

PROTECTION OF HUMAN RIGHTS FOR MINORS AGAINST ACTS OF SEXUAL ABUSE

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Abstract

The state's unequivocal responsibility to safeguard children as victims of violence, particularly sexual abuse, is imperative due to their pivotal role in future development. The study method used the normative way. The research findings aim to serve as a guide for crafting policies aligning with national law, contributing positively to legal science by addressing material and formal legal aspects, as well as enhancing victim protection and recovery. The prevalence of unsettling acts of sexual harassment underscores a pressing need for vigilant attention. Child victims of sexual violence endure profound psychological impacts, ranging from mild to severe trauma, leading to a loss of self-confidence, shame, and, tragically, suicide in some cases. This study delves into child protection policies in Makassar, Indonesia, scrutinizing shortcomings in addressing sexual crimes against minors. Therefore, legal innovations for enhanced handling of such cases, ensuring justice for the victims and fostering societal balance are needed.

Keywords: Human rights; Sexual abuse; Child protection; Policy; Novelities.

Abstrak

Tanggung jawab negara yang tegas untuk melindungi anak-anak sebagai korban kekerasan, khususnya pelecehan seksual, sangatlah penting karena peran mereka yang sangat penting dalam pembangunan di masa depan. Metode penelitian menggunakan cara normatif. Temuan penelitian ini bertujuan untuk menjadi panduan dalam menyusun kebijakan yang selaras dengan hukum nasional, memberikan kontribusi positif terhadap ilmu hukum dengan memperhatikan aspek hukum material dan formal, serta meningkatkan perlindungan dan pemulihan korban. Maraknya tindakan pelecehan seksual yang meresahkan menggarisbawahi perlunya perhatian yang mendesak. Anak-anak korban kekerasan seksual mengalami dampak psikologis yang besar, mulai dari trauma ringan hingga berat, yang berujung pada hilangnya rasa percaya diri, rasa malu, dan, tragisnya, bunuh diri dalam beberapa kasus. Studi ini menggali kebijakan perlindungan anak di Makassar, Indonesia, dan meneliti kelemahan dalam menangani kejahatan seksual terhadap anak di bawah umur. Oleh karena itu, diperlukan inovasi hukum untuk meningkatkan penanganan kasus-kasus tersebut, menjamin keadilan bagi para korban, dan mendorong keseimbangan masyarakat.

Kata Kunci: Hak asasi manusia; Pelecehan seksual; Perlindungan anak; Kebijakan; Novelty.

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INTRODUCTION

Human rights are inherent rights of human beings that reflect their dignity which must obtain legal guarantees law which is basically a reflection of human rights so that the law must contain justice or not determined by human rights that are conceived and regulated or guaranteed by the law itself. Human Rights Concern all aspects of human life which is a reflection of the nature of man as a personal member of society and a creature of God that must be respected and guaranteed by law. The important thing that needs to be considered in the legislation relating to children is the consequences of its application in relation to various factors such as economic, social, political and cultural conditions of the community.¹

The position of children as a young generation that continues the ideals of the nation's future leaders and as a source of hope for the previous generation needs to get the widest opportunity to grow and develop reasonably both spiritually and socially child protection is an effort and activity of all levels of society in various positions and roles that are well aware of the importance of children for Indonesia and the nation in the future if they have matured physical or mental and social growth then it is time to replace the previous generation.²

The number of cases of sexual abuse of minors continues to increase. Sexual abuse of minors can be in verbal form as well as in nonverbal form. Children who experience such abuse will experience the impact of feeling humiliated for others, sexual abuse is a behavior or act that harasses a person or group to others who are directly related to the harasser and the impact of sexual abuse often occurs where children suffer from emotions, depression, loss of appetite, and children will become introverted people who have difficulty sleeping and not focusing on school. Many cases abuse of minors is not revealed due to the culture of society that still holds a principle of family problems are family problems that do not deserve to be discussed or reported to the authorities because it is tantamount to opening the family's own disgrace.

