

The Urgency of Legal Protection of Obscenity in Indonesia



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ABSTRACT: This study aims to examine the Urgency of Legal Protection of Obscenity in Indonesia. Sexual abuse is any form of action, whether done to oneself or done to others regarding and relating to genitals or other body parts that can stimulate sexual appetite and have a devastating impact, including psychological trauma, mental and physical health disorders, loss of trust, and stigma and discrimination. Victims can also experience impairments in social and academic functioning, even disconnection of family and social relationships. The research method used is a normative research method, using a *statute approach* and *case approach* related to the Urgency of Legal Protection of Obscenity in Indonesia. The *statute* approach is to examine matters concerning legal principles, legal views and doctrines, and laws and regulations related to the Criminal Act of Obscenity and can be accounted for while the *case* approach is an approach that is carried out to analyze, analyze and be used as a guideline for legal problems to resolve legal cases. This research uses secondary data supported by primary material and will be analyzed with analysis content. The results of this study related to the Urgency of Legal Protection of Obscenity in Indonesia can be concluded that the act of sexual immorality, especially against children, is an urgent issue and requires serious attention. Its serious repercussions, such as psychological trauma and health problems, underscore the urgency of comprehensive legal protection. This protection includes not only legal aspects, but also medical, psychosocial, and assistance support in the judicial process. The implementation of the Child Protection Law and cross-sectoral cooperation are key in providing effective and comprehensive protection for child victims of abuse.

KEYWORDS: Legal Protection, Criminal Act, Obscenity

I. INTRODUCTION

Children are assets for the nation and as the next generation of the nation whose welfare must be protected and guaranteed by the state. That in society a child must be protected from all forms of violence and crime that can endanger the safety of children. Every child has the right to protection in accordance with Article 28 D paragraph (1) of the Law of the Republic of Indonesia Year 1945 that everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law. Basically, children have not been able to protect themselves. Therefore, parents play an active role in the growth and development of children. Children's rights are expressly stipulated in Article 28 B Paragraph (2) of the Law of the Republic of Indonesia Year 1945, that the state guarantees every child the right to survival, growth and development and children have the right to protection from violence. [1] One form of crime against children that is of public concern is the crime of sexual immorality, sometimes even committed by people close to the victim. Every child should have the right to life and freedom and receive protection from parents, family, community, nation, and state since the womb. Therefore, all parties must ensure the survival and development of the child. The increase in cases of sexual abuse has become a public concern, so the public also considers that the efforts made in the child protection law have not been effective, the community urges that punishment for sex offenders be more severe and the minimum provisions are increased by making changes to Law Number 23 of 2002 concerning Child Protection. [2]

The realization of the implementation of child protection can be seen through Law Number 23 of 2002 concerning Child Protection. And in order to adjust to some provisions, several changes were made to certain articles, Law number 35 of 2014 concerning amendments to Law number 23 of 2002 concerning Child Protection was promulgated. [3] In Law Number 23 of 2002 concerning Child Protection, the special section regulating child protection can be seen in the provisions of Chapter IX of the Implementation of Protection, from Article 42 to Article 71. And as mentioned earlier, there are slight changes in several articles as stated in the provisions of Law number 35 of 2014 concerning amendments to Law number 23 of 2002 concerning Child Protection. [4] Obscenity is a violation of human rights that cannot be justified both in terms of morals and morals and religion, especially committed by perpetrators against minors, both women and men. The prohibition of sexual crimes in the form of lewd acts against children is regulated in Article 76 E of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning

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Child Protection. Article 76 E states: "Everyone is prohibited from committing violence or threatening violence, coercing, deceit, committing a series of lies, or inducing a Child to commit or allow obscene acts to be done". [5] R. Soesilo explained, obscene acts in the Criminal Code are all acts that violate decency (decency) or are heinous acts which are all included in the realm of sexual lust. [6]

