

## JURIDICAL REVIEW OF STEP FATHER'S ABILITY AGAINST CHILDREN (CASE STUDY OF DELI SERDANG CHILD PROTECTION INSTITUTE)

<sup>1</sup>Yusfirda Aziza Rangkuti, <sup>2</sup>Nelvitia Purba

<sup>1,2</sup> Fakultas Hukum Universitas Muslim Nusantara Al-Washliyah Medan

<b>Keywords</b>	Abstract. This study aims to determine the legal arrangements against child molestation by stepfathers. The method used in this research is Juridical Empirical or called field research, which is to examine the applicable legal provisions and what happens in reality in society. Empirical juridical research is legal research regarding the enforcement or implementation of normative legal provisions in action on certain legal events that occur in society. In this study, the classification of criminal acts of harassment is regulated in several laws and regulations, such as the Criminal Code, Law no. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection and the PKDRT Law.
Protection, Preservation, Historic Building	


Email : [iyusfrida@gmail.com](mailto:iyusfrida@gmail.com)  
[nelvitiapurbaumn@gmail.com](mailto:nelvitiapurbaumn@gmail.com)

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### 1. INTRODUCTION

The Indonesian state is based on law (rechtsstaat), not based on mere power (machtsstaat). The conception of the rule of law implies that the state provides legal protection for citizens through the institution of an independent and impartial judiciary and guarantees human rights. According to Moh. Kusnardi, Harmaily Ibrahim, that the state of law is a state that stands above the law that guarantees justice to its citizens. Children are the foundation and hope of all parents. Children are the only successors of the nation who have a big responsibility for achieving the ideals of the nation. A child based on the definition in Article 1 Number 1 of Law No. 35 of 2014 concerning Child Protection explains that "A child is someone who is not yet 18 years old and is even still in the womb". Further explanation in Law N0 11 of 2012 concerning the Juvenile Criminal Justice System, explains that "Children are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime". Talks about children and their protection will never stop throughout the history of life, because children are the next generation to come. The good and bad future of the nation also depends on the good and bad conditions of the children at this time. In this regard, the treatment of children in a good way is our collective obligation, so that they can grow and develop properly and can become carriers of the minutes of this nation's civilization. but not yet 18 (eighteen) years of age who is suspected of committing a crime". Talks about children and their protection will never stop throughout the history of life, because children are the next generation to come. The good and bad future of the nation also depends on the good and bad conditions of th children at this time. In this regard, the treatment of children in a good way is our collective obligation, so that they can grow and develop properly and can become the bearers of the minutes of this nation's civilization. but not yet 18 (eighteen) years of age who is suspected of committing a crime". Talks about children and their protection will never stop throughout the history of life, because children are the next generation to come. The good and bad future of the nation also depends on the good and bad conditions of the children at this time. In this regard, the treatment of children in a good way is our collective obligation, so that they can grow and develop properly and can become the bearers of the minutes of this nation's civilization. The good and bad future of the nation also depends on the good and bad conditions of the children at this time. In this regard, the treatment of children in a good way is our collective obligation, so that they can grow and develop properly and can become the bearers of the minutes of this nation's civilization. The good and bad future of the nation also depends on the good and bad conditions of the children at this time. In this regard, the treatment of children in a good way is our collective obligation, so that they can grow and develop properly and can become the bearers of the minutes of this nation's

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civilization.

Protection of children is not a new thing, in fact the protection has become part of the child. Since birth, humans have had essential rights, namely human rights, with these human rights humans can get protection and determine their own lives.<sup>4</sup> If a child becomes a victim of crime then for legal protection of course more attention must be paid because children are the next generation of the nation. For the crime of sexual violence experienced by child victims, of course, it has a deep trauma or bad memory effect on the child, this affects the behavior, lifestyle and behavior of the child in the future.

The increasing number of cases of sexual violence against children proves that this problem is not just an ordinary problem, but is a serious problem that must be handled by the government, one example of a case of sexual violence that is very emotionally draining is the case of sexual violence against children that occurred in September 2019 in Tanah 600 Village, Medan Marelan Sub-district, which was experienced by a stepdaughter who was carried out by her father. Perpetrators commit sexual violence by sexual intercourse with the victim when her mother goes shopping in the morning, not only sexual violence, the child also receives threats from the perpetrator which makes him psychologically disturbed and afraid to tell his mother.

Children as creatures of God Almighty and social beings, from the time they are conceived until they are born have the right to live and be independent and receive protection both within their parents, family, community, nation and state, therefore there is no human being or other party who may deprive them of the right to life and liberty.

