

## Juridical Analysis on the Regulation of the Criminal Act of Sexual Abuse from the Perspective of Positive Law

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ARTICLE INFO	ABSTRACT
<p><b>Keywords:</b> <i>Regulation of Crime, Sexual Abuse, Law.</i></p>	<p>Sexual violence against children is a serious problem that affects many aspects of children's lives. Indonesian law, especially Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, regulates legal protection for victims of child sexual violence. This study aims to conduct a juridical analysis of regulations on the crime of sexual harassment from a positive legal perspective. This study uses a normative juridical research approach. The nature of this research is descriptive and analytical. The data used is library research. The results of the study show a. Legal regulations on the protection of children from the crime of sexual harassment are contained in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in Article 15 letters d and e, Article 59 Paragraph (1) and Paragraph (2) letter j, Article 15 A, Article 69A, Article 76E, Article 82 Paragraph (1) and Paragraph (2), and Articles 289-296 of the Criminal Code. b. The form of legal protection for child victims of sexual abuse is realized through Article 69A, which emphasizes that the protection provided to children as victims of sexual abuse. This research contributes to the implementation of legal protection for child victims of sexual abuse in Indonesia, by highlighting the importance of implementing existing regulations and their important role in providing adequate social protection and rehabilitation for victims.</p>

### INTRODUCTION

Acts of violence that always involve children often occur in various parts of the world. Not infrequently, this act traumatizes children, not only the future, which will provide opportunities for the welfare of children, but the violence that occurs, making children no longer look at the future well. The United Nations has created an organization that deals with children's problems so that children receive treatment from adults in general because, according to human rights, the existence of children as human beings created by God has the same position as other humans (Harefa, 2019). In Indonesia, child protection has also been implemented by establishing the Child Protection Law as a legal basis for implementing the law in the field. In several regions in Indonesia, acts of sexual violence against children often occur, even increasing from year to year. The question then arises: Why is it that the state has enacted a law on child protection but, in reality, cannot back up the actual protection of children? Is there something wrong with the implementation of the law on child protection? Or is it just a law that we only see and hear, but we do not implement the mandate of the law? Of course, this will affect the law enforcement process against perpetrators of sexual violence against children. In Indonesia, child protection is regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The law states that: "the Unitary State of the Republic of Indonesia guarantees the welfare of each of its citizens, including the protection of children's rights, which are human rights; it is further stated that every child has the right to survival, growth, and development and has the right to protection from violence and discrimination as mandated in the 1945 Constitution of the Republic of Indonesia." (No. 23 C.E.).

So, it is very clear that the purpose and objective of enacting this law is to ensure that the government takes part in realizing the welfare and legal certainty of children in the Child Protection Law.

Data from the National Commission for Child Protection (Komnas PA) shows that there were 3,547 complaints of cases of violence against children received throughout 2023. The most dominating case was sexual violence, with 1,915 complaints. Some of the backgrounds of sexual violence cases include watching pornographic videos. There were 985 cases of physical violence and 674 cases of psychological violence. Based on the place of occurrence, most cases of violence against children occurred in the family environment, which amounted to 35%. Followed by incidents in the school environment as much as 30%, social environment 23%, and not mentioned as much as 12% (Muhamad, 2023).

This number indicates that cases of sexual violence against children are in the highest and first worrying category compared to other physical violence and psychological violence. In Indonesia, several types of sexual violence have often occurred, including Rape; Sexual intimidation; Sexual harassment; Sexual exploitation; Trafficking in women; Forced prostitution; Sexual slavery; Forced marriage; Forced pregnancy; Forced abortion; Forced contraception, and sterilization; Sexual torture; Sexual punishment; Sexual, discriminatory practices that harm or discriminate against women; Sexual control through doctrine, including through discriminatory rules based on morality and religion (Purwanti & Hardiyanti, 2018).

