

# Addressing Juvenile Protection Discrepancies: A Study on Legal Safeguards and Challenges against Sexual Abuse by Educators in Seluma Regency

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## Abstract

Law Number 11 of 2012, commonly referred to as the Juvenile Criminal Justice System Law, stands as a legal framework designed to safeguard children entangled in legal conflicts. Its primary objective is to secure a promising future for these children, facilitating opportunities for identity development that fosters

independence, responsibility, and constructive contributions to themselves, their families, society, and the nation. Despite the existence of these legal safeguards, their efficacy often encounters challenges within the intricate dynamics of social life. This disjunction is particularly conspicuous in institutional environments such as schools, where the assurance of safety is not guaranteed. Disturbingly, statistical data compiled by the PPA Unit of the Criminal Investigation Unit of the Seluma Police spanning from 2019 to 2021 reveals a disconcerting prevalence of eight cases of sexual abuse perpetrated by teachers against their students. A poignant instance unfolded in Talang Alai Village, Kec. Air Periukan District, wherein a child named RA became a victim of molestation by an individual identified by the initials AI on August 18, 2019. In response to these distressing occurrences, this research endeavors to formulate strategies for addressing criminal acts of sexual abuse committed by teaching staff in Seluma Regency. The study aims to meticulously scrutinize and analyze the prevalence of such crimes, providing scholarly insights into the harsh reality of sexual abuse committed by teaching staff in this specific region.

## **Keywords**

*Countermeasures, Crime, Obscenity, Bengkulu*

## **I. Introduction**

Educators constitute a vital cohort responsible for imparting knowledge to students. In the public perception, educators are not confined to formal educational institutions; they can also be found in diverse settings such as mosques, surau, prayer rooms, and

homes. These individuals are entrusted with the fundamental duty of educating, teaching, guiding, directing, training, assessing, and evaluating students across various educational levels, including early childhood, basic, and secondary education. The overarching objective is to cultivate an intellectually adept and morally upright generation, especially among the youth, for the betterment of the nation and state.<sup>1</sup>

The delineation of the educator's role underscores their status as role models. This suggests that beyond the transmission of knowledge, educators play a crucial role in shaping the character and values of the students they instruct. Their influence extends beyond the classroom, permeating various spheres of students' lives, emphasizing the importance of embodying qualities that contribute positively to the personal and civic development of the younger generation.

Apart from the role of the teacher, there is also the potential problem of violence perpetrated by a teacher against children. Violence against children predominantly occurs within the scope of schools where the place for children to receive a proper education is the first social environment that has a major influence on the growth and development of adolescents. For this reason, children need to be protected from everything that can cause them to commit criminal acts that can affect their mental, moral and spiritual development. Protection of children from acts of violence is contained in Law No. 35 of 2014 concerning Child Protection and every child has the right to survive, grow and develop and has the right to protection from violence and discrimination. Where

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<sup>1</sup> Syaiful Bahri Djamarah, *Guru dan Anak Didik dalam Interaksi Edukatif*, (Jakarta: Rineka Cipta, 2013) p. 31.

the existence of children as the nation's next generation can be seen in Law no. 4 of 1979 concerning Child Welfare which aims to organize a child's life and livelihood that can guarantee the child's growth and development naturally.

As a forum for ensuring the implementation of protection for children, Law No. 3 of 1997 concerning Juvenile Justice was issued, which institutionally and the existing legal instruments are expected to be able to provide guidance and protection for children, so that efforts to provide welfare for children through guidance, development and prevention of child rehabilitation can be realized jointly between the government and the community.

The guidance, development and prevention that has been carried out by the government is in the form of providing direction, guidance, assistance and supervision of child welfare efforts carried out by the community. The various efforts that have been made by the state to provide protection for children, in fact show that there is still a gap between expectations and reality.

