witnesses and Victims in order to improve the implementation of witness and victim protection. The background of the establishment of the Witness and Victim Protection Agency is because the presence of witnesses and victims is not getting enough attention, there is no one who regulates and guarantees the rights of witnesses and victims and the motivation to protect witnesses and victims against human rights violations is increasing. The existence of the LPSK as an institution that handles the protection of witnesses and victims, at least provides a breath of fresh air for people who are victims of human rights violations or crimes, including crimes of sexual violence, to be more courageous and play a role by revealing the chronology of events they have experienced and crimes that often occur. even in an environment that is not expected, there will be attempts to demean human values and dignity by means of sexual violence, such as in one's own family. In addition, LPSK still has much to do in the supervision and protection of children, not only direct action but indirect action is also needed in monitoring the implementation of child protection against sexual violence in their family environment. Direct legal protection is to provide handlers for children as victims of criminal acts of sexual violence against children, while indirect legal protection is to provide prevention and control before and after criminal acts of sexual violence against children with the existence of laws and regulations and protection institutions laws against existing children, then the government in providing legal certainty and legal order against criminal acts of sexual violence against children must be implemented in accordance with applicable regulations and impose severe penalties for perpetrators of criminal acts of sexual violence against children, so that perpetrators of criminal acts of sexual violence against children are deterred from the applicable penalties. . Indonesia is a rule of law that adheres to the rule of law, therefore Indonesia needs to implement the concept of a rule of law, especially the protection of the law for children. One form is the inclusion of legal protection for children in article 28 B point 217 which reads "every child has

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<sup>14</sup>Sri Esti Wuryani Djiwandono, loc. cit

<sup>15</sup> Rena Yulia, VICTIMOLOGI: Perlindungan Hukum Terhadap Korban Kejahatan, (Yogyakarta: Graha Ilmu, 2010) Hal 3

<sup>16</sup> Arif Gosita, Masalah Korban Kejahatan (Kumpulan Karangan), (Jakarta: PT. Bhuana Ilmu Populer, 2004) hal 172.

the right to grow and develop and has the right to protection from violence and discrimination".

## B. Research Methods

It is a way of acting according to a certain system of rules, the purpose of this method is so that practical activities can be carried out rationally and with direction in order to achieve optimal results.<sup>17</sup>

### 1. Types of research

The research used in this thesis is normative legal research. The normative juridical approach method is a study that examines the law that is conceptualized as a norm or rule that applies in society, and becomes a reference for everyone's behavior.<sup>18</sup> Meanwhile, what is meant by normative legal research is legal research that aims to obtain normative knowledge about the relationship between one rule and another and its application in practice.<sup>19</sup> In this thesis, the author discusses the Role of Witness and Victim Protection Institutions in protecting child victims of sexual violence in their own family environment.

### 2. Data and sources

Victims in protecting child victims of sexual violence in their own family environment.

#### a) Primary Legal Materials

Namely the materials that bind and consist of basic norms or rules, basic rules, regulations, uncodified legal materials, jurisprudence and treaties.<sup>20</sup> In this study, primary legal materials are regulations, laws and regulations relating to Child Protection, Witness and Victim Protection Institutions, and Domestic Violence and other related regulations. The primary legal materials that the authors use are:

- 1) Criminal Code
- 2) Law Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 Concerning Child Protection,
- 3) Law Number 23 of 2004 concerning Elimination of Domestic Violence,
- 4) Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims
- 5) Government Regulation Number 4 of 2006 concerning Implementation and Cooperation for Recovery of Victims of Domestic Violence.

#### b) Secondary Legal Materials

Namely materials that provide an explanation of primary legal materials.<sup>21</sup> In this research, the form of literature related to Child

<sup>17</sup> Sudarsono, Pengantar Ilmu Hukum, (Jakarta: Reneka Cipta, 2004) hal 15

<sup>18</sup> Abdulkadir Muhammad, Hukum Dan Penelitian Hukum, (Bandung: Citra Aditya, 2004) hal 52.

<sup>19</sup> *ibid*

<sup>20</sup> Soejono Soekanto dan Sri Mamudji, Penelitian Hukum Normati Suatu Tinjauan Singkat, (Jakarta: Rajawali Pers, 2004) hal 13

<sup>21</sup> *ibid*

Protection, Witness and Victim Protection Institutions, and Domestic Violence. The literature used includes: books, national and international scientific journals as well as papers, research results, theses and theses

c) Tertiary legal materials

Namely legal materials that provide explanations or directions for primary and secondary legal materials.<sup>22</sup>

**3. Method of collecting data**

To obtain a scientific truth in thesis writing, data collection methods are used<sup>23</sup> a literature, namely studying and systematically analyzing books, scientific papers, the internet, laws and regulations and other materials related to the materials discussed in this study.

