

Legal Analysis of Legal Protection Efforts for Perpetrators of Child Molembolism Based on Legal Justice In Indonesia Research Proposal

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Abstract. *This research is entitled "A Legal Analysis of Legal Protection Efforts for Perpetrators of Child Molestation Crimes Based on Legal Justice in Indonesia." The purpose of this research is to determine the legal regulations applicable to child molestation crimes, the forms of legal protection for perpetrators, and analyze the application of legal justice in the criminal justice process. This issue is important to study because the legal system often only emphasizes the protection of victims, while the rights of perpetrators as legal subjects receive less attention. The research method used is normative juridical, namely by examining primary legal materials in the form of legislation, as well as secondary legal materials such as legal literature, scientific journals, and previous research results. The approaches used include a statute approach and a conceptual approach to understand the compatibility between positive legal norms and principles of justice. The analysis is conducted qualitatively and descriptively, by interpreting applicable legal provisions and comparing them with the theory of legal justice that demands a balance between the rights of victims and perpetrators. The research results show that legal provisions regarding the crime of child molestation are regulated in the Criminal Code, Law Number 35 of 2014, and Law Number 17 of 2016, which provide maximum protection for children as victims. However, in terms of legal justice, protection for perpetrators is still limited to procedural aspects such as the right to legal assistance and humane treatment during the judicial process. Therefore, it is necessary to update criminal law policies that emphasize the balance between victim protection and perpetrator rights, and encourage the implementation of restorative justice so that the legal objectives of certainty, benefit, and justice can be fully achieved.*

Keywords: *Criminal; Justice; Legal; Protection.*

1. Introduction

With the concept of a legal state, it always regulates every action and behavior of its people based on applicable laws. Criminal law itself is a tool or means for resolving problems in society. The existence of criminal law can provide justice and appropriate solutions for that society. Because criminal law is a set of regulations that regulate actions, both ordering or prohibiting actions or doing something, which are regulated in the law, with criminal sanctions for violators. Meanwhile, the criminal law in force in Indonesia can be divided into two types: criminal law recognized in the Criminal Code (KUHP) and Special Criminal Law regulated outside the KUHP.

Criminal law not only provides an understanding of actions prohibited by a legal rule, which prohibition is accompanied by a threat (sanction) in the form of a certain penalty for anyone who violates the prohibition, but also includes matters related to the imposition of penalties and how the penalty can be implemented. The prohibition is directed at actions, a condition or event caused by a person's behavior or actions. The threat of criminal penalties or sanctions is directed at the perpetrator who commits a criminal act, usually referred to as "whoever", namely the perpetrator of the criminal act as a legal subject, namely a supporter of rights and obligations in the legal field. So that criminal acts are one of the parts studied in criminal law.

Children are part of the younger generation who have a strategic role in the sustainability of a nation. From a national and international legal perspective, children are recognized as legal subjects who have the right to receive protection from all forms of violence, discrimination, and exploitation. Child protection is a constitutional mandate as stipulated in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "Every child has the right to survive, grow, and develop and has the right to protection from violence and discrimination."

However, in practice, various crimes that harm children are still common, one of which is the crime of child molestation. Child molestation is a serious crime because it not only harms the physical and psychological harm to the victim, but also threatens the future of the child as the next generation of the nation. It is not surprising that positive law in Indonesia, both the Criminal Code (KUHP) and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, strictly regulates criminal sanctions against perpetrators of child molestation.

However, from a legal perspective, protection is not only provided to victims, but also to perpetrators. This is in line with the principle of legal justice, which must not ignore the rights of suspects or defendants. Perpetrators of criminal acts remain legal subjects entitled to legal protection, including the right to a fair trial,

the right to legal assistance, and the right to humane treatment during the judicial process. Thus, a legal dilemma arises: on the one hand, the state must guarantee maximum protection to victims, but on the other hand, the state must not ignore the rights of perpetrators.

