

LEGAL PROTECTION OF CHILD VICTIMS OF SEXUAL VIOLENCE AS A CONTINUOUS PROTECTION MEANS (Islamic Law Studies and Psychoanalytic Psychological Theories)

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ABSTRACT

Child protection is a right that must be obtained by children as it has become their rights as stated in the law. Child protection is a guarantee for its part to be upheld because in the constitution there is a guarantee of human rights, especially if you have been a victim of sexual violence. This article aims to find out how legal protection is for Child Victims of Sexual Violence and from the point of view of Islamic law and psychoanalytic psychology theory, which in the end can become sustainable protection. As a country that has various religions, there is Islam which plays a role in providing enlightenment, which is described in Islamic law with various theories. In addition, psychological impacts occur for children, will affect development so it is necessary to know how efforts must be made in terms of Psychoanalytic Psychology theory for this is an ongoing protection given to children as victims of sexual violence. This study uses a qualitative method with subjects AM (14 years) and MT (12 years) who are victims of sexual violence and stepfather perpetrators. The results of the research are: Legal protection must still be obtained, even though there has been a statement of forgiveness by the child as a victim inasmuch as this is clearly influenced by the psychological energy of anxiety caused by him getting wrong treatment from people who must provide protection to him. Islamic law exists so that children get their rights, including protection, education rights, custody rights, housing rights, the right to make choices, the rights of opinion and rights as children who are the hope of the nation.

Keywords: *Legal Protection, Child Victims Of Sexual Violence, Continuous Protection Means, Islamic Law, Psychoanalytic Psychological Theories*

A. INTRODUCTION

The foundations and objectives of the founding of the Republic of Indonesia are laid down to protect the entire Indonesian nation and the entire homeland of Indonesia, and to promote public welfare, participate in carrying out world order based on independence, eternal

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peace and social justice (Ridlwan, 2011; Yuniwati, 2017), enrich the life of a nation and in the body of the 1945 Constitution, the second amendment of Article 28 B paragraph (2) states that every child has the right to survival, growth in survival, growth and development and the right to protection from violence and discrimination. Meanwhile, Article 28-C paragraph (2) states that every child has the right to develop themselves through the fulfillment of their basic needs. This shows that the State of Indonesia recognizes the basic rights of children, such as the right to survival, growth and development and protection, which are important things that must be prioritized in efforts to fulfill them, both in the form of policies and services. The commitment of the Indonesian nation to realize general welfare and educate the nation's life is very much in line with the commitment of the global community to build and create a future, without the burden of suffering psychologically and physically for sexual crimes that children receive (Sukardi, 2017).

Indonesia is also one of the countries that ratified the United Nations Convention on the Rights of the Child, namely through Presidential Decree (Keppres) Number 36 dated August 25, 1990. With the ratification of the convention, the State should be legally obliged to protect and fulfill the rights of the child, children's rights, whether social, political, cultural and economic (Usma & Nahrowi, 2004).

Facts on the ground, the government is still not maximal in providing and fulfilling children's rights. One example is that there are still many cases of sexual violence against children (Ningsih & Hennyati, 2018; Noviana, 2015). This is a crime that always stalks children, wherever they are, even at home, in places of worship, in schools or public facilities, with various forms of sexual violence and perpetrators who are always near the victim or are people who should provide protection against child.

Child Sexual Violence (KSAD) is currently a concern of the world community since the number continues to grow every year (Homma M.S et al., 2012; Samodra & Paramastri, 2019), and sexual violence against children can be in the form of direct sexual contact between children and adults (incest, rape, sexual exploitation) (Sulastri, 2019).

Poerwandari (2000) defines sexual violence as an act that leads to sexual solicitation/urging such as touching, palpating, kissing, and/or taking other actions that are not desired by the victim, forcing the victim to watch pornographic products, sexual jokes, degrading and harassing remarks that lead to gender/sex aspects of the victim, forcing to have sex without the victim's consent with or without physical violence; forcing sexual activities that are not liked, demeaning, hurting or injuring the victim (Fu'ady, 2011; Sari, 2017; Wulandari & Krisnani, 2020). Thus, protection is very much needed due to the sake of the sustainability

of children in their lives, they must be mentally prepared to deal with various conditions that will be faced.

