

## **The Role of Victims in Rape Cases of Biological Children in Ternate City: A Victimology Review**

**Indrawati Irianto Parengrengi**

*Faculty of Law, Universitas Khairun Ternate, Email: indrawatiirantop@gmail.com*

**Muhaimin Limatahu**

*Faculty of Law, Universitas Khairun Ternate.*

**Faisal**

*Faculty of Law, Universitas Khairun Ternate.*

---

### **Abstract**

This study aims to determine the role of children as victims of rape by their biological father from the victimological perspective and to find out the efforts of the Ternate Police Force in tackling cases of rape of biological children that occurred in the jurisdiction of the Ternate Police. This research was carried out in the City of Ternate, precisely at the Ternate Police Force, Ternate District Court, and to rape victims by using the interview method with predetermined respondents. The results of this study indicate the role of the victim in the rape committed by his biological father against him. The role of the biological child rape victim is due to moral erosion in society which is a problem in society. It cannot be denied that it is always influenced by various aspects of life, for example, the socio-cultural aspect that exists in society. The current transition to the bad social condition resulted from the modernization that is not balanced with the development of good morals. For example, current fashionable clothes tend to be revealing. The Ternate City Police Force has been active in carrying out various kinds of actions: First, Preventive Actions, namely prevention efforts before the occurrence of child rape. In this case, it involves several parties including individuals, society, government, and the police themselves. It includes conducting socialization in schools about the dangers of sex outside of marriage in collaboration with the Health Service of Ternate City, conducting raids on boarding houses and inns, eradicating alcohol, and pornographic films/videos. Second, Repressive Actions, namely efforts made after the occurrence of child rape. In this case, the Ternate City Police have taken legal action following existing laws and regulations.

**Keywords:** *Victimology, Victim, Rape*

### **INTRODUCTION**

Children are a mandate as well as a gift from God Almighty, which must always be protected because they have inherent dignity, worth, and rights as human beings that must be upheld. Children's rights are part of the human rights contained in the Republic of Indonesia's 1945 Constitution and the United Nations Convention on Children's Rights. Children are the future of the nation and the next generation of the nation. So, every child has the right to live, grow,

develop, and participate. They have the right to be protected from acts of violence and discrimination. They have civil rights and the right to freedom.

Even though Law Number 39 of 1999 concerning Human Rights has included children's rights, the implementation of the obligations and responsibilities of parents, families, communities, governments, and the state to protect children still requires a law on child protection as a juridical basis. Parents, families, and communities are responsible for maintaining and protecting these human rights following the obligations imposed by law. Likewise, in the context of implementing child protection, the state and government provide facilities and accessibility for children, especially in ensuring optimal growth and development.

Efforts to protect children are carried out as early as possible, namely from the fetus in the womb until the child is 18 (eighteen) years old. Departing from the concept of complete and comprehensive child protection, Law Number 39 of 1999 places the obligation to protect children based on the following principles:

- a. Non-discrimination
- b. The best interests of the child
- c. Right to live, survival and development
- d. Respect for children's opinions.<sup>1</sup>

Children -- as the nation's next generation -- are one of the subjects of development in the field of human resources (HR), whose development must be maintained, to create the quality successors of the nation who can continue and carry out the nation's vision and mission. Children are the potential and successor to the ideals of the nation. Children are the development capital that will maintain and develop the existing results of development. Therefore, children need protection to ensure complete, comprehensive, harmonious, and balanced physical, mental, and social growth and development.<sup>2</sup>

A child will be the successor of hope for the continuity of a nation. Because the fate of a nation is very dependent on the next generation. If the next generation is good, certainly, the life of a nation will also go well. On the other hand, if the next generation is damaged, the life of the nation will be damaged. So, the next generation is important for the survival of the nation. Thus, it is only natural that a child should be given special attention, supervision, and protection.

Child protection is all efforts made to create conditions so that every child develops and grows naturally, and becomes physically, mentally and socially healthy. Efforts to protect children have been discussed for a long time both nationally and internationally. Talks about this issue will never stop because it is a universal problem. Protection of children can be realized in various forms, namely through the provision of children's rights that are linked to law, such as protection for welfare, education, development, guarantees for a bright future, and protection from cruelty, violence, and other protections that can stimulate the natural development of the child.

Unfortunately, children are often targets of crime. They attract criminal actions because in essence children cannot yet protect themselves from various kinds of actions that cause mental, physical, and social losses. Children must be assisted by others to be protected.

---

<sup>1</sup> Pemerintah Republik Indonesia, "Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak," Pub. L. No. 35 (2014).

<sup>2</sup> "No Title" (n.d.).

Considering such situations and conditions, there are some cases where children become rape victims.

Children are not objects of arbitrary action from anyone or any party. Therefore, the commitment and treatment that pays attention to the protection, development, and role of children as the next generation of the nation must be upheld by the government. The main protective pillar for children is the family. But the fact is that in many cases, people who are close to children become perpetrators. The family is the most intimate environment for children, where the children first carry out social activities, grow, and develop with supervision and guidance from their parents. It has been implied in Law Number 23 of 2002 which was later amended by Law Number 35 of 2014 concerning Child Protection. This law regulates the responsibility for the protection of the care and development as well as safeguarding the interests of children which are borne by the state, government, community, family and parents.<sup>3</sup>

Article 2 paragraph 3 and paragraph 4 of the Law of the Republic of Indonesia No. 4/1979 on Child Welfare reads as follows<sup>4</sup>: “Children have the right to care and protection, both when in the womb and after birth. Children have the right to protection against the environment that can harm or hinder normal growth and development.” These two verses clearly state and encourage the need for child protection in the context of seeking child welfare and fair treatment for children.

The crime of rape is a form of violence against women, including children. This crime is an example of the vulnerability of women's position, especially to men's sexual interests. The sexual image of women who have been being placed as male sexual objects; has far-reaching implications for women's lives. They are forced to always face violence, coercion and physical and psychological torture.

Violence against women and children is horrifying to hear and perhaps the public prefers to turn a blind eye. That is the reality for children in Indonesia. Several types of violence often occur to children in Indonesia, namely physical, sexual, psychological, and social (structural) violence. Such violent actions have a bad and permanent impact on childrens.

From the explanation above, it has been explained that children are subjects protected by the state, but unfortunately, many children become victims of rape. The rapists are usually not strangers, but they are usually the closest people, especially parents. It is known that fathers are protectors of their children, but in some cases, fathers destroy their children's future. Here there are 2 (two) cases of rape committed by fathers against children that occurred in Ternate City.

The first case occurred in Kayu Merah Village, South Ternate City District, North Maluku Province. The victim with the initials of SE (14 years old) was raped by ME (40) who is her biological father. The acts were carried out by ME twice at the house of the suspect and the victim. The first incident was carried out in the family room, to be precise in the room of the perpetrator and his wife. Then, the second incident was carried out in the victim's room<sup>6</sup>. It started when the suspect watched porn. Not long after, the suspect immediately had sex with his biological child. At the time of the incident, the victim's mother and sister were not at home.

---

<sup>3</sup> “No Title.” <http://repository.umsu.ac.id/bitstream/123456789/6334/1/SKRIPSI%20ERA%20HUSNI.pdf>,

<sup>4</sup> Pemerintah Republik Indonesia, “Undang-Undang Nomor 4 Tahun 1979 Tentang Kesejahteraan Anak,” Pub. L. No. 4/1979 (1979).

<sup>5</sup> Pemerintah Republik Indonesia.