Of the several types of sexual violence mentioned above, one of the acts of sexual violence that often occurs against children today is the crime of sexual abuse. In the Criminal Code (KUHP), the term obscene acts has been recognized. However, the term sexual harassment is not recognized in the Criminal Code.

The Big Indonesian Dictionary (KBBI) states that the perpetrator of sexual harassment is a person who likes to demean or belittle others regarding sex or matters of intercourse between men and women (Ardianoor, 2020). Obscene acts in the Criminal Code are regulated in the Second Book of Crimes, Chapter XIV on Crimes of Decency (Articles 281 to 303). Obscene acts committed by married men or women have been regulated in Article 284, the article on rape is regulated in Article 285, and the act of inducing obscene acts on persons who are still immature/underage is regulated in Article 293 (Rusli & Martquardo, 2021).

Sexual abuse comes from the word obscene in the legal dictionary, which means: "vile and filthy, indecent (violating modesty, decency). Obscene acts can be classified as a form of crime against decency. According to R. Soesilo, obscene acts are all acts that violate decency (modesty) or vile acts, all of which are in the environment of sexual lust, for example, kissing, groping the genitals, groping the breasts, and so on (Soesilo & Pidana, 1991). Furthermore, R. Soesilo explains "obscene acts" by referring to Article 289 of the Criminal Code: "Whoever by violence or threat of violence forces someone to commit or allows an obscene act to be committed, shall, being guilty of an act offensive to the honor of decency, be punished by a maximum imprisonment of nine years."

The definition of child protection can be interpreted as an act of realizing social justice in a society and a joint effort to protect children and enable them to carry out their rights and obligations in a humane manner (Daming & Al Barokah, 2022). Child protection can be divided into 2 (two) parts, namely: Juridical child protection, including protection in the field of public law and civil law, and non-juridical child protection, including protection in the social field, health field, and education field (Fitriani, 2016).

Child protection is all efforts to create situations and conditions in which every child can exercise their rights and obligations properly. Child protection is recognizing justice given to children by their respective rights. Child protection activities carry legal consequences, both for the welfare and development of children in the future. Child protection can be done directly or indirectly. Direct protection is in the form of protecting children from various threats from within and outside, educating, fostering, and assisting children in various ways to prevent them from starving and maintaining their health, providing means of self-development, and so on. Indirect child protection is an activity carried out indirectly directed at children, with the intermediary of other people in child protection efforts.

Article 1 point 2 of Law No. 23 of 2002 explains that: "child protection is all activities to ensure and protect children and their rights so that they can live, grow, develop, and participate optimally by the dignity of humanity, and receive protection from violence and discrimination."

So, child protection can be interpreted as an effort that is realized to prevent, rehabilitate, and empower children who experience sexual violence, exploitation, and neglect so that the survival and development of children can be guaranteed, both physically and mentally (Widjiastuti, 2016). Children's rights can only be protected by applying established laws and regulations. Furthermore, related policies, efforts, and activities that ensure the realization of protection of children's rights must be based on the consideration that children are vulnerable and dependent groups, in addition to the existence of groups of children who experience obstacles in

their growth and development, both spiritually, physically and socially (Gultom & Sumayyah, 2014). Child protection is very beneficial for every child, parent, and government, so coordination and cooperation are needed to ensure the protection and welfare of children and prevent imbalances in child protection activities.

This study aims to analyze juridically the legal regulation of sexual harassment crimes from a positive legal perspective in Indonesia. In addition, this study also aims to identify and evaluate the form of legal protection provided to children as victims of sexual abuse in accordance with Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The benefits of this research are expected to contribute to the development of legal science, especially in terms of protecting children from sexual abuse crimes. This research is also expected to provide practical recommendations for law enforcement, policymakers, and the wider community in an effort to increase the effectiveness of legal protection for children victims of sexual abuse. In addition, the results of this study are expected to be a reference material for future studies in the field of child protection law.