Cases of sexual crimes against children and women that occur in Indonesia from year to year continue to increase, based on data from the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia that throughout 2021-2023 there are 48,727 cases of sexual violence against children. [7] Thus, the impact of sexual crimes (lewd acts, rape or sexual intercourse against children), is very diverse, starting from psychological, physical, and social impacts such as exclusion in the surrounding environment. This also has the potential to damage the future of the victim. The crime is a very evil and despicable act (*super mala per se*) and is strongly condemned by the community (*people condemnation*) both nationally and internationally. [8] By looking at the consequences experienced by victims of sexual immorality, at this time legal protection of children as victims of obscenity begins from the complaint, examination of the level of investigation, prosecution and verdict in the Court hearing. To overcome crime, a rational effort is needed from the community, namely by knowing the implementation of legal protection that has been carried out and what factors hinder legal protection of children as victims of sexual immorality. Crime prevention policies or efforts are essentially an integral part of social defense efforts. [9]

One form of protection for victims according to the Witness and Victim Protection Law is all efforts to fulfill rights and provide assistance to provide a sense of security to victims which must be carried out by institutions in accordance with the provisions. [10] This protection is provided in all stages of the criminal justice process in the judicial environment. Legal protection of crime victims as part of protection to the community, can be realized in various forms such as through the provision of restitution and compensation, medical services and legal assistance. [11] When dealing with a child who has legal issues, the best interests of the child must come first. As a result, if a young person does not get enough attention from his immediate environment, it is easy for him to carry out behaviors that are contrary to socially accepted legal norms. Such is the importance of emphasizing the number of child molestation as a very appropriate step in carrying out a form of protection for children from criminal acts of sexual abuse. Obscenity is prohibited in Indonesia because it violates human rights in all aspects of life, especially the protection of children in Indonesia. This guarantee is strengthened through the ratification of the international convention on the Rights of the Child, namely the ratification of the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990 concerning the Ratification of the Convention *On The Rights Of The Child (Convention On The Rights Of The Child)*. [12] Therefore, according to Law Number 35 of 2014 concerning Child Protection, it is explained that children are an inseparable part of human survival and the sustainability of a nation and state. The implementation of child protection is a form of justice (non-discrimination) of children's rights in a society. [13]

The implementation of protection of children is a tangible form of protection of children's rights as contained in Law Number 39 of 1999 concerning Human Rights. The implementation of child protection is clarified in the content of separate laws, namely Child Protection Law Number 23 of 2001 and Law number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection. [16] In the provisions of Law Number 23 of 2002 concerning Child Protection, the protection of children adheres to the principles of non-discrimination, best interests for children, the right to life, survival, and development, and respect for children's opinions. [17] One form of child protection in Indonesia is also regulated in the National Criminal Code Article 415 huruf b "committing lewd acts with a person known or reasonably suspected to be a child." In addition, there are also provisions in Article 81 of Law Number 23 of 2002 concerning Child Protection, it is stated that: "Any person who intentionally commits violence or threats of violence forces a child to have intercourse with him or with another person, shall be punished with a maximum imprisonment of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah) and at least Rp. 60,000,000.00 (sixty million rupiah)". Meanwhile, according to the provisions of Article 82 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, it is stated that: "Any person who violates the provisions as referred to in Article 76 D shall be punished with a maximum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah)". [18]

From the formulation of Article 76 D and Article 76 E jo. Article 81 and Article 82 of the Child Protection Law, it is seen that there is no requirement for this offense to be reported by the victim. Thus, the offense of sexual intercourse with a child and molestation of a child is a common offense, not a complaint offense. Ordinary offenses can be processed without the consent of the aggrieved (victim). The forms of legal protection for children as victims of sexual abuse that have been carried out so far are juridical legal protection and non-juridical legal protection. Juridical legal protection is protection provided by law to victims through statutory orders and implemented based on a judge's decision. [19] Juridical legal protection is provided for in Article 5 of the Law on the Protection of Witnesses and Victims. In addition, Article 7 of the Law on the Protection of Witnesses and Victims is also given additional rights in the form of compensation. Compensation for victims of sexual abuse is submitted by the victim herself, the victim's family or the victim's attorney to the Human Rights Court through the assistance of the Witness and Victim Protection Institute. Non-juridical legal protection is protection provided by law to victims of obscenity outside the judge's decision. The provision of this protection is also purely for the healing process of the victim's trauma for the heinous events he experienced. [20]