Sexual violence is a universal crime can be found around the world at every level of society regardless of age or gender the magnitude of incidents reported in each country varies. The term sexual violence is a term that is very loud, especially in May 2016 one of the members of commission 9 of the House of Representatives from the P3 faction responded to the phenomenon of sexual violence that befell children by saying that the state must give a firm signal on this crime because it is currently Indonesia's sexual crime emergency. VOA (Voice of America) Indonesia on May 10, 2016 in addition to declaring the crime as an extraordinary crime President of the Republic of Indonesia Joko Widodo also wants the handling of attitudes and actions of all elements of both government and society to be carried out specifically in the city of Makassar.³

It has long been known that sexual abuse, especially in children as victims, is a disease that seems difficult to cure this case has been going on for a long time and has become an iceberg phenomenon in this country. Last year we were suddenly realized by the various reports in the mass media about the occurrence of sexual harassment in various regions in Indonesia in particular the Indonesian government has stated that Indonesia is in a sexual crime emergency.

¹ Doni A. Koesoema. 2007. *Pendidikan Karakter Strategi Mendidik Anak di Zaman Global*. Jakarta: Grasindo.

² *Convention on the Right of The Child*, yaitu Konvensi tentang Hak-hak Anak yang telah berlaku sejak 1990

³ Arfah Tjolleng. (2010, Maret 11). *Perlindungan Hak Asasi Manusia dalam Pemberantasan Tindak Pidana Perdagangan Orang*. *Ikhtiyar, Edisi Khusus Hari Supersemar*.

Constitution of the Republic of Indonesia year 1945 result of amendment to amendment result of amendment to the 4th Amendment does not provide for age limits on children formulation in the Constitution the state of the Republic of Indonesia in 1945 has a special meaning to the understanding of the status of children is as a legal subject of the national legal system that must be protected maintained and fostered to achieve child welfare article 28B paragraph 2 determines that every child is entitled to the survival of growing and developing and entitled to protection kan anak as a source of aspiration for the birth of new generations of heirs of a great nation capable civilization, science and high technology, and then be able to prosper the people of Indonesia.⁴

The principle of legal protection of children must be in accordance with the Convention on the rights of the child or the convention on the rights of the child as ratified by the government of the Republic of Indonesia through Presidential Decree No. 36 of 1990 concerning the ratification of the convention on the rights of the child or the Convention on the rights of the child as a result of the meeting of states parties to the convention on the rights of the child on December 12, 1995.

Law No. 35 of 2014 on child protection amendment to Law No. 23 of 2002. This law is worth new things because law number 23 of 2022 is considered not optimal in victim protection services facilitated by the state Victim Protection in the criminal justice process is certainly inseparable from victim protection according to applicable positive law provisions. Cases that occurred in Indonesia in Indonesia in the period 2016-2022 the Ministry of women's protection and Child Protection recorded 25,050 women including children. While in Makassar there were 54 cases of physical violence, 27 cases of psychological violence, and 46 cases of sexual violence.⁵

The question in this journal is how the implementation of Law No. 35 of 2014 on the protection of children in violation of criminal acts of sexual abuse? and how does the settlement in violation of the criminal act of sexual harassment in giving a deterrent effect on the perpetrator?

METHOD

Type of research is a type of empirical research that is field research by collecting data in the field based on the problem posed and reviewing the provisions related to the object of Research, International and National Instruments will also examine the symptoms in the community against the factors, causes and consequences of sexual abuse of minors and then from the results of this study can be found countermeasures to prevent the occurrence of these crimes.