## **METHOD**

This study employs a normative juridical research approach, which is both descriptive and analytical in nature. The normative juridical method focuses on analyzing legal norms and regulations related to the criminal act of sexual abuse, particularly from the perspective of positive law in Indonesia. The research was conducted from January to June 2024, primarily at the Faculty of Law, Universitas Labuhanbatu, Indonesia, with additional data collection from various legal libraries and online legal databases. For qualitative insights, the study involved interviews with legal experts, child protection officers, and practitioners in the field of child rights and protection. These informants were selected based on their expertise and experience in handling cases related to sexual abuse and child protection laws in Indonesia. Data collection techniques included library research, which involved reviewing books, journal articles, legal documents, and other relevant literature. Additionally, structured interviews with selected informants provided deeper insights into the practical application of child protection laws. The data analysis involved a qualitative approach, focusing on the interpretation and analysis of legal texts and interview transcripts. The data was categorized and analyzed to identify key themes and patterns related to the regulation and enforcement of laws on sexual abuse in Indonesia. The findings were then critically examined to draw conclusions and provide recommendations for improving legal protections for child victims of sexual abuse.

## **RESULTS AND DISCUSSION**

### **Children and the crime of child molestation**

Children are an integral part of the sustainability of human life and the sustainability of a nation and state so that one day, they can be responsible for the sustainability of the nation and state. Every child needs to get the widest possible opportunity to grow and develop optimally, both physically, mentally, and socially. For this reason, protection efforts need to be made to realize the welfare of children by providing guarantees for the fulfillment of rights without discriminatory treatment.

The definition of a child in Indonesian regulations is pluralistic, so it needs to be defined based on the general provisions contained in the regulation. According to Nicholas Mc Bala in his book *Juvenile Justice System*, children are between birth and the beginning of adulthood. This period is a period of life development, as well as a period of limited ability, including limitations to harm others (Marlina, 2009). Furthermore, Law Number 35 of 2014 defines children namely: "A child is someone who is not yet 18 (eighteen) years old, including children still in the womb."

The crime of sexual abuse is a violation of human rights that cannot be justified in terms of morals, decency, and religious morals. Victims of sexual abuse are mainly minors, both male and female. The crime of sexual abuse or sexual crime is defined as the same as against the norms of decency and morality. The regulation for children is contained in the Criminal Code (KUHP). It is specifically regulated in Law Number 35 of 2014, which amended Law Number 23 of 2002 concerning Child Protection (Supanto, 1999). The consequences of sexual abuse result in physical and psychological trauma to the victim, especially for children. To provide special protection to children in Indonesia from the crime of sexual abuse that often occurs, it is necessary to have rules that can guarantee legal protection as an effort to protect child victims of sexual abuse, which is regulated in the Criminal Code (KUHP), Article 290 of the Criminal Code.

The law states that every child victim of sexual abuse has the right to legal protection. The law can be described as the values of freedom as a personal interest on the one hand and the value of order as an interest

between individuals and one another. The importance of legal protection for society is to create stability, regulate social relations primarily, and prevent humans from chaos in all aspects of their lives. Law is needed to guarantee and prevent humans from chaos (Reksodiputro, 1994). The life of a democratic society and state highly upholds the value or right to independence and freedom. The preamble of the 1945 Constitution even states that "freedom is the right of all nations." The right to independence is meaningless if, on the other hand, there is still colonialism in all its forms. Colonization is essentially a form of criminal act such as harassment, violation, deprivation, restraint, or forced or arbitrary control of the freedom and rights of others (Barda Nawawi Arief, 2018).

The definition of obscene acts (ontuchtige chandelier) is any form of act, whether performed on oneself or another person, concerning and relating to the genitals or other parts of the body that can stimulate sexual desire. For example, stroking or rubbing the penis or vagina, holding the breasts, kissing a woman's mouth, and so on. (Chazawi, 2005). Obscene acts are all forms of acts, whether committed on oneself or another person, regarding and relating to the genitals or other parts of the body that can stimulate sexual desire (Chazawi, 2005). The definition of sexual abuse itself is broader than the definition of intercourse. The definition of intercourse, according to Hoge Road, implies the fusion of male genitals and female genitals where it is required that the penis enters the vaginal canal.