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In the process of implementing child protection (children's rights), the Law has regulated it. One of them is for matters related to children's rights regulated in Articles 52 to Article 66 of Law Number 39 of 1999. In addition, it is also regulated in the Law on Child Protection regarding the rights and obligations of children. The rights of children are regulated in the provisions of Article 4 to Article 18 and regarding obligations regulated in Article 19. The implementation of child protection is expected to ensure the rights of these children. All of this can be done if all elements, government, society and law enforcement officials carry out their roles properly. [21] Based on the explanation above, the problem in this study is how the urgency of legal protection of obscenity in Indonesia.

II. RESEARCH METHODS

The research method used is a normative research method, using a *statute approach* and *case approach* related to the Urgency of Legal Protection of Obscenity in Indonesia. The *statute* approach is to examine matters concerning legal principles, legal views and doctrines, and laws and regulations related to the Criminal Act of Obscenity and can be accounted for while the *case* approach is an approach that is carried out to analyze, analyze and be used as a guideline for legal problems to resolve legal cases. This research uses secondary data supported by primary material and will be analyzed with analysis content. [22]

III. RESULTS AND DISCUSSION

A. The Problem of Sexual Abuse in Indonesia

Obscenity is an event that is in the spotlight today, especially because there are now many cases of sexual abuse and children become victims of these crimes. Children have a very unique personality, where children are able to act according to their own feelings, thoughts and will. But, of course, the environment will also affect the personal development of the child. Therefore, far from everything that negatively affects his personal development. [23] The definition of lewd acts (*ontuchtige handeligen*) is all kinds of forms of actions, both done to oneself and done to others regarding and related to the genitals or other body parts that can stimulate sexual appetite. For example, stroking or rubbing the penis, holding breasts, kissing a woman and so on. Obscenity is the tendency to engage in sexual activity with helpless people such as children, both men and women, with violence or nonviolence. The definition of obscenity or obscenity in the Big Dictionary Indonesian, is interpreted as follows: fornication is the basic word of obscene, namely dirty and vile in nature not in accordance with manners (indecent), immoral, obscene: adultery, committing immoral crimes, obscene, adultery, rape, tainting the honor of women. [24]

According to R. Soesilo, what is meant by lewd acts is all actions that violate decency / decency or heinous acts that all have to do with genital lust, such as kissing, groping pubic members, touching breasts (intercourse is also included in this sense). [25] Furthermore, according to Moeljatno, "fornication is said to be any act that violates immorality or heinous acts related to his sexual lust". [26] According to the PAF lamintang and djisman samosir, fornication is "the act of a person who by force or threat of violence compels a woman to have intercourse outside of marriage with her. [27] J.M. Van Bemmellen argued that lewd acts included copulation and homosexuality or lewd acts contrary to nature. The prohibition or punishment of perpetrators of lewd acts, according to Bemmellen is aimed at protecting young children (adolescents) from impaired sexual development, and rape. [28] The factors causing abuse, especially against children, are divided into two, namely internal factors and external factors. According to Abdul Syani, internal factors are those that come from within a person himself which includes a person's psyche. The psychological state of the individual, the personality of a person who is different can cause problems such as one's behavior both good behavior and deviant behavior, especially if a person is in a depressed state and there is a desire in him to do despicable things. External factors are factors that are based on the environment or a form of change and development outside of humans (*extern*), especially things that have a relationship with the emergence of criminal behavior, an action that has elements in the environment and other external factors are the cause of high influence in the occurrence of an act of violence, one of which is acts of abuse against children. [29]