The perpetrators of today's rape crimes are not only committed by adults but are also carried out by teenagers and children, even tragically the one who commits the sexual intercourse is none other than the victim's stepfather. The method of implementation or the way of working or better known as the Modus Operandi of the crime of sexual intercourse is different, some are carried out individually and some are carried out in groups. The perpetrators usually know their victims and sometimes the victims are family members of the perpetrators themselves.

Perpetrators of sexual intercourse are not dominated by those who come from middle or low economic groups, let alone lacking or not educated at all, but the perpetrators have penetrated all social strata from the lowest to the highest strata. These crimes can arise due to environmental influences and psychological backgrounds, even due to spontaneous psychological shocks due to sexual stimulation.

Uncontrolled sexual stimulation gives birth to criminal acts of decency, especially the crime of sexual intercourse. This crime can be carried out by threats, coercion, violence and can even be carried out by using chemical substances that can eliminate a person's consciousness as well as cause sexual stimulation without realizing it.

Victims of sexual intercourse do occur a lot in today's society, where minors are the main target. This is because minors are indeed very potential victims of sexual intercourse, because their position is the weakest in the structure so that this makes it easier for perpetrators of sexual intercourse to carry out their actions and results in increasing victims of sexual intercourse with children.

When compared with the punishment given to the perpetrator of sexual intercourse, it is lighter than the consequences suffered by the victim. Children who are victims of sexual intercourse will experience prolonged trauma that will affect their mental development. In this case, this is where law enforcers pay attention to incidents like this in imposing criminal penalties for criminals.

Based on the background that has been formulated above, the writing is interested in raising this issue into a research entitled: "A Juridical Review of Legal Protection Against Children as Victims of Sexual Abuse Perpetrated by Stepfathers

Based on this, the formulation of the problem can be formulated as follows:

1. What are the legal arrangements for child molestation by stepfathers?
2. What is the form of legal protection for children as victims of sexual abuse committed by stepfathers?

The objectives to be achieved in this research:

1. To find out the legal arrangements for child molestation by stepfathers.

2. To find out the form of legal protection for children as victims of obscenity committed by stepfathers.
3. To find out if there are elements of the stepfather's fornication?

## 2. METHOD

In writing this thesis, the author doesn't research to obtain data or collect various necessary data, facts and information. The data obtained must have a relationship that is relevant to the problem being studied, so that it has qualifications as a proportional scientific writing system.

The data to be used in this legal research comes from 2 (two) sources, namely:

- a) Primary data is data that has been obtained directly from the first source or the source of origin from the field or data obtained directly through interviews with competent sources. In this case, people or groups of people as well as banking institutions, students majoring in Legal Studies, and Notaries/PPATs who are bound by the case are examined.
- b) Secondary data is data obtained from books as complementary data for primary data sources. Sources of secondary data in this study are data that have been obtained by conducting a literature review.<sup>4</sup> The secondary data are books on banking law, mortgage law and other government regulations.

Analysis techniques to process data obtained from literature searches, document studies, so this study uses qualitative analysis. This qualitative analysis is basically an explanation of the theories put forward, so that from these theories several things can be drawn that can be concluded and discussed in this thesis.

## 3. RESULTS AND DISCUSSION

### A. Factors that cause perpetrators to commit sexual acts against children

Factors causing the occurrence of criminal acts of sexual abuse against children are divided into two, namely internal factors and external factors. Data were obtained based on interviews with resource persons from psychologists and the police. The author conducted an interview with Oka Hendri (on Monday, June 20, 2022) who is the deputy head of the child protection institution at the Serdang Deli Serdang City of Medan who has directly handled cases of perpetrators and victims of criminal acts of sexual abuse against children and he is also the one who accommodates and takes care of the children of the victims. The official obscenity under the auspices of the LPA (Child Protection Agency) mentions cases of criminal acts of sexual abuse against children that occurred in the Deli Serdang Regency Region.

### B. How is the application of material criminal law regarding the crime of sexual immorality by fathers against stepchildren in case decisions?

The case studied by the researcher is the case of a criminal act of sexual abuse committed by the stepfather against the child. 81 paragraphs (1) and (3) of the Republic of Indonesia Law No. 35 of 2014 concerning amendments to the Republic of Indonesia Law No. 23 of 2002 concerning Child Protection.

Based on the position of the case as described above, the indictment in this case is the authority of the panel of judges to choose the most appropriate indictment to be applied with the defendant's needs related to the facts revealed in the trial and the evidence presented by the public prosecutor including the testimony of witnesses who have been justified, by the defendant and the confession of the defendant who honestly admits his actions. Therefore, the Makassar District Court Judge stated that all elements of the defendant's actions had fulfilled the formulation of the offense in Article 81 paragraphs (1) and (3) of Law Number: 35 of 2014 concerning Amendments to Law Number: 23 of 2002 concerning Protection Child.