Children are a fundamental part that cannot be separated from human survival and the survival of a nation and state. In the Indonesian constitution, children have a strategic role which is explicitly stated that the state guarantees every child's right to survival, growth and development as well as protection from violence and discrimination.<sup>2</sup> If you look at the concept of the Indonesian state, based on the 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3) stipulates that "*the State of*

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<sup>2</sup> Randy Pradityo, "Garis Lurus Diversi Sebagai Pendekatan Non-Penal." *Jurnal RechtsVinding Online* 3 (2016). See also Ratri Novita Erdianti, and Sholahuddin Al-Fatih. "Fostering as an Alternative Sanction for Juveniles in the Perspective of Child Protection in Indonesia." *Journal of Indonesian Legal Studies* 4, no. 1 (2019): 119-128.

*Indonesia is a state of law*". The concept of the rule of law then really upholds the values of human rights, so the protection of children is part of the provisions of the Indonesian constitution and the interests of children should be respected as the best interests for the survival of the state.

The principle of legal protection for children must be in accordance with the Convention on the Rights of the Child as ratified by the government of the Republic of Indonesia with Presidential Decree Number 36 of 1990 concerning ratification of the Convention on the Rights of the Child. child). After doing it ratification of the Convention on the Rights of the Child by the Indonesian Government by issuing Presidential Decree Number 36 of 1990, legally creates an obligation for Indonesia (participating country) to implement children's rights by absorbing them into national law, which in this case is stated in the Law -Law Number 11 of 2012 concerning the Child Criminal Justice System and Law Number 35 of 2014, amendments to Law Number 23 of 2002 concerning Child Protection.

Law Number 11 of 2012 concerning the Juvenile Justice System, hereinafter abbreviated to the Juvenile Criminal Justice System Law, is intended to protect and protect children who are in conflict with the law.<sup>3</sup>This law aims to ensure that children can face a long future and provide opportunities for children to become, through the development of their identity, independent,

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<sup>3</sup> Randy Pradityo, "Restorative Justice dalam Sistem Peradilan Pidana Anak." *Jurnal Hukum dan Peradilan* 5, no. 3 (2016): 319-330. See also Wulan Saputri Indah, et al. "Deviant Behavior of Children in Social Media from Perspective of Law and Criminology: Does Creativity on Social Media Encourage Bad Behavior in Children?." *Journal of Creativity Student* 7, no. 2 (2022): 267-282.

responsible and useful human beings for themselves, their families, society, nation and state.

The form of protection for children through legal instruments is not always directly proportional to the dynamics of social life. In this case, for example in life or the school environment, school is not always the safest place for people to be safe. Based on data The PPA Unit of the Criminal Investigation Unit of the Seluma Police showed that throughout 2019–2021 there were 8 cases of sexual abuse committed by teachers against their students, for example what happened in Talang Alai Village, Kec. Air Priukan District. Before a child named RA was molested by the perpetrator with the initials AI on August 18 2019, it was on this basis that researchers conducted research related to the study of criminal statistics on similar criminal acts, in this case molestation.<sup>4</sup>

Apart from these cases, here are the details of cases from 2019-2021 in table form below:

**TABLE 1. Types of Obscenity Crime Case Reports for 2019–2021**

Year	Amount	Case type	Element
2019	2	Obscenity	1. Force 2. Craftiness

<sup>4</sup> See also Mona Agustina Nedy, "Faktor Penyebab Terjadinya Tindak Pidana Pencabulan Terhadap Anak di Polres Seluma." *Sultan Adam: Jurnal Hukum dan Sosial* 2, no. 1 (2024): 67-75; Davinsi Josie Sidabutar, Lidia Br Karo, and Herlambang Herlambang. "The Inhibiting Factors in The Implementation of Women and Children Protection Unit's Roles's in Law Enforcement of Immoral Criminal Act Committed by the Closest Adults to Minors in The Jurisdiction of Kepahiang Police Resort." *Bengkoelen Justice: Jurnal Ilmu Hukum* 11, no. 1 (2021): 12-25.