The penis secretes sperm, which usually results in pregnancy. Meanwhile, suppose one of the conditions is not met; for example, the penis has not entered the sperm. In that case, this incident is not called intercourse but an obscene act, so if it is carried out by force with violence or threat of violence, the incident is the rape of obscenity. Obscene acts violate decency or morality, but any act against one's own body or another person's body violates decency. Obscene acts is the name of a group of various types of acts that violate decency or morality, also including acts of sexual intercourse outside of marriage (Anwar, 1986). Obscene acts include copulation and homosexuality or obscene acts against nature. The prohibition or punishment of the perpetrators of obscene acts, according to Bemmellen, is shown to protect young children (adolescents) from sexual development disorders and rape. In addition, according to Bemmellen, the prohibition of obscene acts and the punishment of perpetrators are shown to maintain the abuse of certain relationships or certain powers, such as biological parents, parents, guardians, employers, and people who are caregivers, educators, or guardians of immature children who are entrusted and become their responsibility (Djubaedah, 2010).

According to Simons, quoted in Lamintang's book, "ontuchtige handelingen," or obscenity, is an act relating to life in the sexual field, which is carried out to obtain pleasure in a way that is contrary to the general view of decency (Lamintang & Lamintang, 2022).

Some forms of sexual abuse that often occur include:

1. Exhibitionism: Intentionally showing off one's genitals to others.
2. Voyeurism: Kissing someone lustfully
3. Fondling: Stroking/fingering one's genitals
4. Fellatio: Forcing someone to make mouth contact

### **Legal arrangements for the protection of children from the crime of sexual abuse according to Positive Law in Indonesia**

The enactment of Law No. 35 of 2014 concerning child protection, as a form of government assertiveness to protect children from victims of sexual violence such as sexual abuse, this law aims to provide rights to children described in Article 4 of Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning Child Protection states that: "Every child has the right to be able to live, grow, develop, and participate reasonably by the dignity of humanity, and receive protection from violence and discrimination."

The crime of sexual abuse is regulated in the Criminal Code (KUHP) in Chapter XIV Book II, starting from Articles 289-296 of the KUHP, which is further categorized as a crime against decency (Kurniawan, 2014).

The natural form that the law provides complete protection for children can be seen in Article 15 of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, which stated: "Every child has the right to obtain protection from a. abuse in political activities; b. involvement in armed disputes; c. involvement in social unrest; d. involvement in events that contain elements of violence, e., involvement in war; and f. sexual crimes." In letters d and e of Law No. 35 of 2014, it is clearly stated that the protection of children from violence and sexual crimes is stated in the article. So, if a child gets violence, including sexual violence, the child must get legal certainty for this action. Child protection is the responsibility of all parties; this is stated in Article 20 of the State, which states: "The Government, Local Government, Community, Family, and Parents or Guardians are obliged and responsible for the implementation of Child Protection." In addition, special protection must be given to children according to Article 59 (1). The Government, Regional Governments,

and other state institutions are obliged and responsible for providing Special Protection to Children. As for the intended special protection, namely in Article 59A that "Special Protection for Children as referred to in Article 59 paragraph (1) is carried out through efforts: a. rapid treatment, including physical, psychological, and social treatment and rehabilitation, as well as prevention of disease and other health problems; b. psychosocial assistance during treatment until recovery; c. social assistance for children from low-income families; and d. provision of protection and assistance in every judicial process." Article 59 Paragraph (2) states: "Special Protection to Children as referred to in Paragraph (1) shall be provided, among others, to letter j. Child victims of sexual crimes through efforts: a. education about reproductive health, religious values, and moral values; b. social rehabilitation; c. psychosocial assistance during treatment to recovery; and d. provision of protection and assistance at every level of examination from investigation, prosecution, to examination at the court session," as stated in Article 69A Special Protection for Child Victims of sexual crimes as referred to in Article 59 paragraph (2) letter j.