Child protection is an activity to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and protection from violence and discrimination (Juniasti & Hamzah, 2021; Nur, 2017; Wiyono et al., 2020). Protection of children who are victims of sexual violence is very necessary as this greatly affects the development of children, both in terms of emotions, social and physical (Maki et al., 2020).

Based on the Online Information System for the Protection of Women and Children (SIMFONI) of the Ministry of PPPA on November 23, 2021, the number of victims aged 0-5 years was 1,370, aged 6-16 years old was 3,324, aged 13-17 years was 6,320 and aged 18-24 years totaled 2,104 people. Meanwhile, the types of sexual violence from the total number of victims were 7,002. There are two important things from the data above. First, there is always an increase in the data on children who are victims of sexual violence. Second, the greater the number of child victims of sexual violence, the more protection is needed, so it is necessary to study how the protection from Islamic law and Law number 35 of 2014 concerning Child Protection is needed. Child protection is all activities to guarantee and protect children and their rights, so that they can live, grow, develop, and participate optimally in accordance with human dignity, and receive protection from violence and discrimination (Komisi Perlindungan Anak Indonesia, 2018). Among the protections that children get is legal protection (Harefa, 2015; Kobandaha, 2017; Muntamah et al., 2019).

Legal protection is an element in which it is very important, namely to regulate citizens who are victims of criminal acts (Arliman S., 2015). In the 1945 Constitution Article I Paragraph 3 which reads: Indonesia is a state of law. This means that Indonesia is a country based on law. By itself, legal protection becomes an essential element as well as a consequence in a state of law and the state is obliged to guarantee the legal rights of its citizens (Yusuf, 2020).

In Indonesia, in fact, since 1979 the government has set a regulation to place children in a fairly safe protection institution, namely Law Number 4 concerning Child Welfare (Anis, 2018; Rahman, 2017) which expressly formulates that every child has the right to care and protection from the time he is in the womb until after he is born (Kaimudin, 2019; Tektona, 2013). Then Indonesia itself has signed the Convention on the Rights of the Child (Convention on the Right of the Child) as a result of the United Nations General Assembly on January 26, 1990 and ratified by Presidential Decree No. 36/1990 on Ratification of the

Convention on the Rights of the Child (Convention on the Rights of the Child). Based on the conditions described above, this research aims to find out how the legal protection for children victims of sexual violence is, then studied with Islamic law and psychological theory and so that in the end whether the protection includes sustainable protection.

B. METHOD

The method used in this research is using a qualitative method for the problems relate to humans which fundamentally depend on an observation. Said by Creswell (2008), Qualitative research is methods to explore and understand the meaning that a number of individuals or groups of people derive from problems or humanity (Hanif & Susanto, 2020; Pane et al., 2021). While the type of research conducted is descriptive explanatory, namely a research conducted to obtain information, explanations and data regarding things that are not yet known, so that this research can be referred to as exploratory research which is very basic in nature (Yusuf, 2020).

The subjects in this study were two children AN and MT who had experienced sexual violence by the closest person; stepfather or family aged 14-15 years. Data collection techniques used in this study was interviews (interviews) and observation with direct observation at the research site. Data analysis techniques in qualitative research are carried out with data collection, data reduction, data presentation, conclusions and verification. In testing the validity of the data, the researchers used method triangulation and source triangulation techniques.

C. DISCUSSION

I. Research Data Description

AM is 16 years old with 1 older brother who is in vocational school and his younger brother is not yet in school. She lives in the house left by his grandmother from his late mother. Since mother died, AM has lived in the house only four of them, namely AM and 2 siblings and stepfather. In the house there are only 2 rooms, 1 room for AM's brother and stepfather and younger brother in the other room. Meanwhile, AM sleeps on the couch in the living room, and is an orphan. Her biological mother died in July 2019 and before 40 days of his mother's death he received treatment from her stepfather. SKR stepfather (56 years old) and works in a motorcycle service station. Every day SKR does housechores and AM only goes to school. On this basis, SKR asked to be served by AM.