Year	Amount	Case type	Element
2020	3	Obscenity	1. Lie 2. Coaxing children 3. Craftiness
2021	3	Obscenity	1. Coaxing children 2. Violence 3. Craftiness

Based on these problems, a study was carried out in the form of research on efforts to prevent the crime of obscenity committed by educators in the legal area of Seluma Regency.

## **II. The Existence of the State's Role in Providing Legal Aid to Citizens**

From research data obtained through investigators from the Seluma Police Women and Child Protection Unit (PPA), AIPTU Sugeng, SH, based on police report no. Pol.: LP/XXX-B/IX/2018 Bengkulu/Res Seluma/Sek Sukaraja, September 2018, description of the case of the criminal act of sexual abuse against minors, which occurred in 2018 against 8 (eight) victims who were still minors, which was committed in the room of the house, the living room of the house, the library room, the local classroom and the elementary school teacher's room 127 Seluma which is located on Ds. Talang Alai, District. Air Priukan, Kab, Seluma, which was carried out by the alleged suspect, ADE IRAWAN Bin ISMAIL, by the perpetrator calling each of them to come to the perpetrator's house, then inviting them into the room and or being called to the teacher's room and or to the library, then telling the victim to take off his trousers, then The victim's genitals were touched and

masturbated<sup>5</sup>(stroking, stroking, or massaging the sexual organs) by the perpetrator until sperm is released (but some of the victims did not produce sperm) and/or ordered the victim to hold the perpetrator's genitals, then the perpetrator ordered the victim to masturbate the perpetrator's genitals until the perpetrator's genitals produced sperm, and/or ordering the victim to insert the victim's genitals into the perpetrator's anus (committing sodomy to the perpetrator) and/or inserting the perpetrator's genitals into the victim's anus until the perpetrator's genitals release sperm by means of force, seduction, deception, a series of lies and threats of violence committed an obscene act against the victim who was under 18 years of age at that time and it was discovered that the perpetrator was a teacher/educator at the place where the victim's child was studying, namely at SDN 127 Seluma.<sup>6</sup>The names of those who were victims of sexual abuse committed by the perpetrator are in the table below:

No	Name	Age	Occupation
1	AL	11	Student
2	GHB	17	Student
3	RA	12	Student
4	AH	14	Student
5	RR	12	Student
6	NS	13	Student
7	AF	12	Student
8	HK	13	Student

Source: Seluma Police Criminal Investigation Unit PPA<sup>7</sup>

<sup>5</sup> Big Indonesian Dictionary. "About the social view of the taboo of masturbation". (Yogyakarta. Pustaka Yustisia, 1987). p. 87.

<sup>6</sup> Interview with AIPTU Sugeng, SH as Seluma Police PPA Unit, January 30, 2020

<sup>7</sup> Interview with AIPTU Sugeng, SH as the Seluma Police PPA Unit, January 30, 2020.



Apart from the criminal acts mentioned above, there were several cases of teacher abuse against students in Seluma Regency during the period 2017 - 2019. The following are the police report numbers at the PPA Unit of the Seluma Police Respatch Unit:

1. Police Report No. Pol.: LP / XX-B/X/2017. AIR CONDITIONING. 17 yrs. Islam. student. Indonesian citizen. / Seluma Res / Sukaraja Secretary, March 2017. Victim of sexual abuse.
2. Police Report No. Pol.: / XXX / V / WA. 12 yrs. Islam. student. Indonesian citizen. / Seluma Res / Sukaraja Secretary, May 2017. Victim of sexual abuse.
3. Police Report No. Pol. / XX-B / X / 2017. AD. 14 yrs. Islam. Student. Indonesian citizen. / Seluma Res / Sukaraja Secretary. May 2017. Victim of abuse.
4. Police Report No. Pol. : LP / XXX-B / X / 2017. AM. 12 yrs. Islam. Student. Indonesian citizen. Res Seluma / Sek Sukaraja, July 2017. Victim of abuse.
5. police report No.Pol.:LP / XXX-B / IX / 2018 Bengkulu / Res Seluma / Sek Sukaraja, September 2018.
6. Police Report No. Pol. / XX-B / XI / 2019. ND. 13 yrs. Islam. Student. Indonesian citizen. Res Seluma / Sek Sukaraja, August 2019. Victim of sexual abuse.
7. Police Report No. Pol.: LP / XX-B / XX / 2019. AT. 12 yrs. Islam. Student. Indonesian citizen. Seluma Res / Sukaraja Secretary, October 2019. Victim of sexual abuse.
8. Police Report No.: LP / XX / V / 2019. DV. 13 yrs. Islam. Student. Indonesian citizen. Seluma Res / Sukaraja Secretary, September 2019. Victim of sexual abuse.

