

RESEARCH ARTICLE

Sexual Harassment in Indonesia: Problems and Challenges in Legal Protection

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OPEN ACCESS

Citation: Huda, M. A. (2021). Sexual Harassment in Indonesia: Problems and Challenges in Legal Protection. *Law Research Review Quarterly*, 7(3), 303-314.
<https://doi.org/10.15294/lrrq.v7i3.48162>

Submitted : March 25, 2021

Revised : May 2, 2021

Accepted : August 11, 2021

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ISSN 2716-3415

Law Research Review Quarterly published by Faculty of Law, Universitas Negeri Semarang, Indonesia. Published quarterly on February, May, August, and November.

Abstract

The child is the greatest gift that God gives to the parents to be cared for and the protection of his rights by the people and the State. Children have basic human rights. Attention to the protection of human rights law in children is still minimal by the people and the State. Indonesia as a State of law must be able to protect the rights of children considering they are the future assets of the State that must be protected the protection of their rights. There have been many cases of sexual crimes in children due to lack of care from parents and no respect for the rights of children by the community. Lack of legal awareness by the community causes the victims of sexual crimes in children to continue. This paper is intended to analyze the sexual harassment cases in Indonesia and its challenges in the legal protection for the victims. This research found that the protection for the victims especially children on the sexual harassment still faced many problems, one of is on the legal culture and unclear protection provided by law.

Keywords: *Sexual Harassment; Sexual Crime; Legal Protection*

1. INTRODUCTION

In the Law Number 23 of 2002 article 4 concerning Child Protection, that is, every child has the right to live, grow, develop, and participate according to human dignity and protection and violence from discrimination and discrimination. Failure to protect children threatens national

development and has a negative effect and consequences to be paid, which will continue to carry until the children become mature individuals (O'Donnell, 2006). Sexual offenses against children are a violation of Human Rights, especially the right of child. Facts about cases of sexual crimes against children indicate that they tend to get less attention, protection, and are often overlooked. The reality that age and psychological and mental maturity factors make it often marginalized in the policy-making process (Wahid & Irfan, 2001). The positions of the less favorable children make them qualified as vulnerable or vulnerable. Violence is common to children, which can be harmful, dangerous, and frightening (Abdullah & Syamsir, 2002). Some previous studies found that children who are victims of violence suffer harm, not only are they mere mortal, but also immaterial like emotional and psychological shocks, which can affect the child's future life. Forms of child abuse can be physical, psychological, or sexual violence (Gultom, 2013; Bondestam & Lundqvist, 2020; McLaughlin, Uggen & Blackstone, 2017; Handayani, Pasetyo & Rahmat, 2019).

Sexual offenses against children are always a frightening specter. If you study history, this type of crime has always existed, or it can be said as a classic evil that will always follow the development of human culture itself, it will always exist and develop at any time although it may not be so different from before. Sexual crime cases can occur everywhere, not only in larger cities with relatively more advanced culture and awareness or legal knowledge, but also in rural areas that still hold the value of tradition and customs. Because of the rampant cases of sexual crimes against children, the community needs to be more observant and sensitive to the environment. It should be realized that crime can be done by anyone and against anyone. Everyone can be the target of crime, be it adults or minors. The rise of current moral decency regarding "*Behavior in Relation Sexual Matter*" is usually in the form of sexual immorality perpetrated by a pair of adults or fellow adults as well as with minors. The perpetrators of the crime feel that children can be one of the goals to channel their sexual desires. This is influenced by the notion that children are not sufficiently able to understand that the act is a crime, or the children have no courage to deny the wishes of the perpetrator.

Cases of sexual violence against children cause the most difficulties in the settlement at the stage of investigation, prosecution, as well as at the stage of imposition of the decision. In addition to the difficulties in the limits above, also the difficulty of proof such as rape or lewd acts are generally done without the presence of others (Marpaung, 1996). Indonesia is one of the countries ratifying the United Nations Convention

The United Nations on the Rights of the Child, by Presidential Decree (Keppres) No. 36 dated 25 August 1990. With the ratification of the Convention, legally the state is obliged to protect and fulfill the rights of children, whether social, political, cultural, and economic (Usman & Nachrowi, 2004).