At first it happened in the living room when AM's siblings were sleeping, what stepfather did was groped AM's body, there was resistance from AM to scream but her

stepfather covered her mouth with his hands and when AM said no, AM's brother wanted to be slammed, and AM is silent. Because outside of that condition and afraid that AM's sibling would wake up and be caught, then the next day SKR changed the bed; SKR slept in the living room while AM slept in the room with her little brother with a different mattress. AM was powerless to fight SKR's treatment, because every night while sleeping SKR always had sex with her with the threat that if she didn't serve her stepfather, his brother would be kicked out. Since she was often treated like this, AM consulted with her aunt in Java and was advised that when SKR did it, she asked to be videoed for evidence, but after the video was made she still felt like she had done nothing. One time a friend played and saw the video on her cellphone, finally she told her friend. After listening to the story, AM's friend asked to meet the local head of the neighborhood association (RT) and immediately reported it to the local police. After reporting to the police, she got a referral for a post-mortem at the hospital and an immediate arrest was made because the post-mortem results proved violent behavior received by AM.

AM is assisted by certain Institutions in receiving various services. The service here is a form of protection provided to victims who request assistance or who are referred by certain Sector Police to be accompanied by institutions dealing with sexual violence against children. In AM, it was found that with low socioeconomic status the house facilities were not sufficient, in this case the room door could not be locked or damaged, apart from economic factors it could also be said that there was an element of intent from parents who were not aware of their obligations to their children, although stepchildren but still what the stepfather does is not justified since the organizers of protection for children include parents.

2. Research Analysis

A child is someone who is not yet 18 (eighteen) years old, including a child in the womb (Inayati, 2015; Komisi Perlindungan Anak Indonesia, 2018; Widodo, 2017). Children are a mandate and gift from God Almighty, who have inherent dignity and worth, as a whole human being (Hutahaean, 2013; Pristiwiyanto, 2020). Furthermore, it is also said that children are the successors of the ideals of the nation's struggle that have a strategic role, and have special characteristics and natures that are expected to ensure the continuity of the existence of the nation and state in the future (Unicep, 2010).

Article 20 of Law Number 35 of 2014 sounds, "The State, Government, Regional Government, Society, Families and Parents or Guardians are obliged and responsible for the implementation of Child Protection"(Fitriani, 2016; Said, 2018; Unicep, 2010). In addition, the Convention on the Rights of the Child (CRC) also states that there are 39 children's rights

that must be fulfilled, and those who are responsible include parents in them. Thus, parents who violate this article will be subject to criminal sanctions in accordance with Article 82 of Law Number 35 of 2014 which is imprisonment for a minimum of 5 years and a maximum of 15 years, and a maximum fine of Rp. 5,000,000,000 (five billion rupiahs) (Unicep, 2010).

AN and MT's status here is as stepchildren. Stepchildren are biological children from a previous marriage, brought into a new marriage, both from the new father's family and the new mother's family. AN is an orphan with 2 siblings and lives in the house inherited from her grandmother from her late biological mother. Meanwhile MT lives in a hut with her 3 younger siblings and her mother works in Jakarta.

The provisions in Article 4 of Law Number 35 of 2014 states that every child has the right to be able to live, grow, develop, and participate properly in accordance with human dignity and protection, and receive protection from violence and discrimination (Fitriani, 2016; Memah, 2020). Article 13 also states that every child while in the care of parents, guardians, or any other party responsible for the care, has the right to receive protection from treatment: Discrimination; Exploitation, whether economic or sexual; Abandonment; Cruelty, violence and abuse; Injustice; and other mistreatment (Hidayati, 2014; Somaliagustina & Sari, 2018).

The cases of AN and MT, when referring to the articles above, are very contradictory, because there has been discrimination, cruelty, violence, injustice and wrong treatment. Especially according to Islamic law, that the real perpetrator is the father who is very detrimental to the child's future. And it's far from fulfilling children's rights, but what happens is actually destroying the future of children, in this case AN and MT.

Even though it is in a position of limitations, namely Islamic law as positive law (national law) it does not necessarily eliminate its majestic values as a *rahmatan lil'alamîn* religion by upholding human rights and paying attention to the safety of mankind on this earth. One of the many themes that receive serious attention in Islamic law is the issue of children. Since the beginning – or even long before there was any indication of the emergence of the Law on the Protection of Children – the Islamic religion, has seriously first preserved and respected human values with the publication of verses discussing the protection and granting of rights to children (Nurjanah, 2017).

