

Juridical Analysis of Legal Protection of Children as Victims of Abuse in the Perspective of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection

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ARTICLE INFO	ABSTRACT
<p>Keywords: Legal Protection, Children, Victims, Abuse.</p>	<p>This study discusses the Juridical Analysis of Legal Protection of Children as Victims of Abuse in the Perspective of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The type of research used is normative juridical research. The nature of research in this study is descriptive analytical. The type of data used is literature research. The results showed the form of legal protection for children as victims of abuse in the perspective of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Protection in the Form of Legal Protection of Children as Victims of Abuse in the Perspective of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, in Article 69A It is stated that the form of protection given to children as victims of abuse, namely by: 1. Providing education about reproductive health, religious values, moral values. 2. Conducting social rehabilitation activities, for Child Victims of Abuse. 3. Conduct psychosocial assistance during treatment until recovery. 4. Provision of protection and assistance at every level of examination starting from investigation, prosecution, to examination in court hearings.</p>

INTRODUCTION

The rise of cases related to violence against children is very concerning. Almost every day through national news, mass media, and even social media news about violence against children. Unnatural treatment of children often occurs because children are considered to have no strength to resist even to protect themselves, a child has not been said to be able. Violence against children does not only occur in Indonesia, but even abroad children still receive the same treatment, namely experiencing sexual, physical and psychological violence.

According to data from the National Commission for Child Protection (Komnas PA), there were 3,547 complaints 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. The number of physical violence was 985 cases and psychological violence was 674 cases. Based on the place of occurrence, the most cases of violence against children occur in the family environment, which is as much as 35%. Followed by events in the school environment as much as 30%, social environment 23%, and not mentioned as much as 12%.

This indicates that cases of sexual violence against children fall into a very high and alarming category first compared to physical violence and other psychological violence. Various efforts have been made by the government to provide protection for children. But sexual violence against children still occurs, even the number has increased every year.

There are about 15 types of sexual violence that have often occurred in the community, namely; (1) Rape; (2) Sexual intimidation; (3) Sexual harassment; (4) Sexual exploitation; (5) trafficking in women; (6) Forced

prostitution; (7) Sexual slavery; (8) Coercion of marriage; (9) Forced pregnancy; (10) Coercive abortion; (11) Coercion of contraception and sterilization; (12) Sexual torture; (13) Sexual punishment; (14) Sexually suggestive discriminatory practices that harm or discriminate against women; (15) Sexual control through doctrine, including through discriminatory rules based on morality and religion.

One of the acts of sexual violence that occurs against children today is the criminal act of sexual immorality. The term sexual harassment is actually unknown in the Criminal Code. The Criminal Code (KUHP) only recognizes the term obscene acts. The Big Indonesian Dictionary (KBBI) states that perpetrators of sexual harassment mean people who like to demean or belittle others, regarding sex or regarding sexual relations between men and women. Obscene acts in the Criminal Code are regulated in the Second Book on Crimes, Chapter XIV on Decency Crimes namely (Articles 281 to Article 303). Obscene acts committed by married men or women are regulated in Article 284, rape is regulated in Article 285, and enticement to commit lewd acts of minors is regulated in Article 293.

According to R. Soesilo, what is meant by lewd acts is all actions that violate decency (decency) or heinous acts, all of which are in the environment of sexual lust, such as kisses, groping pubic members, groping breasts, and so on. (Soesilo, 1996) Furthermore, R. Soesilo explained "obscene acts" referring to Article 289 of the Criminal Code that: "Whoever by force or threat of violence forces a person to commit or allow the commission of obscene acts, shall be punished for committing acts that attack the honor of decency with a penalty of not less than nine years."

Child protection is all efforts made to create conditions so that every child can properly carry out his rights and obligations. Child protection is a manifestation of justice given to children in accordance with their respective rights. Child protection activities carry legal consequences, both from the welfare and future development of the child. Child protection can be done directly or indirectly. Direct protection is in the form of protecting children from various threats from inside and outside, educating, fostering, accompanying children in various ways as a form of preventing children from hunger and maintaining their health, providing means of self-development, and so on. Indirect child protection is an activity carried out indirectly that is shown to children, with the intermediary of others in child protection efforts.

The definition of child protection can be interpreted as an act of manifestation of social justice in a society and joint efforts in protecting children to carry out their rights and obligations humanely. Child protection can be divided into 2 (two) parts, namely; (1) Juridical child protection, which includes: protection in the field of public law and in the field of civil law; (2) Non-juridical child protection, including: protection in the social sector, health sector, education sector.