The social reality in Indonesia shows that perpetrators of child molestation often face trial by society. Often, before being brought to justice, perpetrators are first lynched by a mob. For example, in Garut Regency in 2022, a man suspected of molesting a minor was killed after being beaten by residents before legal proceedings could be carried out. A similar case occurred in Lampung in 2023, when an alleged child molester was beaten to death by a mob because they deemed him "unworthy of life." This phenomenon of vigilantism raises serious issues, because although the crimes committed by perpetrators are reprehensible, the way society punishes them with violence actually violates the principle of the rule of law.

In the context of a state based on the rule of law (*rechtstaat*), law enforcement must be based on the principle of due process of law, which states that anyone suspected of committing a crime has the right to be prosecuted through applicable legal procedures. Judging perpetrators through mob violence not only violates the law but also has the potential to create new injustices. This demonstrates the importance of legal protection for perpetrators, not to justify their actions, but rather to ensure that legal justice continues to operate within the proper framework.

Legal justice in this context refers not only to formal legal aspects but also to substantive ones. According to John Rawls' theory of justice, justice is fairness, or justice as fairness. This means that treatment of perpetrators of child molestation must remain within a framework of respect for human dignity. Therefore, a legal analysis of legal protection efforts for perpetrators of child molestation is necessary to determine the extent to which the Indonesian legal system accommodates the principle of balanced legal justice between victims and perpetrators.

Furthermore, debates frequently arise in society regarding punishment for child molestation, particularly regarding the effectiveness of imprisonment, additional penalties such as chemical castration, and rehabilitation. Some argue that harsh punishment alone does not address the root of the problem, necessitating a more comprehensive approach to justice while still guaranteeing the rights of perpetrators in accordance with human rights principles.

Thus, this research is crucial. While the state is obligated to provide maximum protection to child victims, it also has an obligation to ensure that perpetrators are treated in accordance with fair legal principles. This balance is the essence of legal justice, ensuring that the law is not merely an instrument of punishment but

also a means of upholding human dignity.

With the background described above, the author is interested in writing an individual working paper entitled "LEGIDAL ANALYSIS OF LEGAL PROTECTION EFFORTS FOR PERPETRATORS OF CHILD MOLESTATION CRIMINAL ACTS BASED ON LEGAL JUSTICE IN INDONESIA"

2. Research Methods

This study uses normative legal research, namely using norms in laws with a conceptual approach and a special approach. The research specification used is Analytical Descriptive, namely an effort to analyze and explain legal issues related to the object. The method used in this study is normative juridical. This research goes through the stages of literature study, the data obtained is then analyzed through a qualitative analysis approach. Qualitative data processing and analysis generally emphasize the analysis of the deductive and inductive conclusion process and the dynamics of the relationship between observed phenomena using scientific logic.

3. Results and Discussion

3.1 Legal Regulations in Indonesia Concerning the Crime of Child Molestation

The crime of child molestation is a serious violation of human dignity, involving moral, social, and legal aspects. In the context of a state based on the rule of law, any violation that demeans human values must receive a proportionate legal response. Children, as a vulnerable group, have the right to maximum legal protection from various forms of violence and sexual harassment. The Republic of Indonesia, based on Article 1 paragraph (3) of the 1945 Constitution, affirms itself as a state based on the rule of law (*rechtsstaat*) that is obliged to uphold justice for all citizens without exception.

In the Indonesian criminal law system, the crime of indecency is regulated in the Criminal Code (KUHP), specifically in Chapter XIV Book II which regulates crimes against morality. According to Moeljatno, crimes against morality are acts that contradict the sense of decency and morality of people living in a particular social environment. The KUHP specifically regulates the crime of indecency in Articles 289 to 296, with an emphasis on the elements of violence and coercion in committing indecent acts.

Article 289 of the Criminal Code states that "anyone who, by violence or the threat of violence, forces a person to commit or allow an indecent act to be committed, shall be punished by a maximum of nine years' imprisonment." This formulation emphasizes that Indonesian criminal law emphasizes the element of physical violence or the threat of violence as the basis for punishment. However, this article does not clearly differentiate between adult and child victims, so in practice it is

often used in conjunction with child protection provisions contained in special laws.

In addition to Article 289, several other articles in the Criminal Code are also relevant to the crime of child molestation. Article 290 regulates indecent acts against children under fifteen years of age or helpless individuals, while Article 292 regulates same-sex molestation against minors. Articles 293 and 294 provide increased penalties for perpetrators who have a relationship of power, trust, or responsibility towards the victim, such as parents, teachers, or public officials. Thus, conceptually, the Criminal Code recognizes elements of increased punishment based on the relationship between the perpetrator and the victim.