The Qur'an has discussed and hinted to humans that the protection of children is basically the duty and obligation of parents that must be done since childhood. This assignment of duties and obligations refers to the terms contained in the Qur'an, namely the term *ibn* for children. This word is still the same as the word *bana* which means to build or do good. As for semantically a child is like a building that must be given a solid foundation, parents must

provide a foundation of faith, morals and knowledge from childhood, so that he grows and develops into a child who has a strong principle and personality (Mustaqim, 2006). Furthermore, the word *ibn* is often also used in the form of *tashghīr* so that it turns into *bunayya* which indicates the child is physically still small and indicates a close relationship (*al-iqtirāb*). The call *yâ bunayya* (O my son) implies that the child who is called is still small and there is a close and affectionate relationship between parents and their children. That is how the relationship between parents and children should be, a relationship that is built on a foundation that emphasizes closeness, affection and tenderness. The attitude of parents that reflects hatred and violence against children is clearly not justified in the Qur'an (Nasif, et al., tt.).

The source of Islamic law, the Qur'an as has described and explored the rights and interests of children as the next generation. With regard to legal protection for children, in general the Qur'an has described basic human rights that no one, group or nation can limit or even suppress these rights. The basic human rights as outlined in the Qur'an are as follows: (a) The right to life; (b) Property rights; (c) Right of protection of honor; (c) The safety and sanctity of private life; (d) The right to security of personal liberty; (e) The right to legal protection from arbitrariness; (f) The right to express opinions and freedom of expression; (g) Right to freedom of association; (h) Right to freedom of residence; (i) The right to equal status in society; (j) Right to justice; (k) The right to declare a decent living; (l) Right to knowledge (Juraidi, 2003).

MT is 12 years old and the perpetrator is a stepfather. MT is the biological child of AR and HN. MT joined her biological mother along with 3 younger siblings and her stepfather. The incident happened once in the bathroom and at the time of the incident the mother was attending the recitation of the Rukun Tetangga (RT), (MT's friend) who conveyed it to the mother. MT was immediately put into the cottage without the knowledge of her biological father. The biological father found out and reported it to the local police. This does not describe the responsibilities of a father, even though he is a stepfather, as well as AN. AN's biological mother has just passed away and has no more shelter and to get parental love, but what she gets is an event that is very psychologically disturbing.

Article 1 paragraph 4 of Law Number 35 of 2014 states that parents are biological father and/or mother, father and/or stepmother, or adoptive father and/or mother. Referring to this article, stepfathers have the same responsibilities as biological fathers. This means that what the father of AN and MT did is an act that cannot be tolerated. In this regard, Allah has said in Surah al-An'am verse 151 which sounds:

قُلْ تَعَالَوْا أَتْلُ مَا حَرَّمَ رَبِّي عَلَيْكُمْ أَلَّا تُشْرِكُوا بِهِ شَيْئًا وَبِالْوَالِدَيْنِ إِحْسَانًا وَلَا تَقْتُلُوا
أَوْلَادَكُمْ مِنْ أَمْلَقِي نَحْنُ نَرْزُقُكُمْ وَإِيَّاهُمْ ... ﴿١٥١﴾

Meaning: Say: "Come, I will rehearse what Allah hath (really) prohibited you from": Join not anything as equal with Him; be good to your parents; kill not your children on a plea of want;- We provide sustenance for you and for them;- come not nigh to shameful deeds. Whether open or secret; take not life, which Allah hath made sacred, except by way of justice and law: thus doth He command you, that ye may learn wisdom (Qs. Al-An'am: 151).

The position of children in the meaning of Islam is that they are entrusted by Allah SWT to their parents, society, nation and state as heirs of Islamic teachings (Revelation of Allah SWT) which will later prosper the world as *rahmatan lil aalamiin* (Jauhari, 2019; Muazzul & Lubis, 2021; Muhammad, 2021; Nurjanah, 2017). This understanding gives rights or gives birth to children's rights that must be recognized, believed and secured as the implementation of deeds accepted by children and parents, society, nation and state (Martoredjo, 2021). Relationship with stepfather is like a biological father, means that the above applies to him, that Allah SWT entrusts the child to him as a surrogate parent of the biological parents.