Article 1 point 2 of Law No. 23 of 2002 explains that: "Child protection is all activities to guarantee and protect children and their rights to live, grow, develop, and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination." Child protection is defined as all efforts realized to prevent, rehabilitate, and empower children who experience acts of sexual violence, exploitation, and neglect, so that the continuity of life and development of children can be guaranteed reasonably, both physically and mentally. Protection of children's rights can be realized through the application of laws and regulations. Policies, efforts and activities that ensure the realization of the 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 spiritual, physical and social. (Gultom & Sumayyah, 2014) Child protection is beneficial for both children, parents and the government, so coordination and cooperation are needed in providing protection for children in order to realize protection and welfare for children as a whole and prevent imbalances in these protection activities.

The presence of Law number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014, in order to realize the protection of violations of children's rights, namely related to Human Rights (HAM). The purpose of this study is expected to provide an understanding of the form of legal protection for children as victims of abuse in the perspective of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. From the description above, the problem is formulated about how the form of legal protection for children as victims of abuse in the perspective of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

METHOD

The type of research used is normative juridical research. The nature of research in this study is descriptive analytical. The type of data used is library research.

RESULTS AND DISCUSSION

A. Understanding Children and Child Abuse

The definition of children in regulations in Indonesia is pluralist, 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* says the child is the period between birth and the beginning of adulthood. This period is a period of life development, as well as a time of limited abilities including limitations to harm others (Marlina, 2009).

Children are an inseparable part of human survival and the sustainability of a nation and State so that they will be able to 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, it is necessary to make protective efforts to realize child welfare by providing guarantees for the fulfillment of rights without discriminatory treatment (Sukatendel, 2020).

Meanwhile, Law Number 35 of 2014 provides a definition for children, namely: "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb." The criminal act of obscenity is a violation of human rights that cannot be justified in terms of morals, morals and religion. Victims of sexual immorality are mainly minors, both male and female. The crime of obscenity or sexual crime is defined the same as against the norms of decency and decency. The regulation is contained in the Criminal Code (KUHP), for children specifically regulated in Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection (Supanto, 1999).

As a result of acts of sexual immorality resulting in physical and psychological trauma to the victims, especially for children. To provide special protection for children in Indonesia from frequent acts of sexual immorality, it is necessary to have regulations that can provide legal protection guarantees as an effort to protect children victims of sexual abuse which has been regulated in the Criminal Code (KUHP), Article 290 of the Criminal Code.

The enactment of Law Number 35 of 2014 concerning child protection, as a manifestation of the government's firmness to protect children from victims of sexual violence such as sexual abuse, this Law aims to provide rights to children as described in Article 4 of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection states that: "Every child has the right to be able to live, grow, develop, and participate reasonably in accordance with human dignity and dignity, and receive protection from violence and discrimination."

Every child who is a victim of sexual abuse has the right to definite legal protection. Law can be described as the values of freedom as self-interest on the one hand and the value of order as the interest between individuals with each other. The importance of legal protection for society is to create stability, regulate social relations in a special way, and prevent people from chaos in all aspects of their lives, and laws are needed to guarantee and prevent people from chaos. (Reksodiputro, 1994) The life of society and democratic states highly upholds the value or right of independence and freedom. In the preamble of the 1945 Constitution it was even affirmed, that "independence is the right of all nations". There is no meaning to the right to independence, if on the other hand there is colonialism in all its forms. Colonialism is essentially a form of criminal offense such as harassment, violation, deprivation, restraint, or forced or arbitrary control of the right to liberty of others (Barda Nawawi Arief, 2018).

Obscene acts are all kinds of acts, both done to oneself and done to others regarding and related to the genitals or other body parts that can stimulate sexual appetite. (Adami, 2005) Obscene acts include copulation and homosexuality or lewd acts contrary to nature. The prohibition or punishment of perpetrators of lewd acts, according to Bemmellen is shown to protect young children (adolescents) from impaired sexual development, and rape. In addition, according to Bemmellen, the prohibition of lewd acts and punishment to perpetrators is 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 minors who are entrusted and become their responsibility. (Djubaidah, 2010) According to Simons quoted in his book *Lamintang*, "ontuchtige handelingen" or lewd is an act pertaining to life in the sexual sphere, which is done with the intention of obtaining pleasure in a way that is contrary to the common view of decency (Lamintang, 1984).

The definition of obscene acts (ontuchtige handelingen) is all kinds of forms of deeds, both done to oneself and done to others regarding and related to the genitals or other body parts that can stimulate sexual appetite. For example, stroking or rubbing the penis or vagina, holding breasts kissing a woman's mouth and so on

(Adami, 2005). The definition of sexual immorality itself is broader than the notion of sexual intercourse. As the definition of intercourse according to Hoge Road, which contains the understanding of a combination of male genitals and female genitals where it is required to enter the penis into the vaginal canal, then the penis releases sperm as usually results in pregnancy. Meanwhile, if you do not meet one of the conditions, for example, the penis has not entered, the sperm has come out, this incident is not copulation, but a lewd act so that if done by force with violence or threats of violence, the incident is rape, lewd. (Adami, 2005) Obscene acts are all acts that violate decency or decency, but also any act against one's own body or with one's own body, or the body of another person that violates decency. Obscene acts are the name of a group of various types of acts that violate decency or decency, also including acts of intercourse outside marriage (Anwar, 1982).

