

## Legal protection of children as victims of associal crimin1wal at the binjai police (police report study lp/b/447/iv/2022/spkt)

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### ABSTRACT

Immoral acts against children are crimes that violate morals, morality and religion. The impact of this crime on children is to cause physical and psychological trauma to victims, especially children, so that it can affect the victim's self-development when he grows up. The problem in this research is how is the legal protection for child victims of immoral crimes based on Law Number 35 of 2014 concerning Child Protection. The type of research used in this study is a normative method. Data collection is done by literature study and field study. Data were analyzed qualitatively to obtain research conclusions using a statutory and conceptual approach. The results of the research and discussion show that legal protection for child victims of immoral crimes is based on the police report LP/B/447/IV/2022/SPKT concerning legal protection of children in the Law Number 35 of 2014 fulfills the legal interests of children as victims of crime because it refers to comprehensive protection for child victims of immorality and fulfills children's rights in the process of law enforcement and provides rehabilitation for children, both medically and psychologically. Law enforcement officials are advised to be more intensive in dealing with legal protection issues for children and to increase socialization in order to disseminate knowledge and awareness to the community, especially people who are in remote areas with low educational and economic backgrounds.

### ABSTRAK

Tindak asusila terhadap anak merupakan kejahatan yang melanggar moral, susila dan agama. Dampak tindak pidana ini terhadap anak adalah menimbulkan trauma fisik dan psikis terhadap korban terutama anak-anak sehingga bisa berpengaruh pada perkembangan diri korban ketika dewasa nanti. Permasalahan dalam penelitian ini adalah bagaimanakah perlindungan hukum terhadap anak korban tindak pidana asusila berdasarkan Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak. Jenis penelitian yang digunakan dalam penelitian ini adalah metode normatif. Pengumpulan data dilakukan dengan studi pustaka dan studi lapangan. Data dianalisis secara kualitatif untuk memperoleh kesimpulan penelitian dengan pendekatan perundang-undangan dan konseptual. Hasil penelitian dan pembahasan menunjukkan perlindungan hukum terhadap anak korban tindak pidana asusila berdasarkan laporan kepolisian LP/B/447/IV/2022/SPKT tentang perlindungan hukum anak dalam Undang Nomor 35 Tahun 2014 memenuhi kepentingan hukum anak sebagai korban tindak pidana karena mengacu pada perlindungan yang menyeluruh kepada anak korban asusila serta memenuhi hak-hak anak dalam proses penegakan hukum serta memberikan rehabilitasi kepada anak, baik secara medis atau secara psikis. Aparat penegak hukum disarankan untuk lebih intensif dalam menangani masalah perlindungan hukum kepada anak dan semakin meningkatkan sosialisasi dalam rangka menyebar luaskan pengetahuan serta kesadaran bagi masyarakat, khususnya masyarakat yang berada di daerah terpencil dengan latar belakang pendidikan dan ekonomi yang rendah.

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## I. INTRODUCTION

The rapid growth of globalization, industrialization and the existence of free trade has made many changes to the condition of mankind which also has an impact on various types of criminal acts. The crime does not only touch the public but also the individual human person. The existence of widening economic imbalances is one of the main factors causing various kinds of criminal acts.

Talking about children cannot be separated from crimes that are increasingly stalking children as victims of this crime itself. In Indonesia, one of the crimes that is in the spotlight is immoral acts that can happen anywhere and happen to anyone, including children who should be protected. Immoral acts related to sexual crimes include rape, sexual abuse, sexual torture, sexual harassment, sexual slavery, sexual exploitation, forced pregnancy and others, which are behaviors that are not in accordance with the norms or rules of decency that apply in society and then become a reflection how weak law enforcement in Indonesia has been (Resignata, 2020)

Children who are victims of violence in everyday life, which shows how weak the position of children is when they experience violence against them. Children are very vulnerable to violence perpetrated by the people around them, in public spaces, even in their own homes. Violence against children predominantly occurs in the household which is actually expected to provide a sense of security, and what is very regrettable is that cases of violence against children have so far been considered a normal problem and are not considered as criminal acts, and what often occurs is acts of violence against children accompanied by with immoral crimes against children (Putra, 2021).