<sup>6</sup> “Terpengaruh Film Porno Ayah Kandung Di Ternate Perkosa Anak Sendiri,” [ternateinfo.com](http://ternateinfo.com), 2020.

The second case was committed by AM (53 years old), a resident of Kampung East Makassar, Central Ternate Subdistrict, North Maluku Province. M (14 years old) was molested by her biological father twice from September to November 2019. Then, this man had sex again with his biological daughter on January 5<sup>th</sup>, 2020. Unable to bear the burden, M complained to one of her family members. M's family reported the case on January 22<sup>th</sup>, 2020 to the Ternate Police<sup>7</sup>.

Based on the facts in the field, some immoral acts were carried out by the parents of the victim. The cases above concern sexual intercourse carried out by the parents of the victim. Violence against women and children often occurs today, including in the North Maluku region. For this act, the perpetrator was punished under the provisions of Article 81 Paragraph (1), Law Number 35 of 2014 concerning Child Protection, amendments to Law Number 23 of 2002 concerning Child Protection, Article 81 Paragraph (3) in conjunction with Article 76 of the Law Number 35 of 2014 concerning Child Protection, an amendment to Law Number 23 of 2002 concerning Child Protection.

The law contains the following elements:

- a. Everyone
- b. Commit violence or threats of violence
- c. Forcing the child to have intercourse with him or with other people.
- d. The action is carried out by parents, guardians, people who have family relationships, child caretakers, education staff, apparatus that handles child protection or more than one person together.

In general, legal attention to victims is still very minimal compared to the perpetrators. So, there is a science of victimology that examines the role of victims, without ignoring that the factor in the occurrence of crime does not only come from the perpetrator but can also come from the victim. For example, the victim is also considered to have a role such as trusting his father too much, the victim also often wears revealing clothes, the victim does not close the bedroom door while sleeping and various factors that cause the perpetrator's lust to arise. This prompted the author to examine the case in the form of a paper with the title, "*The Role of Victims in Rape Cases of Biological Children in Ternate City: A Victimology Review.*"

## RESEARCH METHOD

### 1. Research Type

The type of research used in this research was empirical legal research. Empirical legal research is a legal research method that uses empirical facts taken from human behavior, both verbal behaviors obtained from interviews and real behavior through direct observation. Empirical research is also used to observe the results of human behavior in the form of physical and psychological information files.

### 2. Research Location

The location of the research was carried out in the City of Ternate, precisely at the Ternate Police Resort. The reason was that the cases occurred in the Ternate Police Resort area, and the Ternate Police Force handled these cases.

---

<sup>7</sup> "Bocah 14 Tahun Di Ternate Di Cabuli Dan Di Setubuhi Ayah Kandung," *Muluttoday.Com*, n.d.

<sup>8</sup> Achmad Ali and Wiwie Heryani, *Menjelajahi Kajian Empiris Terhadap Hukum* (Jakarta: Kencana Prenada Group, 2012).

- a. Criminal Reservation Unit of Ternate Police Resort. The author also researched the State High Court
- b. Ternate and at the victim's address in Kayu Merah Village, South Ternate City District,
- c. East Makassar, Central Ternate District, the reason is to obtain information on the victim and the perpetrator from the family.

### **3. Types and Sources of Data**

The types and sources of data used in this study consisted of primary data and secondary data. Primary data is original data obtained directly from the community<sup>9</sup>. Secondary data is data that supports primary data and is obtained in finished forms, such as in documents and publications, which are obtained from library materials. The secondary data sourced from:

- a. Primary Legal Materials, namely materials that are binding, such as laws and regulations. In this case, they are:
  - 1) The Republic of Indonesia's 1945 Constitution.
  - 2) Law Number 39 of 1999 concerning Human Rights.
  - 3) Law Number 35 of 2014 concerning Child Protection.
  - 4) The Book of Laws
  - 5) Criminal Code
- b. Secondary Legal Materials, namely materials that explain primary legal materials, such as:
  - 1) books related to the title and problems that will be studied in writing this paper.
  - 2) The results of research and scientific papers that are related to this paper.
  - 3) Seminar papers related to this paper.
  - 4) Legal journals and literature related to this paper.
  - 5) Tertiary legal materials, namely materials that can provide instructions or can explain primary and secondary legal materials, such as dictionaries, the internet, journals, and related encyclopedias.

### **4. Data Collection Techniques**

Data collection techniques used in the study are as follows:

- a. Field Research. It was conducted to obtain primary data using direct interview techniques. In this case, the author conducted interviews with investigators at the Ternate Police Force and the family (mother) of child rape victims in Kayu Merah Village.
- b. Literature Research. This method was carried out through a series of activities such as reading, taking notes, reviewing, and making reviews of library materials that are related to the studied problem.

### **5. Technical Data Analysis Techniques**

The data analysis technique that the author used is descriptive qualitative research. It is a process of systematically searching and compiling data by using relevant sources of information to complete the data that the author needs. The data is derived from interviews and literature studies.

## **ANALYSIS**

### **A. Definition of Victimology**

---

<sup>9</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1984).

Victimology comes from the Latin word *victim* which means victim and *logos* which means knowledge. Terminologically, victimology means a study that studies the victim, the causes of the victim and the consequences of the occurrence of crime which is an issue of humans and is a social reality.

Victims in the scope of victimology have a broad meaning because they are not only limited to individuals who experience physical and psychological harm, but also groups, corporations, private companies, and the government<sup>10</sup>. Victimology is also known as a science/study that studies victimization (of crimes) that is a human problem and is a social reality. It includes:

- a. A human problem according to the actual dimensional proportion.
- b. A result of interaction due to the existence of an interrelation between existing phenomena and influence each other. It is the action of an individual who is influenced by certain social structural elements of society.

Victimology can also provide an understanding to the community by studying victims and witnesses of crime. The protection of witnesses and victims is one of the subsystems of the criminal law system in Indonesia. Based on the statement above, a question that arises is whether witness and victim protection is provided for all types of crimes. Not everyone can be given protection against all types of crime. Therefore, it is necessary to limit norms regarding the concept of protection for victims and witnesses both for the safety of their officials, as well as the level of continuity in handling criminal cases.

Victimology assesses victims and provides orientation for the welfare of society; this is also in line with victimization thoughts of Ellias or Separanovic quoted by Maya Indah.<sup>11</sup> Their victimization studies promote human rights insights from the perspective of human suffering in line with thoughts on victimization. It studies victims of legal problems. Victimology provides a better understanding of how to protect victims. Victim studies in victimology can provide ideas in the field of victimization.

Social context refers to traditional cultural values and structures that influence differences, individual or group status positions such as social pressure, conflicts, bad labels, and ways to resolve conflicts. For example, powerful groups tend to impose their will with power, so abuse of power is seen as endemic without victimization.

Social consequences of victimization can adversely affect certain individuals, groups, society in general, and humanity in general, both in terms of medical, psychiatric, criminological, and social implications. In a process that is understood because the community or community stakeholders are sensitive enough to determine bad influences, the first thing that needs to be prioritized is that the methods of victimization include comprehensive methods that have a multidisciplinary perspective from criminal law, criminology, and social justice. Therefore, it can be assumed that the object of victimization tries to understand and analyze the conditions and processes of victimization.

Based on this opinion, it can be concluded that victimology has an important role as a study that studies victims in social reality. Victimology can provide a deeper understanding of the background and definition of victims, and the various types of social groups, perpetrators, and subjects that are involved in the process of victimization to protect victims. Judging from its growth, victimology views crime from three

---

<sup>10</sup> Siswanto Sunarso, *Vikrimologi Dalam Sitem Peradilan Pidana* (Jakarta: Sinar Grafika, 2012).