**4. Data analysis**

Normative legal research that examines secondary data and presents the following data with its analysis.<sup>24</sup>The method of data analysis was carried out by qualitative methods with deductive conclusions. There are basically two methods of drawing conclusions, namely deductive and inductive drawing methods. Deductive conclusion method is a general proposition whose truth is known and ends in a more specific conclusion (new knowledge).<sup>25</sup> The method of inductive inference is a process that starts with specific propositions (as a result of observations) and ends at a conclusion (general knowledge) in the form of general principles.<sup>26</sup> Withdrawing conclusions on the data that has been collected using deductive or inductive conclusion methods, so that it will be able to explain the answers to the problems that have been compiled<sup>27</sup>.

**C. Results and Discussion**

**1. Internal factors in the occurrence of sexual violence in children.**

As we approach the 21st century, there are still many children and families who have to deal with problems of poverty, drugs, violence or torture, rape, parental divorce, parents who drink, death of parents, do not have a proper home, are born with disease and suffering from AIDS (Acquired Immune Deficiency Syndrome) which has an impact on the lives of children.<sup>28</sup>The occurrence of crimes against children is due to several factors that influence it. The factors that influence it are complex, as explained by several internal factors in the occurrence of crime according to several experts as follows: According to Suharto<sup>29</sup>Whereas violence against children is generally caused by internal factors originating from the children themselves, namely children experiencing disabilities, mental retardation, autistic behavior disorders, children are too innocent, have a weak temperament, children's ignorance of their rights, children

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<sup>22</sup> Infra footnote 54

<sup>23</sup> Ibid p. 24.

<sup>24</sup> Soejono Soekanto, op. Cit p. 69

<sup>25</sup> Bambang Sunggong, Metode Penelitian Hukum, (Jakarta: Raja Grfindo Persada, 2007) hal 11.

<sup>26</sup> Ibid p. 50

<sup>27</sup> Winarto Surachman, Dasar Dan Tehnik Research (Pengantar Metodologi Ilmiah), (Bandung: Tarsito, 1982) hal 131.

<sup>28</sup> Sri Esti Wuryani Djiwandono, op. Cit p. 77

<sup>29</sup> Abu Huraerah, op.cit., P. 50

are too dependent on adults. According to Rusmil, the causes of violence and neglect of children occur due to the child's own factor, namely the child suffering from developmental disorders, chronic disease due to dependence on the child's environment and because the perpetrator deviates the child. According to Moore and Parton<sup>30</sup> As quoted by Fentini Nugroho, the individualistic factor states that parents who are gifted to abuse children have certain characteristics, such as: having a background (childhood) which is also full of violence, they are also accustomed to receiving beatings. There are also those who consider children as individuals who should provide support and attention to parents (role reversal) so that when the child cannot meet these expectations, parents feel that the child should be punished. Another character is the ignorance of the child's developmental needs, for example the child's age is not yet possible to do something but because of the lack of parental knowledge, the child is forced to do it and when it turns out that the child is not yet capable, the parents are angry. According to Richard J.<sup>31</sup>

## **2. External Factors Occurrence of Sexual Violence in Children**

External factors in the occurrence of sexual violence against children, namely factors that are outside of the child's self, can be in the form of individual environments such as family, society, education, economy, politics and so on. According to Suharto, that violence against children is generally caused by internal factors and external factors, external factors originating from the family and the community environment such as:<sup>32</sup> According to Suharto<sup>33</sup> Whereas violence against children is generally caused by internal factors that come from the children themselves, namely children experiencing disabilities, mental retardation, autistic behavior disorders, children are too innocent, have a weak temperament, children's ignorance of their rights, children are too dependent on adults.

- 1) Poor family, unemployed parents, insufficient income and many children;
- 2) Single family or broken home, for example divorce, absence of mother for long term or family without father and mother unable to fulfill children's needs economically;
- 3) Psychologically immature families, ignorance of educating children, unrealistic expectations of parents, unwanted children, children born out of wedlock;
- 4) Severe illness or mental illness in one or both parents, for example, the inability to care for and care for children due to emotional upset and depression;
5. History of neglect of children, parents who feel that they have experienced little abuse tend to mistreat their children;
6. Poor social conditions, slum settlements, displacement of children's playgrounds, indifference to acts of exploitation, views of the value of children that are too low, increased understanding of wages economics, weak legal instruments, lack of stable social control mechanisms.

