
**ANALYSIS OF LEGAL PROTECTION FOR CHILDREN VICTIMS OF
PAEDOPHILIA BASED ON LAW NO. 1 OF 2016 CONCERNING THE
SECOND AMENDMENT OF LAW NO. 23 OF 2002 CONCERNING CHILD
PROTECTION****Slamet Pribadi**Faculty of Law, Universitas Bhayangkara Jakarta Raya, Jakarta, Indonesia
Email: slamet.pribadi@dsn.ubharajaya.ac.id**Abstract**

The study belongs to normative law research. The research aims to examine the regulation of paedophilia criminal action in Indonesia that can give law protection to the victim of paedophilia criminal action in Indonesia and to find out the form of an attempt of protection for the victim of paedophilia criminal action. The data employed were secondary data collected using the literary study technique, that is, to collect the secondary data relevant to the problem studied and characterized according to the category. The data collected was then analyzed using a qualitative data analysis method. Based on the research, it can be obtained the legislations that can be used for protecting the victim of paedophilia criminal action in Indonesia include (a) Articles 287 clause (1) of KUHP (Penal Code) and 81 clauses (1) and (2) of Act number 23 of 2002 about Children Protection, governing the criminal act of sexual activity with a child, (b) Articles 289 of KUHP, 290 clauses (2) of KUHP, 290 clauses (3) of KUHP, 292 of KUHP, 293 clauses (1) of KUHP, 294 clauses (1) of KUHP and 82 of Act number 23 of 2002 about the Children protection, governing the criminal acts of sexual abuse to the child, (c) Article 88 of Act number 23 of 2002 about the Children protection, governing the criminal act of child exploitation. Meanwhile, the form of protection the government, nongovernmental agencies and society give to the victim of paedophilia criminal action include counselling, medical service/help, legal assistance, monitoring and prevention.

Keywords: paedophilia; children; legal protection

Received August 02, 2022, Revised August 17, 2022, Accepted August 26, 2022

INTRODUCTION

The 1945 Constitution of the Republic of Indonesia aims to achieve a just and prosperous society, namely the existence of social welfare for all Indonesian people. The conception of the rule of Law as outlined in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia provides logical consequences for the Indonesian state to consistently protect the implementation of human rights. Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states, "every child has

the right to survival, growth, and development and the right to protection from violence and discrimination (Article 28B Paragraph (2) of the 1945 Constitution, 1945).

The state provides protection to children, including economic, social, cultural, political, defense and security, and legal aspects (Rusmini, 2017). Especially regarding the protection of children from the legal aspect, it has a significant and strategic role. The purpose and rationale of legal protection for children cannot be separated from the

goal of how to realize the welfare of children as an integral part of realizing overall social welfare (Gosita, 2004). As also stated in Article 1 paragraph (2) of the Government Regulation in Lieu of Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection provides clear and comprehensive arrangements regarding child protection which principally aims to provide guarantees and protect their rights so that they can live, grow, develop, and participate optimally and obtain protection from violence and discrimination (Probosiwi & Bahransyaf, 2015).

And in the general explanation of the Child Protection Law, it is explained that starting from the complete, comprehensive and comprehensive Concept of Child Protection, the Law places the obligation to protect children based on the following principles:

- a) Non-discrimination.
- b) The best interests of the child.
- c) The right to life, survival and development.
- d) Respect for children (Article 2 of Law Number 23 of 2002 Concerning Child Protection, 2002).

Thus, it is generally used to describe one of the disorders of psychosexual development, individuals with abnormal erotic desires for children (Supardi, 2005). Generally, the form of action is in the form of an outlet for sexual desire. This sexual harassment causes psychological trauma that cannot be cured in a short time. The modus operandi of paedophiles to ensnare their victims varies. Some pretend to love children with the lure of material things, which ultimately ask for sexual services in return, either subtly or by force (Asmawi, 2005). They tend to be sexually passionate and find it difficult to love their partners (Rusmini, 2017). Cases of sexual violence against children during the Covid-19 pandemic continued to increase, both perpetrators of sexual violence against girls and boys carried out by paedophiles and child prostitution

businesses. The future is to reduce the number of violence against children and protect children. Data from the PPA symphony from January to June 17, 2020, almost 3,928 cases of violence against children, including sexual violence, physical violence and emotional violence, but almost 55 per cent of those cases were sexual violence (Darmavati, n.d.).