<sup>11</sup> Sunarso. *Ibid.* p 2

perspectives: first, the role of the victim as an integral part in the interaction process that causes crime; secondly, the protection of the rights of victims as the rights of victims are often neglected compared to the rights of the perpetrators in the criminal justice process; third, the protection of victims' rights in conventional and non-conventional crimes, including victims of structural violence.

The theoretical basis used is the theory of punishment and the absolute theory or the theory of retaliation, namely the punishment is imposed because people have committed a crime. As an absolute consequence that there must be some retaliation against the person who committed the crime. So the basis for the justification lies in the existence of the crime.

## **B. Experts' Views on the Role of Victims**

Victims can have a role in the occurrence of a crime, either consciously or unconsciously, directly or indirectly. It concerns the attitude and condition of a person who is a potential victim or attitudes and circumstances that can trigger someone to commit a crime. The problem then arises the question of why victims who suffer physically, mentally, and socially, are considered as parties who play a role and trigger the occurrence of crime. Sometimes, victims are even required to take responsibility for the actions committed by the perpetrators of the crime. It can be said that if we want to observe the problem of crime according to the actual proportion of various dimensions (dimensionally), we must consider the role of the victim in the occurrence of a crime. In reality. It is not easy to distinguish each role played by the victim, because the victim is the main participant in playing various roles that are limited by certain situations and conditions. The victim can play a role in a conscious or unconscious state, either directly or indirectly, alone or together, responsible or not, passively or actively, with positive or negative motivation. Everything depends on the situation and conditions at the time where the incident took place.

In certain situations and conditions, the victim can also 'invite' the perpetrator to commit a crime against him due to his attitude and actions. In this case, there is no previous relationship between the victim and the perpetrator. For example, the victim behaves and acts negligently towards her property which gives other people the opportunity to take it without permission. It could also be because of the attitude and behavior of the victim, causing hatred, disgust, and actions that harm the victim. It could also be because the victim is in a vulnerable area or is on duty in the security sector. The victim makes it possible and makes it easier for him to become the target of a crime<sup>12</sup>.

According to J. E. Sahetapy, concerning how a person (can) become a victim is not always related to crime, as this also includes victims of accidents and natural disasters apart from victims of crime and abuse of power.

According to Arif Gosita, the role of the victim in the occurrence of a crime is as follows:

- a. The victim acts as the one who stimulates, invites, and persuades the perpetrator to commit a crime.
- b. The victim acts as a pseudo victim who cooperates with the perpetrator in committing a crime.
- c. Victims feel they are victims of other people's actions so they commit a crime as a form of revenge.

---

<sup>12</sup> Rena Yulia, *Viktimologi: Perlindungan Hukum Terhadap Korban Kejahatan* (Yogyakarta: Graha Ilmu, 2010).

- d. Victims are self-justification tools for crimes committed by a criminal. The self-justification relates to rejection, the victim's denial, devaluation of the victim's self-esteem, denial of causing suffering, harm to the victim, blaming the victim and formulating the infliction of suffering on the victim as a right act<sup>13</sup>.

## DEFINITION OF CHILDREN AND BIOLOGICAL CHILDREN

### 1. Understanding Children.

According to the Child Protection Act, Law No. 35 of 2014, Article 1 number 1, "A child is a person who is not yet 18 (eighteen years). A fetus that is still in the womb is also said to be a child." Children are a gift from God Almighty that must be guarded and educated as a provision of human resources. Children are an invaluable wealth. Referring to the Great Indonesian Dictionary, the definition of children is, "*Etymologically, a child is defined as an immature human being.*"

R.A. Kosnan explained the meaning of children as follows, "*Children are young people at a young age and they are easily influenced by their surroundings*".

Arif Gosita stated that: "*Therefore, children need to be taken seriously. However, ironically, children are often placed in the most disadvantaged positions, they do not have the right to voice their opinions, and even become victims of acts of violence and violations of their rights.*"

According to Sugiri<sup>14</sup>, "*As long as the body is still undergoing the process of growth and development, the child is still a child and will only become an adult when the process of development and growth is complete, and the age limit for a child is the same as the beginning of becoming an adult, which is 18 (eighteen) years for women and 21 (twenty-one) years for men.*"

Furthermore, Bisma Siregar, in his book states:

*"In a society that already has a written law, an age limit is applied, namely 16 years or 18 years or a certain age according to calculations that at that age the child is no longer included or classified as a child but as an adult."*

Children are the potential and the next generation of the nation. Children have a strategic role in ensuring the existence of the nation and state in the future. For them to be able to assume that responsibility, they need to obtain the widest possible opportunity to grow and develop optimally, physically, mentally, and spiritually. They need to obtain their rights, be protected, and to be prospered. Therefore, all forms of violence against children need to be prevented<sup>15</sup>.

Juridically, Indonesia already has a set of laws and regulations to guarantee children's rights, which include:

- a. The Republic of Indonesia's 1945 Constitution

The 1945 Constitution in Article 28 B paragraph (2) states, "*Every child has the right to survive, grow, and develop. They have the right to be protected from violence and discrimination*".

---

<sup>13</sup> Yulia. *ibid.* p 35

<sup>14</sup> "No Title."

<sup>15</sup> "No Title."



Based on the 1945 Constitution Article 28 paragraph (2), it can be interpreted that the position of every child is the same. They have the right to live, grow, develop, and be protected from all forms of violence and discrimination.

b. Universal Declaration of Humans Rights

This is a worldwide declaration of Human Rights that was accepted and approved by the United Nations, on December 10<sup>th</sup>, 1948. This declaration was the result of the performance of the human rights commission established in 1946 by the United Nations. The contents of this declaration state that humans are born equally with dignity and rights. Everyone has the right to live, to be free and to be safe. No one should be punished or mistreated cruelly. Based on the statement of global human rights that has been approved by the United Nations, December 10 is celebrated as World Human Rights Day.

c. The Ratification of the Declaration of the Children's Rights at the United Nations Session on November 20<sup>th</sup>, 1989 led to the Decree of the President of the Republic of Indonesia Number 36 of 1990 concerning Ratification of the Convention on the Children's Rights.

With these declarations, it is hoped that all parties – individuals, parents, social organizations, government, and society – recognize the rights of these children, and encourage all efforts to fulfill them. There are ten principles regarding children's rights according to the declaration as follows:

- 1) Every child shall enjoy all the rights outlined in this declaration without exception, without distinction.
- 2) Every child must enjoy special protection and must be provided with opportunities and facilities by law or by other means so that they can develop physically, mentally, morally, spiritually, and socially in healthy and normal ways.
- 3) Every child from birth must have a name and a national identity.
- 4) Every child should enjoy the benefits of social security.
- 5) Every child, whether physically, mentally, or socially, has a disability, and must be given special treatment, education, and maintenance according to his condition.
- 6) Every child needs love and understanding for his full and balanced personal development.
- 7) Every child must receive an education free of charge and based on compulsory education.
- 8) Every child should receive protection and first aid under any circumstances.
- 9) Every child must be protected from every form of neglect, violence, and exploitation<sup>16</sup>.

## 2. Definition of Biological Child.

Biological children or often referred to as legitimate children are children born from legal marriages according to law and religion. From this understanding, it can be concluded that children who have been fertilized before marriage but are born in marriage can be said to be biological children.

The Compilation of Islamic Law article 99 states that legitimate children are:

- a. Children born in or as a result of a legal marriage.

