

**LEGAL PROTECTION OF VICTIMS – RIGHTS IN SEXUAL ABUSE
CASES OF CHILDREN
(CASE STUDY OF DECISION NUMBER 1607/Pid.Sus/2021/PN. Tjg)**

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Abstract

This study aims to determine the legal protection of victims' rights in cases of sexual abuse of children. That is special treatment in the form of obtaining legal protection in obtaining better civil rights, political rights, economic rights, social rights and cultural rights. So that when the child becomes an adult, he will understand and understand more about the rights he has. According to Hans Kelsen, legal theory is the science of applicable law and not only of what law should be. The formulation of the problem includes: 1. How is the protection of legal protection for the rights of children who are victims of sexual harassment in laws and regulations? and 2. How is the implementation of legal protection for child victims of sexual harassment in fulfilling the elements of justice? This type of normative research uses a juridical approach, legal principles and comparative law, judging from its nature this research is classified as descriptive research, namely research that describes what is about a situation. The research method used is qualitative with a normative approach. The authors collect data from libraries, documentation, print media and electronic media. From the research results, it can be obtained that legal protection for child victims of sexual harassment is regulated in Law no. 35 of 2014 changes to Law no. 23 of 2002 concerning Child Protection by providing children's rights in terms of access to fulfillment of rights, child victims of sexual abuse get legal protection in terms of providing legal assistance, rehabilitation and prevention, implementation of legal protection for child victims of sexual harassment to obtain their rights and get maximum legal protection and assistance.

Keywords: *Legal Protection, Sexual Harassment, Against Children.*

I. INTRODUCTION

Children as creatures of God Almighty and social beings, from the time they are conceived until they are born, have the right to live and be independent and receive good protection from their parents, family, society, nation and state. Therefore, no human being or any other party is allowed to deprive them of their right to life. If the child is still in the womb of the parents and the parents are always trying to abort the child in their womb, then the parents will be subject to legal proceedings to be held accountable for the actions that violate the law. Moreover, a

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child who has been born, the right to life and freedom as basic rights and basic freedoms cannot be eliminated or removed, but must be protected and expanded. Because children's human rights are part of human rights that are guaranteed and protected by law both in international law and national law.²

Universally protected in the Universal Declaration of Human Rights (UDHR) and the International on Civil and Political Rights (ICPR). Even children's human rights must be treated differently from adults, which are specifically regulated in special international conventions.

Children's human rights are treated differently from those of adults, because children are still in the womb, give birth, grow and develop until they become adults, are still in a state of dependence and are not yet independent and still require special treatment in terms of nutrition, health, knowledge, religion and skills. work, security, freedom from fear, freedom from worries and well-being.

This special treatment is in the form of obtaining better legal protection in obtaining civil rights, political rights, economic rights, social rights and cultural rights. So that once the child becomes an adult he will understand and understand more about the rights he has, so once the child has grown into an adult he will not hesitate anymore in applying and implementing civil rights, political rights, economic rights, social rights and cultural rights. responsible in accordance with the provisions of the law.

Has been established. In this way, these children who have grown up as future generations will become very strong pillars and foundations for the family, society, nation and state.³

If a child, from the time he is still in the womb to giving birth, grows and develops into an adult, receives less attention and protection from parents, family, community and nation, then the child who becomes an adult through this process will not be able to understand and understand civil rights. political rights, economic rights, social rights and cultural rights in accordance with what is expected in the established legal provisions. This will be very detrimental to the future generations of the family, society, nation and state which will pose a threat if it becomes the pillar and foundation.

To prevent the above, it requires concrete child protection laws both substantially, structurally, and culturally which are expected in laws and regulations, so that basic rights and basic freedoms from birth to adulthood will become more stable as the next generation. the future will become a pillar of the

² Abdussalam and Adri Desasfuryanto. (2016). *Child Protection Law*. PTIK Publisher

³ Ibid., h. 7

foundation of the family, society, nation and state that will become stronger, stronger and more independent in realizing national goals.⁴

Children are an integral part of human survival and the survival of a nation and state. In order to be able to take responsibility for the sustainability of the nation and state in the future, every child needs to receive the widest possible protection and opportunity to grow and develop optimally both physically, mentally and socially. For this reason, it is necessary to carry out protection efforts to realize children's welfare by providing guarantees for the fulfillment of their rights without any discriminatory treatment.