Based on the articles suspected by investigators that have been stated in the Public Prosecutor's Indictment Letter number: PDM-191/MKS/Ep/03/2015 and applied in decision number: 553/Pid.B/2015/PN.MKS namely Article 81 paragraphs (1) and (3) of 2014 concerning amendments to the RI Law no. 23 of 2002 concerning child protection which has the following elements:

1. Subjective element Everyone, in this case the defendant RP.

## 2. Objective Element

### **C. Efforts to Combat the Crime of Obscenity Against Children in the Denpasar Police District**

Crime prevention efforts are known by various terms, including penal policy, criminal policy, or strafrechtspolitiek. In the context of tackling crimes against various means as a reaction that can be given to criminals, in the form of criminal and non-criminal means, which can be integrated with one another.

The law is formed on the desire and awareness of each individual in society, with the intention that the law can run as aspired by the community itself, which requires harmony and peace in the association of living together. A person who commits a crime will be held responsible for the act with a criminal if he has a mistake, someone who has a mistake if at the time of committing the act seen from the perspective of society shows a normative view of the error he has committed.

### **D. What is the form of legal protection for children as victims of obscenity committed by stepfathers?**

The position of the victim in criminal justice as a party seeking justice has been neglected. When examined from the purpose of punishment in positive criminal law, criminals receive more attention such as rehabilitation, treatment of offenders, social adaptation, correctional services, and others. This is a form of injustice for the victim, because being the aggrieved party is only functioned as a vehicle for verification and not sporadically nor is the victim's human rights neglected.

Criminal responsibility related to the perpetrators of the crime of rape is a study that has recently been debated. The term "deterrent effect" is synonymous with news about rape, especially if the victim is a child. Criminal sanctions for the crime of rape in the Child Protection Act recognize imprisonment and fines, and there are minimum and maximum limits. Provisions for criminal sanctions relating to sexual violence (rape) against children are contained in Article 81 of Law Number 35 of 2014 in conjunction with Law Number 23 of 2002 concerning Child Protection and also Law Number 23 of 2004 concerning Elimination of Domestic Violence The steps for articles 46, 47 and 48. However, the criminal formulation system in the provisions of Articles 46, 47, and 48 of the Domestic Violence Law is an alternative (jail or fine). The alternative formulation causes the punishment that can be imposed is only one of them, imprisonment or a fine. Sexual violence against women, especially biological children, is currently increasing. This is because the Criminal Code and the Law are considered less effective, therefore the government has passed a government regulation in lieu of Law no. 1 of 2016 became Law No. 17 of 2016 which imposes heavier penalties for perpetrators of sexual violence crimes, one of which is by imposing chemical castration. the culprits.

Legal protection for children aims to claim the fulfillment of children's rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and prestige, and receive protection according to violence and discrimination, for the realization of quality, noble, and moral Indonesian children. prosperous. The rules regarding the treatment of sexual violence against children are clearly regulated in Law no. 23 of 2002 jo. Law No. 35 of 2014 concerning child protection in Article 81, as well as the Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence. The implementation of legal protection for children who become victims is not as aphorismal as the law provides. Although not yet aphorism, but there are several forms of legal protection that have been given to children who become victims of synchronicity of Law no. 35 of 2014 which is still contained in Article 64 paragraph (3), that children who become victims receive rehabilitation both on forums and outside the forum, protection efforts and reporting of self-evidence through mass media to avoid labeling, awarding safety collateral for victim witnesses and expert witnesses both physical, mental, and social, the gift of accessibility to receive coverage of the development of the case.

The crime of sexual violence against biological children includes how the role of criminal rules in reviewing and completing and applying synchronous criminal penalties uses actions that are carried out according to the nature of the criminal rules that are coercive and can be enforced, so that any act

that violates the rules can be subject to suffering in the form of sanctions. Due to the fact that the criminal code and the law are believed to be ineffective, according to that the government has passed a government regulation in lieu of Law no. 1 of 2016 as Law Number 17 of 2016 amendment to Law Number 23 of 2002 which imposes heavier sanctions for perpetrators of sexual violence crimes, including using chemical castration.

#### 4. CONCLUSION

The classification of criminal acts of harassment is regulated in several laws and regulations, such as the Criminal Code, Law no. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection and the PKDRT Law. In line with the case that the author analyzes, it is more appropriate to use the Child Protection Act Article 81 paragraphs (1) and (3) which meet the following elements: Everyone commits violence forcing the child to perform sexual obscene acts with him. Performed by the parent, guardian, or caregiver of the child.

In the case where the author analyzes the elements that have been met, a person who commits a criminal act of sexual abuse against a minor will be sentenced to a maximum of 15 years in prison. While the crime of sexual intercourse committed by the father against the child is sentenced to be added 1/3 (one third) of the previous criminal threat.

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