However, the Criminal Code, a colonial product drafted during the Dutch East Indies era, lacks a human rights-based child protection orientation. Andi Hamzah explained that the spirit of criminal law in the Criminal Code is still dominated by a retributive perspective, emphasizing retribution against the perpetrator without considering victim recovery or social rehabilitation. Therefore, reform of the national criminal law is necessary to align it with the values of justice and humanity stipulated in the Indonesian constitution.

The development of criminal law in Indonesia then gave birth to Law Number 23 of 2002 concerning Child Protection, which was updated by Law Number 35 of 2014. This law was presented as a response to the increasing acts of violence and sexual harassment against children, as well as an effort to strengthen the state's commitment to fulfilling children's rights. Article 76E of the law states that "everyone is prohibited from committing violence or threats of violence, coercing, using deception, a series of lies, or persuading a child to commit or allow the commission of obscene acts."

The criminal provisions are regulated in Article 82 paragraph (1) which states that the perpetrator can be sentenced to a minimum of five years and a maximum of fifteen years in prison and a maximum fine of five billion rupiah. This criminal provision is specific and carries a heavier penalty than the Criminal Code, and can be increased by one third if the perpetrator has a power relationship with the victim. The application of this provision is a manifestation of the principle of *lex specialis derogat legi generali*, where special laws override general provisions in the Criminal Code.

In addition to the Child Protection Law, Law Number 17 of 2016 was also enacted as a ratification of Perppu Number 1 of 2016 concerning Chemical Castration and Announcement of the Identity of the Perpetrator. This policy is a repressive measure by the government in addressing the rampant sexual violence against children. However, the existence of additional punishments such as chemical castration has given rise to ethical and legal debates because it is considered contrary to the principles of human rights, especially the right not to be tortured

or treated cruelly as regulated in Article 28G paragraph (2) of the 1945 Constitution.

In Satjipto Rahardjo's view, the law should not merely serve as a punitive instrument of power, but should also serve as a means to achieve justice and humanity. Therefore, criminal sanctions for child molestation must maintain a balance between protecting the victim and the perpetrator's rights as a legal subject. Excessively harsh penalties without considering substantive justice can lead to new violations of human rights principles.

Indonesia has also ratified the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990, which affirms the state's obligation to protect children from all forms of violence, abuse, and sexual exploitation. This ratification is legally binding and serves as the moral basis for the development of national regulations that promote the best interests of the child.

Although the national legal framework is quite comprehensive, problems arise in implementation. Many child molestation cases are handled inconsistently across regions, both due to differing interpretations by law enforcement officials and a lack of public understanding of the applicable regulations. Furthermore, the law often relies on the Criminal Code, even though the Child Protection Law is hierarchically considered a *lex specialis*.

This situation demonstrates that legal regulation alone is insufficient without effective and just law enforcement. The ongoing efforts to reform the national criminal code through the Draft Criminal Code (RKUHP) are expected to emphasize the position of children as legal subjects who must be protected and strengthen the penal system, which focuses on corrective justice, not just retribution.

Overall, it can be concluded that legal regulations in Indonesia regarding child molestation crimes have undergone significant development, moving from a colonial legal system to a modern legal system with a more child rights perspective. However, this regulatory development must also be balanced by strengthening the principle of legal justice for all parties, including perpetrators, so that law enforcement is not merely repressive but also humane and proportional.

3.2. Forms of Legal Protection Given to Perpetrators of Child Molestation Crimes

Legal protection for perpetrators of criminal acts, including in cases of child molestation, is an important aspect of the Indonesian criminal justice system. The concept of legal protection is not only aimed at victims, but also at perpetrators of crimes, because both are legal subjects who have basic rights. This principle is derived from Article 28D paragraph (1) of the 1945 Constitution, which guarantees that everyone has the right to recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law. Thus, perpetrators of criminal acts may not lose their legal rights even if they have violated criminal norms.