---

<sup>16</sup> "No Title.". *ibid.* p 37-40

- b. The result of legal husband and wife fertilization outside the womb and birthed by the wife.
- c. The child's age limit is the maximum age as a manifestation of the child's ability in the legal aspect until the child changes status to become an adult or normal legal subject. A child can be said to be a child if the child is at least 0 (zero) years old to 18 years old or up to the maximum age when the status changes to become an adult or a normal legal subject. These provisions include:
  - 1) The Civil Code, Article 330. Minors are those who have not reached the age of 21 (twenty-one) years and have not been married.
  - 2) Law No. 1/1974, concerning marriage, Article 7 paragraph (1): marriage is only permitted if the man has reached the age of 19 (Nineteen) years and the woman has reached the age of 16 (sixteen) years.

Article 47 paragraph (1) states that children who have not reached the age of 18 (eighteen) years or have never been married are under the authority of their parents as long as they are not revoked from their power.

Article 50 paragraph (1): A child who has not reached the age of 18 (eighteen) years or has never been married who is not under the authority of the parents, is under the authority of the guardian. The age limit of children according to the Criminal Code is determined in Article 45, namely 16 (sixteen) years old.

Legal protection for children's rights within the age limits of the child according to the Criminal Code in Article 45, is carried out in the case of criminal prosecution, for committing an act before the age of 16 years, the judge can determine: "Ordering the guilty be returned to his parents or guardians, without any punishment, or ordering that the guilty be handed over to the government without any punishment". From the description of Article 45 above, it can be concluded that this article is often used as a legal object for the protection of children's rights.

### **C. Police Duties and Functions**

#### **1. Police duties.**

The main tasks of the Indonesian National Police are:

- a. to maintain public order and safety.
- b. to enforce the law and provide service to the community.

They enforce regulations, guard, escort, and patrol the community and government activities as required. They also carry out various activities to ensure security, order, and smooth traffic on the road, fostering the community to increase their participation, public legal awareness and obedience of citizens to laws and regulations, participating in fostering national law, maintaining order and ensuring public security, coordinating, supervising and providing technical guidance to the special police, civil servant investigators, and other forms of self-defense. They carry out investigations into all criminal acts following the criminal procedural law and other laws and regulations, carry out police identification, police medicine, forensic laboratories and police psychology for police duties, protecting the safety of body, soul, property, society, and the environment from disturbances of order and/or disaster, including providing assistance and assistance by upholding human rights, serving the interests of the community for a while before they are being handled by the competent agency and/or party, providing services to the community under their interests within the scope of the police's duties, and carry out other duties following the laws and regulations.

## 2. The Function of the Police Force

The function of the police is to maintain security and public order, undergo law enforcement, protection, shelter, and service to the community. The bearer of the police function is the State Police of the Republic of Indonesia. Indonesia is assisted by special police, civil servant investigators, and/or other forms of defense agencies.

### D. Definition and Elements of the Crime of Rape

#### 1. Definition of Crime

Crime comes from a term known in Dutch criminal law, namely *strafbaar feit*. Although this term was contained in the Dutch WvS and the Dutch East Indies WvS (the Criminal Code), there is no official explanation of what is meant by *strafbaar feit*. Therefore, jurists try to give meaning and content to the term. Unfortunately, until now there has been no uniform opinion.

The terms that have been used, both in existing legislation and in various legal literature as a translation of the term *strafbaar feit*, are as follows:

- a. A crime can be said as an official term in our criminal law. Almost all of our laws and regulations use the term *criminal act*, such as in Law No. 6/1982 on Copyright, (replaced with Law No. 19/2002), Law No. 11/ PNPS/1963 concerning the Eradication of the Crime of Subversion, Law No. 3 of 1971 concerning the Eradication of Criminal Acts of Corruption (replaced by Law number 31 of 1999), and other laws.
- b. Criminal Events, used by several legal experts, for example, R. Tresna in his book Principles of Criminal Law, Drs. H.J. van Schravendijk in a textbook on Indonesian Criminal Law, Prof. A. Zainal Abidin, S.H. in his book Criminal Law. The formation of the act has also used the term criminal event, namely in the 1950 Provisional Constitution (read article 14 paragraph 1).
- c. Offense (*delik*), which comes from the Latin *delictum* is also used to describe what is meant by *strafbaar feit*. This term can be found in various literature, for example in the writing of Prof. Drs. E. Utrecht, S.H., although he also uses another term, namely a criminal event (in the Criminal Code 1). Prof. A. Zainal Abidin in his book Criminal Law 1. Prof. Moeljatno has also used this term, as the title of his book.
- d. Trial offenses and participation offenses are according to him, more appropriate in terms of criminal acts.
- e. Criminal violations can be found in the main books of Criminal Law written by M. H. Tirtaamidjaja.
- f. Acts that may be punished, this term is used by Karni in his book a summary of criminal law. It is also used by Schravendijk in his textbook on Indonesian Criminal Law.
- g. Acts that are punished. This is used by the legislators in the Act.
- h. Law No. 12/Drt/1951 on fire and explosives.
- i. Criminal Acts, used by Prof. Moeljatno in various writings, for example in the book Principles of Law Criminal.

*Strafbaar feit* consists of three words, namely *straf*, *baar* and *feit*. *Straf* is translated into criminal and legal. The word *baar* is translated with actions, events, violations, and deeds.

Moeljatno used the term criminal act, which he defined as "an act that is prohibited by a prohibition law which is accompanied by threats (witnesses) in the form of certain crimes,

for anyone who violates the prohibition". The term criminal act is more appropriate for the following reasons:

- a. The prohibited act is the act (human action, namely an event or condition caused by the behavior of people), meaning that the prohibition is shown in his actions. Meanwhile, the criminal threat was shown by the person.
- b. There is a close relationship between the prohibition (shown in the act) and the criminal threat (shown in the person). Therefore, the act (in the form of a situation or event caused by that person, which violates the prohibition) has a close relationship with the person who caused the act.
- c. To state that there is a close relationship, it is more appropriate to use the term criminal act, an abstract meaning that refers to two concrete circumstances, namely, first, the existence of certain events (actions); and second, there are people who carried out or who caused the incident.

## 2. Elements of a Crime

The elements of a crime can be distinguished from at least two points of view, namely: (1) from a theoretical point of view; and (2) from a legal point of view, which is reflected in the sound of the formulation. Meanwhile, from the point of view of the law, it is part of the fact that the crime is formulated into a certain crime in the articles of the existing laws and regulations.

The elements of a crime, according to experts, can be known by seeing how the formulation sounds. Some examples are taken from the theoretical limits of criminal acts that have been discussed earlier, by Moeljatno, R. Tresna, Vos, Jonkers, Schravendijk. According to Moeljatno, the elements of a crime are:

- a. A deed;
- b. What is prohibited (by the rule of law);
- c. Threats of punishment (for those who violate the prohibition).

Only human actions may be prohibited, by the rule of law, based on the criminal act compound word, so the main meaning is in the act, but it is not separated from the person. Threatened with a punishment illustrates that the act does not have to be punished. The notion of being threatened with a sanction is a general sense, which means that in general, a sentence is imposed. Whether *in concreto* the person who commits the act is punished or not is another matter from the definition of a criminal act.

From the formulation of R. Tresna above, a criminal act consists of the following elements:

- a. Actions/series of actions (of humans);
- b. Violating laws and regulations;
- c. Punishment was carried out.

From the third element, there is an understanding that it is as if every act committed is always followed by punishment. In contrast to Moeljatno, because the sentence is threatened with a criminal act, it means that the act is not always and is not therefore criminalized.