If you study history, actually this type of crime (delict, strafbaarfeit) has been around for a long time, or it can be said as a classic configuration of crimes that will always follow the development of human culture itself. It exists and develops all the time, although it may not be too much different from previously. In addition, this crime of rape does not only occur in big cities which are relatively more advanced in culture, awareness or law awareness, but also occur in rural areas which still hold relatively high values. , tradition (tradition), and customs (custom) (Saputra, 2021)

Deviant behavior can be considered as a source of disaster because it can endanger the social system. The use of the concept of deviant behavior implicitly implies that there is a standard path that must be taken. Behavior that does not go through this path means that it has deviated (Muniriyanto, 2019) .

The mode of crime through social media has often occurred since the introduction of electronic devices that are used as a link to exchange information regardless of distance and time. The mode of sexual crimes that occur against children is carried out through social media intermediaries. This practice has caused children to experience systemic exploitation. Children are

used as commercial sex commodities, online sexual violence against children is in line with the rapid development of the internet. The freedom to access the internet in Indonesia certainly allows all levels of society with various levels of education to easily access the internet. One of the problems that has recently been exposed, namely sexual violence against children that appears online. This technology has exposed children to violence by transmitting or displaying images of children sexually or containing sexual elements, and often children are coaxed/forced to have sexual intercourse through this technology (Ulva, 2021)

In order to realize quality Indonesian human resources, have competitiveness and be able to lead and maintain national unity within the Unitary State of the Republic of Indonesia based on Pancasila, continuous guidance is needed for the survival of children based on human rights. Growth and development of mental, physical and social, protect against all possibilities that will harm every child (Said, 2018). Criminal acts are behaviors that are prohibited by law and children are given criminal sanctions to anyone who does or violates the law (Andhini, 2019)

As a rule of law country, Indonesia must uphold the law without discrimination, including in handling the problem of children who are in conflict with the law in providing protection. Legal protection for children can be interpreted as an effort to protect the law against various freedoms and human rights of children (fundamental rights and freedoms of children) as well as various interests related to child welfare (Prsetyo, 2020)

Protection is intended to prevent harm or harm from other people or groups of people, including those carried out by those in power (government and state) and by outsiders who act for physical purposes. Spirit and health, values and human rights. It goes without saying that protecting the victim is an absolute matter, bearing in mind that the victim of a crime is the one who is most harmed and suffers, and being injured violates the victim's rights (Rahayu, 2022).

Efforts to provide protection to children who are victims of immorality can be carried out by developing systems and mechanisms of legal and social protection for children who are at risk or become victims of immorality. In addition, it is also very important to carry out efforts to recover and reintegrate child victims of immorality. This includes prioritizing a good approach to children who are victims of immorality in all legal procedures, providing medical and psychological services to children and their families, bearing in mind that children who are victims of immorality usually experience trauma which will potentially interfere with their psychological development (Dewi, 2022).

Parents, families and communities are also responsible for safeguarding and maintaining these human rights in accordance with the obligations imposed by law. Likewise, in the framework of implementing child protection, the state and government are responsible for providing facilities and accessibility for children, especially in ensuring optimal and directed growth and development.

Cases of child abuse decided by the Binjai Police with police report numbers:LP/B/447/IV/2022/SPKT on April 1, 2022 was a case of committing a series of crimes in the form of immoral acts against a minor named DP who resided in Kebun Cocoa, Jalan Perintis Kemerdekaan, Kebun Lada Village, North Binjai District, Binjai City, North Sumatra. Head of the

Binjai Police Public Relations Section, Iptu Junaidi, said the incident began when BL and the victim were both residents of North Binjai District, Binjai City. On the day of the incident, BL took the victim to the Cocoa Gardens using a bicycle by telling the victim that he would take her home. However, the person concerned was taken into the bushes and forced the victim to open the skirt the victim was wearing. After further investigation, the perpetrator was suspected of consuming pornographic videos. The same case that happened on June 23, 2018 with police report LP/B/219/VI/2018/SPKT at Binjai Police Office. It happened caused by the man was watched porn and find a little kindergarten girl around his neighborhood and raped her. The phenomenon behind this research is that the rule of law is not always used as a reference for defending children who are victims of immorality. So the question arises whether legal protection for children, victims of immoral crimes based on Law Number 35 of 2014 concerning Child Protection can fulfill legal interests. Meanwhile, on the other hand, law enforcers are very much bound by the principle of legality, so laws are read as the letters read, and it is very difficult to give a different interpretation, even when dealing with cases that are closely related to human values and are not rarely, cases of violence against children are affected by a justice system that is not neutral, such as those related to political and money issues. Therefore, it is hoped that new ideas and breakthroughs will emerge that can provide adequate protection for justice seekers.

