

# Legal Protection Analysis of Online Sexual Crime Against Underage Children Based on Law Number 35 of 2014 on Child Protection (Case Study No.1446/PID.SUS/2017/ JKT.SEL)

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## ABSTRACT

The involvement of a child in legal matters can make society insensitive to justice and underestimate the role of children as the next generation of the nation. This condition should be a deep concern for parents in accompanying and supervising children's behavior. A child is someone immature both mentally and physically, who still needs to be guided and supervised in his association. This ignorance of children often makes children do deviant behaviors and tend to do evil. Behavior that deviates from the norm will usually create a new problem in the legal field and harm society. In Indonesia itself, there are special arrangements regarding children which are regulated in Law Number 23 of 2002 of Child Protection. The problem raised in this research is how to regulate child protection in online sexual crimes in terms of law number 35 of 2014 on child protection (case study decision number 1466/pid.sus/2017/jkt.sel)? The author examines the problem by using normative legal research methods. The data from the research show that the case in this decision proves that there is still a gap for perpetrators of crimes related to children, where perpetrators who have been proven to have committed criminal acts intentionally selling and distributing videos of immoral children should receive the harshest punishment, but the judge eased the sentence.

**Keywords:** *Child Protection Law, Criminal Law,*

## 1. INTRODUCTION

The dynamics of social life are not uncommon for a conflicts between one person and another that cause one party to become a victim of the actions of others. The resolution of conflicts that occur between two or more parties is a legal function. Therefore, the legal position must be placed above all else. Every act must follow the rule of law without exception [1]

to ensure the maintenance of social order. Likewise with Indonesia, in accordance with the 1945 Constitution, Indonesia is a country based on law (*rechstaat*). [2] Which has 4 elements: divisions of power, human rights, The existence of State Administrative Court and government based on law and regulations. [3] Adi Sulistiyono

In this case, Indonesia has fulfilled the four elements so that Indonesia can called a *rechstaat*. In line with the concept of *rechstaat*, AV Dicey describes the existence of 3 important elements in every legal state which he calls the term The Rule of Law:

1. Equality before the law is how every people and group are equal to the law
2. Supremacy of law is a regulations to oppose and eliminate arbitrariness and the wide and the wide free authority of the government
3. Due Process of Law or the guarantee of human rights by the constitution which is the result of "the ordinary law of land", that constitutional law is not a source, but as a consequence of individual rights formulated and affirmed by the judiciary. [3]

The regulations that apply in Indonesia are laws or statutory regulations that are based on the ideological foundation and constitution of the Indonesia. Indonesian law is nothing but a law that is made from the nation's cultural values. [4]

The law then continues to change and adapt to the development of the times and current technology.

"The advancement of Information and Communication Technology (ICT) and its use in various fields of life marks the change of human civilization towards an information society. The internet is an ICT product that makes it easy for everyone to obtain and disseminate information quickly,

cheaply, and to reach a very wide area. The utilization of the Internet not only brings positive impacts but also negative impacts.

One of the negative aspects of internet use is the spread of pornographic information, which is a serious concern. The process of spreading pornography is greatly facilitated by the internet and social media. This can be spread through websites, blogs, social networks, and mailing lists. Ironically all of them have quite a lot of followers, [5] this has an impact on children as well as criminal acts of sexual harassment committed against children via the internet which can damage children's future.

Sexual crimes in the form of harassment and pornography committed against children through online media have taken many victims. This kind of crime is carried out by verbally abusing children or sending pornographic content to children so that this can harm children's psychology. In addition, children can also be perpetrators of criminal acts that commit harassment or pornography.

The understanding of pornography in Article 1 paragraph (1) of Law Number 44 of 2008 concerning Pornography is "images, sketches, illustrations, photos, writings, sounds, sounds, moving images, animations, cartoons, conversations, gestures, or other forms of messages. Through various forms of communication media and public performances, which contain obscenity or sexual exploitation that violates the norms of decency in society". In the point of view of the future of children, it is very necessary to protect children from sexual crimes, both those committed by adults and those committed by children. Protection establish because of a legal relationship. [6] The protection provided by law can be interpreted as "a form of certainty for the protection provided by the rules or norms that have been made to create security, order, and justice". [7] To provide a protection for children from sexual crimes committed online, the Government has established the Indonesian Child Protection Commission (hereinafter referred to as KPAI).