RESULT AND DISCUSSION

1. Implementation of Law No. 35 Of 2014 On Child Protection In Violation Of Criminal Acts Of Sexual Abuse

Children are the younger generation of successors to the ideals of the nation's struggle, children have a strategic role and have special characteristics and properties that ensure the continuity and existence of the nation and state in the future. Children's rights are part of the human rights contained in the Constitution of the Republic of Indonesia in 1945 and the United Nations Convention on the rights of the child. The government of Indonesia in its effort to ensure and realize the legal protection and welfare of children through the establishment of Law No. 23 of 2002 on Child Protection which

⁴ Gatot Supramono. 2007. *Hukum Acara Pengadilan Anak*. Jakarta: Djambatan.

⁵ Maidin Gultomo. 2008. *Perlindungan Hukum Terhadap Anak*. Bandung: Rafika Aditama.

then in order to adjust to some provisions then made some changes to certain articles then promulgated Law No. 35 of 2014 on amendments to Law No. 23 of 2002 on Child Protection.

Child protection is all activities to ensure and protect children and their rights in order to live, grow, develop, and participate optimally in accordance with human dignity, as well as protection from violence and discrimination. Child protection is closely related to the five pillars, namely, Parents, Family, Community, Government, Local Government and state.

Child protection that complements other rights guarantees that children will receive what they need in order for them to survive, develop and grow in accordance with the expectations of the law. However, in fact, the condition of children in Indonesia is still very worrying, especially regarding the problem of child labor, street children, and children victims of sexual violence, sexual exploitation, and commercial sexual exploitation.

Legal protection of children is a fundamental right and freedoms of children which means legal protection of various freedoms and rights of children as well as interests related to the welfare of children. child protection is also a business and activities of all levels of society in various positions and roles that do not focus only on the authorities but to anyone who is well aware of the importance of children for nusa and the nation in the future.⁶

In Law No. 35 of 2014 article 1 Paragraph 2 itself explains that child protection is all activities to ensure and protect children and their rights in order to live, grow, and develop and participate optimally in accordance with human dignity and protection from violence and discrimination.

Children are also entitled to protection from abuse in political activities, involvement in armed disputes, involvement in social unrest, involvement in events that contain elements of violence, involvement in war, and sexual crimes. In Article 59 paragraph (1) and Paragraph (2) letter j it is also stipulated that the Government, Local Government and other state institutions are obliged and responsible for providing special protection to children, one of which is given to child victims of sexual crimes.⁷

Special protection can be done through rapid treatment efforts including treatment and/or rehabilitation of physical, psychological and social as well as the Prevention of diseases and other health disorders that can threaten the life of the child itself. psychosocial assistance at the time of treatment until recovery, as well as the provision of social assistance for children who come from disadvantaged families, and the provision of protection and assistance in any judicial process in accordance with applicable regulations.⁸

Special protection for child victims of sexual crimes is carried out through various efforts:

- a. Education on reproductive health, religious values, and moral values;

⁶ Soedjono Dirdjosisworo. 2002. *Pengadilan Hak Asasi Manusia Indonesia*. Bandung: Citra Aditya Bakti.

⁷ Assistant Secretary for Public Affairs (ASPA). (2019, September 24). Effects of Bullying [Text].

StopBullying.Gov. <https://www.stopbullying.gov/bullying/effects>

⁸ Gordon, S. (2020, Mei 26). 6 Reasons Why People Are Bullied at Work. Verywell Mind. <https://www.verywellmind.com/reasons-why-workplace-bullies-target-people-460783>