## II. RESEARCH METHOD

This type of research uses normative research. With a police report study:LP/B/447/IV/2022/SPKT/POLRES BINJAI, POLDA SUMATERA UTARA. Normative legal research is legal research that describes the norms that apply in a particular legal system. In this research, analytic method that the researcher use is what must be done from a legal point of view in a particular legal system (Tan, 2021) . In this study the authors used the problem approach used is the statutory approach and the conceptual approach concerning legal protection of children in the Law Number 35 of 2014 fulfills the legal interests of children as victims of crime because it refers to comprehensive protection for child victims of immorality and fulfills children's rights in the process of law enforcement and provides rehabilitation for children, both medically and psychologically. The sources of legal materials to be used in this study consist of two categories, namely primary legal materials and secondary legal materials that consist report of police office at Binjai with police report numbers:LP/B/447/IV/2022/SPKT on April 1, 2022. The data collection technique used in this research is by recording it in documentation/reports.

## III. RESULT AND DISCUSSION

Cases of child abuse decided by the Binjai Police with police report numbers:LP/B/447/IV/2022/SPKT on April 1, 2022 was a case of committing a series of crimes in the form of immoral acts against a minor named DP who resided in Kebun Cocoa, Jalan Perintis Kemerdekaan, Kebun Lada Village, North Binjai District, Binjai City, North Sumatra. Head of the Binjai Police Public Relations Section, Iptu Junaidi, said the incident began when BL and the victim were both residents of North Binjai District, Binjai City.

On the day of the incident, BL took the victim to the Cocoa Gardens using a bicycle by telling the victim that he would take her home. However, the person concerned was taken into the bushes and forced the victim to open the skirt the victim was wearing. After further investigation, the

perpetrator was suspected of consuming pornographic videos. Jumadi said the Women and Children Protection Unit (PPA) Satreskrim Polres Binjai conducted an investigation by examining the victim and a number of witnesses. "Furthermore, police officers arrested the perpetrators on Jalan Perintis Kemerdekaan. The perpetrator, who daily works as a pedicab driver, together with evidence was taken to the Binjai Police Headquarters for further examination and legal proceedings. "From the results of the investigation, the perpetrator admitted to the obscene act said twice," said Junaidi. "Then, forced the victim by opening the victim's pants. Then, insert the perpetrator's genitals into the victim's genitals. When finished, the perpetrator told the victim to go home," said Junaidi.

In this case, the victim is still a minor which according to Arif Gosita, what is meant by a victim is "those who suffer physically and spiritually as a result of the actions of other people who seek self-fulfillment or that of others that conflict with the interests and human rights of those who suffer." . Child victims are children under the age of 18 (eighteen) years who experience physical, mental and/or economic losses caused by criminal acts (Moeljati, 2017) . In this case, the person in charge of carrying out prosecutions is the public prosecutor as referred to in Article 13 of the Criminal Procedure Code (KUHAP) which reads "Public prosecutors are prosecutors who are authorized by this law to carry out prosecutions and carry out judge decisions".

Legal protection for child victims of immoral crimes based on the Child Protection Act shows that the enactment of this law provides comprehensive or comprehensive protection for children who are victims of immoral acts, both from the aspect of criminal threats against perpetrators, protection against discriminatory treatment and protection from legal proceedings. Law and legal protection of children in Law Number 35 of 2014 fulfills the legal interests of children as victims of crime because it refers to comprehensive protection for child victims of immorality and fulfills children's rights in the process of law enforcement and provides rehabilitation for children, either medically or physically. psychic.

Based on Article 143 paragraph (2) of the Criminal Procedure Code that the public prosecutor in making the indictment which is dated and signed and contains: (UU No.1, 1946)

- a. Full name, place of birth, age or date of birth, gender, nationality, place of residence, religion and occupation of the suspect.
- b. Careful, clear and complete description of the crime charged with mentioning the time and place of the crime.