Based on cases of obscenity from the period 2017 - 2019, there are several elements of this criminal act that are strengthened by the facts that have been obtained as follows:<sup>8</sup>

1. The element "every person" is a human being or person who is a legal subject whose actions can be held accountable in this case.
2. Elements of violence or threats of violence, coercion, deception, a series of lies or persuading children.
3. Elements of committing obscene acts against minors.
4. Elements carried out by educators or teaching staff.

If in a broad sense this is related to discussing issues of delinquency, deviation, changing quality of crime, the process of criminalization and decriminalization of an act or crime considering the place, time, interests and policies of the ruling group and outlook on life related to social, economic development and culture at a particular time and place.

In dealing with the widespread occurrence of criminal acts of sexual abuse against children, the Seluma Police as the state apparatus responsible for security and public order certainly have a more complete task, not only enforcing the law when a criminal act occurs, but also being responsible for creating a situation that safe by preventing the occurrence of criminal acts.

Based on the explanation from AIPTU Sugeng, SH above, other things explained by BRIPKA H. Sitorus Arisandi, the role of the Seluma Police in tackling criminal acts of sexual abuse against children can be carried out in several ways, including:<sup>9</sup>

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<sup>8</sup> Interview with AIPTU Sugeng, SH as the Seluma Police PPA Unit, January 30, 2020.

<sup>9</sup> Interview with BRIPKA H. Sitorus Arisandi, as the PPA Unit of the Seluma Police Criminal Investigation Unit, January 30, 2020.

*a. Preventive Efforts*

As the motto that is often heard is that prevention is better than overcoming, if something bad has happened it will be very difficult to fix it again, including cases of child abuse, if a case of abuse has occurred, it is very detrimental to the victim from various aspects. Even law enforcement cannot restore all the losses experienced by the victim, both morally and materially, so as the person responsible for security and public order, prevention is part of the police's duty to provide outreach about the protection of women and children to schools and the community.

*b. Repressive Efforts*

Carry out law enforcement against perpetrators and carry out the process of investigating and investigating cases of obscenity. The National Police as state law enforcement officials are investigators of criminal acts as regulated in the Criminal Code, all general rules regarding the implementation of this investigation process are clearly stated in the Criminal Code, but specifically regarding cases of obscenity against children as regulated in the Child Protection Law, there are things – special things that must be fulfilled in the investigation, many agencies or institutions have been established which also have duties and responsibilities in the process of investigating cases of child abuse.<sup>10</sup>

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<sup>10</sup> Interview with BRIPKA H. Sitorus Arisandi, as the PPA Unit of the Seluma Police Criminal Investigation Unit, January 30, 2020.

