

Legal Protection for Child Victims of Sexual Violence in the Criminal Justice System

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Abstract. *This research, entitled "Legal Protection for Child Victims of Sexual Violence in the Criminal Justice System," aims to identify and broaden our understanding of the legal protection provided to child victims of sexual violence within the criminal justice system and identify weaknesses in the current legal protection system. The author used a sociological juridical approach in this research. The research specifications include descriptive analytical research. The data used in this study are of two types: primary and secondary data. This research was conducted at the Pemalang District Court. The data collection methods used were direct field study and literature study. The crime of indecent assault is included in the category of criminal acts against morality, which is contained in Article 81 paragraph (1) and Article 88 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Article 81 paragraph (1). The explanation of this article is that committing the crime of indecent assault by threatening that if the perpetrator's wishes are not complied with, the perpetrator will commit acts of violence. The implementation of legal protection for child victims of violence remains suboptimal due to obstacles faced by law enforcement officials and relevant agencies. These obstacles are due to several internal and external factors within each agency.*

Keywords: *Children; Criminal; Justice; Molestation, System.*

1. Introduction

Indonesia is a state based on law, as expressly stated in Article 1 paragraph (3) of the 1945 Constitution, which states that all government and societal actions must be based on law, not power alone. This concept is rooted in Pancasila, which demands legal certainty, protection of human rights, an independent judiciary, and the principle of legality.

As a nation governed by the rule of law, all actions of state administrators and citizens must comply with applicable legal regulations. In this context, law is a

hierarchy of norms culminating in the constitution, namely the 1945 Constitution of the Republic of Indonesia.¹

Crime can occur anywhere and at any time, in fact, it could be said that crime occurs in almost every aspect of society. Of the many types of crime that occur in society, sexual crimes are a common occurrence, and sadly, children are the victims of these crimes.

Sexual abuse is a sexual crime that arises from changes in our societal structure. It is a highly damaging crime, especially for its victims, as it violates human rights and can damage human dignity, particularly the soul, mind, and offspring. Cases of sexual abuse are currently rampant in our country, and the victims are often children.

In cases of sexual assault, victims are the ones who suffer the most. In addition to material and/or immaterial losses, victims of criminal acts must undergo a series of legal enforcement processes to obtain justice. According to Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, "A victim is a person who experiences physical, mental, and/or economic suffering resulting from a criminal act."²

Children are an irreplaceable gift from God Almighty. They are part of the younger generation, a potential human resource and the successor to the nation's ideals. They play a strategic role and possess special characteristics and traits that require guidance and protection to ensure complete, harmonious, and balanced physical, mental, and social growth and development.³ Child protection is a constitutional mandate as stated in Article 28B paragraph 2 of the 1945 Constitution of the Republic of Indonesia which states that "every child has the right to survival, growth and development and has the right to protection from violence and discrimination."⁴

As individuals carrying out a noble task, teachers must be diligent in carrying out their duties. They must not only teach but also instill character education in their students. This is especially true for sex education, ensuring children understand sexual boundaries and professionalism.

Teacher professionalism has been regulated in Article 1 paragraph 1 of Law Number 14 of 2005 concerning Teachers and Lecturers which states: "Teachers are professional educators with the main task of educating, teaching, guiding,

¹Rais, MTR, "Indonesia's Legal State: Ideas and Implementation." Unsulbar Law Journal, Vol. 5, No. 2, (2022). p. 13

²Putri, WA, & Qorib, F. "Legal Protection for Witnesses and Victims of Sexual Abuse According to Law No. 31 of 2014." Justness: Journal of Political Law and Religion, Vol. 4, No. 1, (2024). p. 3

³Makarao. (2013) Child Protection Law and the Elimination of Domestic Violence, Rineka Cipta, Jakarta, p. 1

⁴Republic of Indonesia, 1945 Constitution of the Republic of Indonesia, Article 28B Paragraph (2)

directing, training, assessing and evaluating students in early childhood education through formal education, basic education and secondary education."⁵

Criminal sanctions for perpetrators of sexual violence (harassment) according to positive law are regulated in Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection. In Article 81 of Law Number 35 of 2014 concerning Child Protection.⁶

In relation to the criminal act of harassment against students carried out by educational staff at SDIT Bina Insan Mulia, Sidorejo Village, Comal District, Pemalang Regency. The immoral act was carried out by a teacher with the initials FA (25). It is suspected that this incident has occurred since October 2023 and is carried out almost every day in the school environment.⁷The perpetrator is guilty of committing a crime by intentionally committing violence or threats of violence, forcing, carrying out a series of tricks, lies or persuading a child, as regulated in Article 82 paragraph (2) of the Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection which has been stipulated as Law Number 17 of 2016.