- b. Social rehabilitation; psychosocial assistance during treatment until recovery; and providing protection and assistance at every level of examination ranging from investigation, prosecution to examination in court hearings.
- c. The victim's right to treatment includes the right to information on the entire process and the results of treatment, protection, and recovery; the right to obtain documents on the results of treatment; the right to legal services; the right to psychological reinforcement; the right to health services including medical examination, action, and treatment; the right to services and facilities in accordance with the special needs of the victim; and the right to removal of sexually charged content for cases of sexual violence with electronic media.
- d. The rights of victims to protection include: providing information about rights and Protection facilities; providing access to information on the implementation of protection; protection from threats or violence of perpetrators and other parties and the recurrence of violence; protection of confidentiality of identity; protection from the attitudes and behavior of law enforcement officers who degrade victims; protection from job loss, job mutation, education, or; and protection of victims and / or complainants from criminal prosecution or civil action for sexual violence that has been reported. Meanwhile, the victim's right to recovery includes medical, mental and social rehabilitation, social empowerment, restitution and/or compensation, and social reintegration.
- e. Victims are also entitled to recovery before, during, and after judicial proceedings such as legal assistance, psychological reinforcement, and so on. This is fully regulated in Article 68, Article 69, and Article 70 of the TPKS law. To provide integrated services in the handling, protection, and recovery of the victims, carried out by the central government coordinated by the minister and local governments through the Regional Technical Implementation Unit for the protection of women and children or UPTD PPA.
- f. UPTD PPA in carrying out their duties can cooperate, among others, with the police, prosecutors, courts, LPSK, and other institutions. The legal protection given to Child Victims of sexual crimes in the jurisdiction of the Makassar Port Police is a legal protection that has been determined by the provisions of the established law. The provisions are contained in Law No. 35 of 2014 concerning amendments to Law No. 23 of 2003 concerning protection in Article 69 A.

Discussion on the forms of sexual crimes against children, which need to be known as the forms of sexual crimes, namely:⁹

- a. Sexual crimes in a severe sense. The intention of this weight category is a crime that relates directly to the victim's body contact. For example, a crime in molestation or a crime in rape. The act of kissing the victim by having elements of coercion, the act of perankulan which in this case embraces unhealthy, and also the existence of other actions that could be likely to cause disgust and even disgust, the act of terror, the act that causes contempt, then as if directed which then refers to obscene acts.
- b. There is an element of coercion against sexual intercourse in which the victim does not want or when the victim does not want the act.

⁹ Seunagal, G. (2021, Mei 7). The Psychology Of Bullying: Understanding What's Behind The Bully. Betterhelp. <https://www.betterhelp.com/advice/bullying/the-psychology-of-bullying-understanding-whats-behind-the-bully/>

- c. Using the victim to be protected but the opposite happens, even the victim then has sex with the perpetrator.
- d. The existence of sexual crimes that can manifest violence that is very fatal and categorized still in severe and mild violence even solely found in adults, but children can also experience it and of course the possibility will happen to anyone and anywhere.

Legal protection provided by the Makassar Port Police to child victims of sexual crimes, as referred to in Article 69 A States about special protection for child victims of sexual crimes. As for what is meant in Article 59 paragraph (2) letter J, namely making efforts on religious values, moral values and efforts in the process of learning better in health, social rehabilitation efforts, psychosocial assistance efforts at the time of treatment to recovery and the protection and assistance during the examination of the investigation, prosecution, until the examination in court hearings.

The form of protection against children as victims of sexual crimes in the jurisdiction of the Makassar Port Police can be seen in Law Number 11 of 2012 concerning the child criminal justice system. In Article 19 says that; keep the identity of the victim's child or child witnesses secret, by keeping the identity to the news in the mass media. Then apply the rules contained in Article 23 of Law Number 11 of 2012 concerning the juvenile criminal justice system.

Children who are victims of sexual crimes must be protected both in the examination level, namely by providing assistance to community mentors or accompanied by others in accordance with the provisions of laws and regulations. Then the victim's child must also be accompanied by a parent or person who is trusted with the victim's child. In the process of investigation until the trial needs help hujum against child victims of sexual crimes. Based on the situation, a child will usually reveal everything he has experienced, so there is a need for legal assistance such as law enforcement and even the parents of the child victims of sexual crimes are present at the examination, so that the examination atmosphere will not seem scary and stressful for the child.