From the explanation of AIPTU Sugeng, SH and BRIPKA H. Sitorus Arisandi above, BRIPDA Shelfira Oktalisa Dhani also explained that the problem of enforcing criminal law against teachers (educators) who commit criminal acts of sexual abuse against their students can be carried out using the legal process as stated in article 82 of 2002 Law No. 23 concerning child protection which carries a term of 15 years, in this case children must receive protection from disturbances in the form of child abuse. If not protected, then children as a generation of the nation can experience destruction, it is more worrying if children become victims of criminal acts of sexual abuse, then the creativity, will and talent of a child will be destroyed in developing thinking and growth and development through a process of trial and error, resulting in generations young people will experience obstacles and in the end, as a whole, it will hamper the process of national regeneration.<sup>11</sup>

Based on the research conducted, it is known that the efforts made by the Police in dealing with criminal acts of sexual immorality are as follows:<sup>12</sup>

1. Carry out outreach and education about the protection of women and children
2. Increase investigations and carry out investigations to the maximum extent
3. Conducting outreach and disseminating information about laws and regulations
4. Be more proactive in coordinating with various parties

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<sup>11</sup> Interview with BRIPDA Shelfira Oktalisa as Seluma Police PPA Unit, January 30, 2020.

<sup>12</sup> *Ibid.*

The criminal act of sexual abuse against a minor committed by a teacher/educator is an act that violates Article 76 E of Republic of Indonesia Law No. 35 of 2014 concerning amendments to Republic of Indonesia Law no. 23 of 2002 concerning child protection in conjunction with article 82 paragraph (1) (2) (4) Republic of Indonesia Law no. 17 of 2016 concerning the second amendment to the Republic of Indonesia Law of 2002 concerning child protection in conjunction with article 292 of the Criminal Code in conjunction with article 65 of the Criminal Code, every person is prohibited from committing violence or threatening violence, forcing, committing deception, committing a series of lies, or persuading a child to commit or allow an act to be committed. obscene.

If the obscene act carried out by the perpetrator does not achieve its purpose, due to resistance from the victim, he is accused of committing an obscenity attempt, the provisions of which are regulated in article 53 paragraph (1) of the Criminal Code which reads:<sup>13</sup>

Attempting to commit a crime is punishable if the intention to do so is evident from the beginning of the implementation, and not solely because of one's own will.

Criminal responsibility is the ability of a legal subject who has caused a criminal incident and is threatened with criminal action. Regarding the crime of rape in the Criminal Code, it is regulated in Article 285:

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<sup>13</sup> CST Kansil, *Pokok-Pokok Hukum Pidana*. (Jakarta: PT. Pradnya Paramita, 2007)., p. 41.

Any person who, by force or threat of violence, forces a woman to have sexual intercourse with him outside of marriage, is threatened with rape with a maximum imprisonment of twelve years.

Legal protection efforts for minors are basically the same regulated in the Criminal Code (KUHP), specifically Article 287. The Criminal Code regulates:<sup>14</sup>

- (1) Any person who has sexual relations with a woman who is not his wife, even though he knows or should reasonably suspect that the woman is not yet fifteen years old, or if it is generally not clear, that it is not yet the time for her to be married, is threatened with imprisonment for a maximum of nine years.
- (2) Prosecution is carried out only based on complaints, except if the woman is less than twelve years old or if there are one of the things mentioned in Article 291 and Article 294.

Article 285 of the Criminal Code clearly states that women are victims of rape and the perpetrator is a man. So what can be punished here is a man who has committed rape as described in Article 285 of the Criminal Code against a woman who is not his wife with violence or threats of violence.<sup>15</sup>

In article 289 of the Criminal Code, obscenity has elements, namely someone who uses violence or threats of violence; force; committing or allowing obscene acts to be

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<sup>14</sup> Kitab Undang-Undang Hukum Pidana (KUHP), *Indonesian Criminal Code*

<sup>15</sup> *Ibid*, p. 118.

committed. Someone with violence or threats of violence means that someone who commits an act must be done with violence or threats of violence. Forcing here means that the act committed would not have occurred if it had not been carried out forcefully and with the threat of violence. Committing or allowing an obscene act to be committed means that allowing or allowing the act to happen to him is carried out with coercion using violence or the threat of violence.