## **3. Impact of Sexual Violence on Children**

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<sup>30</sup> Ibid., Pp. 51-52

<sup>31</sup> Ibid., P. 53.

<sup>32</sup> Abu Huraerah, Loc. Cit

<sup>33</sup> Topo Santoso and Eva Achjani Zulfa, op.cit, p. 61

Child rape by biological father, brother, neighbor, friend is a child's suffering that cannot be erased in the next life. Rape and other forms of sexual violence against children that are often carried out by close people are considered to have entered a troubling stage.<sup>34</sup>The public in general is not aware of the extent of the influence of child abuse, to see the complexity of the problems faced as a result of the influence of child abuse can be seen from the following expert opinions. According to Rusmili, stated that children who suffer from violence, exploitation, abuse and neglect face the risk of:<sup>35</sup>

- 1) Shorter age;
- 2) Poor mental and physical health;
- 3) Educational problems (including drop-out from school);
- 4) Limited ability as a parent later;
- 5) Become a bum.

Meanwhile Suharto concluded that violence can cause children to lose the most rudimentary things in their lives and in turn have a very serious impact on children's lives in the future, including:

- a) Permanent disability;
- b) Learning failure;
- c) Emotional disturbances can even lead to personality disorders;
- d) Poor self-concept and an inability to trust or love others;
- e) Passive and withdrawn from the environment, afraid to form new relationships with other people;
- f) Aggressive and sometimes criminal;
- g) Become a bully as an adult;
- h) Using drugs or alcohol;
- i) Dead.

#### **4. Functions of Legal Institutions and Institutions in Victim Protection**

In essence, the protection of victims as legal promises by the criminal justice system seeks to realize the primary function of law as expressed by IS Susanto in three ways, namely:<sup>36</sup>

- 1) Protection, law functions to protect the community from the threat of danger and harmful actions from fellow and community groups including those carried out by power holders (government and state) and those that come from outside, aimed at physical, mental, health, values, and human rights.
- 2) Justice, guarding law, protecting from justice for all people. Negatively, it can be said that the law is unfair, that is, if the law in question is seen as violating the values and rights that are believed to be maintained and protected for all people.
- 3) Development, law is used as a vehicle both in determining the direction, objectives and implementation of development fairly. This means that the law is simultaneously used as a development tool but also as a control tool so that development is carried out fairly.

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<sup>34</sup>Sri Esti Wuryani Djiwandono, loc. Cit

<sup>35</sup>Abu Huraerah, op.cit. page 56

<sup>36</sup>Maya Indah S, *Perlindungan Korban (Suatu Perspektif Viktimologi dan Kriminologi)*, (Kencana Prenadamedia Group, Jakarta: 2014), hal 71, lihat I.S.Susanto, *Kejahatan Korporasi*, (Semarang:UNDIP, 1995) hal 17.



Edmond Cahn suggested that in order to provide protection for parties who must be protected by law, which are called consumers of law, in this case victims and the wider community, an anthropocentric view of the law is needed. This view is a point of view of law and government in which humans concretely live in the midst of it, as the main consumers of law and government. The concrete way humans are treated will determine the value of the law. In this consumer perspective, Cohn has a way of working as follows:<sup>37</sup>

- 1) Regarding targets and events related to legal impact. The significance of any principle, rule or concept is examined by observing the human targets it is affected by. This method reveals that a sense of injustice has a vital influence on the way the law works.
- 2) Concerning human concretization. The law protects the physical and psychological safety of the whole human being, and his property on which the law rests guarantees the social values, ideals and freedoms that make life very meaningful to humans as a whole.
- 3) Regarding the relative proportion of the gravity of things. Although responsive to the interests of internal efficiency and profit, law gives a far greater meaning to the needs felt by the people in general.
- 4) Regarding attention to certain cases. Tradition for jurists uses an official perspective to justify the legal system in terms of mean, overall statistics, and overall manner of behavior. In fact, it belittles an interest in the results of certain cases as a scientific act, unlike jurists.

