

Legal Protection of Childern as Perpetrators of Criminal Acts of Obscenity

Mega Mustika, Hedwig A Mau, Mohamad Ismed

Universitas Jayabaya, Indonesia

Email: megamustika652@gmail.com, hedwigadiantomau@gmail.com, ismedismed@gmail.com

Correspondence: megamustika652@gmail.com*

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ABSTRACT

The child protection is a fundamental human right. Every child is entitled to survival, development, participation, and protection from crime and discrimination. Legal protection for children involved in criminal acts, such as molestation, is governed by Law Number 11 of 2012 on the Criminal Justice System. This research utilizes Law Enforcement Theory and Law Protection Theory, adopting a normative juridical approach supported by empirical data. The study begins with an analysis of relevant legal articles and includes primary data to support secondary legal materials. The analysis aims to provide a prescriptive study with interpretive analysis. The findings reveal that legal regulations for child molestation cases, as in Decision Number 2/Pid.Sus-Anak/2022/PN Jkt Brt, are based on Article 82 paragraph (1) jo Article 76 E of Law Number 17 of 2016 and Article 64 paragraph (1) of the Criminal Code. Protection for child offenders is outlined in Article 71 paragraph (4) of the Child Protection Law and Article 3 of the Juvenile Criminal Justice System Law, emphasizing humane treatment and access to legal aid.

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1. Introduction

In accordance with Article 1 paragraph (3) of the 1945 Constitution, it is explained that "The State of Indonesia is a state of law." The state of law is organized based on laws that guarantee justice for its citizens. Children are a special part of human life and the country's continuity (Nugroho, 2017). Children are the hope and dream of a nation; they are the most important part of the young generation who have opportunities for the success of a country, with talent who can contribute in terms of thoughts, ideas, and decisions. Therefore, children need education and protection for a good future. Both in mental, physical, and social organizations that are equal to each other (Sciences et al., 2019; Sulastri & Rochmansyah, 2024; Suparmono, 2000).

The definition of a child, as interpreted by Law No. 1 of 2016, which was stipulated as Law Number 17 of 2016 concerning Child Protection, is a person in the womb up to no more than 18 years old. Children are a gift from God, and children need to get protection from actions that can harm them because they need to continue their lives in a good environment, inside (internal) or outside (external) the environment, to avoid discrimination and violent crimes (Yusra & Susanti, 2022).

The sign of concern of the world's population for children's rights and the interests of their protection was approved by the United Nations on November 20, 1989. Alternatively, what we know as the UN Convention on the Rights of the Child, which Indonesia ratified as a member of the United Nations through Presidential Decree Number 36 of 1990 concerning the Convention on the Rights of the Child, this is so that it can bind all Indonesian people because Indonesia is part of the United Nations. With the existence of legal instruments and conventions on children's rights, it is hoped that they can protect and create value by comprehensively protecting children and their rights (Prameswari, 2017).

Delinquency is committed by a child or is called juvenile delinquency. There are subjects of discussion, namely violations of the law, nature, acts of deviation from the norms imposed, and violations of the law. This is the act of a child in the form of a violation of legal and social norms (Soetodjo, 2008). Regarding the abuse carried out by children, the term obscenity originated from the root word "obscene," which, as KBBI, has the meaning of dirty and heinous (such as violations of decency and others), bad behavior (violation of morality), acts that are not in accordance with morality. In contrast, obscenity, according to the legal dictionary, has the meaning of acting indecently or having an intimate relationship with someone (Harefa, 2013).

Criminal justice today sometimes still treats child perpetrators as perpetrators of crimes made by someone who can already be held accountable for their actions. Children are seen as capable and can take responsibility for their actions and deserve the same punishment as adults, which also happens in Indonesia. Restorative Justice is an effort to handle crimes by involving victims, perpetrators, their families, and other parties interested in finding solutions by focusing on restoring the original condition as before the crime, which is not aimed at providing retaliation.

So children's cases in the settlement process need to be carried out outside the court so that the community can play a role as a concern; besides that, children can think and be afraid to repeat the crime if many people are involved in it. Helping to restore the child's condition so that he or she is prevented from repeating the crime. However, based on a study conducted by Bappenas, Puspaka, and Unicef (2022), one of the biggest problems in Indonesia related to the judicial mechanism for juvenile crimes lies in the issue of prevention, protection, and data collection. This causes children who face the law to have more vulnerable conditions than they should. This can be seen from the disparity in the recovery process between the victim and the perpetrator. Recovery only focuses on the victim, so the implementation of rehabilitation and recovery for children as perpetrators has not been carried out optimally.