The problematic regarding immoral acts against children arises because the imprisonment given to the perpetrators does not make people afraid to do so, even more and more perpetrators of rape and child abuse. Although there have been many legislations that threaten perpetrators of criminal acts against children with severe criminal penalties, but still this crime occurs. Therefore, research on how to protect the law against children as a victim of criminal morality according to the positive criminal law currently. The condition of economic, social, and technological development affects the government's lack of attention to children, so that children are exposed to the exploitation of children's rights, acts of violence, child trafficking, neglect of children. Conditions that concern children in conflict-prone, disaster-prone and child conflicts with the law and others. These developments also affect the behavior of parents to children, even children experiencing sexual violence. This case does not appear on the surface due to the low awareness of community law (Fitriani & Marlina, 2009; Budiman, et.al., 2020; Elvandari & Chan, 2018). The case of sexual aberrations is like an iceberg; little has been revealed but a case that is not yet known much more. Most victims (along with parents) are reluctant to report the crime they are experiencing in shame. Even many victims who cannot report the crime because they have been killed. The case at the Jakarta International School (JIS) raised the fact of the widespread sexual crimes against children in Indonesia as Hartono Harimurti put it in Suara Merdeka "*Kebiri or Hukum Mati.*" A similar incident arose in Sukabumi. A total

of 110 children reported to be victims of Andri Sobari alias Emon, although only about 60 people allegedly treated inappropriate by casual workers in a factory. After that, came the recognition of casual laborers from Lebaksiu, Tegal regency, Sama'i or Ropi'i he harassed more than 100 boys. There is even a profession as teachers and religious leaders, who should protect and educate children, not "prey" them (Hidayati, 2014; Halim, 2021; Wibowo, 2020).

2. METHOD

This research identified as a rule norm or Act (Act). While the nature of the research descriptive to see the law in the real sense and examine how the work law in the community. By using legal materials, to generate arguments, new theories, and concepts as prescriptions in solving problems encountered. Sources of data in research using Primary law material, and Secondary Law material. this will examine the effectiveness of a law. Data analysis used in this study using qualitative methods, by combining between library research and field research. As well as comparing the rules, the provisions on the use of progressive law against the protection of children victims of sexual crimes in progressive law. This research is aims to analyze concerning legal protection for victims of sexual violence against children and the punishment system against child sexual violence perpetrators.

3. RESULT AND DISCUSSION

To be able to find out about how the legal protection of child victims of sexual crimes, we can start from the meaning of the real law. The law can be seen from eight meanings, namely law in the sense of rulers, the law in the sense of the officers, the law in the sense of attitude of action, the law in the sense of the rule system, the law in the sense of value, law in the sense of law, law in the sense of jurisprudence, law in the sense of legal discipline. Some legal meanings from various points of view can be illustrated that the law is not merely a written legislation and law enforcement apparatus as has been understood by the public who do not know about the law. But the law also includes things that are already living in the community (Dirdjosisworo, 2008; Primasari & Ginting, 2017).

The definition of legal protection is a protection given to the legal subjects in the form of legal instruments, both preventive and repressive, whether written or unwritten. In other words, the protection of the law as an illustration of the function of law, namely the concept by which the law can provide justice, order, certainty, benefit, and peace (Rahayu, 2009; Afandi, 2018).

In the concept of legal protection against victims of crime, there are also some legal principles that require attention. This is because in the context of criminal law, the principle of law must be colored in both material criminal law, formal criminal law, and criminal law. The principles as explained by Gosita (1993) are as follows:

1) The principle of benefit

This means that the victim's protection is not only aimed for the benefit (both material and spiritual) for the victims of crime, but also the benefit for the wider community, especially in reducing the number of criminal acts and creating public order.

2) Justice Principle

That is, the application of the principle of justice in an effort to protect victims of crime is not absolute because it is limited also by a sense of justice that should also be given to the perpetrators of crime.

3) The principle of balance

Because the legal purpose in addition to providing certainty and protection of human interests, as well as to restore the balance of the disturbed social order to its original state (*restitutio in integrum*), the principle of equilibrium obtains an important place in the recovery of the rights of victims.

4) The principle of legal certainty

This principle may provide a strong legal foundation for law enforcement officers while carrying out their duties in an effort to provide legal protection to victims of crime (Laksana, 2017).

In the further context, legislation related to legal protection against child crime includes Law No. 23 of 2002 on Child Protection, Law No. 13 of 2006 on the Protection of Witnesses and Victims, Law No. 11 of 2012 on Juvenile Justice. The Legal standing outlines the law enforcement of children, the rights, and obligations of children in conflict with the law and the law enforcement of investigations,

prosecutions, court hearings and court executions in both prisons and Bases. Legal protection of children is an effort to protect various fundamental rights and freedom of children, as well as various interests related to the welfare of children. Legal protection for children covers a wide range (Kismanto & Mashdurohatun, 2017; Octaviana, 2019; Muhsin, Ma'mun, & Nuroniyah, 2021). In the perspective of the state, the state to protect its citizens, including to the child, can be found in the preamble of the 1945 Constitution which is reflected in the fourth paragraph, in its elaboration CHAPTER XA on Human Rights, especially for the protection of children, Article 28B paragraph (2) The Constitution states that every child has the right to survival, growth and development, and is entitled to protection from violence and discrimination. Legal protection is all efforts made consciously by every person or government agency, even the private sector that aims to seek security, control, and the fulfillment of the welfare of life in accordance with existing rights (Law No. 39 of 1999 on Human Rights Rights) (Harahap, 2016; Ilyasa, 2021).