#### **5. Legal Protection Measures Provided by the Witness and Victim Protection Agency (LPSK)**

In Indonesia, the LPSK was formed recently. The law regulating the protection of witnesses and victims in particular was only created in 2006 and in mid-2008 a new institution and personnel were formed. At the beginning of its operation, LPSK certainly still focused on the institutional capacity content that was felt to be needed to realize its ability to provide protection for witnesses and victims. Therefore, various activities have been taken to strengthen its institutional capacity. The existence of the LPSK based on the relevant laws and regulations needs the support of all components of the nation. Not only in order to be able to play an optimal and maximum role, but also to take part in regional and international levels.<sup>38</sup>The police are the first agency to report the occurrence of a crime in society, especially for cases of Domestic Violence (KDRT), so based on Article 16 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, the police are obliged to provide temporary protection to victims and in providing protection to victims, the police collaborate with the Witness and Victim Protection Agency (LPSK) to ensure safety and comfort for victims. All forms of violence, especially domestic violence, constitute violations of human rights and crimes against human dignity as well as forms of discrimination that must be eliminated. Sexual violence committed by one's own family is not different in standard operating procedures for services and protection of witnesses or victims who come from their own family or are not in the case of sexual violence crime. Before witnesses and victims can get legal protection from the LPSK, they must pass several procedures that have

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<sup>37</sup> Ibid., P 72

<sup>38</sup> Bambang Waluyo, op.cit, p. 50

been established by the LPSK besides they must meet the requirements to receive protection from the LPSK. The requirements that must be fulfilled in accordance with Article 28 Paragraph (1) of the PSK Law are: they have to pass several procedures that have been set by the LPSK besides they must meet the requirements to receive protection from the LPSK. The requirements that must be fulfilled in accordance with Article 28 Paragraph (1) of the PSK Law are: they have to pass several procedures that have been set by the LPSK besides they must meet the requirements to receive protection from the LPSK. The requirements that must be fulfilled in accordance with Article 28 Paragraph (1) of the PSK Law are:

- a) the importance of the testimony of Witnesses and / or Victims;
- b) Threat level that endangers Witnesses and / or Victims;
- c) results of medical team or psychologist analysis of Witnesses and / or Victims; and
- d) a track record of criminal acts that have been committed by Witnesses and / or Victims.

Talking about legal protection efforts from LPSK, it is important to understand that protection is an important aspect that must be owned by every citizen. Protection is all efforts to fulfill rights and provide assistance to provide a sense of security to Witnesses and / or Victims which must be implemented by LPSK or other institutions in accordance with the provisions of the Law. Protection provided to victims or witnesses can be provided at the stage of investigation, investigation, prosecution and / or examination at court proceedings, on the basis of the initiative of law enforcement officials, security forces, and / or from requests submitted by victims.

The existence of legal protection from the LPSK, guarantees the sense of security for witnesses and victims is getting stronger. Another form of legal protection that can be provided to victims is through the provision of compensation, retribution and rehabilitation as regulated in Government Regulation Number 44 of 2008 concerning Compensation, Retribution and Assistance to Witnesses and Victims.

All of these rights will be fulfilled by the LPSK as a form of legal protection which is its duty, but still consider various things including the urgency of the case and the urgency of its fulfillment. Apart from that, in cases of domestic violence, the LPSK will also refer to Article 10 of the PKDRT Law which formulates the rights of victims. However, to be able to respond to domestic violence effectively, it is very necessary for every family member to have the ability and skills to deal with domestic violence, so that it does not cause fatal sacrifices. Of course this can only be done for family members who already have a certain maturity age and have the courage to act and act. Conversely, if family members do not have the power and ability to face domestic violence, proactively the community, experts,

## **6. Constraints by the Witness and Victim Protection Agency (LPSK) in revealing cases of sexual violence in the family environment.**

The Witness and Victim Protection Agency (LPSK) was established based on Law Number 31 of 2004 concerning Witness and Victim Protection. LPSK is an institution that was formed to handle the provision of protection and assistance to witnesses and victims based on their duties and authorities as stipulated in the Law on Witness and Victim Protection. So far, legal protection for witnesses and victims has been based on the Criminal Code as a source of material law, using the KUHAP as procedural law.