Further legal arrangements for child protection can be seen in Article 76E, which states: "Every person is prohibited from committing Violence or threat of Violence, forcing, deceiving, committing a series of lies, or inducing a Child to commit or allow obscene acts to be committed." If everyone referred to in Article 76 E does so, it will be enforced according to Article 82 paragraph (1): "Every person who violates the provisions referred to in Article 76E shall be punished with a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah). Furthermore, in Paragraph (2), If the criminal offense as referred to in Paragraph (1) is committed by parents, guardians, caregivers of children, educators, or education personnel, the punishment shall be increased by 1/3 (one-third) of the criminal sanction as referred to in paragraph (1)."

Child protection in Indonesia should have been implemented long ago, given that children are the country's assets. Children are the next generation of the nation who should get special protection from the government (Izziyana, 2019). Child protection is not only done by the government, but it is also the shared responsibility of all parties. With the implementation of child protection, we have contributed to development and participated in upholding justice in the form of child protection.

Forms of Legal Protection for Children as Victims of Sexual Abuse in the Perspective of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (Aji & Hartanto, 2018).

The state, in its laws, regulates the form of protection given to children who are victims of sexual violence. The sexual violence referred to here is sexual violence in the form of child sexual abuse. In the Criminal Code, the act of sexual abuse is contained in Articles 287 and 288. Article 287 Paragraph (1) states: "Any person who has carnal knowledge of a woman who is not his wife, knowing or reasonably suspecting that she is not yet fifteen years of age or, if it is not generally straightforward, that she is not yet marriageable, shall be punished by a maximum imprisonment of nine years. Paragraph (2): "A prosecution shall be instituted only upon complaint, except when the woman has not yet reached the age of twelve or when one of the cases mentioned in Articles 291 and 294 are present.

Furthermore, Article 288 Paragraph (1) states: "Any person who in marriage has carnal knowledge of a woman whom he knows or reasonably should presume that she is not yet marriageable, if the act results in injury, shall be punished by a maximum imprisonment of four years. Paragraph (2): "If the fact results in a serious physical injury, a maximum imprisonment of eight years shall be imposed." Paragraph (3): "If the fact results in death, a maximum imprisonment of twelve years shall be imposed.

To protect children from sexual abuse as stipulated in Article 69A of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection (Patepa, 2020). Then, the form of Legal Protection specifically for child victims of sexual crimes, as referred to in Article 59 paragraph (2) letter j, is carried out through efforts:

1. Education on reproductive health, religious values, and moral values.
2. Social rehabilitation.
3. Psychosocial assistance during treatment and recovery.
4. Providing protection and assistance at every level of examination, from investigation prosecution to examination in court.

The conclusion is that the form of protection against sexual violence against children has been regulated by law. So, it is hoped that the law will be a manifestation of the government's protection of children's rights. That the law can provide legal certainty for child protection in Indonesia.

## CONCLUSION

Legal arrangements for the protection of children from the crime of sexual abuse are contained in Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection in Article 15 letters d and e, Article 59 Paragraph (1) and Paragraph (2) letter j, Article 15 A, Article 69A Article 76E, Article 82 paragraph (1) and Paragraph (2). As well as Articles 289-296 of the Criminal Code. The form of legal protection for child victims of sexual abuse is realized through Article 69A, which states that the form of protection given to children as victims of sexual abuse, namely by: 1. Providing education about reproductive health, religious values, and moral values. 2. Conducting social rehabilitation activities for child victims of sexual abuse. 3. Providing psychosocial assistance during treatment until recovery. 4. Providing protection and assistance at every level of examination, from investigation and prosecution to court examinations.

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