Sexual violence against children is a severe violation of human rights and must be considered an extraordinary crime because its impact has threatened the future of the nation's generation (Probosiwi & Bahransyaf, 2015). Child sexual abuse and other forms of maltreatment have long-term health implications, including mental health issues and injuries (Ward et al., 2018). The high number of cases of sexual violence against children prompted the chairman of The National Commission for Child Protection to state that Indonesia had entered a period of emergency. The handling of crimes of sexual violence against children, when compared to the criminal law system in Indonesia, still tends to highlight a crime from the point of view of the perpetrator of the crime. Even though something is lacking and unbalanced if the point of view of the child as a victim is ignored.

The handling of crimes of sexual violence against children, when compared to the criminal law system in Indonesia, still tends to highlight a crime from the point of view of the perpetrator of the crime. The victim and the perpetrator are two elements of the occurrence of a crime. Even though there are still things lacking, the elements causing the crime would not have occurred if there were no victims. From this perspective, legal protection for children as victims of sexual crimes is essential.

Victims are only represented as sufferers who will retaliate against the perpetrators who have been implemented with criminal sanctions that laws and regulations have regulated. Sexual assault is linked to low self-esteem, self-criticism, and

attachment type (Schnittker, 2022). Children as victims of sexual crimes here are not given much attention because the concentration of punishment is only given to the perpetrators, which indicates the completion of the problem. Even though the punishment of the perpetrator of a crime of sexual violence does not necessarily mean that the child as a victim feels willing and safe. Many victims still do not feel that they have received justice and the return of their position in the community due to the trauma they have received. Therefore, it is necessary to have a law that can provide equal justice to victims of what was done by perpetrators of sexual violence crimes, so it is not the application of a system of revenge that is needed in resolving the case in question.

METHOD

A. Type of Research

The type of research used by the author in conducting this research, entitled Analysis of Legal Protection for Children, Victims of Paedophilia, reviewed in Government Regulation in lie of Law no. 1 of 2016 concerning the Second Amendment of Law no. 23 of 2002 concerning Child Protection. The type of research used in this research is normative research or literature study, namely legal research conducted by examining secondary data or library materials consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The legal materials are then compiled systematically, studied, and then drawn conclusions to the problem under study.

B. Research Approach

The research approach used in this legal research is the statute approach. This approach is used to study the applicable laws and regulations (positive Law) and their implementing regulations that regulate the problem of children and paedophilia, both at the time of their formulation and in their implementation,

to examine the level of relevance and synchronization between these laws and regulations.

C. Legal Resources and Materials

This study uses secondary data, which is the primary data obtained from legal materials, namely, materials or materials that are closely related to specific problems and are connected through a legal point of view, which consist of:

1. Primary Legal

Materials Primary legal materials are legal materials that are binding and underlie other legal materials that are closely related to the problem under study.

2. Secondary Legal

Materials Secondary legal materials are materials that explain primary legal materials. Secondary legal materials are all publications on Law that are not official documents.

3. Tertiary Legal

Materials Tertiary legal materials provide instructions and explanations of primary and secondary legal materials, such as legal dictionaries and others.

D. Legal Materials Collection Method

The method of collecting legal materials analyzed in this study uses a literature or document study. This is a data collection technique by studying, reading, and recording books, literature, notes, laws and regulations, and essential articles from the internet media. It is closely related to the subject matter used to compose the writing of this Law and then categorized according to the appropriate grouping.

E. Methods of Data Processing and Analysis of Legal Materials

Data analysis is organizing and sorting data in patterns, categories and basic descriptions so that themes can be found and formulated in working hypotheses.

The data analysis method used by the author in writing this Law is technical data analysis, namely by collecting data, qualifying and then connecting theories related to the problem and finally drawing conclusions to determine the results. Data analysis is the next step in processing research results.

RESULTS AND DISCUSSION

A. Regulation of the Crime of Paedophilia in Indonesia

Paedophilia is one of the crimes of morality. This crime is so disturbing the community and cannot be left alone. In addition, the crime will have a negative impact on the victims, who incidentally are children. Child victims of paedophilia, in the short term and long term, can experience physical and mental disorders.