Children are part of the next generation of the nation's ideals who have a strategic role in ensuring the sustainability of a nation and are the potential for national development in the future. It is children who play a role in determining the forerunner of a nation as well as a reflection of the attitude of life nation in the future. If children are not educated properly, the life of the nation will be bad in the future. In order for them to grow and develop optimally, physically, mentally, socially and spiritually, they need to receive attention from all levels of society including the government. Children are human beings who because of their condition have not yet reached a mature level of growth so that everything is different from adults in general.⁵

In terms of guaranteeing a child so that his life can run normally, the state has provided a legal umbrella, namely Law Number 23 of 2002 concerning Child Protection. However, as time has gone on, in fact it is felt that the law has not been able to work effectively because there is still overlap between sectoral laws and regulations related to the definition of children, on the other hand there are rampant crimes against children in society, one of which is crime sexual activity which is currently mostly carried out by people close to the child, and legal protection for children with disabilities has not been accommodated. So, based on this paradigm, Law Number 23 of 2002 concerning Child Protection which has been in effect for (approximately) 12 (twelve) years has finally been amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which emphasizes the need for increasing criminal sanctions and fines for perpetrators of crimes against children, especially for sexual crimes that aim to provide a deterrent effect, and encourage concrete steps to restore the child's physical, psychological and social well-being. This needs to be done to anticipate that children (victims of crime) will not become perpetrators of the same crime in the future. Because based on the facts that were revealed when the perpetrators of crimes against children (especially perpetrators of sexual crimes) were

⁴ Sudrajat, Teddy. (2011). *Legal Protection of Children's Rights as Human Rights in the Perspective of the Family Law System in Indonesia*.

⁵ Ibid, h.10

examined in court, it turned out that the perpetrator had also experienced (sexual abuse) when the perpetrator was still a child, so the perpetrator became obsessed with doing the same thing as ever experienced.⁶

Every independent and sovereign country must have a law. One of the crimes against children that has become a public concern is sexual abuse which has been happening around us lately, sometimes even by people close to the child who we have been never would have thought, such as a sexual crime committed by a father to his child (both biological father and adoptive father), even in 2014 there was a case that shocked the world of education, namely sexual harassment that occurred in a school which was said to be "international standard". " which were "allegedly" committed by unscrupulous educators, as well as many other cases of sexual harassment that occurred in various parts of the archipelago. All of this was done for the sake of sexual satisfaction and he admitted that he would get a headache if he didn't do the act within a month (www.museum.polri.go.id). In another case that was no less exciting that occurred in 2014 where the number of victims of pedophilia with the perpetrator Andri Sobari alias Emon, 24 years old, has reached 110 children (tempo.co),⁷ it turns out that both Robot Gedek and Emon have had past trauma in terms of sexual harassment. The rise of cases of sexual harassment has become a public concern, so that the public is also urging that the punishment for perpetrators of sexual crimes be more severe and the minimum provisions are increased.

In the old child protection law, the threat of perpetrators of sexual crimes was only punished with a maximum sentence of 15 (fifteen) years, a minimum of 3 (three) years and a maximum fine of Rp. 300,000,000 (three hundred million rupiah) and a minimum of Rp. 60,000,000. - (sixty million rupiah), whereas in Law Number 35 of 2014 it was amended with a maximum penalty of 15 (fifteen) years, a minimum of 5 (five) years and a maximum fine of Rp. 5,000,000,000 (five billion rupiah). What is more specific in this law is if the perpetrators of rape or obscenity are committed by parents, guardians, nannies, educators, or teaching staff, then the penalty is increased by 1/3 (one third).⁸

The National Commission for Child Protection (KPAI) released its end of 2016 records regarding cases of violations of children's rights. From KPAI records, cases of violations against children's rights this year have increased from the previous year. KPAI chairman Arist Merdeka Sirait said the number of complaints received by KPAI regarding violations of children's rights in 2016 was 3,739 cases. This number increased from 2015 which only 2,726 cases. It is

⁶ Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection

⁷ <http://tempo.co> quoted on August 5, 2022. At 10.00 WIB

⁸ Law Number 23 of 2002 Concerning Child Protection

also said that the forms of violations against children's rights are not only increasing in terms of quantity, but the modes of violation are increasingly diverse.