In order to maintain the originality of this research, there is a research model that the researcher will propose that is similar to this research, namely: Litia Pratidina Sembiring, with the thesis "Legal Protection of Children as Perpetrators of Sexual Acts", Master of Law, University of

Medan Area, in 2018. Research on children who carry out criminal molestation crimes is used by Law No. 35 of 2014 to apply criminal penalties to child offenders to ensure that their rights are maintained. Use and protect when children are judged. If understood, the problem for the judge is that he needs to refer to the three principles of the law, namely justice, utility, and legal certainty. Meanwhile, the perpetrator's child receives protection according to Law No. 35 of 2014, which explains child protection. These namely various activities protect and guarantee children and children's rights so that they can develop, live, grow, and actively participate while respecting human dignity".

2. Materials and Methods

This research is included in normative law, which is carried out based on the main legal material through the study of various concepts, theories, legislation, and legal principles that are related to normative juridical research

1. An analytical approach involves analyzing legal materials to understand the conceptual meaning of terms used in law and the application of legal practices and decisions.
2. The case approach is an effort to form a legal argument from the perspective of a concrete case in the field, where, of course, this case is related to events or legal cases that take place in the field.
3. The statute approach involves analyzing all rules and regulations concerning the issues being raised. The researcher must understand the hierarchy and various principles contained in the law.

Source The most important legal material used in normative research is literature study, while secondary data is used.

Primary Legal Materials are binding legal materials. The peripheral legal materials in this research proposal for this thesis are: the Constitution of the Unitary State of the Republic of Indonesia Year 1945, Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, Criminal Code (KUHP), Criminal Procedure Code (KUHAP), Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, Law Number 12 of 2022 concerning the Crime of Sexual Violence, Law Number 13 of 1961 concerning the Main Provisions of the Police, Government Regulation No. 92 of 2015 is the Second Amendment to Government Regulation No. 27 of 1983 concerning the implementation of the Criminal Procedure Code, Police Chief Regulation Number 6 of 2019 concerning Criminal Investigation.

Secondary legal materials consist of textbooks produced by legal experts, legal magazines, scientific views, legal cases, jurisprudence, and the results of symposiums related to writing (Ibrahim, 2018). Tertiary legal materials are materials or writings that can add explanations to the primary and secondary legal materials, consisting of legal dictionaries, large Indonesian dictionaries, and encyclopedias.

This research uses data collection techniques through literature studies limited to secondary law. Data is collected from notes, transcripts, views, literature books, and documents relevant to the issue

discussed. Legal materials are analyzed qualitatively, using norms, principles, principles, and doctrines to provide deductive juridical arguments. The result of this analysis is a general conclusion explaining the relationship between different types of data to answer concrete problems.

3. Result and Discussion

Legal Arrangements for Children Who Commit Criminal Acts of Molestation

Molestation is a common phenomenon, especially now that there are still high cases of sexual violence against children. Children have a very special personality where they can act according to their feelings and thoughts. However, it is undeniable that the environment also affects children's growth and development. So that each child has the right to live in a good environment, kept away from something that can have a bad impact on their development.

R. Soesilo explained, the meaning of obscene acts is all actions that are contrary to politeness/decency or heinous acts that are all related to sexual desire, such as kissing, squeezing breasts, fingering the genitals, and having sex.

Regarding acts of sexual violence against children, there is a law regarding child protection that is intended as a sanction for child perpetrators who violate the law. The reason for the use of the legislation is to ensure that the rights of children sued by the court are still respected and protected. Bad children in this case can be interpreted as individuals aged 12-18 years with suspicion of having committed a crime. Suppose a child here commits an act of sexual violence but first seduces the victim. In that case, the act is different from Article 76 E of the Child Protection Law, which explains: "All individuals are not allowed to threaten violence or commit violence, coercion, a series of lies, fraud, or persuasion to a child to commit sexual assault or let it go".

The punishment in Article 82 of the Child Protection Law is:

- (1) "All individuals who violate the rules are given a minimum prison sentence of 5 years and a maximum of 15 years and a maximum fine of five billion rupiah.
- (2) Regarding the above criminal acts carried out by education personnel, parents, caregivers, educators, or guardians, the criminal threat will be added to 1/3".

Children who commit molestation can be held criminally accountable if they are 14 years old, while if when carrying out the act they are over 12 years old but under 14 years old, it means that the punishment that can be imposed is a maximum of half of the law for adults (Sudirman, 2023). However, if the child is given the threat of life or death imprisonment, it means that the judge can impose a maximum of 10 years in prison. Then with regard to the imposition of sanctions for the perpetrator's child, the judge is required to take into account the needs of the child, especially for the rights he has as a child. The 1945 Constitution as the highest norm outlines that "all children have the right to develop, grow, maintain the continuity of their lives and have the right to be protected from discrimination and violence".