Based on the KPAI report, pornography and in 2020 cybercrime crimes committed against children reached 651 cases. Meanwhile, in the previous period, KPAI received 653 complaints regarding pornography and cybercrime crimes committed against children. [8]

Whether it is right or wrong. This ignorance of children often makes children do deviant behaviors and tend to do evil. Behavior that deviates from the norm will usually create a new problem in the legal field and harm society. Based on this, it can be seen that the factors as described "The involvement of a child in legal matters can make people insensitive to justice and underestimate the role of children as the nation's next generation. This condition should be a deep concern for parents in accompanying and supervising children's behavior. A child is someone who is immature both mentally and physically, who still needs to be guided and supervised in his association. Children are the

type of people who are very easily influenced by anyone, children also like to imitate the behavior of those around them without knowing over are "factors that are often the reason why a child commits an act unlawful. Children are not aware of their actions, children who commit criminal acts no criminal have motive in carrying out their actions, very different from adults who commit criminal acts because there is a criminal motive. The act of violating the law by the child makes the child unable to take responsibility for his actions when before the law. Children who are in conflict with the law are forced to face situations and conditions that are very vulnerable to

Violence that can destroy their mental and future, even though the child makes a mistake that results in harming others, it can't actually be considered a crime, because the child has not been able to plan a crime. As alleged in various existing cases so that in this case even though the child is the perpetrator of the crime, the child is also the victim".

### ***1.1. Related Work***

Based on the introduction, the issues in this research is "How is the certainty of indictment against corporation that committed crime against social service in the verdict of on Sumedang Court Number 109/Pid.Sus/2017/PN.Smd?"

### ***1.2. Our Contribution***

The purpose of this research is to address issues that have been outlined in the background is to know how is the regulation of child protection in online sexual crimes in terms of law number 35 of 2014 on child protection (case study of decision number 1466/Pid.Sus/2017/Jkt.Sel)?

### ***1.3. Paper Structure***

The structure of this paper uses research method to collect data, manage data and conclude from the data according to the problem to be studied by the author. This legal research studies certain legal phenomena, either one or more symptoms. This legal research is carried out with a series of scientific activities based on certain methods, systematics, and thoughts. The research method used by the author in the study is as follows: Types of Research, the type of research in this paper is normative research and also known as doctrinal legal research, The approach of this paper is prescriptive research, descriptive research is to provide arguments for the research results obtained, the arguments are in the form of prescriptions or judgments about right or wrong, or what should be according to law against facts or legal events from research results..

This research uses various material: primary legal material such as criminal code, Law Number 44 of 2008, Law Number 19 of 2016, Law Number 11 of 2008, Law Number

19 of 2016, Law Number 35 of 2014, Law Number 23 of 2002, Law Number 11 of 2012, Law Number 31 of 2014, Law Number 13 of 2006 secondary legal material such as related literature, articles, etc.

## 2. BACKGROUND

The case happened in 2014 where Hermawan alias. Uher, who is the defendant in this case, is aware of the existence of the VGK (Video Gay Kids) group on social media telegram with the defendant's personal account with a cellphone number 087743900161 with name profile ERWAN HERMAWAN and defendant join to VGK, then after defendant join in group VGK that contain hundreds account member that joined, and in that group, each other member share videos of children sexual harassment.

he defendant received many links of sexual harassment videos and sexual perversion with VGK (Video Gay Kids) content that could be downloaded and saved, so since 2014 defendant sell/buy the children sexual harassment and deviation videos below age content VGK (Video gay Kids) in media social media and the Defendant sold the Gay Kids video using the defendant's cellphone.

When joining the VGK (Video Gay Kids) group, the defendant was happy, because the defendant in the group saw a lot of videos of harassment and sexual perversion committed by adult men against underage boys and with underage girls. and the defendant often saw or watched videos of sexual harassment and abuse by adult men against boys as well as with underage girls.

The indictment of the Public Prosecutor in the Decision of the South Jakarta District Court Number 1466/Pid.Sus/2017/PN JKT.SEL is a combination indictment, in which the cumulative indictment with alternative charges is combined or combined using several articles as follows:

1. First: Article 27 paragraph (1) Jo. Article 45 paragraph (1) of Law Number 19 of 2016 on Amendments to Law Number 11 of 2008 on Information and Electronic Transactions
2. Article 4 paragraph (1) letter a and f Jo. Article 29 of Law Number 44 of 2008 on Pornography
3. Article 4 paragraph (1) letter a and f Jo. Article 29 of Law Number 44 of 2008 on Pornography.

Based on the legal facts found, the Panel of Judges thinks that the defendant in disseminating Electronic Information and/or Electronic Documents which has content that violates the morality of the act was carried out by the defendant intentionally because the defendant knew and was aware of the act and its legal consequences, namely Electronic Documents which had contents that violated decency. Thus, the element without rights or against the law

disseminates Electronic Information and/or Electronic Documents that have contents that violate cultural values. Furthermore, regarding the second element, what is meant by unlawful or against the law is any party who is not justified by the laws and regulations to produce, create, reproduce, disseminate, broadcast, import, export, offer, trade, rent or provide pornography that explicitly contains intercourse, including deviant intercourse

Because all elements of Article 4 paragraph (1) in conjunction with Article 29 of Law No. RI. 44 of 2008 on Pornography has been fulfilled, then the Defendant must be declared to have been legally and convincingly proven to have committed a crime as charged in the second indictment.