Several factors cause Indonesia to become a target for paedophiles, and the first is the weak Law in Indonesia. For example, Article 289 of the Criminal Code for perpetrators of sexual abuse of children is only sentenced to 9 (nine) years in prison. Then in Article 82 of Law Number 23 of 2002 concerning Child Protection, perpetrators of sexual abuse against children are sentenced to 15 years in prison and a maximum fine of IDR 300 million.

The second factor is that poverty in Indonesia is getting worse, making children more vulnerable to some forms of crime and exploitation. Poverty is a severe threat. The third factor is the weakness of security devices in Indonesia. Many have spawned and exploded various modes of deviation, anomalous, or deviant behaviour. In their actions, paedophiles no longer seek prey by blocking children at school or on the street. Paedophiles use increasingly sophisticated methods, namely internet facilities, to find their prey.

From a legal perspective, the imposition of sanctions in the form of

corporal punishment does not provide general prevention, namely in the form of a deterrent effect to individuals who plan to do bad things and want to abuse children sexually. If there is a moderately severe punishment, people will think twice when they intend to commit an evil deed because they think going to jail will take a long time.

From the point of view of poverty, the child does not get a proper place or house as a shelter for his life, and even his life is like a homeless person without being able to fight back because his condition is physically and psychologically weak. In various places, children are seen on the streets, exploited by adults to beg, living homeless with adults whose sexual needs can arise at any time, potentially causing children to get indecent treatment, including becoming victims of paedophiles on the streets. The legal apparatus, the state and society must stop this terrible drama. Otherwise, it will give birth to paedophiles – new paedophiles that regenerate endless endings. As a cycle of behaviour and revenge or trauma in the future, starting from the victim and later becoming a paedophile. This kind of regeneration potential must be prevented, and children who are victims and children who are not must be protected from these potentials.

B. Forms of Protection for Victims of Paedophilia in Indonesia

Every time a crime occurs, ranging from minor crimes to serious crimes, of course, the victim will experience suffering, both material and immaterial. Theoretically, the form of protection for victims of crime can be provided in various ways, depending on the suffering or loss suffered by the victim. For example, for losses of a mental or psychological nature, of course, the form of compensation in the form of material or money is not adequate if it is not accompanied by efforts to restore the victim's mentality. On the

other hand, if the victim only suffers material losses, psychological services seem too excessive. Children who are victims of crime, victims of exploitation, both economically and/or sexually, children who are victims of physical, psychological and sexual violence and children who are victims of abuse such as victims of paedophilia also need special protection. The provisions of Article 59 of Law Number 23 of 2002 concerning Child Protection states 'The government and other state institutions are obliged and responsible for providing special protection to children in emergencies, children in conflict with the Law, children from minority and isolated groups, children in economic and/or sexual exploitation, trafficked children, children who are victims of abuse of narcotics, alcohol, psychotropic substances, and other addictive substances (drugs), children who are victims of kidnapping, selling, trafficking, children who are victims of physical and/or mental violence, children with disabilities, and children who are victims of abuse and neglect.

CONCLUSION

Pedophilia is included in the category of crimes against children. Because, it produces a bad impact for those who have become victims. Seto Mulyadi, as a child psychiatrist, explained that the victim of this crime will cause symptoms of a lack of self-confidence and ultimately view sex as a negative act. The following are laws and regulations that can be used to ensnare perpetrators of sexual abuse of children, including pedophiles in Indonesia.

Sexual intercourse here is intercourse carried out by adults against minors. The intercourse was carried out outside the marriage relationship. This is regulated in Article 81 paragraph (1) and paragraph (2) of Law Number 23 of 2002 concerning Child Protection.

The obscene act referred to here is an act committed by an adult against a minor (not yet eighteen years old) to commit an act that is contrary to the honor of the victim. This is regulated in Article 82 of Law Number 23 of 2002 concerning Child Protection.

Exploitation in this case is the sexual exploitation of minors (not yet eighteen years old) for the benefit of the perpetrator, both commercially and for the sexual satisfaction of the perpetrator himself. This is regulated in Article 88 of Law Number 23 of 2002 concerning Child Protection

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