According to him, the factors causing the increase in violations of children's rights are due to various triggers. For example, the lack of understanding by families, parents, society and the government regarding children's rights. Arist Merdeka Sirait said that the most dominant violation of children's rights was violence. The KPAI Data and Information Center (Pusdatin) noted that in 2016 there were 625 cases of violence against children. A total of 273 cases were in the form of physical violence, 43 cases of psychological violence, and 309 cases of sexual violence, this number certainly increased compared to 2015 where only around 400 cases of child abuse were recorded at Komnas PA.

From the data owned by KPAI, child violence actually occurs in the immediate environment, such as at home, school, and the child's social environment. Based on the location of the incident, 40% of cases of violence against children in the family environment, 52% in the social environment, 5% in the school environment, and 3% in unspecified locations.⁹

Criminal acts of violence against children, especially those committed by biological parents, are interesting to study because every parent has a responsibility to protect their children, but in reality it is the opposite, parents are the perpetrators of violence against their children. Greater trauma generally occurs when the violence is perpetrated by biological parents. The abusive actions of parents towards their children must have a negative impact on children such as psychological impacts and can also have an impact on the child's development and future. Children who should have a good relationship with their parents and make their parents a place to complain do not get these rights. As a result, the child will be disturbed psychologically and feel ashamed of his environment because of the harsh treatment of his parents against him. Not infrequently it also causes children to become lonely individuals and have difficulty getting along with their friends.¹⁰

Children who are constantly in a state of tension, indecision, and fear, will gradually experience mental disorders (psychoneurosis) or commonly called psychological (mental) pressure whose manifestations can vary, ranging from mild to severe.

The research method used is qualitative with a normative approach. The authors collect data from libraries, documentation, print media and electronic

⁹<http://megapolitan.kompas.com/read/2022/5/06/14062881/komnas.pa.case.pelanggaran.hak.anak.meningkat>. accessed on August 1, 2022. At 09.00 WIB

¹⁰Agus Rahrjo. Protection of human rights (protection of human rights) is not fully achieved. (2006). PT. Space

media. From the research results, it can be obtained that legal protection for child victims of sexual harassment is regulated in Law no. 35 of 2014 changes to Law no. 23 of 2002 concerning Child Protection by providing children's rights in terms of access to fulfillment of rights, child victims of sexual abuse get legal protection in terms of providing legal assistance, rehabilitation and prevention, implementation of legal protection for child victims of sexual harassment to obtain their rights and get maximum legal protection and assistance.¹¹

Based on the background above, the problem can be defined, the formulation of which is as follows:

- 1) How is the legal protection of the rights of children who are victims of sexual harassment in laws and regulations?
- 2) How is the implementation of legal protection for child victims of sexual harassment in fulfilling the elements of justice?

II. DISCUSSION

Theoretical Framework and Analysis

Legal theory is basically a continuation of efforts to examine positive law, at least when we reconstruct the presence of theory clearly, legal theory is seen as a scientific discipline. Independently through a special object of study.¹²

According to Hans Kelsen, legal theory is the science of applicable law and not only of what law should be. According to him, what is meant by legal theory is pure legal theory, which can also be referred to as positive legal theory. Pure legal theory or positive legal theory is meant because it only explains the law and seeks to clear the object of explanation from everything that has nothing to do with law. As a theory, Hans Kelsen also explains what is meant by law and how the law exists.

The theory of child protection based on the 1945 Constitution examines the position of children before the law and the government, regulated in Article 28A: every person has the right to defend his life and livelihood. Article 28B paragraph (2): every child has the right to survival, growth and development and has the right to protection from violence and discrimination. Children are a valuable asset, the younger generation is the successor of the nation, the progress of the Indonesian nation lies in today's children who must be protected and prospered.