Regarding the act of molestation carried out by a child, in accordance with Article 82 paragraph (1) of the Child Protection Law, it can be explained that there is no reason whatsoever in abolishing the crime of a child if he can be responsible (mentally and physically healthy). Even so, the judge must still take into account that the child is still a "child" by considering the value of justice and what is

behind the criminal act, so that then the judge can sanction the child with the form of action. This action is in accordance with Law Number 11 of 2012 Article 82, namely:

- a. "Surrender to someone;
- b. Return to guardian or parent;
- c. Revocation of driver's license;
- d. Treatment at LPKS;
- e. Remedies due to criminal acts;
- f. Treatment in a psychiatric hospital;
- g. Must participate in formal training or education by a private or government body."

Law No. 11 of 2012 fundamentally aims to protect the rights of children who are in conflict with the law as a form of *restorative justice* (Setyowati, 2020). Efforts to protect children's rights as a form of implementing *restorative justice* are carried out through diversion efforts for children who are in conflict with the law. The definition of diversion in accordance with Law No. 11 of 2012 Article 1 number 7 is:

"Diversion is an effort to transfer the settlement of children's cases outside of criminal justice from criminal justice".

Therefore, it is necessary to seek diversion in juvenile criminal justice from the level of prosecution, investigation, and examination of cases. Then in carrying out this diversion, there are requirements that need to be considered, such as in Law No. 11 of 2012 Article 7 paragraph (2), where:

"Diversion efforts can be limited to criminal acts with a threat of imprisonment of less than 7 years and no repeated criminal acts".

These requirements have a comprehensive nature or both need to be met, and cannot be just one. So, the act of molestation carried out by a child, therefore violating Law No. 11 of 2012 Article 76 E, makes diversion impossible to pursue.

In accordance with Article 76 of Law No. 11 of 2012, child abuse is punishable by imprisonment for a maximum of 15 years and a maximum fine of Rp5,000,000,000. Thus, for cases of child abuse, the judge cannot give a decision in the form of diversion but must sanction according to article 82 paragraph (1) of Law No. 11 of 2012.

The judge at the West Jakarta District Court No. 2/Pid.Sus-Anak/2022/PN Jkt Brt. The judge sentenced the person to prison and did not carry out diversion because the crime was threatened by imprisonment for more than 7 years and was included in the repetition of the crime even though the court issued no previous decision, but not only 1 child but 8 children who were victims of molestation. The judge should see the interests and conditions that are best for the child. The legal regulation of children who carry out criminal abuse is contained in Law No. 11 of 2012 concerning the juvenile criminal justice system. If the age of the child is under 12 years old, diversion must be sought, and handed over to parents to be guided and distributed properly. Meanwhile, if the child of the criminal offender is over 12 years old and under 18 years old, it is not a repetition of the crime, and the threat is under 7 years old. Diversion must still be sought by looking at the conditions and various factors that trigger the child to commit a crime.

Diversion is not only carried out in the police but also in the prosecutor's office and the courts. The implementation of diversion that the PPA Unit should carry out with the process is:

- a. The request for community research, where investigators usually ask BAPAS (Correctional Center) so that community supervisors can assess the psychological condition and background of the child, thereby still prioritizing the interests of the child.
- b. Deliberation, after obtaining the results of the research of the correctional center, the investigator summoned the victim, the victim's parents, the perpetrator's children, the perpetrator's parents, the RT/RW, companions from special institutions for victims, social welfare workers, correctional centers as children's companions, and from the police. Where diversion is carried out in a familial manner by involving various parties and still prioritizing the rights of children, both perpetrators and victims, as well as finding a way out / or a solution together with no one party being harmed. Deliberation or diversion in the process is the best step in resolving cases out of court.
- c. If diversion is accepted, the investigator carries out an application for determination of diversion at the District Court. The result is that the diversion agreement that has been signed by the victim and child as the perpetrator and the parties involved is completed by deliberation.
- d. The diversion was rejected, so the investigator compiled minutes stating the absence of agreement between the two and signed by all parties. Then, the legal process continued to the next stage.

Why this needs to be considered, if you look at the cases that are outlined in this specific, there are indeed several victims. However, AW often likes to do it with men. As for female victims to satisfy their sexual desires by holding their breasts. However, for the male victim, he did it by inserting his penis into the victim's anus, and it was considered wrong. because it could be that if not handled specifically, AW's child will be entangled in associations that make him suffer more and more with *labeling* from the community as the same sex which will affect his mindset and deviant deeds from his religious teachings as a man who should like and marry a woman but because of his sexual desire that is mastic and not handled properly, this will have an impact on AW's future.