According to civil law, parents' power over their children starts from birth to adulthood or marriage (Salim, 2021; Tutik, 2015). If he is an adult or married, then his power will be eliminated (Maswandi, 2017). It may be that at certain times the power is removed by the judge for certain reasons. The power over children is shared by husband and wife, but is usually held by the father. In certain cases, such as being sick, traveling and so on, that power can be transferred to the mother. That power includes the care of the child and his or her wealth and representing the child in legal action if he is not deemed competent (under pardon).

Islam teaches not to do violence to their children. Like what is contained in the Qur'an letter At Tahriim verse 6 which sounds:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا قُوا أَنْفُسَكُمْ وَأَهْلِيكُمْ نَارًا وَقُودُهَا النَّاسُ وَالْحِجَارَةُ عَلَيْهَا مَلَائِكَةٌ غِلَاظٌ شِدَادٌ لَا يَعْصُونَ اللَّهَ مَا أَمَرَهُمْ وَيَفْعَلُونَ مَا يُؤْمَرُونَ ﴿٦﴾

Meaning: O ye who believe! save yourselves and your families from a Fire whose fuel is Men and Stones, over which are (appointed) angels stern (and) severe, who flinch not (from executing) the Commands they receive from Allah, but do (precisely) what they are commanded (Qs. At-Tahriim: 6).

The verse describes the wife and children to be protected by the head of the family, although editorially the verse above is aimed at men (fathers), but it does not mean it is only directed at them. This verse refers to women and men (mother and father), as well as almost the same verses (e.g. the verse that commands fasting) which are directed to men and women. Thus it can be interpreted that both parents are responsible for the children and also their respective partners as each is responsible for his behavior. The father or mother alone is not enough to create a household that is filled with religious values and is shaded by a harmonious relationship.

According to Islamic law, as the Prophet SAW once said, only his parents will make a magi or a Christian (Ismail, 1978). Based on the words of the Prophet Muhammad, philosophically, Islamic law provides equal protection to all children born, without discrimination. Burhanudin Hamnash (2014) conveyed that in the view of Islam, child protection has a fundamental meaning, namely as a comprehensive approach in spiritual education for humans, as a paradigm for changing the fate of children and as a value base, applying the principles of nobility and civilization, fostering generations, and forming a ummah.

Sholihah (2018) states that child protection in the perspective of Islamic law means the fulfillment of children's rights and their protection from things that can harm them. The rights of children are stated clearly and in detail in Islamic law, which is contained in the verses of the Qur'an and the hadiths of the Prophet Muhammad. Furthermore, Sholihah added that great attention to the protection of children and the fulfillment of their rights shows the perfection of Islamic law towards groups of weak creatures who cannot fulfill their own needs and cannot protect themselves from things that can harm themselves and their souls. Islamic recognition of children's rights has existed long before the United Nations declaration on children's rights and human rights, which was only introduced in the twentieth century. This shows the truth of Islamic teachings which are a blessing for the whole world.

The impact of sexual violence on children can have a physical and psychological impact. Psychological impact can be viewed from Psychoanalytic Psychological Theory. Psychoanalysis was introduced by Freud (1986) in his first book, "Dream Interpretation (Dream Interpretation)" in 1909. Freud's rationale (1986) is that most human behavior stems from unconscious processes. Freud defined unconscious processes as thoughts, fears, and repressed desires so that the individual is not aware of them. These emotions affect behavior, especially negative influences in the form of desires that disrupt the balance of their personality (Saimun, 2006). Fear, and suppressed desires that are not realized by the individual. These

emotions affect behavior, especially negative influences in the form of desires that disrupt the balance of their personality.

Psychologically, mental disorders in the end give birth to deviant actions (deviant). This disorder is experienced by adult humans because of the frustration of sexual needs that they experienced in childhood, so that if a child does not experience a series of sexual stages naturally, then he will experience deviant behavior when he enters adulthood. (growth phase) Deviant actions according to social norms are not all negative. However, it appears as an energy, and imagination in a work of art, literature, science, and so on (Saimun, 2006).