This study aims to determine and increase insight regarding how legal protection is provided for child victims of sexual violence in the criminal justice system and what are the weaknesses in legal protection for child victims of sexual violence in the current criminal justice system.

2. Research Methods

In this research, a sociological juridical approach was used. The research specifications used were descriptive analytical. There were 2 methods of data collection, namely literature study and interviews. The interviewee was Bili Abi Putra, SH, MH, as a Judge at the Pemalang District Court. The data analysis method is interviews or field notes.

3. Results and Discussion

3.1 Legal Protection for Child Victims of Sexual Violence in the Criminal Justice System

The crime of indecent assault is any form of act, whether committed against oneself or against another person, that relates to the genitals or other parts of the

⁵Law Number 14 of 2005 concerning Teachers and Lecturers

⁶Law Number 35 of 2014 concerning Child Protection

⁷<https://jateng.times.co.id/news/hukum-kriminal/gzr3dbxwu/Oknum-Pegawai-Sekolah-di-Pemalang-Diduga-Akukan-Asusila-Terhadap-Seorang-Student> Accessed on January 29, 2026, at 10:44 AM

body that can stimulate sexual desire.⁸Indecent acts are generally crimes against morality, in the perspective of society they take various forms, namely "adultery, homosexuality (male and female same sex couples), lesbianism (female and female same sex couples), prostitution (prostitution), molestation, rape."⁹

The number of child sexual victims in Indonesia is currently increasing at a heartbreaking rate. These children often face the potential to become victims. When a child is the subject of a crime and must bear witness to the incident, they must be protected and their rights granted, as stipulated in Article 59 of Law Number 17 of 2016 concerning Child Protection, which states that state institutions must ensure special protection for children. In cases of child sexual abuse, the perpetrators are often people close to the victim, such as neighbors, relatives, biological family members, stepfathers, grandparents, and siblings. Sexual abuse is also often perpetrated by individuals with less religious beliefs.¹⁰

The crime of indecent assault is included in the category of crimes against morality, which are contained in Article 81 paragraph (1) and Article 88 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

The article explains that committing an indecent act involves threatening violence if the perpetrator's wishes are not met. For example, stroking or rubbing the penis or vagina, grabbing breasts, or kissing someone on the mouth with prior threats.

In a Criminal Justice System, the Police have a position in this system, the police are the spearhead in overcoming criminal crimes that occur. In the first process, someone who commits a crime, so the first person who has the right is the Police, the initial stage in the case carried out by the Police is to carry out a search for existing cases and evidence, namely by investigation and inquiry. Investigators are explained in the Criminal Procedure Code Article 11 paragraph (4), Investigations are explained in the Criminal Procedure Code Article 1 paragraph (5), Investigators are explained in (Criminal Procedure Code Article 1 paragraph (1), Investigations are explained in the Criminal Procedure Code Article 1 paragraph (2)).¹¹

In relation to efforts to restore the values and image of honor in individuals so that they can be accepted back into society and forget everything that has happened and prevent the recurrence of sexual abuse, rehabilitation is needed for victims of sexual abuse. Rehabilitation for children as victims of sexual abuse can be found in Article 68 of Law Number 35 of 2014, an amendment to Law Number 23 of 2003

8Fachri Bey, Furaanul Ichsan, 2011, "Process of Proving Criminal Acts of Indecent Acts Against Biological Children Committed by Their Fathers". *Lex Journal*. Vol. 8, No. 3. (2011). p. 226.

9 Ibid, p. 228

10Bambang Sutyoso. (2006). *Legal Discovery Methods*, UII Press, Yogyakarta, p. 146

11Bambang Sutyoso, Op. Cit, page 146

concerning Child Protection and also Article 6 Paragraph (1) Letter b of the UUPSK, which also details the forms of rehabilitation provided, including psychosocial rehabilitation and psychological rehabilitation.