The following is the identity of the defendant based on the decision Report No.LP/B/447/IV/2022/SPKT/POLRES BINJAI as follows:

Full Name	: Arjuna Alias Ancos Bin Zainuddin
Place of Birth	: Medan
Age/Date of Birth	: 21 years old/12 October 1997
Gender	: Male
Nationality	: Indonesian
Place of Residence	: Jl. Pelita, Sei Mencirim, Medan Krio, Sunggal
Religion	: Moeslem

The defendant's actions are as regulated and punishable by Article 76 D Jo Article 81 paragraph (1) of the Law of the Republic of Indonesia Number 35 of 2014 concerning amendments to the Law of the Republic of Indonesia Number 23 of 2002 concerning child protection "Anyone

who violates the provisions referred to in Article 76D shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).

The actions of the defendant invited the victim to have sexual intercourse however the victim refused and in the end the following acts of violence occurred:

The defendant's actions are as stipulated and punishable by law in Article 76E namely "Everyone is prohibited from committing violence or threats of violence, forcing, deceiving, committing a series of lies, or persuading children to commit or allow obscene acts to be carried out". Jo Article 82 paragraph (1) of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection that "Anyone who violates the provisions referred to in Article 76E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiahs)". (Law No. 35, 2014)

The author's analysis of the success of a law enforcement process depends heavily on the application of criminal law, where the role of law enforcers is how to properly actualize it in the real world. A defendant can only be sentenced because it has been proven in court that he has committed a crime as stated by the prosecutor in his indictment. The case that the author discusses in this thesis is about the immoral act of child molestation committed by the defendant Arjuna alias Ancos bin Zainuddin against the child of DP (the victim). The most appropriate indictment in this case is Article 82 paragraph (2) of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection that in this case the crime referred to in paragraph (1) was committed by a person parents, guardians, nannies, educators or educational staff, then the penalty is added to 1/3 (one third) of the penalty referred to in paragraph (1). The Panel of Judges of the Binjai Police stated emphatically that the defendant was guilty of committing the crime of "persuading a child to have intercourse with him" in accordance with Article 81 paragraph (2) of Law Number 23 of 2002 concerning Child Protection which formulates the following:

"Anyone who intentionally commits deception, a series of lies, or induces a child to have intercourse with him or with another person, shall be punished with imprisonment for a maximum 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 a minimum of Rp. 60,000,000.00 (sixty million rupiah). (Law No. 11, 2012).

Legal protection in question is a legal remedy that must be provided by law enforcement officials to provide a sense of security, both mentally and physically against disturbances and various threats from any party (Yusyanti, 2020). Legal protection is an action or effort to protect society from arbitrary acts by authorities that are not in accordance with the rule of law, to create order and tranquility so as to enable humans to enjoy their dignity as human beings (Santi, 2020)

The factors for children to commit acts of sexual violence are grouped into two parts, namely (Hermi, 2022)):

1. Intrinsic Motivation

Intrinsic motivation is motives that become active or function without needing external stimulation, because from within the individual there is an urge to do something.

Intrinsic Motivation includes:

- a. Intelligence Factor; namely the intelligence factor of the child by looking at the child's ability to weigh and decide something. Naughty children tend to have lower verbal intelligence in achieving school results, so they will easily fall into negative things.
- b. Age factor; is the most important factor in the causality of crime. The majority of child delinquency is caused by immature age, although there are some children who are naughty as adults.
- c. Gender Factor; statistically the delinquency of boys is more massive than girls.
- d. Factors Position of Children in the Family; Some research states that the order of children in the family is one of the factors in how children's behavior is formed. For example, most only children are spoiled by their parents, thus forming spoiled characters and making it difficult for children to socialize with society. This forms a negative habit and does something that can harm society when their wishes are not fulfilled.

2. Groups of Extrinsic Motivation Extrinsic motivation is motives that are active and need stimulation from outside to function. Extrinsic Motivation includes:

- a. Family Factors; as the closest social environment for children in the process of maturation and character formation for children. Children will receive their first education from their mothers. Unlike most broken home families, the mental tendency of children to be disturbed is very high because they do not get love from both parents. Or for example, children who do not get enough attention and supervision because their parents are busy in their respective careers, is one of the factors that causes children to take out their misbehavior on other people to get attention (Suryandi, 2020).
- b. Educational Factors; namely school as a good means in building the character of children after family. Basically, schools are also responsible for the education and morals of children. Good interaction and communication between teachers and students will show success in forming children's morals, and vice versa.