In the Indonesian criminal law system, the concept of legal protection for perpetrators of criminal acts is closely related to the principle of due process of law, which ensures that anyone suspected of committing a crime must be treated in accordance with applicable legal procedures. Moeljatno explained that criminal law must not be applied arbitrarily, because, in essence, criminal law is an instrument that limits the state's power to punish its citizens. This principle requires a balance between the public interest in protecting victims and the perpetrator's interest in obtaining a fair legal process.

The first form of legal protection provided to perpetrators of child molestation crimes is procedural protection. This protection ensures that the investigation, prosecution, and trial processes are conducted in accordance with criminal procedural law as stipulated in Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP). The KUHAP emphasizes the principle of the presumption of innocence, which means that anyone suspected, arrested, detained, charged, and/or brought before a court must be presumed innocent until a final and binding court decision is issued. This principle serves as the foundation for legal protection for perpetrators so that they are not punished before being proven guilty through an objective and transparent judicial process.

In addition, the Criminal Procedure Code also grants certain rights to perpetrators, including the right to be accompanied by legal counsel, the right to file objections to the actions of investigators or public prosecutors, and the right to file legal remedies such as appeals, cassation, or judicial review. These rights are a manifestation of the principle of procedural justice, which guarantees that every perpetrator of a crime, even if they commit a serious crime such as child molestation, still has the right to receive humane and fair legal treatment.

Legal protection also includes substantial protection, namely the protection of the basic rights of perpetrators while serving their sentences. In this context, perpetrators have the right not to be tortured, humiliated, or treated inhumanely. This is affirmed in Article 33 of Law Number 22 of 2022 concerning Corrections, which states that prisoners have the right to receive care, education, guidance, and opportunities for worship and social interaction while serving their sentences. This provision demonstrates that the Indonesian penal system is not solely oriented towards retribution but also towards the rehabilitation and social reintegration of perpetrators.

From a human rights perspective, perpetrators of criminal acts are also protected by Law Number 39 of 1999 concerning Human Rights. Article 34 of this law affirms that everyone has the right not to be tortured, treated cruelly, inhumanely, or degradingly. This protection is crucial to ensuring that law enforcement against perpetrators of child molestation does not violate humanitarian principles, even if the perpetrator has committed a morally reprehensible act.

Meanwhile, in the context of additional penalties such as chemical castration as regulated in Government Regulation in Lieu of Law (Perppu) Number 1 of 2016, perpetrators still have the right to file legal challenges to the imposition of such penalties. Many legal experts, such as Andi Hamzah, argue that castration poses an ethical dilemma because it potentially violates the right not to be tortured and the right to bodily integrity. Therefore, before imposing additional penalties such as chemical castration, the court is obliged to consider the results of medical and psychological examinations and professional recommendations from authorized institutions to ensure that the action does not conflict with the principles of justice and humanity.

In addition to formal protection derived from laws, there is also informal legal protection provided through social and psychological approaches. This approach is typically implemented during the correctional facility's rehabilitation phase, with the aim of correcting the offender's behavior and restoring their moral conscience. Satjipto Rahardjo argues that the law should not stop at punishment, but rather serve as a means of development to shape better individuals. This view emphasizes that offenders still have the potential for rehabilitation and reintegration into society.

In practice, legal protection for child molesters often encounters social resistance because society tends to demand the harshest possible punishment for perpetrators. However, the law must remain neutral and rational, not subject to public emotional pressure. According to Soerjono Soekanto, fair law enforcement requires a balance between certainty, utility, and justice. This means that perpetrators deserve punishment, but the process and form of punishment must remain within the legal framework and based on humanitarian principles.

Furthermore, legal protection for perpetrators is also realized through the right to an impartial trial. The court is obliged to decide the case based on legal facts and valid evidence, not based on public pressure or media opinion. The Criminal Procedure Code provides space for perpetrators to defend themselves, either personally or through legal counsel. This right to self-defense is part of the principle of fair trial as guaranteed by Article 14 paragraph (2) of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by Indonesia through Law Number 12 of 2005.⁹

Another equally important form of protection is the guarantee of restorative justice. This concept is beginning to be incorporated into various criminal law policies in Indonesia, including the 2023 Draft Criminal Code. Although its application to cases of sexual violence against children remains very limited, this principle provides room for perpetrators to atone for their wrongdoing through non-punitive mechanisms such as apologies, social responsibility, or compensation to the victim. This approach aims to strike a balance between victim protection and the perpetrator's moral recovery, while still maintaining proportionality and

strict ethical boundaries.