The court may apply special measures throughout the giving of testimony to ensure that witnesses give their statements free from intimidation and fear for their lives. These efforts can also be taken in sensitive cases (including human trafficking, sexual crimes, child witnesses and family crimes) to prevent re-victimization of victims or witnesses by limiting their openness to the public and media throughout the trial.¹²

In essence, the cases frequently highlighted involve students who are generally still children, so Law Number 17 of 2016 concerning Child Protection serves as a reference for law enforcement in determining which articles to sanction against teachers. The average age of Indonesian children when entering school is 6 to 18.¹³

3.2 Weaknesses in Legal Protection for Child Victims of Sexual Violence in the Criminal Justice System

Law as social engineering or social planning means that law is a tool used by agents of change or pioneers of change who are entrusted by society as leaders to transform society as desired or planned. Law enforcement is the obligation of all members of society, and for this, an understanding of rights and obligations is essential. Society is not merely a bystander to how the law is enforced, but rather an active participant in law enforcement.

Law enforcement according to A. Hamid S. Attamimi as quoted by Siswanto Sunarno is essentially the enforcement of legal norms, whether they function as commands (gebot, command) or other functions such as giving power (ermachtigen, to empower), allowing (erlauben, to permit), and deviating (derogieren, to derogate). Siswanto Sunarno further said that in a country based on material or social law that is determined to advance the general welfare and enlighten the life of the nation, the enforcement of statutory regulations cannot be prevented.¹⁴

The state upholds Human Rights (HAM), including Children's Rights, which are marked by the guarantee of protection and fulfillment of children's rights in the 1945 Constitution of the Republic of Indonesia and several other provisions of laws and regulations, both national and international. This guarantee is strengthened through the ratification of international conservation on Children's Rights, namely the ratification of the Convention on the Rights of the Child through Presidential

12Interview with Bili Abi Putra, SH, MH as Judge of Pemalang District Court, March 9, 2026

13Interview with Bili Abi Putra, SH, MH as Judge of Pemalang District Court, March 9, 2026

14Maulana Hasan Wadong. (2000). Introduction to Advocacy and Child Protection. Jakarta. Grasindo. p. 17

Decree Number 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child (Convention on the Rights of the Child). The state, government, local government, society, family and parents are obliged to provide protection and guarantee the fulfillment of children's human rights in accordance with their duties and responsibilities.¹⁵

The most important thing in legal protection for victims of child molestation is to think about the future because victim protection should not only be carried out until the decision is finalized but must continue until the child is truly worthy of returning to life and can live and develop according to what the child should receive.¹⁶ From the investigation through to trial, legal assistance is essential for child victims of sexual abuse. Because a child will inevitably express their rights to the experiences they have experienced, legal assistance is essential, especially from law enforcement and even the parents of the child victims of sexual abuse. Throughout the investigation and trial, a child victim will be asked to explain, or even not be asked to explain, their experiences.¹⁷

The implementation of legal protection for child victims of violence remains suboptimal due to obstacles faced by law enforcement officials and relevant agencies. These obstacles are due to several internal and external factors within each agency.

Weaknesses in legal protection or internal obstacles are obstacles that originate from within law enforcement officials and related agencies. There are several internal obstacles faced by the Police, the Social Service and the Population Control, Family Planning, Women's Empowerment and Child Protection Service, in implementing legal protection for child victims of violence, namely limited human resources (HR), limited budget from the government, and lack of facilities in protecting victims of violence, especially minors. Furthermore, external obstacles are obstacles that originate from outside law enforcement officials and related agencies, in this case, there are several external obstacles faced by the Police, the Social Service and the Population Control, Family Planning, Women's Empowerment and Child Protection Service, in implementing legal protection for child victims of violence, namely in the form of obstacles in gathering information from victims of sexual violence, parents of victims who are less able to fight for

15Ni Made Darmakanti et al. "Handling Child Victims of Violence." *Journal of Yustisia Communication*, Ganesha University of Education, Legal Studies Program. Vol. 5, No. 2. (2022). p. 1