Freud differentiates personality structure on human; *Id*, *Ego* and *Super Ego* (Friedman & Schustack, 2002). *Id* is a very primitive part of the personality that operates before infancy and relates to the outside world, so the id contains all the unlearned innate drives which in psychoanalysis are called instincts (Fatwikiningsih, 2020; Meiwati & Oemiati, 2016). *Id* has two instincts, namely competing instincts; the sexual instinct driven by libido and the death instinct or aggressiveness. When energy arises in *id*, the result is tension. Tension can be released in the form of self-reflection and physical symptoms. *Id* contains everything that is psychologically inherited and has been present since birth. The characteristics of *Id* are that they have no morality (cannot judge or distinguish between good and bad).

Ego can be said as the word "*I*" or "*self*" that grows from infancy and becomes the source of the individual to communicate with the outside world. With the ego, the individual can distinguish himself from the surrounding environment so that a core that integrates personality is formed. The ego can be said to be the executive of personality because it controls the doors to action, responding to decide which instincts to satisfy and how. The main difference between the id and the ego is that the id only recognizes the subjective reality of the soul, while the ego distinguishes between things that are in the mind and those in the outside world (Friedman & Schustack, 2002; Meiwati & Oemiati, 2016).

Super ego is the moral or ethical part of personality (Abraham, 2017). *Super ego* is the internal embodiment of the traditional values and ideals of society, as explained by parents to children and carried out by giving them gifts or punishments. *Super ego* is controlled by moralistic and idealistic which always contradicts the pleasure principle of *id* and the reality principle of the ego, this *super ego* has two subsystems namely conscience and ego ideal. The main functions of *super ego* are to block the impulses of *id*, especially the sexual and aggressive impulses. The second function is to encourage the ego to replace realistic and moralistic goals. The third function is the pursuit of perfection (Friedman & Schustack, 2002; Hasanah, 2015; Meiwati & Oemiati, 2016).

A healthy personality is able to balance *id*, *ego* and *super ego*. When *id* appears impulsive while the ego cannot control it, there will be behavioral deviations. Meanwhile, if *super ego* controls *id* and *ego*, a person will appear stiff and likes to rule over others (Friedman & Schustack, 2002). What should stand out is *ego*, where anxiety due to *id* in conflict with the rules (*super ego*) of *ego* can relieve this tension through unconscious defense mechanisms. Self-defense mechanisms function to deny or change reality while protecting oneself from conflict and anxiety. For example, AN shows the attitude that she can't do anything for housechores, which has to serve her brothers and sisters, and subconsciously appears a rational self-defense mechanism that all this time she has been treated well by her stepfather (AN), while in MT it appears an attitude that was very forgiving to her stepfather, because she thought that when her stepfather was arrested her mother, himself and her younger siblings did not know who to live with, especially after her stepfather was arrested she had to live in a cottage with his three younger siblings, without her mother and father. Since her mother works in Jakarta as a maid and her stepfather is undergoing detention according to the judge's decision.

Freud put forward a principle called the motivational or dynamic principle to explain the driving forces behind human actions. For Freud, humans are motivated to seek pleasure and reduce stress and anxiety. Motivation is caused by physical energy that comes from instincts. Freud believed that it was perfectly valid to call this form of energy psychic energy. For AN and MT, when they become victims of sexual violence, there is a defense mechanism for their ego or other psychic energy, especially when faced with a situation when their respective stepfathers are imprisoned. Feelings of guilt arise in each of them so that actions that blame themselves appear, revenge, contemplate until they cry and all are caused by the psychic energy of each of those who are victims of sexual violence.

D. CONCLUSION

Protection for children who are victims of sexual violence must be given, especially the legal protection because by law the actions taken by the stepfather have clearly violated and there have been deviations. Fulfillment of children's rights must always be pursued and enforced. Legal protection must still be obtained, even though there has been a statement of forgiveness by the child as a victim. This is clearly influenced by the psychic energy of anxiety caused by him getting wrong treatment from people who should provide protection to him. Islamic law exists so that children get their rights, including protection, education rights, custody rights, housing rights, right of choice, rights of opinion and rights as children who are the hope of the nation.

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**Legal Protection Of Child Victims Of Sexual Violence As A Continuous Protection Means
(Islamic Law Studies and Psychoanalytic Psychological Theories)**

Sulastri, Suharto, Zuhraeni, Siti Nurjanah

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