Legal protection is also provided in the context of medical and psychological rehabilitation for perpetrators with mental disorders. In some cases, perpetrators of child molestation have been proven to have mental disorders or sexual control disorders (paraphilia), so the criminal act is not solely motivated by free will. Article 44 of the Criminal Code provides special protection for perpetrators who cannot be held accountable for their actions due to mental disorders. The perpetrators are not subject to criminal penalties but may be treated in a mental hospital.

In the implementation of criminal penalties, correctional institutions also play a significant role in providing legal protection for offenders. Inmates have the right to receive personal development and independence, as well as evaluation of their moral and social development. Through correctional programs, offenders are expected to recognize their mistakes and refrain from repeating similar crimes after release.

From this overall description, it can be understood that legal protection for perpetrators of child molestation is not intended to justify their actions, but rather to ensure that the legal system operates based on the principles of justice, humanity, and legal certainty. This protection is part of an effort to enforce the law in a civilized and just manner, one that not only punishes but also fosters and restores social order.

3.3. Analysis of Legal Justice in the Implementation of Legal Protection for Perpetrators of Child Molestation Crimes

Legal justice is the ultimate goal of an ideal legal system. In the context of child molestation, the concept of legal justice becomes complex because it must balance the interests of the victim, which must be protected, with the rights of the perpetrator, which must be respected. Legal justice should not be interpreted narrowly as retribution, but rather as an effort to create moral and social balance between both parties. According to Gustav Radbruch, legal justice consists of three fundamental values: legal certainty (*rechtssicherheit*), utility (*zweckmäßigkeit*), and justice (*gerechtigkeit*). All three must go hand in hand for the law to truly reflect substantive human values.

In the application of legal protection to perpetrators of child molestation, tension often arises between the public's sense of justice and the principle of legal justice. Society tends to demand the harshest possible punishment for perpetrators, sometimes even rejecting the idea of legal protection for perpetrators as inappropriate. However, Indonesia's positive legal system affirms that everyone, without exception, has the right to be protected by the law, including perpetrators of serious crimes. This view aligns with the principle of a state based on the rule of law, which rejects vigilantism (*eigenrichting*).

The concept of legal justice applied to perpetrators of child molestation must be based on the principle of proportionality. Proportionality means that the punishment imposed must be commensurate with the level of culpability and impact of the perpetrator's actions, while still respecting their human dignity. Moeljatno emphasized that punishment is not merely retribution, but rather a means to uphold law and order and educate the public to refrain from committing similar violations. Therefore, the application of legal justice to perpetrators of child molestation must not exceed the bounds of humanity, even if their actions are truly reprehensible.

In the modern criminal law system, legal justice is not only seen from the severity of the punishment, but also from the extent to which the law provides fair treatment to all parties involved in the case. The perpetrator has the right to receive a transparent and non-discriminatory legal process. This is in line with the principle of fair trial as stipulated in Article 14 paragraph (1) of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by Indonesia through Law Number 12 of 2005. This principle ensures that the perpetrator has the right to be treated fairly from the investigation stage to the execution of the court's decision.

From a progressive legal perspective, Satjipto Rahardjo believes that legal justice should be oriented toward humanitarian values, not merely adherence to the text of the law. He believes that law enforcement should not stop at procedural formalities but must explore the sense of justice that exists within society (living law). In the context of child molestation cases, legal justice does not simply mean imposing the harshest possible punishment, but also ensuring that perpetrators receive a humane legal process and the opportunity to improve themselves.

Legal justice also implies that the state is obliged to guarantee the basic rights of perpetrators throughout the legal process. This includes the right to defense, the right not to be tortured, and the right to receive dignified treatment. Law Number 39 of 1999 concerning Human Rights affirms that these rights cannot be diminished under any circumstances, including against perpetrators of crimes. In this regard, legal justice must serve as a moral barrier to prevent law enforcement from engaging in repressive actions beyond the bounds of humanity.