The concept of legal protection of children as perpetrators of obscenity crimes.

The 1945 Constitution explains that "the state protects abandoned children and the poor". Then this was reaffirmed through the regulation on Child Welfare in Law Number 4 of 1979, which describes "welfare, namely the livelihood and life of children that can guarantee the development and natural growth, both social, spiritual, or physical".

Crimes committed by children have recently become commonplace and require more attention by the family, society, and the government. After all, children can be perpetrators or victims of violence. Fundamentally, a crime or criminal act will give rise to a sanction or punishment. The child who carried out the act of molestation, in this case, was a man named MUA, and 8 others were carried out by the perpetrator, who is also a child named AL, as can be noted in the West Jakarta District Court Decision through the Public Prosecutor, where an indictment was given against AL bin Saeful Anwar at the age of 15 years whose charges were in the form of an act of molestation on MUA at the age of 8 years.

In accordance with the decision of Judge Julius Panjaitan, S.H., M.H., on Thursday, January 27, 2022, at the West Jakarta District Court, the result of the decision from the criminal judge was 10 months in prison at LPKA Cinere and carried out 6 months of job training at Class I Bapas West Jakarta. The Navy here needs attention and optimal psychological recovery. Because the previous AL was a victim, the lack of attention and deeds of this adult are considered right, and no witnesses are given. So the actions that the Navy did to the victims were not a mistake, and everything was considered ordinary and could be done by anyone.

In addition, there needs to be a role from institutions to continue to supervise children to avoid discrimination and focus on rehabilitation and psychological recovery for children as perpetrators. The role of social workers, bapas to carry out environmental conservation where children live, as well as provide information to the community so that children can return to the community after passing the punishment period, can accept children back without any bad stigma to the child, by involving parents, families, RT, RW and community leaders to help restore a bad environment to be good. In addition, for the victim's children, there needs to be assistance, psychological recovery and a good environment. So that the child is not overshadowed by what he experienced before.

So it is very important for parents, families, the environment, and child protection institutions to carry out socialization and prevention so that children can understand, understand and avoid criminal acts. Regarding the implementation of legal protection for children in the West Jakarta District Court, apart from being based on Law Number 11 of 2012 and Law Number 17 of 2016, it also refers to the judge's belief in a crime, because basically all decisions are made from the judge's beliefs and still take into account the rights of the child as well as his best interests.

Children's criminal justice in this context includes all examinations and decisions of criminal cases involving children, then the system applied is also not the same as criminal cases by adults. Soedarto explained that juvenile justice includes all examination processes and determination of cases related to the interests of children (Wahyono, 1993).

Of course, there is a difference from criminal justice for children and adults, where the legislation minimizes child criminal acts because there are rights from children who need protection. One of the differences can be noted in Article 3 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which determines the rights of children in criminal justice, which includes:

1. "Freedom from punishment, torture, or other treatment that degrades, inhuman, and cruel;
2. Engaging in redistributive activities;
3. Obtaining legal aid effectively as well as other assistance;
4. Separated from adults;
5. Given humane treatment through paying attention to needs as they age;
6. Getting health services;
7. Getting an education;
8. Gaining accessibility, especially for children with disabilities;
9. Getting a personal life;
10. Getting social advocacy;
11. Getting assistance from trusted people and guardians or parents of the child;
12. His identity is not published;

13. impartiality, getting justice in juvenile court, as well as closed hearings for the public;
14. Not imprisoned or detained with an exception as a last resort and for a short period of time;
15. Not given a life sentence or death; and
16. Obtaining other rights as stipulated by law.”

Then in Article 4 of Law No. 11 of 2012 it is explained that children who are in prison have the right to:

- a. “Conditional leave;
- b. Leave ahead of independence;
- c. Parole;
- d. Leave to visit family;
- e. Assimilation;
- f. Reduction of the penalty period or remission;
- g. Other rights as per existing rules.”

In principle, children cannot protect themselves against various types of behavior that can harm them mentally, physically, or socially. Children in various fields of livelihood and life. It will require the support of other individuals in protecting themselves, especially when looking at their circumstances and environment, especially when dealing with a justice system that is unfamiliar to them. Children must be protected from abuse of laws and regulations that apply to those who cause psychological, physical, and mental harm.