The decisions handed down by the Panel of Judges in Case Number 1466/Pid.Sus/2017/PN JKT.SEL are as follows:

1. Stating the Defendant Hermawan alias. Uher has been legally and convincingly proven guilty of committing a crime "without rights or against the law, distributing Electronic Information and/or Electronic Documents that have contents that violate decency" and trading child pornography";
2. Sentencing the Defendant with imprisonment for 3 (three) years and 6 (six) months and a fine of Rp. 500,000,000.- (five hundred million rupiah), provided that if the fine is not paid, it is replaced with imprisonment for 3 (three) months;
3. Determine the period of arrest and detention that has been served by Defendant to be deducted entirely from the sentence imposed;
4. Determine that the defendant remains in custody.

In this decision which protection arises because of a legal relationship. [9] Legal Protection can be interpreted as a certainty form of protection given by the law and the regulations with the purpose of creating a security, discipline and justice. [10]

In the event that the child as a victim has been optimally carried out, even in the investigation process, the investigator must attach the results of the litmas (community research) from the social service related to the impact of a criminal act that he experienced and this will be considered by the public prosecutor and judge. In the context of children as perpetrators of criminal acts, one example of legal policies that have been carried out by the police, prosecutors and judges is Diversion, namely the transfer of settlement of children's cases from the criminal justice process to outside the criminal justice process specifically

crimes committed by children who threaten the sentence is less than seven years and is not a repeat of the crime. This is a mandate from the System Juvenile Justice Criminal Act which is coercive and as an obligation that must be fulfilled

and has sanctions if the APH (law enforcement officers) intentionally does not carry out it or does it improperly. Because diversion must be attempted before the investigation begins and is sought by prosecutors and judges. In the event that a child who commits a crime commits a crime and is sentenced to imprisonment, the child is placed separately from adults, namely in LPKA (Children's Special Penitentiary) with the rights regulated in the Juvenile Criminal Justice System Act. relating to children's cases such as social services, The commission of woman and children in order to recover the trauma experienced by children victims of violence (more so for sexual violence), instilling religious knowledge and moral ethics as an early prevention effort

This legal protection has an important role to protect a person's rights in an existing legal relationship. Protection provided by law can be in the form of protection for consumers, protection for witnesses and victims, and also protection for children.

The implementation of child protection is very important to ensure that all children can be cared for and raised in a supportive environment that can fulfill all their basic rights according to their physical, psychological and social needs so that they can grow and develop optimally. All child protection organizers have their respective duties and functions which are mutually bound under the understanding of protection as a forum. The form of child protection in a country is in its various efforts to fulfill all the basic rights of children and to protect them from various possibilities of neglect, abuse, violence and exploitation

Law Number 23 of 2002 on Child Protection has so far been amended 2 (two) times, namely amended by:

1. Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection
2. Law Number 17 of 2016 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection To become a constitution

Law Of Child Protection Act aims to ensure the fulfillment of children's rights so that they can live , grow, develop, and participate optimally in accordance with human dignity, as well as receive protection from violence and discrimination, for the realization of quality, noble, and prosperous Indonesian children. [11]

But unfortunately, Law of Child Protection was drafted with less emphasis on the family, like a child a separate entity from the family. The context of children's rights is not related to their rights and obligations as part of their family. In addition, Law of Child Protection also does not regulate what the rights of parents in the family are, the rights and obligations of family members in the family, and what and

how the government plays a role in ensuring that parents carry out their obligations properly. [12]

### 3. CONCLUSION

In this conclusion section, the author will describe a brief answer regarding the legal protection of minors through sexual crimes in the online realm in terms of Law Number 35 of 2014 on Child Protection (Case Study of Decision Number 1466/Pid.Sus/2017/ Pn Jkt. Sel) which the author adopted as the formulation of the problem in writing this thesis. The existing regulations, namely to protect and guarantee all children's rights so that they are not injured from crime, are quite good, but in implementation it can be said to be lacking, this is none other than the lack of understanding from several parties, such as parents, the community and the surrounding environment.

The case in this decision proves that there is still a gap for perpetrators of crimes related to children, where perpetrators who have been proven to have committed criminal acts intentionally selling and distributing videos of immoral children should receive the harshest punishment, but the judge actually lightened the sentence. In other words, in deciding the case the judge still uses his conscience in deciding the defendant, even though there is no guarantee that the defendant will not repeat the act.

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