16Interview with Bili Abi Putra, SH, MH as Judge of Pemalang District Court, March 9, 2026

17Susani Triwahyuningsih. "Protection and Enforcement of Human Rights (HAM) in Indonesia: Legal Standing." *Journal of Legal Studies*. Vol. 2, no. 2. (2018). p. 7

their children's rights due to the lengthy legal process, and the community's reluctance to care and understand the impact of the violence.¹⁸

The main obstacles to the protection and recovery of child victims of sexual abuse include a lack of understanding among authorities, societal stigma, a culture of shame/silence, and limited rehabilitation facilities. Obstacles also arise from slow legal processes, the perpetrator's power relations (often those closest to the victim), and a lack of comprehensive psychological support for the victim.

The following are factors that hinder providing legal protection and recovery for victims:¹⁹

1. Law Enforcement Factors

- a. Lack of Understanding/Children's Perspective: There are still officers who do not understand the psychology of child victims of sexual abuse, so that treatment is not optimal or traumatic.
- b. Limited Resources: The lack of specialized personnel (PPA Unit) in certain areas results in slow handling of reports.
- c. Complicated Legal Process: Complicated evidentiary procedures often leave victims mentally exhausted.

2. Legal and Infrastructure Factors (Sarpras)

- d. Lack of Special Places/Rehabilitation: Limited safe houses and child clinical psychologists for trauma recovery.
- e. Legal Loopholes: Although there is a Child Protection Law, implementation in the field is often inconsistent, or the articles used do not provide a deterrent effect, especially if the perpetrator is someone close to the perpetrator.

3. Social and Cultural Factors

- a. Culture of Shame and Taboo: The crime of sexual abuse is still considered shameful, so families tend to cover up cases to avoid stigma, rather than reporting them.
- b. Lack of Awareness/Participation: Minimal community supervision in the surrounding environment and fear of being a witness.
- c. Power Relations: The perpetrator is often someone close to the child (father, uncle, teacher) who has a more dominant position, making the child afraid to report it.

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19Interview with Bili Abi Putra, SH, MH as Judge of Pemalang District Court, March 9, 2026

4. Victim Factor (Child)

- a. Fear and Manipulation: Children are often manipulated by the perpetrator (child grooming method) so that they are not aware that they have been molested, or are threatened to keep quiet.
- b. Severe Trauma: The victim's difficulty in retelling the incident (revictimization) during the BAP process.

5. Economic Factors

- c. Limited Funds: Victims or their families often face financial constraints for legal proceedings, medical examinations, and ongoing psychological support.

Ultimately, legal justice must uphold the truth without violating human values, and provide perpetrators with the opportunity to correct their mistakes through a humane trial. Thus, the law can function not only as an instrument of retribution but also as a means of moral transformation.

4. Conclusion

The crime of indecent assault is included in the category of criminal acts against morality, which is contained in Article 81 paragraph (1) and Article 88 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Article 81 paragraph (1). The explanation of this article is committing the crime of indecent assault by threatening that if the perpetrator's wishes are not complied with, the perpetrator will commit acts of violence. For example, stroking or rubbing the penis or vagina, touching breasts, kissing someone's mouth by threatening first. The implementation of legal protection for children who are victims of violence is still not optimal because there are still obstacles faced by law enforcement officers and related agencies. The obstacles faced by law enforcement officers and related agencies are due to several factors from both internal and external to each agency. Internal obstacles are obstacles that originate from within law enforcement officers and related agencies. There are several internal obstacles faced by the Police, Social Services and Population Control, Family Planning, Women's Empowerment and Child Protection Services in implementing legal protection for child victims of violence, namely limited human resources (HR), limited budget from the government, and the lack of facilities to protect victims of violence, especially minors. Furthermore, external obstacles are obstacles that come from outside the law enforcement apparatus and related agencies, in this case, there are several external obstacles faced by the Police, Social Services and Population Control, Family Planning, Women's Empowerment and Child Protection Services, in implementing legal protection for child victims of violence, namely obstacles in gathering information from victims of sexual violence, parents of victims who are less active in fighting

for their children's rights due to the lengthy legal process, and the community who are reluctant to care and know the impact of the violence.

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