The purpose of children's criminal law is closely related to the goal of realizing the "best interests of the child," which is fundamentally an important part of social welfare. The debate on legal protection in the context of children's criminal law is certainly about laws that concern a series of examinations of children as parties who commit crimes, starting from the time in the police (investigation and investigation), prosecution (prosecutor's office), courts, and correctional institutions which make it can be considered an aspect of child protection.

Child crime has always drawn criticism from law enforcement for dealing with children who have problems with the law, where there is a view that such children are often treated as "inferior". Adults involved in criminal activities. The current criminal justice mechanism sometimes still treats child perpetrators as delinquents, namely perpetrators of crimes committed by adults. Article 71, paragraph (4) of the Child Protection Law explains that "criminal imposition of a child is not allowed to violate the dignity of the child". Meanwhile, the dignity and dignity of children that children as human beings have rights inherent in them as a divine gift as stated in Articles 52-66 of Law No. 39 of 1999 concerning Human Rights (Indonesia, 1999).

The child who was originally a victim imitated the behavior of the perpetrator of the crime of molestation, where the victim was himself, who is now the perpetrator of other children. Meanwhile, in Law No. 11 of 2012, the principles adopted include:

1. “Children's growth and development and survival;
2. Guidance and also child coaching;
3. The best interests of the child;
4. Respect for children's opinions;
5. Criminalization and deprivation of independence are the last steps;

6. Retaliation Evasion”.

Juvenile justice institutions should also prioritize restorative justice processes and strive for diversity to ensure peace between victims and children, non-judicial resolution of children's problems, prevention of deprivation of children's freedom, encouragement of community participation, and instilling a sense of responsibility in children.

The protection provided to children by the Criminal Code (KUHP) is as follows: (Prints, 2000)

1. Maintaining children's politeness
2. Prohibition of having sex with adults
3. Prohibition of obscenity with children.

Institutions involved in handling child cases regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, including:

1. Child investigator,
2. The Public Prosecutor is the public prosecutor of the child
3. A judge is a child judge
4. An appellate judge is a child appellate judge
5. The cassation judge is the child cassation judge
6. Community supervisors are functional law enforcement officials who carry out community research, guidance, supervision and assistance of children inside and outside the judicial process.
7. A Professional Social Worker is a person who works, both in government and private institutions, who has the competence and profession of social work as well as concern for social work obtained through education, training, and/or experience in social work practice to carry out service duties and handle children's social problems.
8. A Social Welfare Worker is a person who is professionally educated and trained to carry out service duties and handle social problems and/or a person who works in both government and private institutions, whose scope of activities is in the field of children's social welfare.
9. A family is a parent consisting of a father, mother, and/or other family members who are trusted by the child.
10. A guardian is a person or entity that, in reality, exercises custody power as a parent to a child.
11. A companion is a person trusted by the child to accompany him or her during the criminal justice process.
12. Advocates or other legal aid providers are people who provide legal services, both inside and outside the court, and who meet the requirements based on the provisions of laws and regulations.
13. The Special Children's Development Institution, hereinafter abbreviated as LPKA, is an institution or place where children serve their criminal term.
14. LPAS further remembers the Temporary Child Determination Institution as a temporary place for children during the judicial process.
15. The Social Welfare Implementation Institution, hereinafter abbreviated as LPKA, is a social service institution or place that implements social welfare for children.

16. The Community Center, hereinafter referred to as Bapas is a correctional technical training unit that carries out the duties and functions of community research, guidance, supervision, and mentoring.

4. Conclusion

Legal regulations on the crime of child abuse are regulated in the provisions of Law Article 82 paragraph (1) jo article 76 E of Law No. 17 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection jo article 64 paragraph (1) of the Criminal Code. In summary, the child who conflicts with the law and is subsequently called a child is 12 years old but not more than 18 years old and is suspected of committing a crime. Factors that affect children's criminal behavior as stated in Decision Number 2/Pid.Sus-Anak/2022/PN Jkt Brt. Internal factors of children becoming victims of molestation, seeing their parents having sexual intercourse, not understanding ejaculation, and education about sexuality.

The concept of legal protection for children who commit criminal acts of molestation is based on Decision Number 2/Pid.Sus-Anak/2022 PN Jkt Brt. Article 71, paragraph (4) of the Child Protection Law briefly explains that the imposition of criminal punishment on children is not allowed if it violates the dignity of the child. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System Article 3 regulates the basic rights of children who face the law, including the right to humane treatment, legal aid, and other assistance. Through efforts to pay attention to what the child needs according to their age, receive effective legal aid and other support assistance, free from punishment, torture, or other cruel treatment. And degrading his dignity as well.

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