The forms of fornication are quite diverse, there are several types of terms about fornication, namely; (1) Exhibitionism: Deliberately showing off gender to others; (2) Voyeurism: Kissing someone lustfully; (3) Fondling: Stroking/palpating a person's genitals; (4) Fellatio: Forcing someone to make oral contact (Marpaung, 1996).

The crime of obscenity is regulated in the criminal code (KUHP) in chapter XIV Book II, starting from Articles 289-296 of the Criminal Code, which is further categorized as a crime against decency. The crime of obscenity is not only regulated in the Criminal Code but also regulated in Law No. 23 of 2002 concerning Child Protection.

1. Forms of Legal Protection for Children as Victims of Abuse in the Perspective of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

The legal basis for Obscenity is contained in the Criminal Code, namely Articles 287 and 288. Article 287 Paragraph (1) states: "Whoever has intercourse with a woman who is not his wife, when he knows or should reasonably suspect that she is not yet fifteen years of age, or if it is generally not clear, that it is not yet time for marriage, shall be punished with imprisonment for not more than nine years.

Subsection (2): "Prosecution shall be made only on complaint, except when the woman is not twelve years of age or if there is any of the matters mentioned in Articles 291 and 294. Furthermore, Article 288 Paragraph (1) states: "Whoever in marriage has intercourse with a woman whom he knows or should reasonably suspect that the person concerned is not yet married, if the act results in injury, shall be punished with imprisonment for not more than four years. Paragraph (2): "If the act results in serious injury, imprisonment for not more than eight years shall be imposed Paragraph (3): "If the act results in death, imprisonment for not more than twelve years shall be imposed.

To protect children from sexual violence Obscenity 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. Therefore, the form of Legal Protection specifically for child victims of sexual crimes as referred to in Article 59 paragraph (2) point j is carried out through efforts; (1) Education about reproductive health, religious values, moral values; (2) Social rehabilitation; (3) Psychosocial assistance during treatment until recovery; (4) Provision of protection and assistance at every level of examination starting from investigation, prosecution, to examination in court hearings.

CONCLUSION

The Form of Legal Protection for Children as Victims of Abuse In the perspective of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Article 69A states that the form of protection provided to children as victims of sexual abuse is by; (1) Provide education about reproductive health, religious values, moral values; (2) Carry out social rehabilitation activities, for Child Victims of Abuse; (3) Conduct psychosocial assistance during treatment until recovery; (4) Provision of protection and assistance at every level of examination starting from investigation, prosecution, to examination in court hearings.

REFERENCES

- Adami, C. (2005). *tindak pidana mengenai kesopanan*, Jakarta: PT. *Raja Grafindo Persada*.
Anwar, M. (1982). *Hukum Pidana Bagian Khusus Jilid 2. Bandung, Alumni*.
Barda Nawawi Arief, S. H. (2018). *Masalah penegakan hukum dan kebijakan hukum pidana dalam penanggulangan kejahatan*. Prenada Media.
Djubaidah, N. (2010). *Marriage Registration and Unregistered Marriages according to Indonesian Written Law and Islamic Law*. *Sinar Graphic, Jakarta*, 1.
Gultom, M., & Sumayyah, D. (2014). *Perlindungan hukum terhadap anak dalam sistem peradilan pidana anak di*

Indonesia.

- Lamintang, P. A. (1984). Dasar-dasar untuk mempelajari Hukum Pidana yang berlaku di Indonesia. *(No Title)*.
- Marlina, P. P. A. di I. (2009). Pengembangan konsep diversi dan Restorative Justice. *Refika Aditama, Bandung*.
- Marpaung, L. (1996). *Kejahatan terhadap kesusilaan dan masalah prevensinya*. Sinar Grafika.
- Reksodiputro, M. (1994). Sistem Peradilan Pidana Indonesia (Melihat Kejahatan dan Penegakan Hukum dalam Batas-Batas Toleransi). *Jakarta: Pusat Keadilan Dan Pengabdian Hukum*.
- Soesilo, R. (1996). KUHP serta komentar-komentarnya lengkap pasal demi pasal. *Bogor: Politea*.
- Sukatendel, K. R. (2020). *Perlindungan Hukum Terhadap Korban Pencabulan Anak di Bawah Umur (Studi di Kabupaten Langkat)*.
- Supanto. (1999). *Kebijakan hukum pidana mengenai pelecehan seksual*. Kerja sama Ford Foundation dengan Pusat Penelitian Kependudukan, Universitas