Based on the legal facts of the case related to the article above, it can be seen that the defendant's actions fulfilled the elements of Article 81 Paragraph (2) of Law Number 35 of 2014 concerning Child Protection as follows:

- a. The element of every person in this article leads to legal subjects, namely people as human beings (naturlijke person) as holders of rights and obligations who can be held accountable for the actions of which the defendant is accused. Considering, that based on the description of the considerations above it is concluded that the meaning of the element "everyone" cannot be disguised as "perpetrator of a crime" because the meaning of the element of "everyone" can only change to "perpetrator of a crime" after the defendant is proven to have committed what he was charged with. Based on the minutes of investigation related to the public prosecutor's indictment as attached in the case file, during the trial examination after the identity of the defendant was declared, it turned out that the identity mentioned by the defendant matched the identity stated in the minutes of investigation and the public prosecutor's indictment. Based on the testimony of the witnesses and the statement of the defendant, it turned out that all of them pointed to the defendant himself as the perpetrator

of the crime in this case, there was no mistake in persona. The 21 year old defendant is considered capable and capable of being responsible. So what is meant by everyone in this case is the defendant Arjuna alias Ancos bin Zainuddin, who so far has given testimony in court so that the defendant must be held accountable for his actions because they match the identity referred to in Article 44 of the Criminal Code and this situation can be concluded because the defendant can answer all the questions put to him. Considering, that based on the judge's considerations above, the element of "everyone" has been fulfilled for the defendant (Hanuddin, 2022).

- b. The intentional element, according to (Sudarto, 2019), is intentional as a goal or desired, intentionally as a necessity or in a deliberate form with awareness of the possibility or awareness of the possibility of other consequences that are not actually a goal. There are 2 theories of intent in the science of criminal law, namely:
- 1) The theory of will (willsheoorie) taught by Von Hippel, explains that the essence of intention is the will to realize the elements of offenses in the formulation of laws.
  - 2) The theory of knowledge or imagining (voorstellings-theorie) adhered to by Frank, explains that deliberately means imagining the consequences of one's actions, people cannot wish for the consequences but can only imagine them. This theory focuses on what the creator knows or imagines, namely what will happen to him when he does it.

The defendant's actions were committed against the DP (victim) who is 16 years old, so he is included in the category of children, because it is based on Article 1 point 1 of Law Number 35 of 2014 concerning Child Protection. Child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. So the third element of having intercourse with him has been fulfilled. A defendant can only be sentenced for being proven to have committed a crime as stated by the public prosecutor in his indictment. Efforts to prove are based on the provisions of Article 184 of the Criminal Procedure Code which explains that a judge may not impose a sentence on a person unless with at least 2 (two) valid pieces of evidence he obtains confidence that a crime has actually occurred and the defendant is the one who is guilty of committing it. The Panel of Judges of the Binjai Police stated that the defendant Arjuna alias Ancos bin Zainuddin had been proven legally and convincingly guilty of committing a crime and sentenced the defendant Arjuna alias Ancos bin Zainuddin to imprisonment for 7 (seven) years and a fine of Rp. 80,000,000 (eighty million rupiah).

#### IV. CONCLUSSION

Legal protection for child victims of immoral crimes based on the Child Protection Act shows that the enactment of this law provides comprehensive or comprehensive protection for children who are victims of immoral acts, both from the aspect of criminal threats against perpetrators, protection against discriminatory treatment and protection from legal proceedings. Law and legal protection of children in Law Number 35 of 2014 fulfills the legal interests of children as victims of crime because it refers to comprehensive protection for child victims of immorality and fulfills children's rights in the process of law enforcement and provides rehabilitation for children, either medically or physically psychic (Prisdawati, 2020). The results of the research and discussion show that legal protection for child victims of immoral crimes is based on the police report LP/B/447/IV/2022/SPKT concerning legal protection of children in the Law Number 35 of 2014 fulfills the legal interests of children as victims of crime because it refers to comprehensive protection for child victims of immorality and fulfills children's rights in the process of law enforcement and provides rehabilitation for children, both medically and psychologically. Law enforcement officials are advised to be more intensive in dealing with legal protection issues for children and to increase socialization in order to disseminate knowledge and awareness to the

community, especially people who are in remote areas with low educational and economic backgrounds.

For this reason, it is suggested that law enforcement officials to be more intense in dealing with legal protection issues for children should further increase outreach in order to disseminate knowledge and awareness to the community, especially people who are in remote, rural areas, with low educational and economic backgrounds. about the importance of legal protection for children. The protection of child victims of abuse in Law Number 35 of 2014 concerning Child Protection has a gender bias tendency, namely victims of abuse are more likely to be female children.

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