Article 289 of the Criminal Code explains obscene acts accompanied by violence as follows:

“Whoever uses violence or fines threats of violence to force a person to commit or allow an obscene act to be committed on him, shall be punished for committing an act of violating decency with a maximum prison sentence of nine years.”

The perception of the word obscenity is not contained in the Criminal Code, but the Indonesian dictionary contains the following meaning: Vile and dirty, indecent (violates modesty, decency).<sup>16</sup>

In article 290 Paragraph (1) of the 1st Criminal Code which reads:

Threatened with a maximum imprisonment of seven years

1. Anyone who commits an obscene act with someone, even though the person is known to be unconscious or helpless.

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<sup>16</sup> R. Sugandhi, *KUHP dan Penjelasannya*. (Surabaya: National Business, 2001)., p. 106.

The definition of fainting in this article is, loss of memory or not aware of himself. Powerless means no have strength or energy at all, so that they are unable to put up even the slightest resistance.

Obscene acts with people who are not yet 15 years old are included in the article 290 Paragraph (2) which reads as follows: Threatened with a maximum imprisonment of seven years:<sup>17</sup>

Any person who commits an obscene act with someone while he knows or reasonably suspects that that person is not yet fifteen years old, or it is not generally evident that that person is not yet fit for marriage.

This article is a protection for children/adolescents. In art In this case, there is no word for women but rather for people. Therefore, even if it is committed against a child or young man, then this article can be applied.

Persuading people under 15 years of age to be molested is regulated by Article 290 (3), the formulation of which is as follows: Punishable with a maximum prison sentence of seven years:<sup>18</sup>

Any person who persuades a person who is known or should be kept under suspicion that he is fifteen years old or, if his age is not known, is not yet capable of marriage, to commit or allow obscene acts to be committed, or to have sexual intercourse outside of marriage with another person.

In the sense of article 290 (3) it describes the person who persuades (influence by seduction) someone generally under five

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<sup>17</sup> Leden Marpaung, *Kejahatan Terhadap Kesusilaan dan Pencegahannya*. (Jakarta: Sinar Grafika, 2008). p. 65-66.

<sup>18</sup> Marpaung, p, 66.



fifteen years old for committing obscene acts or allowing himself to be treated lewdly, or for committing adultery with another person.<sup>19</sup>

Criminal sanctions regarding obscene acts against children are also regulated outside the Criminal Code, namely in Law Number 35 of 2014 Concerning Amendments to Law Number 23 of 2002 concerning Child Protection article 76D: Every person is prohibited from using violence or threats of violence to force a child to have sexual intercourse with him or another person, the provisions in article 81 are as follows:

- (1) Any person who violates the provisions as intended in article 76D shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of a maximum of Rp. 5,000,000,000.00 (five billion rupiah).
- (2) The criminal provisions as intended in paragraph (1) also apply to every person who deliberately commits deception, a series of lies, or persuades a child to have sexual intercourse with him or another person.
- (3) In the event that the criminal act as intended in paragraph (1) is committed by a parent, guardian, child caretaker, educator or educational staff, then the penalty is increased by 1/3 (one third) of the criminal threat as intended in paragraph (1).
- (4) In the event that a criminal act as intended in article 76D causes more than one victim, results in serious injuries, mental disorders, infectious diseases, the

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<sup>19</sup> Marpaung, p. 307

perpetrator is sentenced to death, life imprisonment, or imprisonment for a minimum of ten years and a maximum of twenty years.

- (5) Apart from being subject to the crime as intended in paragraph (1), paragraph (3), paragraph (4), and paragraph (5), the perpetrator may be subject to additional punishment in the form of announcing the identity of the perpetrator.
- (6) Additional penalties and exceptional measures for child offenders

Provisions in article 82 of Law Number 35 of 2014 Concerning Amendments to Law Number 23 of 2002 concerning Child Protection under article 76E Everyone is prohibited from committing violence or threatening violence, coercing, committing deception, committing a series of lies, or persuading a child to commit or allow obscene acts to be committed. explains that:<sup>20</sup>

- (1) Any person who violates the provisions as intended in article 76E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of a maximum of Rp. 5,000,000,000.00 (five billion rupiah).
- (2) In the event that the criminal act as intended in paragraph (1) is committed by a parent, guardian, child caretaker, educator or educational staff, then the penalty is increased by 1/3 (one third) of the criminal threat as intended in paragraph (1).