However, the Criminal Procedure Code regulates more about suspects than witnesses and victims. It seems that the position of witnesses and victims has not been optimal compared to that of the perpetrators. Witnesses, victims and whistleblowers need legal protection so that they are not worried or afraid that their lives will be threatened by certain parties. when they are needed by law enforcers to help uncover criminal cases, at the level of investigation, investigation, prosecution and examination in court. Legal protection based on Article 50 to Article 68 Law Number 8 of 1981 KUHP. Therefore, based on the principle of equality before the law in the principle of a state of law, witnesses and / or victims must be guaranteed legal protection.<sup>39</sup> Despite the promulgation of Law Number 31 of 2014 concerning Protection of Witnesses and Victims, the provision of protection for witnesses and victims is still considered not optimal. The Law on Witness and Victim Protection is deemed insufficient to guarantee the protection of witnesses and victims which directly hampers the performance of the LPSK itself. One of them, namely: The Law on Protection of Witnesses and Victims does not specifically regulate what kind of authority the LPSK has in the framework of providing protection for witnesses and victims, which sometimes causes LPSK to often take the wrong path in carrying out its duties which instead place these witnesses and / or victims. in a tricky situation. When viewed from the duties and authorities given by the Law on Witness and Victim Protection against LPSK, in general it seems that this is sufficient. However, if we pay close attention to it, especially if it is related to the mandate of the law, the authority of this institution is still inadequate. There are several provisions that should be stipulated in this PSK Law, one of which is the issue of providing assistance to witnesses and victims. In Article 33 - Article 36 of the Witness and Victim Protection Law regarding the procedures for providing assistance, it does not stipulate the various provisions that should be agreed by the LPSK with witnesses and / or victims in order to go hand in hand. It would be better if the LPSK and the witnesses and / or victims who will receive the assistance make agreements regarding the assistance that will be carried out by people, institutions or organizations. For example, making agreements with departments in other government circles, or making agreements with people, institutions or organizations for the broader interests of LPSK. In addition, the Law on Protection of Witnesses and Victims has several weaknesses, namely that it does not regulate how law enforcers provide protection for witnesses and victims, even for prosecutors and their families, considering that both witnesses and victims and prosecutors in reality have difficulties in securing themselves. and his family. As well as the absence of an LPSK in each region plus the authority of the LPSK which only provides protection only if there is a request making the handling of protection for witnesses and victims in all regions in Indonesia not yet optimal. LPSK is an organization that is authorized by the government for government affairs. In Administrative Law, the state cannot stop or remain silent, the state cannot refuse on the grounds that there are no rules called *ultra vires*, namely the government's authority for very urgent matters and need to be carried out as long as it does not conflict with horizontal regulations. If it is not regulated, of course there must be a mutual agreement or a policy or descriptive take in the context of *ultra vires*, this

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<sup>39</sup> Muhammad Resha Tenribali Siregar, "Peran Lembaga Perlindungan Saksi Dan Korban (LPSK) Dalam Melindungi Saksi Korban Kekerasan Seksual Yang Dilakukan Keluarga Sendiri (Skripsi Program S1 Ilmu Hukum, Universitas Hasanuddin 2015)

is a base practice or common practice that can be carried out anywhere, meaning that the LPSK has to do what must be decided and not against the rules. But sometimes in practice too, LPSK receives intervention from other institutions in carrying out its duties,

#### **D. Conclusion**

From the results of the research and discussion described in the previous chapter, several conclusions can be drawn as follows:

1. Protection of child victims of sexual violence in the family environment is regulated in the KUHP and outside the KUHP. The provisions in the Criminal Code are regulated in Article 287. Regulations outside the Criminal Code are in the form of the Child Protection Law in Article 9, the Law on the Protection of Witnesses and Victims in Article 5, the Law on the Elimination of Domestic Violence in article 4 and Government Regulation Number 4 of 2006 in Section 2.
2. Factors that cause violence against children are generally caused by internal factors that come from the children themselves and external factors that come from family and community conditions, such as:
  - a. Children have physical disabilities, mental retardation, behavioral disorders, autism, children are too naive, have a weak temperament, do not know their rights, children are too dependent on adults;
  - b. Family poverty, unemployed parents, insufficient income, many children;
  - c. Single family or broken home;
  - d. Psychologically immature family;
  - e. Severe illness or mental illness in one or both parents;
  - f. History of child neglect;
  - g. Poor social environmental conditions.
3. The role of the Witness and Victim Protection Agency (LPSK) in protecting child victims of sexual violence in the family environment, namely by providing witness and victim rights, namely:
  - a. obtain protection for the safety of his personal, family, and property, and are free from threats regarding the testimony he will, is being, or has given;
  - b. participate in the process of selecting and determining the form of security protection and support;
  - c. provide information without stress;
  - d. got a translator;
  - e. free from entangling questions;
  - f. get information about the progress of the case;
  - g. get information about court decisions;
  - h. get information in case the convict is released;
  - i. anonymity;
  - j. got a new identity;
  - k. find a temporary residence;
  - l. got a new residence;
  - m. obtain reimbursement of transportation costs as needed;

- n. get legal advice;
- o. get temporary living expenses assistance until the end of the protection period; and / or
- p. get assistance.

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