There is no impression about the subjective conditions attached to the person as a subject to a crime. According to the limits made by the Vos, it can be concluded that the elements of criminal acts are:

- a. Human behavior;

- b. Threatened with a sanction;
- c. Stipulated in the laws and regulations.

It can be seen that in the elements that there is no difference. A criminal act is a human act that is prohibited, contained in the law, and is threatened with punishment for those who commit it.

However, it does look different when compared with the opinion of adherents of monism. Although the details of the above formulations appear to be different, in essence, there are similarities, namely: not separating the elements regarding his actions from elements concerning the person himself.

### **3. The Definition of the Crime of Rape.**

The crime of rape (*verkrachting*) is contained in Article 285 whose formulation is as follows:<sup>17</sup> Any person who by force or threat of violence forces a woman to have sex with him outside of marriage is threatened with rape crime with a maximum imprisonment of twelve years. Because the term rape does not accurately describe rape according to its true meaning, the proper qualification for Article 285 is rape for sexual intercourse (Wirjono, 1980:123).

The definition of coercive action (*dwingen*) is an act that is shown to other people by suppressing the will of another person who is contrary to the will of that person, accepting the will of the person who suppresses or equals his own will. In accepting this will, there are at least two kinds, namely:

- a. Accepting what will be done to him.
- b. People who are forced to do the same as what the person who forces them wants.

For the first, there is coercion according to article 285, namely having sex with him, or being willing to agree to it. Likewise, forcing in Article 289 means allowing obscene acts to be carried out. Meanwhile, for the second, it is contained in Article 368 (extortion), 369 (threats) where the act of coercion is shown so that the person who is forced to do the same act with his will, namely attacking objects, writing off receivables, and making debts. The methods of coercion here are limited by the two ways of coercion which are not further explained in the Act. Only knowing violence, there is article 89 which formulates the expansion of the meaning of violence, namely making someone helpless is the same as using violence. R. Soesilo gives the meaning of violence by using words that use no small amount of physical strength or power illegally (Soesilo, (80:84).

### **4. Elements of the Crime of Rape.**

The elements of the crime of rape are regulated in Article 285 of the Criminal Code, which reads: "Anyone who by force or threat of violence forces a woman to have sex with him outside of marriage, is threatened with rape crime with a maximum imprisonment of twelve years."

Based on the formulation of Article 285 of the Criminal Code, elements of rape can be drawn, namely:

1. Anyone

The element shows the person (perpetrator). If that person fulfills all the elements and criminal acts regulated in Article 285 of the Criminal Code, then he can be called the perpetrator of the crime of rape.

---

<sup>17</sup> Adami Chazawi, *Tindak Pidana Mengenai Kesopanan* (Jakarta: Raja Grafindo Persada, 2007).

2. By Violence

According to Prof. Simons, what is meant by violence or *geweld* is any use of body energy that is not too light.

3. With threats to use violence

According to Hoge Raad, regarding the threat of violence, it is required that the threat must be pronounced in such a situation so that it can give the impression to the person being threatened, that being threatened will harm his freedom, and that the intent of the perpetrator was intended to make such an impression.

4. Force

Coercion can be done with actions and also with words. The act of coercion results in a woman being forced to be willing to have sex. A woman is deemed to be forced to have sex, even though it is the woman herself who takes off all the clothes worn by the woman<sup>18</sup>. In this case, the compulsion of women must be the result.

## RESULT

### A. The Role of the Victim in the Crime of Rape Perpetrated by Her Biological Father

Before the author describes the role of the victim in the cases of rape crime committed by the biological father who already has permanent legal force (*inkrach*), the author will first explain the two cases as follows.

On Tuesday, May 18<sup>th</sup>, 2020 at around 17:00 GMT+9, the victim was in the room then the perpetrator entered the victim's room and immediately opened the towel the victim was wearing, then the perpetrator immediately pushed the victim to fall on the bed, and the perpetrator immediately inserted the perpetrator's genitals into the victim's genitals (vaginal opening). The perpetrator then moved his buttocks for approximately 5 (five) minutes until the perpetrator's sperm (semen) came out and the perpetrator threw it on the bed. The second incident occurred on Tuesday, June 2<sup>nd</sup>, 2020 when the victim ran away from home, and then was found by the victim's mother on the street.

Arriving at the house, the perpetrator pulled the victim into the room, and the perpetrator then threatened the victim, took off her clothes and push the victim to the bed. Then the perpetrator inserted his genitals into the victim's genitals (vaginal opening). The victim is his biological child. At the time of the first incident, the perpetrator threatened the victim by saying, "If you tell someone, I will cut and hit you with an iron<sup>19</sup>. The victim's mother also said that at the time of the second incident the perpetrator threatened the victim by saying, "If you don't want to take off your clothes, I'll stab you with scissors." the victim's mother also said that the first rape was committed by the perpetrator when the victim's mother went to the garden and the second incident occurred when the victim's mother was outside of the house. The victim's mother also explained that before the incident took place, the perpetrator had watched pornographic films from his cellphone.

#### 1. Similar Occurrence

From December 1<sup>st</sup>, 2019 to January 5<sup>th</sup>, 2020, the perpetrator raped the victim 4 (four) times. Every time the perpetrator commits the depraved act, the perpetrator always gives

---

<sup>18</sup> Nurlena Setyaningsih, "Perlindungan Tindak Pidana Kekerasan Terhadap Perempuan (Studi Kasus Di UPPA Polres Bantul)" (Universitas Islam Negara Sinar Kalinggaga, 2014).

<sup>19</sup> "No Title."

money and then threatens to kill the victim's mother and will not send the victim to school if the victim tells other people<sup>20</sup>. Then on a day and date that is not remembered for certain, but from September 2019 to Sunday, January 5<sup>th</sup>, 2020 at around 09:00 GMT+9 or at least from September 2019 to January 2020, at the house of the perpetrator and victim in Makassar Village, East Ternate District, Central Ternate City. The victim was still 14 (fourteen) years old and still in grade nine of Junior High School. At around 12:00 GMT+9 the victim came home from school and was still wearing the school uniform. In the television room, the perpetrator asked the victim, "Where is mama?" And the victim replied to the question by saying, "Mommy is coming home".

Then, the perpetrator approached the victim and sat next to the victim and then lifted the victim's skirt and held the victim's thigh, he held the victim's genitals and then inserted his right finger into the victim's vagina after rubbing his fingers, and was satisfied with the suspect and then gave the victim Rp. 20,000. (Twenty thousand rupiahs) by throwing the money at the victim while saying, "After that change uniforms."

The obscene act was carried out when the house was deserted. The suspect also committed sexual immorality 14 (fourteen) times. On Sunday, December 1<sup>st</sup>, 2019 at around 10:00 GMT+9 the perpetrator picked up the victim who was exercising, then the victim followed the perpetrator to the house and entered the house, when he arrived at the house the perpetrator locked the front door and told the victim to go into the front room but the victim didn't want to and went into her room the perpetrator followed the victim then said to the victim "Open your pants". But the victim refused the order so the perpetrator pulled the victim and forced open the victim's pants. Because he was afraid that the victim was silent, the suspect put the victim to sleep and took off his pants<sup>21</sup>, then inserts his tensed genitals into the victim's genitals (vagina) then performs up and down movements for approximately 15 (fifteen) minutes after feeling good, the perpetrator pulls out his genitals and then spills his sperm (semen) on the sarong after which the perpetrator gives money with the amount of Rp. 50.000 (Fifty thousand rupiah). He said to the victim while saying "Do you want to repeat the above?" and the victim answered by saying "Yes" then the perpetrator took the victim to Salero.