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<sup>20</sup> Law Number 35 of 2014 on the Amendment of the Law Number 23 of 2002 on Child Protection.

- (3) Apart from perpetrators as intended in paragraph (2), an additional 1/3 (one third) of the criminal threat is also imposed on perpetrators who have been convicted of committing criminal acts as intended in article 76E.
- (4) In the event that the criminal act as intended in article 76E results in more than one victim, the penalty is increased by 1/3 of the criminal threat as intended in paragraph (1).
- (5) Additional penalties are excluded for child offenders.
- (6) The action as decided together with the main crime includes the time period for carrying out the action.

This regulation is in accordance with the essence of the law, which is a system of rules, basically a guideline or guideline for humans which is used as a limiter for attitudes, actions or behavior in carrying out relationships and activities with other humans in social life. Law can also be described as a network of freedom values such as personal interest on the one hand and the values of order. Article 25 of Law Number 35 of 2014 concerning Child Protection regulates that Community obligations and responsibilities for child protection are carried out through community role activities in implementing child protection. As an interpersonal interest in the other party. The importance of legal protection in people's lives includes, among other things, creating stability, regulating social relations in a special way, and preventing people from chaos in all aspects of their lives.

Prevention of criminal acts of violence against minors can be pursued with a strategy of prioritizing children's rights in all government and community policies and programs, empowering children as subjects of their rights in opposing violence, and

providing access to basic services for children in the fields of education, health and welfare. social.

After knowing the definition and deeper understanding of the criminal act itself, then in the criminal act there are elements of a criminal act, namely:

a. Subjective Elements

Elements that exist or are attached to the perpetrator or are connected to the perpetrator and include everything that is contained in his heart. The subjective elements of a criminal act are:<sup>21</sup>

- 1) Intentional or unintentional (*dolus* or *culpa*).
- 2) The purpose of an attempt or pogging is as intended in Article 53 paragraph 1 of the Criminal Code.
- 3) Various purposes or brands such as those found for example in crimes of theft, fraud, extortion, forgery, etc.
- 4) Planning in advance or *voorbedachte raad* as for example in the crime of murder according to Article 340 of the Criminal Code.
- 5) Feelings of fear or anxiety as included in the formulation of criminal acts according to Article 308 of the Criminal Code.

b. Objective Elements

Elements that exist outside the perpetrator. Elements that are related to circumstances, namely the circumstances in which the actor's actions must be carried out. The objective elements of a criminal act are:

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<sup>21</sup> Law Number 35 of 2014 on the Amendment of the Law Number 23 of 2002 on Child Protection.

- 1) The nature of breaking the law or *wederrechtelijkheid*.
- 2) The quality of the perpetrator, for example "the condition of a civil servant" in a crime of office under Article 415 of the Criminal Code or "the condition of being a manager or commissioner of a limited liability company" in a crime under Article 398 of the Criminal Code.
- 3) Causality, namely the relationship between an action as a cause and a reality as an effect.

Obscene acts according to the General Indonesian Dictionary are vile and dirty acts (such as politeness), bad acts (violating decency), indecent acts. Obscene acts are acts against the law in the sense that they are contrary to religious norms and the norms of Indonesian society.<sup>22</sup>The Criminal Code explains that obscene acts are all vile acts related to sexual desire.<sup>23</sup>

The judge's consideration in handing down a decision based on Article 294 of the Criminal Code and Article 81 paragraph (2) of Law Number 23 of 2002 concerning Child Protection is an act classified as a criminal act. This is done by looking at the objective elements and the subjective elements. . From the explanation above, it can be concluded that if a person can be convicted, there must first be two conditions which form one condition, namely that the act is against the law as a part of the criminal act, and the act committed can be accounted for as a part of the fault.