Every research is always accompanied by theoretical thoughts, in this case because of the close reciprocal relationship between theory and collection, processing, analysis, and construction activities. Before defining the theory, there

¹¹ Moleong, Lexi J, (2007). *Qualitative Research Methods*, Bandung: Rosdakarya Youth

¹² H. Salim HS & Erlies Septiana Nurbani (1). *Application of Legal Theory in Thesis and Dissertation Research, First Book*, (2017). PT Raja Grafindo Persada. Depok

are two terms that need to be explained, namely concept and proposition. The concept refers to the terms and definitions used to abstractly describe events, circumstances, groups or individuals that are the center of social science attention. Proposition is a logical relationship between two concepts.¹³

1945 Constitution, Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection aims to ensure the fulfillment of children's rights so that they can live, grow, develop and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination, for the realization of quality, noble, and prosperous Indonesian children. Law Number 39 of 1999 concerning Human Rights, Law number 17 of 2016 regarding the stipulation of government regulations in lieu of Law Number 1 of 2016 concerning the second Amendment to Law Number 23 of 2002 concerning Child Protection Becomes Law.

This law provides trust, responsibility and obligations to the community, so that the community may no longer stand idly by and be indifferent in terms of protecting children, among the obligations and responsibilities of the community include carrying out community participation activities in the implementation of child protection which are carried out with involve community organizations, academics, and child observers. So that in this case community organizations, academics and child observers should go directly to the field to do prevention by doing a lot of education in terms of protecting children, so that cases of crimes against children (especially sexual crimes) which have recently haunted us a lot can be minimized.¹⁴

Article 2 of Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 concerning Child Protection states that the implementation of child protection is based on Pancasila and is based on the 1945 Constitution of the Republic of Indonesia and the basic principles of the Convention on the Rights of the Child include: a. Non-discrimination; b. The best interests of the child; c. Right to life, survival and development; and D. Respect for children's opinions. Then in Article 3 of Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 concerning Child Protection states that child protection aims to ensure the fulfillment of children's rights so that they can live, grow, develop and participate optimally in accordance with dignity and human dignity, and receive protection from violence and discrimination, for the realization of quality, noble, and prosperous Indonesian children.

The results of previous research are the efforts of researchers to look for comparisons and then to find new inspiration for further research. In addition, previous studies help research to position research and show the originality of

¹³ Barda Nawawi Arief. (2005). *Several Aspects of Criminal Law Enforcement and Development Policies* Revised Edition. Bandung

¹⁴ Riduan, *Methods and Techniques for Compiling a Thesis*. 2007, Human Scholar. Surabaya

research. This research is to find out how the principles of child protection are according to the laws and regulations in Indonesia and how the protection can be provided by Indonesian criminal law for children who are victims of sexual crimes. 1. Legal Protection of Children as Victims of Sexual Crimes According to Indonesian Criminal Law. By: Angelin N. Lilua. 2. Protection of the Rights of Children Victims of Sexual Violence to a Fair Trial (Study in Yogyakarta), by: Nanda Dwi Utami. Based on the implementation of legal protection for child victims of sexual harassment, it already fulfills the elements of justice, philosophically, Pancasila is the basis of activities in various fields of family life in society, state and nation and the philosophical basis for implementing child protection.¹⁵

III. CONCLUSION

Legal protection is all forms of efforts to protect human dignity and respect as well as recognition of human rights in the field of law. The principle of legal protection for the people of Indonesia is rooted in Pancasila and the concept of a rule of law, both of these sources prioritize recognition and respect for human dignity. There are two forms of legal protection, namely preventive and repressive legal protection.

The protection that can be provided by Indonesian criminal law is further contained in Article 69A which stipulates that: special protection for child victims of sexual crimes is carried out through efforts: a. Education about reproductive health, religious values and moral values; b. Social rehabilitation; c. Psychosocial assistance from the time of treatment until recovery; and D. Provision of protection and assistance at every level of examination starting from investigation, prosecution to examination in court.

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¹⁵ Andi Hamzah & Bambang Waluyo. (1998). *Offenses against the administration of justice (Conterm of Court)*. Jakarta: Sinar Graphics.

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