Furthermore, on Wednesday, December 3<sup>rd</sup>, 2019 at around 14.00 GMT+9, when the victim had just returned from school and entered the room to change uniforms, suddenly the perpetrator who had just returned from work entered the victim's room and pulled the victim's hand and was brought into the perpetrator's room then opened the shorts of the perpetrator, the victim then put the victim to sleep and then inserted his tensed genitals into the genitals (vagina) then the perpetrator made an up and down movement for 15 (fifteen) minutes after which the perpetrator pulled out his genitals and released sperm (semen) in the sarong and then the perpetrator gave money to the victim with the amount of Rp. 20,000, (Twenty thousand rupiah). Then on Sunday, December 8<sup>th</sup>, 2019 at around 08.00 GMT+9 when the victim had just returned from school, the perpetrator again pulled the victim's hand and was brought into the room after that opened the victim's pants then opened his pants and then inserted his tensed genitals into the genitals (vagina). He then made an up and down motion, after that the perpetrator pulled out his genitals and released sperm (semen) in the sarong on the bed after which the perpetrator asked the victim "After that, if you want to go, go but don't forget to go home." After the incident then the victim left the room,

---

<sup>20</sup> "No Title."

<sup>21</sup> "No Title."

The next incident was on Sunday, January 5<sup>th</sup>, 2020 at around 09.00 GMT+9, the perpetrator again raped the victim, where the perpetrator picked up the victim who was in the Salero field and then went to the house. Upon arrival at the perpetrator's house, the perpetrator put the victim into the room and then put her to sleep. He opened the victim's pants and the perpetrator opened pants and then inserted his genitals into the victim's genitals then the perpetrator made an up and down movement for some time after that the perpetrator pulled his genitals from the victim's genitals (vagina) and spilled his sperm (semen) on the sarong which was on the bed. After that, the perpetrator gave money to the victim in the amount of Rp. 50,000 (fifty thousand rupiahs). Due to the perpetrator's actions, the victim ran away from home for 4 (four) days<sup>22</sup>.

Departing from the chronology above, it can be said that in reality, it is not easy to distinguish each role played by the victim, because the victim is the main participant in playing various roles that are limited by certain situations and conditions. Legal Protection Against Victims of the Crime of Rape against Biological Children, the victim can play a role in a conscious or unconscious state, directly or indirectly, alone or together. However, the author will describe the role of the victim in the occurrence of the crime of rape by his biological father on Tuesday, June 2<sup>nd</sup>, 2020, in the victim's room, Siti Ekoran or Siti, in Kayu Merah Village, South Ternate District, Ternate City. According to the author, the victim here is considered to have a role because she trusts the perpetrator too much so that the victim deliberately does not close the room door, and only uses a towel which eases the perpetrator to enter and pull the towel, then immediately committed rape. After the first rape case occurred, the victim did not immediately report it to the family, but chose to run away from home and was found by the victim's mother.

After the victim's mother brought the victim home then the victim's mother wanted to hit the victim but was prevented by the perpetrator. The victim entered the room immediately, followed by the perpetrator namely her biological father. The perpetrator ordered the victim to take off her clothes and then pushed her into the bed and inserted his genitals into the victim's vagina. Then after the second incident, the victim reported the rape case to the family.

Meanwhile concerning the second case, on Wednesday, December 3<sup>rd</sup>, 2019 in the victim's room, Meylany Kusumawaty, nicknamed Mey from the East Makasar Village, Central Ternate sub-district, Ternate City, according to the author, the victim here is also considered to have a role because she did not immediately lock the door to protect herself. From the first incident, the victim was considered to have a role because she received the money given by the perpetrator and after that first incident, the victim did not immediately report to the family the rape, so the rape was repeated 4 (four) times and every time the victim was raped, she received the money.

Apart from the description above, several other factors make the crime of rape committed by the biological father against the child. It consists of internal factors and external factors.

The author conducted interviews with the perpetrators of biological child rape. The perpetrator said that the victim intentionally wore revealing clothes and depicted the curves of the body. It provoked lust from the perpetrator. The perpetrators took the opportunity in such a condition. Judging from the activities and lifestyle of the perpetrator, the perpetrator is indeed an alcoholic. He has a habit of watching pornographic videos/films often which resulted in committing a rape crime.

---

<sup>22</sup> "No Title."



a. Internal factors

- 1) In terms of the child's personality, it cannot be denied that the individual's personality determines whether the role of the victim is large or small in a rape crime that occurs. The same thing applies to victims of biological child rape. The victim's personality becomes a representation of the situation and condition of the victim in the occurrence of a crime against her. The victim, who in this case is a child, still has a nature to obey orders. They are easily influenced and have limitations in terms of attitude and rational thinking. This is what triggers the child to become a victim of rape.
- 2) The aspect of faith or spirituality. Religion is the basis of a person's behavior. Weakness in faith and religion can affect a person's behavior. By understanding religion, a person will avoid deviant behavior and can protect himself from harmful things.
- 3) The relationship between the victim and the perpetrator. In terms of the existence of emotional relationships such as friendship and kinship between the perpetrator and the victim, for example, the existence of a courtship bond or friendship in the sense of close friends becomes an opportunity for the perpetrator to be able to meet the victim anytime and anywhere. This is what is used by the perpetrator to then commit the crime of rape on the victim either through planning or simply because the perpetrator tends to be close to the victim more often. What is ironic is that the victim or in another case the child plays an active role, such as seeking to then get attention or affection from, say, her boyfriend. This is what is then used by the perpetrator to carry out his actions because he thinks he can freely order the victim who is already dependent on the affection of the perpetrator. Then because of the limitations that the victim has and even because of the victim's own will, she becomes a victim of the crime of rape.

b. Education Level

Sutherland and Cressy clearly stated, "Crime and delinquency can also be the result of a lack of education." What determines the condition of an individual's way of thinking is her education<sup>23</sup>. The lack of providing sex education to children can make children become victims of rape. Usually, parents rarely provide sex education to children at home. This is because children are considered as not old enough to obtain and enter into discussions concerning sex. Discussions about sex are deemed taboo, especially to children. So, children gain an understanding of sex or information about sex from their friends or other sources. This causes them to obtain misleading information. What is even more ironic is if the information about sex was obtained by the child from the perpetrator of the rape, which was originally intended to mislead the child.

c. External factors

The occurrence of moral deficiency in the community is a problem in society that cannot be denied. It is always influenced by various aspects, for example, the socio-cultural aspects of society. The current transition to the bad moral acts resulted from modernization that is not balanced with the development of moralities. An example can be seen from the development of fashion, that follows Western culture, that contradicts the culture of Indonesian people. It becomes a factor that leads to the crime of rape. Today's youth have indeed applied Westernized clothing, which can be seen in everyday life in

---

<sup>23</sup> Syarifan Nurjan, *Perilaku Delinkuensi Remaja Muslim* (Yogyakarta: Samudra Biru, 2019).

society. They aim to find their identity through the various things they display in society, both socially and in fashion.

The style of fashion for today's women includes mini dresses that lack manners. They wear tight clothes that show body curves. They display private parts and this is what is then imitated and copied by children. There are also cases of free sex that then lead to the occurrence of the crime of rape which is against the norms that exist in Indonesia. Children are at a developing age, where they still imitate what they see. As a result, it can bring the child into a situation that invites the desire of the perpetrator so that the child becomes an outlet for the lust of the perpetrator.