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<sup>22</sup> WJS Poerwadarminta, *Kamus Umum Bahasa Indonesia*. Jakarta: (Balai Pustaka, 1984), p. 91.

<sup>23</sup> Poerwadarminta, p. 92.

The teacher's motive for committing obscene acts was because he wanted to fulfill his sexual desires, by persuading the victim witness to have intimate relations with him. This was an intention, desire or willingness of the defendant to have sexual intercourse with the victim in order to serve the defendant's biological desires. Thus, the element of "intentionally" has been fulfilled.

According to R. Soesilo, what is meant by acts of sexual immorality, as stated in Article 289 of the Criminal Code, are all acts that violate decency (decency) or heinous acts which are all related to genital lust, for example: kissing, groping the genitals, Groping breasts, according to Moeljatno, is said to be any act that violates morals or a vile act related to sexual desire.<sup>24</sup>

Regarding the criminal act of sexual immorality, there must be a person as the subject and that person committed it with a mistake. In other words, if it is said that a criminal act of sexual immorality has occurred, it means that there is a person as the subject and that person is guilty. The elements regarding the criminal act of obscenity according to Law Number 23 of 2002 concerning child protection Article 82 are:

1. The "Whose" element, in this case indicates the subject or perpetrator or who is charged with committing a criminal act.
2. The element "Deliberately committing violence or threatening violence, coercion, deception, a series of

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<sup>24</sup> Ismantoro Dwi Yuwono, *Penerapan Hukum dalam Kasus Kekerasan Seksual terhadap Anak*. (Yogyakarta: MediaPressindo, 2018).

lies or persuading a child or to commit or allow obscene acts to be committed."<sup>25</sup>

Sexual intercourse is also included in it. One of the phenomena of crime that always occurs in society is sexual crime and sexual harassment. Sexual crimes are all sexual acts, attempted sexual acts, unwanted comments, sex trafficking, in any situation, and anywhere. Sexual crimes can take many forms including rape, sex slavery and/or sex trafficking, forced pregnancy, sexual violence, sexual exploitation.<sup>26</sup>

As has recently happened in the world of education, there have been crimes of sexual abuse committed by teachers against their students. This case occurred in one of the districts in Bengkulu, more precisely in Seluma District. In October 2019 there was a case of sexual abuse committed by an elementary school teacher in one of the schools in Seluma District.

From this case it can be seen that crime does not only occur in the wider environment, it can also occur in the world of education. This results in the threat to children because children are a part of human rights that must be protected and are worth fighting for. Their quality is largely determined by their form and treatment today. Children require different supervision and legal protection than adults. This is based on the physical and mental reasons of immature children. Children need to receive the broadest possible protection to grow and develop optimally both physically and mentally, socially and with noble character.

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<sup>25</sup> Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection.

<sup>26</sup> Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection.

### III. Conclusion

Based on the research results, enforcement of criminal acts of sexual abuse committed by teachers (educators) against their students carries the threat of punishment which is not the same as that of ordinary civilians, which is stated in article 76E of the law on child protection that if the criminal act of sexual abuse is against a minor (in this case students) carried out by parents, guardians, child care providers, educators, teaching staff. So the penalty is increased by 1/3 of the criminal threat as intended in article 76E of Republic of Indonesia Law no. 35th 2019.

The suggestions we provide here are only a contribution of thought that can be considered further by the parties concerned:, namely dIt is hoped that the teaching profession can improve mentality and morality, which aims to have strong self-control so that one is not easily tempted to do something that is not good, and also to prevent bad thoughts and intentions in one's heart and mind. For the relevant authorities, it is hoped that they can provide legal protection for victims and provide psychiatric assistance to protect their mental health from feeling trauma caused by the criminal act of sexual abuse.

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