Legal justice also needs to be viewed from the perspective of the purpose of punishment itself. In criminal law theories, there are two major schools of thought that explain the purpose of punishment: the retributive theory (retribution) and the utilitarian theory (prevention and correction). Retributive theory emphasizes that perpetrators should be punished as retribution for their actions, while utilitarian theory views punishment as a means to correct and prevent future crimes. In the context of modern legal justice, the Indonesian criminal system seeks to integrate the two through the concept of just punishment, namely punishing perpetrators while providing opportunities for social rehabilitation.

However, in practice, the application of legal justice to perpetrators of child molestation still faces many challenges. Many law enforcement officials still prioritize a retributive approach and ignore the principle of substantive justice. In some cases, perpetrators experience physical violence during investigations or face severe social stigma even before a court verdict is issued. This situation violates the principle of legal justice by rendering perpetrators objects of punishment, rather than legal subjects who retain their rights.

Legal justice also demands consistency in the application of sanctions. Similar cases should receive proportional sentences and avoid significant disparities in sentencing. High disparities in sentencing can lead to public distrust in the legal system. According to Barda Nawawi Arief, consistency in sentencing is an important indicator for assessing the level of justice in the criminal justice system. Therefore, judges must consider both substantive and moral justice when sentencing perpetrators.

In addition to formal and substantive justice, the concept of legal justice also encompasses corrective justice, namely efforts to restore social balance resulting from legal violations. In this context, protection for perpetrators can be interpreted as part of corrective efforts to enable them to recognize their mistakes and reintegrate into society without permanent stigma. This corrective approach aligns with the spirit of the Indonesian correctional system, which prioritizes development over mere punishment.

Legal justice in the context of perpetrator protection also demands that additional criminal policies, such as chemical castration, be implemented carefully. Although such policies aim to protect children from sexual violence, their implementation must not ignore the principles of humanity and the perpetrator's constitutional rights. In the view of several legal academics, including Andi Hamzah, castration has the potential to conflict with Article 28G paragraph (2) of the 1945 Constitution, which prohibits inhumane treatment of anyone. Therefore, legal justice must balance aspects of protecting society and respecting the perpetrator's rights.

The application of legal justice also requires consideration of the psychological and social conditions of the perpetrator. Not all perpetrators of child molestation have the same motivations; some may suffer from mental disorders or unresolved past trauma. In this context, legal justice cannot be equated between perpetrators who are fully aware of their actions and perpetrators who suffer from mental disorders. Article 44 of the Criminal Code provides the basis for the application of justice based on criminal responsibility that is proportional to the perpetrator's psychological condition.

Ideally, legal justice does not stop at the handing down of a sentence, but also encompasses the implementation of the sentence. Offenders serving their

sentences must still receive guidance, moral education, and opportunities for self-improvement. In the correctional system, this is achieved through social reintegration programs that enable inmates to become useful members of society. Thus, legal justice is an ongoing process aimed at balancing punishment, rehabilitation, and humanity.

Ultimately, legal justice in the application of legal protection to perpetrators of child molestation crimes is a manifestation of a civilized legal system. Legal justice must uphold the truth without sacrificing human values, and provide the perpetrator with the opportunity to atone for their wrongdoing through a legitimate and humane process. Thus, the law can function not only as a tool of retribution but also as a means of moral transformation that humanizes all human beings.

4. Conclusion

Legal regulations regarding the crime of child molestation in Indonesia have been regulated in the Criminal Code, Law Number 35 of 2014 concerning Child Protection, and Law Number 17 of 2016. All three emphasize maximum protection for children, although they tend to be retributive and do not fully balance the rights of victims and perpetrators. Legal protection for perpetrators of child molestation crimes remains guaranteed, both in the form of normative protection through the defendant's rights in court, as well as procedural protection so that the legal process runs fairly and humanely according to the principle of due process of law. Legal justice analysis shows that the application of legal protection to perpetrators still faces a dilemma between societal moral interests and the principles of substantive justice. A legal approach that is more oriented toward balancing victim protection, perpetrator punishment, and social recovery for both parties is needed.

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