The modernization of cyberspace, mass media and increasingly sophisticated technology that are often used by the community can lead to becoming a factor in the emergence of rape against children. Then, there is specialization in the field of communication and mass media. It is undeniable that efficiency and effectiveness have become the allure of various technologies which later become a means of communication and become a means of exchanging information which sadly is also used to undergo criminal acts.

Based on the factors that can trigger a person to become a victim of rape that has been described previously, we can more or less tell what the conditions are like for a child who became a victim of rape. The child's role either directly or indirectly influences situations and conditions which make them become victims. The basis and theoretical basis used by the author in strengthening this research is the absolute theory or the theory of retaliation. It is the punishment that is imposed because people have committed crimes. As an absolute consequence, there must be retaliation to the people who commit crimes, so the basis for justification lies in the existence of the crime itself. The author also uses the views of Arif Gosita<sup>24</sup> regarding the role of the victim in the occurrence of a crime as follows:

- 1) The victim acts as the one who stimulates, invites, and persuades the perpetrator to commit a crime against him. From the empirical data that the authors found in the field, the victim is considered to stimulate and invite the perpetrator to rape herself because the victim regularly wears sexy clothes that show curves of the body. So, it provokes the perpetrator's desire to carry out his actions, in this case, the act of rape.
- 2) The victim acts as a pseudo victim who cooperates with the perpetrator in committing a crime, the victim is considered to have cooperated with the perpetrator because from the rape case described above, it has been explained that the rape occurs repeatedly, the victim also receives money given by the perpetrator and regarded rape as a matter of course.
- 3) Victims feel they are victims of other people's actions so they commit a crime as a form of revenge
- 4) Victims are self-justification tools for crimes committed by a criminal. The self-justification relates to rejection, denial from the victim, devaluation of the victim's self-esteem, denial of causing suffering, harm to the victim, blaming the victim and formulating causing the suffering to the victim as a righteous act<sup>25</sup>.

#### **B. Efforts of the Ternate Police Force in Dealing with Biological Child Rape Cases that Happened in Ternate City**

A crime is an act that disturbs society and is not desired by humans who want peace and tranquility. Therefore, countermeasures must be carried out as early as possible to prevent

---

<sup>24</sup> Gusti ngurah Parwata, "Peran Korban Terjadinya Kejahatan" (universitas Udayana, n.d.).

<sup>25</sup> Parwata.

wider impacts. To eliminate crime is only an illusion because humans as social beings who have different interests. So from time to time, there will still be criminal actions. The prevention of crime is far better than trying to educate criminals to be better. But this does not mean that the perpetrator of a crime will never return to becoming good and lawful<sup>26</sup>.

In general, the conception of crime prevention is carried out using moralistic and abolitionist methods. The moralistic method means that coaching is carried out by forming positive mental and spiritual conditions. For example, it can be applied by educators, religious experts, psychologists, and so on. Then, the abolitionist method can also be carried out. It is coaching carried out conceptually based on the results of the author's research, by exploring the elements that cause crime. This countermeasure method will conceptually be more effective if it is accompanied by an operational method, namely prevention carried out by the police<sup>27</sup>.

The data on child rape cases from 2019 to 2020 states that there are 14 cases in 2019, in the Ternate City area. Among these fourteen cases, there was one case of rape of a biological child. Then, in 2020 there were 4 cases of rape of biological children in the city of Ternate. A total of 14 (Fourteen) cases have reached the Court and have had a verdict. There were 5 (Five) cases of rape that occurred in 2019, and 9 (Nine) cases in 2020. From the data above it can be concluded that there has been an increase in cases from 2019 to 2020.

Departing from what has been described above, the efforts to overcome the crime of Rape have been attempted and carried out by several relevant agencies, in this case, the Ternate Police apparatus in collaboration with related parties such as parents, community, school, and mass media. Based on an interview with the author, Tomi stated that:

*The efforts made by the Ternate Police prioritize preventive actions that are carried out in a systematic, planned, integrated, and directed manner to produce effective results to prevent crimes, especially crimes committed against a child.*

The efforts made by the Ternate Police Force to tackle the repetition of crimes committed against children are as follows:

### **1. Preventive Efforts**

Humans, both as individuals and as groups, are considered to instinctively aim to achieve their interests and goals that are different from one another. For example, humans want to obtain scarce resources in the economic, social, and political fields. These goals and interests can often be achieved by following existing rules and norms. In this case, these goals and interests are achieved through destructive actions or asocial behavior, both in interpersonal and intergroup life in society. In line with this, the act of violating the rules of norms and laws is a natural thing because everyone tries to pursue their interests based on rational calculations. Furthermore, because the wants, needs, and aspirations of individuals and groups cannot be satisfied, violations of rules and norms always threaten people's lives.

As a result of the above tendency, human social life is always marked by actions that are contrary to rules and norms. In such situations, conflicts of interest and violence always threaten people's lives. The National Police of the Republic of Indonesia is a state instrument that plays a role in maintaining public security and order, enforcing the law,

---

<sup>26</sup> Abdulsyani, *Sosiologi Kriminalitas* (Bandung: Remadja Karya, n.d.).

<sup>27</sup> Abdulsyani. *ibid.* p 27

and providing protection and services to the community in the context of maintaining domestic security.

As a government tool, the police force is an instrument of the state, which is held to maintain public order in the country and take action against perpetrators who are considered to have committed crimes, besides defending the country from enemies who threaten state security, both from other countries and from within their own country.

Preventive efforts are one of the efforts to prevent criminal acts. Such efforts are carried out by the Ternate City Police to prevent the occurrence of crimes or violations by eliminating the opportunity factor. In connection with this, there is an assumption that crime happens due to the opportunity factor. Preventive action is an effort that is carried out systematically in a planned, integrated, and directed manner, which aims to anticipate and minimize all criminal acts that occur in the jurisdiction of the Ternate City Police Force.

Preventive efforts carried out by the Ternate City Police include holding socialization on the dangers of sex outside of marriage in schools, conducting raids in boarding houses (dimly lit inns), holding *dhikr* (remembrance to God) together at certain moments (The Police Force Anniversary), eradicating the circulation of alcohol, eradicating the circulation of porn videos/films, and much more. Such efforts are to increase security in the jurisdiction of the Ternate Police Force.

Opportunities for perpetrators to commit and repeat the crime of child rape must be eliminated. As the motto in victimology, in the efforts to correct criminals, it is necessary to pay attention and make sure that crime does not occur again. In this effort, the Police conducted legal counseling concerning crime and provided lessons on legal arrangements for the crime. It is hoped to minimize the perpetrators' acts in committing crimes. In addition, the police also provided counseling to the public in several public places where people gather such as motorcycle taxi bases and others. As for actions that can lead to crime, for example, people must be careful against various kinds of criminal acts that threaten children, women, and the community. Everyone should also be more vigilant.

There needs to be a realization that there is a need to develop social incentives as social pressures and economic pressures can influence a person's behavior towards evil deeds. Furthermore, it focuses on individuals who show criminal or antisocial potential, even though this potential is caused by biological, psychological, and social disorders which are only secondary factors. Then, the community also has an important role in this prevention stage. The community can do things to prevent the occurrence of crime through efforts, for example, creating a local security system in residences. By doing this, at least the community makes efforts to prevent crime in the environment around where they live.

To strengthen the coping capacity, it is necessary to combine 3 wills: political will, social will, and individual will. The will of the government (political will) with various efforts needs to be supported by a social image (social will) through various media to launch the government's will. Human or individual will should also be considered. It is in the form of the awareness to obey the law and always try to avoid evil deeds.