Abuse has a very serious impact in Indonesia, both for victims, victims' families, and society as a whole. Here are some of the consequences of the crime of obscenity:[30]

1. Psychological Impact on Victims: Victims of sexual abuse often experience severe psychological impacts, including trauma, depression, anxiety, and post-traumatic stress disorder. This experience can interfere with the emotional and psychological development of the victim, and can even affect their interpersonal relationships in the future.
2. Mental and Physical Health Disorders: Victims of sexual abuse can experience long-term mental health disorders, such as anxiety disorders, post-traumatic stress disorder (PTSD), and depression. In addition, there is also an increased risk of physical injury and transmission of sexually transmitted diseases.
3. Loss of Trust and Security: The occurrence of abuse can cause victims to lose trust in others and feel insecure in an environment where they should feel safe. This can affect their overall mental and emotional well-being.
4. Stigma and Discrimination: Victims of abuse often experience stigmatization and discrimination from society, even from their own immediate environment. This can worsen the psychological condition of victims and make them feel isolated and disowned by society.

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5. Impairment in Social and Academic Functioning: The psychological and emotional impact that victims of abuse experience can affect their social and academic functioning. Victims may experience difficulties in interacting with peers, decreased school performance, and difficulties in establishing healthy interpersonal relationships in the future.
6. Family and Social Termination: Some victims of sexual abuse experience disconnection with their family members or friends as a result of traumatic experiences. This can lead to social isolation and difficulty in getting the support necessary for recovery.

Thus, acts of abuse are not only detrimental individually to victims, but also have far-reaching impacts on their social and emotional well-being as well as society as a whole. Therefore, the protection and prevention of obscenity crimes is very important to be prioritized by the government, law enforcement agencies, and society as a whole.

B. The Urgency of Legal Protection of Obscenity in Indonesia

Legal protection is all the fulfillment of rights and the provision of assistance to provide a sense of security to witnesses and / or victims, legal protection of crime victims as part of community protection, can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance. According to Philipus M. Hadjon argues that Legal Protection is the protection of dignity and dignity, as well as recognition of human rights possessed by legal subjects based on legal provisions from arbitrariness. According to Satjipto Raharjo, defining legal protection is to provide protection to human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights provided by law. [31] The child is the trust and gift of God Almighty in whom is attached the dignity and dignity as a whole person. Consequently, children must get the widest possible opportunity to grow and develop optimally both physically, mentally, spiritually, and socially by providing protection and fulfillment of their rights without discrimination. [32]

According to Barda Nawawi Arief, legal protection of children is an effort to protect the law against various fundamental *rights and freedoms of children* as well as interests related to child welfare. [33] Furthermore, Maidin Gultom gave the view that child protection is an effort and activity of all levels of society in various positions and roles, who are well aware of the importance of children for the archipelago and the nation in the future. If they have matured their physical and mental, social growth, then the time has come to replace the previous generation. [34] Legal protection for child victims of sexual abuse is part of efforts to protect the government or authorities with existing regulations. Legal Protection is the protection of dignity and dignity, as well as recognition of human rights possessed by legal subjects based on legal provisions from arbitrariness or as a collection of regulations or rules that will be able to protect one thing from another. Most victims of sexual abuse that often occur are minors, basically children who are victims of sexual immorality, can cause mental and psychological disturbances, so that children as victims of sexual violence experience trauma and severe disorders of their mental and mental health. Therefore, child victims of sexual abuse must get treatment to restore their psyche to improve, this is part of efforts made as legal protection for children as victims of sexual violence. [35]

In Article 59 paragraph (1) and paragraph (2) letter j of Law Number 35 of 2014 concerning Child Protection, it is stipulated that the government, local governments and other state institutions are obliged and responsible to provide special protection to children, one of which is given to child victims of sexual crimes. [36] This special protection is done through the efforts of:

1. Prompt treatment including physical, psychological and social treatment and/or rehabilitation as well as prevention of diseases and other health problems;
2. Psychosocial assistance at the time of treatment until recovery;
3. Provision of social assistance for children who come from poor families;
4. Provision of protection and assistance in every judicial process.