2. Settlement in Violation Of The Criminal Act Of Sexual Harassment In Giving A Deterrent Effect On The Perpetrator

Pertimbangan hakim merupakan salah satu aspek terpenting dalam menentukan terwujudnya nilai dari suatu putusan hakim yang mengandung keadilan dan mengandung kepastian hukum, di samping itu juga mengandung manfaat bagi para pihak yang bersangkutan sehingga pertimbangan hakim ini harus disikapi dengan teliti, baik, dan cermat. Apabila pertimbangan hakim tidak teliti, baik, dan cermat, maka putusan hakim yang berasal dari pertimbangan hakim tersebut akan dibatalkan oleh Pengadilan Tinggi/Mahkamah Agung.

In the general definition of legal protection against child victims of sexual crimes are all efforts made in protecting children who have experienced problems in the child's growth and development and have experienced the unfreedom and violation of children's rights. That way the relevant parties need to provide legal protection so that all interests of the child will be able to prosper the child.

implementation of the law on child sexual crime victims in Makassar Port Police. Is all forms of implementation of the implementation of the process of legal protection to children victims of sexual crimes are based on legislation. As children who have experienced sexual crimes will get all their rights and will get protection that will be in accordance with the needs of children victims of sexual crimes.

The form of implementation of legal protection that is obtained by the child victims of sexual crimes, namely:

- a. They kept the identities of all the victims secret.
- b. In the process of checking the victim then bring the victim directly to the police station and accompanied by the victim's parents.
- c. The existence of medical assistance provided by the police and assisted by *Visa et Repurtura*.
- d. The existence of assistance obtained by child victims of sexual crimes in accordance with what the victim needs
- e. Provide a safe place for the victim's child who feels uncomfortable when staying at home.
- f. Counseling the child victim.
- g. The existence of providing information about the rights of victims.
- h. The existence of assistance for the victim's child who will be taken care of and will get restitution.
- i. It is for children in need of rehabilitation.
- j. There is assistance for the victim's child to pick up and come to the victim's child at his home.

In general, a legal settlement consists of the words “settlement” and “law”. the word has a different meaning. Based on the Great Indonesian electronic dictionary, completion comes from the word “done” which is interpreted as already worked out, completed, and has been solved. The word completion is a way, making, process, stage, solving, *menyelesaikan*. and “settlement ” means the settlement and solving a problem. The definition of law has a variety of definitions so that the author chooses a simple set of rules consisting of norms and sanctions.

Legal settlement is literally defined as a way, the process pursued in solving legal problems (cases) based on regulations established by the government and other types of law (Islamic legal system and customary legal system), so that legal problems can be solved in meeting legal certainty and based on the values of Justice. The legal settlement of sexual violence against children in this study, conducted on the basis of positive law in the form of legislation in force today. In positive law, cases of violence against children are resolved based on the settlement of criminal law in the form of legislation consisting of ordinary offenses and complaints. The settlement of the criminal law is carried out with several stages of settlement.¹⁰

In the process of Criminal Law Settlement, there are stages of legal settlement that is based on material sources of law and formal sources of law. Material law, which is the law governing the interests and relationships that are tangible orders and prohibitions. Legal settlement based on material law, is carried out on the basis of positive law in the form of legislation. Formal law, which is the law that regulates the ways of maintaining and implementing material law and in other words, the law that contains regulations regarding the ways of filing a case before the court and the procedure for judges to give decisions. Stages of legal settlement have processes. These processes include; reports, minutes of examination (BAP), the Public Prosecutor (JPU), and the District Court (PN). These processes or stages are the stages of the completion of material law. Formal law is explained explicitly and in detail in the Code of Criminal Procedure (KUHAP).

¹⁰ Rover, C de. 2000. *To Serve & To Protect Acuan Universal Penegakan HAM*. Jakarta: Raja Grafindo Persada.

CONCLUSION

The implementation of Law No. 35 of 2014 concerning the protection of children in violation of the criminal act of sexual abuse is contained at every stage in the process of handling the applicable law at the time of handling the case. and settlement in violation of the criminal act of sexual abuse in giving a deterrent effect against perpetrators in Law No. 35 of 2014 on child protection, namely by providing maximum punishment in each case of child protection.

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