The efforts to combine the three wills carried out are by:

- a. Improving and stabilizing the law enforcement apparatus, including strengthening the organizations and infrastructure to settle criminal cases.
- b. Making a legislation to prevent future criminal acts.

- c. Creating an effective criminal justice mechanism that is fast, accurate, affordable, and simple.
- d. Encouraging community participation to help smooth the implementation of crime prevention.
- e. Undergoing repressive efforts as conceptual efforts to tackle crime after it has occurred.

Based on an interview with the Criminal Investigation Unit, according to Tomi, the preventive efforts carried out by the Ternate City Police Force to overcome the case of the child rape were:

- a. Spreading information about the dangers of sex outside of marriage to schools in collaboration with the health service of Ternate City.
- b. Eradicating the circulation of pornographic videos and films
- c. Conducting raids on boarding houses and inns
- d. Preventing the circulation of alcohol
- e. Adding police posts in the jurisdiction of the Ternate City Police Force
- f. Providing facilities to improve women's quality of life as well as child welfare and protection.
- g. Providing a variety of friendly services for women and children.
- h. Increasing the number of facilities and types of services for women and children.
- i. Increasing the participation of forum members in the protection of victims of violence.

## **2. Repressive Efforts**

Law Number 2 of 2002 concerning the National Police has given the role to the Police Force as stipulated in Article 5 paragraph (1):

*"The National Police is a state instrument that plays a role in maintaining security and public order, enforcing the law, and providing protection and services to the community in the context of maintaining domestic security."*

In addition to this role, Article 13 of Law Number 2 of 2002 concerning the main tasks of the National Police has also been stipulated, namely:

- a. to maintain public order and safety.
- b. to enforce the law, and
- c. to provide protection and service to the community.

To carry out this main task, the National Police has the general authority in Article 15 of Law Number 2 of 2002. One of these powers is to assist in the settlement of disputes between members of the public that can disrupt public order.

Repressive measures are the last resort in preventing rape, namely by taking action against the perpetrators according to their actions and correcting them so that they are aware that their actions are unlawful and detrimental to society. It is so they do not repeat it and other people will not do it, considering the sanctions that they will bear are very severe. This repressive measure was taken by the police to keep the community away from the factual threats that had occurred by providing firm and consistent action to deter the perpetrators.

## **C. The Effort of Countermeasures**

Repressive efforts mean taking action against the perpetrators of crimes according to their actions and educating them so that they are aware that their actions are unlawful and detrimental to the community. This effort can also be accompanied by very firm actions

from law enforcement, especially from the police, both in the form of physical contact and by using firearms, if the situation is urgent to use them. This is carried out to provide a deterrent effect to every perpetrator of a crime so that they do not commit another crime.

The repressive efforts carried out by the Ternate City Police Force, in this case, includes imposing the perpetrators of child rape with Article 81 paragraph (1) in conjunction with Article 76D Jo article 81 paragraph (3) and Article 82 paragraph (1) in conjunction with Article 76E Jo Article 82 paragraph (2) Law Number 35 of 2014 of the Republic of Indonesia, the second amendment to Law Number 23 of 2002 concerning Child Protection Law Number 17 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection in conjunction with Article 64 paragraph (1) of the Criminal Code.

Although repressive efforts have been carried out by the Ternate City Police, cases of rape of biological children are still very common in the Ternate City area. From this study, the authors also obtained direct data in the form of interviews with the investigators of the City of Ternate.

Of the two cases that the author studied, the Ternate Police investigators have completed the investigation process and they have then been transferred to the prosecutor's office and the Ternate court. Such cases have internal and external factors.

1. In terms of the child's personality, the individual's personality is a determinant of whether the role of the victim is large or small in a rape crime that occurs.
2. In the aspect of faith or spirituality. Religion becomes the basis of a person's behavior. So the weakness of faith in religion can affect a person's behavior.
3. The relationship between the victim and the perpetrator.

The existence of emotional relationships such as kinship between the perpetrator and the victim is also a factor, as stipulated in a Decision Number Case 226/Pid.Sus/2020/PN Tte which points out the existence of a bond in courtship or friendship. Decision Number 4 on Education Level 73/Pid.Sus/2020/PN Tte concerned about abuse in providing sex education to children.

## CONCLUSION

Based on the description of the discussion and the results of the research above, the authors concluded the role of the victim in the rape by her biological father against her. The role of the biological child rape victim is due to moral erosion in society which is a problem in society. It cannot be denied that it is always influenced by various aspects of life, for example, the socio-cultural aspect that exists in society. The current transition to the bad social condition resulted from the modernization that is not balanced with the development of good morals. For example, current fashionable clothes tend to be revealing.

The Ternate City Police Force has been active in carrying out various kinds of actions: First, Preventive Actions, namely prevention efforts before the occurrence of child rape. In this case, it involves several parties including individuals, society, government, and the police themselves. It includes conducting socialization in schools about the dangers of sex outside of marriage in collaboration with the Health Service of Ternate City, conducting raids on boarding houses and inns, eradicating alcohol, and pornographic films/videos. Second, Repressive Actions, namely efforts made after the occurrence of child rape. In this case, the Ternate City Police have taken legal action following existing laws and regulations.

## SUGGESTIONS

1. The community is expected to further improve its mentality, morality, and spirituality which are useful for self-control. It is so that they are not easily tempted to do something or commit crimes that will ultimately harm themselves. In addition, the community must also be more active in terms of preventing cases of rape of biological children, by reporting to the authorities if they know of incidents of rape of biological children.
2. Ternate City Police Force is expected to be more intensive in its efforts to prevent the occurrence of a crime to suppress or reduce the rate of rape of biological children in the Ternate City Police jurisdiction. In addition, the Police Force can also realize legal protection for victims of biological child rape by providing psychiatrists to protect the psyche of victims from trauma.

## BIBLIOGRAPHY

### Books

- Abdulsyani. *Sosiologi Kriminalitas*. Bandung: Remadja Karya, n.d.
- Ali, Achmad, and Wiwie Heryani. *Menjelajahi Kajian Empiris Terhadap Hukum*. Jakarta: Kencana Prenada Group, 2012.
- Chazawi, Adami. *Tindak Pidana Mengenai Kesopanan*. Jakarta: Raja Grafindo Persada, 2007.
- Nurjan, Syarifan. *Perilaku Delinkuensi Remaja Muslim*. Yogyakarta: Samudra Biru, 2019.
- Parwata, Gusti ngurah. "Peran Korban Terjadinya Kejahatan." universitas Udayana, n.d.
- Setyaningsih, Nurlena. "Perlindungan Tindak Pidana Kekerasan Terhadap Perempuan (Studi Kasus Di UPPA Polres Bantul)." Universitas Islam Negara Sinar Kalinggaga, 2014.
- Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: UI Press, 1984.
- Sunarso, Siswanto. *Vikrimologi Dalam Sitem Peradilan Pidana*. Jakarta: Sinar Grafika, 2012.
- Yulia, Rena. *Viktimologi: Perlindungan Hukum Terhadap Korban Kejahatan*. Yogyakarta: Graha Ilmu, 2010.

### Websites

- "Bocah 14 Tahun Di Ternate Di Cabuli Dan Di Setubuhi Ayah Kandung." *Muluttoday.Com*, n.d.
- ternateinfo.com. "Terpengaruh Film Porno Ayah Kandung Di Ternate Perkosa Anak Sendiri," 2020.

### Laws

- Pemerintah Republik Indonesia. Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak, Pub. L. No. 35 (2014).
- . Undang-undang Nomor 4 Tahun 1979 Tentang Kesejahteraan Anak, Pub. L. No. 4/1979 (1979).