Legal protection for children's victims of moral crimes may include forms of protection that are abstract (indirect) as well as concrete (direct). Abstract protection is basically a form of protection that can only be enjoyed or felt emotionally (*psychically*), such as satisfaction (*satisfaction*) (Yanti, Yuniastuti, & Rahayu, 2020; Affiarni, Nafikadini, & Rokhmah, 2020). Meanwhile, concrete protection is basically a form of protection that can be enjoyed in a real way, such as in the form of a material or non-material nature. Material giving can be either compensation or restitution, life, or education deductions. Non-material protection of non-material protection may be liberation from threats, from degrading reports of human dignity (Wahyuningsih, 2016). Legal protection for child victims of sexual crimes in abstract form among others regulated in the Criminal Code. The formulation of criminal acts in the Criminal Code which can be used as a basis for ensnare the perpetrators of intercourse or fornication are regulated in Chapter XIV Article 287, Article 289, Article 290, Article 292, Article 293, Article 294, Article 295, and Article 296 of the Criminal Code. Against the perpetrator is threatened with imprisonment between 9 months to 7 years and a fine of between Rp.15.000.00 (fifteen thousand rupiah).

In addition, there is also in the provisions of Article 81 of Law No. 23 of 2002 on Child Protection, stated that:

- (1) Any person who deliberately violates or threatens violence to force a child to have sex with him or with another person shall be punished with a maximum imprisonment of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of Rp 300,000. 000.00 (three hundred million rupiah) and at least Rp 60,000,000.00 (sixty million rupiah).
- (2) The criminal provisions referred to in paragraph (1) shall also apply to anyone who deliberately misrepresents, a series of lies, or persuades a child to intercourse with him or with another person.

Whereas pursuant to the provisions of Article 81 of Law Number 35 of 2014 regarding Amendment to Law Number 23 Year 2002 regarding Child Protection, it is stated that:

- (1) Anyone who violates the provisions referred to in Article 76D shall be subject to imprisonment of a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah).
- (2) The criminal provisions referred to in paragraph (1) shall also apply to any Person who deliberately misrepresents, a series of lies, or persuades a Child to have intercourse with him or with another person.
- (3) In the case of a criminal offense as referred to in paragraph (1) shall be done by a Parent, Guardian, Child Caregiver, educator or educational staff, the penalty shall be added 1/3 (one third) of the criminal penalty referred to in paragraph (1).

In addition, the protection of children is also a commitment of the government, namely the issuance of Perpu No.1 of 2016 on the second Amendment of Law no. 2 of 2002 on Child Protection. In the Perpu, among others, regulation on criminal sanction, additional criminal, and other actions for the perpetrator. Penalty in the form of additional criminal one third of prison threats of at least 10 years and maximum 20 years. In addition, the threat of life sentence and death penalty goes to criminal litigation. As for the additional alternative criminal regulated is the announcement of identity of the perpetrator, chemistry, and the installation of electronic detection equipment.

Table 1. Data on cases of violence against children in Indonesia

Year	Total cases
2010	171
2011	2178
2012	3512
2013	4311
2014	5066
2015	6006

Sources: KPAI

Table 1 showed that the cases of sexual crimes to children that occurred in vulnerable time until July 2015, which where every year has increased significantly. see the phenomenon that occurs above the government is expected to enforce the legal protection of child victims of sexual crimes and make legal efforts that can ensnare perpetrators of sexual crimes against children with the threat of severe punishment that makes the perpetrators of sexual crimes against children a deterrent. Another thing to keep in mind is the supervision of parents to their children so as not to experience the sexual crimes that befell his child that can cause the child's future to be bleak. legal awareness of the community is also expected to prevent perpetrators of sexual crimes against children.

4. CONCLUSION

This study concludes that law enforcement and protection for children in cases of sexual violence in Indonesia is still experiencing several challenges, in addition to the problem of the legal culture of the community as well as the problem of the existing laws and regulations. Although Indonesia has ratified conventions related to child protection, and issued laws related to child protection, to implementing a justice system for children that guarantees children's rights, in its implementation there are several obstacles.

5. DECLARATION OF CONFLICTING INTERESTS

The Author declares that there is no potential conflict of interest in the research, authorship, and/or publication of this article.

6. FUNDING

None

7. ACKNOWLEDGEMENT

None

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“Beauty provokes harassment, the law says, but it looks through men’s eyes when deciding what provokes it.”

Naomi Wolf

The Beauty Myth

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