Based on Law number 35 of 2014 concerning child protection, it is affirmed that there is a responsibility from family, parents, government and community and the state which is indeed part of a series of activities carried out continuously to be able to provide protection to those who have children's rights. This action is said to be a manifestation of the best life for children who have hope as the future of an intelligent nation. The courage to have nationalism is people who animate from good morals and uphold the norms and values of Pancasila along with a strong desire to maintain the unity of the nation and state. The issue of child protection is a human problem that is made a social reality. [37] Legal protection efforts are needed to be implemented as early as possible, including starting from guarantees in the womb until the child enters the age of 18 years, which means that the parameters of the conception of child protection are as comprehensive and comprehensive as possible based on the law listed in number 35 of 2014 concerning child protection which is positioned as a necessity for child protection based on principles including:

1. Nomocracy;
2. The best interests of the child;
3. The right to life, survival, and continuity;
4. Respect for the opinion of the child. [38]

The imperative of protecting children as victims of sexual abuse is not only the responsibility of the government, but also the responsibility of all of us. This is in line with Child Protection Law Number 35 of 2014 which defines a child as someone who

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is not yet 18 years old, including children who are still in the womb. The Child Protection Law also affirms that child protection is the responsibility of the state, family, and society. The application of these principles can be done through:

1. Establishment of Child Protection Task Force: Child protection task force was established to handle cases of violence against children, including sexual abuse. This task force consists of various parties, such as the government, non-governmental organizations, and academics.
2. Establishment of Integrated Service Centers for Victims of Violence against Children: Integrated service centers provide integrated services for victims of violence against children, including medical, psychological, and legal services.
3. Training for Law Enforcement Officers: Law enforcement officers are trained to handle cases of violence against children in a sensitive and child-friendly manner.
4. Socialization and education about children's rights: Socialization and education about children's rights is carried out to the wider community to raise awareness about the importance of protecting children from violence. [39]

By applying these principles, it is hoped that victims of child abuse can get optimal protection and recovery. Efforts that must be presented to children as victims of abuse are needed continuously and strive to maintain and maintain their welfare. The quality of protection in children should be of the same degree or degree as protection given to individuals of mature age. [40] Since every individual has an equal position before the point law, the state must simultaneously and fully cooperate with each other in providing protection to children against various forms of violence committed by irresponsible individuals and making the function of children a place of crime.

IV. CONCLUSIONS

Based on the description above related to the Urgency of Legal Protection of Obscenity in Indonesia, it can be concluded as follows:

1. Acts of abuse, especially when children are victims, are a major concern today given their very serious impacts. The child as a unique individual can be influenced by the surrounding environment, therefore it is important to keep him away from everything that can have a negative effect on his personal development. Sexual abuse involves sexual activity with a helpless person, and has devastating repercussions, including psychological trauma, mental and physical health disorders, loss of trust, and stigma and discrimination. Victims can also experience impairments in social and academic functioning, even disconnection of family and social relationships. Therefore, the protection and prevention of obscenity is very important and must be prioritized by all parties.
2. Legal protection for victims of sexual abuse, especially children, is very important and urgent in Indonesia. Children as God's gift must be optimally protected to ensure they can grow and develop properly without fear or discrimination. The legal protection covers various aspects, such as medical, psychosocial, and legal assistance, as well as assistance in the judicial process. With the implementation of Law Number 35 of 2014 concerning Child Protection and the establishment of child protection institutions and programs, it is an important step in guaranteeing children's rights and providing them with opportunities to get a decent and safe life. Therefore, the importance of cooperation between the government, family, community, and all levels of society is needed to protect children from all forms of violence, including the crime of obscenity.

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