

## Legal Analysis of Criminal Regulations in Cases Criminal act Child Abuse Under Law Child Protection Act

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**Abstract** In Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, there is an article that prohibits obscene acts, which is regulated in Article 76E which reads: "Everyone is prohibited from committing violence or threats of violence, coercing, committing tricks, committing a series of lies, or persuading children to commit or allow obscene acts to be committed." Furthermore, Article 76D which reads: "Everyone is prohibited from committing violence or threats of violence to force a child to have intercourse with him or with another person. This research was conducted with the aim of finding out how to protect the law for children who are victims of criminal acts of obscenity and how to prove and apply the law to criminal acts of obscenity committed by children. The research method conducted in this study is a normative juridical research method so that it can be concluded as follows: 1. Child protection. is regulated in Law Number 23 of 2002. In addition to Law No. 23 of 2002 concerning Child Protection in protecting victims of child abuse, Law No. 13 of 2006 concerning the Protection of Witnesses and Victims can also protect victims of child abuse and victims of other criminal acts. 2. Evidence in the crime of obscenity uses evidence in accordance with the Criminal Code. The valid evidence according to Law No. 8 of 1981 is regulated in Article 184 of the Criminal Procedure Code which consists of witness statements, expert statements, letters of recommendation, and information of the defendant. In the application of the law against child molesters, Article 82 of Law Number 23 of 2002 concerning Child Protection can be applied by using the mechanism and system of child justice, namely Law Number 11 of 2012 concerning the Child Criminal Justice System.

**Keywords** : Criminal Regulation, Criminal Acts, Obscenity.

### 1. INTRODUCTION

A criminal act is an act that is prohibited by a legal regulation, the prohibition of which is accompanied by a threat or sanction in the form of a specific criminal penalty, in other words other action criminal is every action and also action Which done intentionally or unintentionally to another person is prohibited by rule law can stated as violate law And will charged sanctions criminal certain as Which has arranged. Based on Various formulations of criminal acts are of course inseparable from the word action. and the perpetrator, meaning there is someone who carries out a criminal act so that called as the perpetrator or perpetrator. Between perpetrator with his actions naturally must There is connection mental health or psychological Which influence, so realization action nature oppose law to victim Which impact negative. So that action somebody new called as a criminal act if it fulfills certain elements related to criminal act.

An act criminal can punished if action Which done fulfil all element the as well as as action oppose law. Based on Book Constitution Law Criminal Which abbreviated (Criminal Code) existence distribution act criminal that is crime Which set up in Book II (Second) and the violations are contained in Book III (Third) of the Criminal Code. In more detail specifically one form of criminal act that is increasingly frequent done by person No responsible even

considered as a common problem, which has resulted in many victims experiencing impact bad covering person mature, teenager And children as perpetrator or the victim, namely sexual abuse. Sexual abuse comes from the word cabul, namely anything various forms of actions that take the form of good actions carried out by oneself yourself or do it on person other.

Molestation That Alone has set up on Criminal Code Chapter XIV Book II of Chapter 281 until Chapter 303 Which categorized as crime to decency. Chapter 289 The Criminal Code states that :

Anyone who uses violence or the threat of violence to force someone to For do or let done action obscene, threatened Because committing acts that attack honor, morality, with prison most long Nine years.

Molestation is Wrong One act criminal or crime Which nature sexual activity carried out by anyone, at any time, without distinguishing time or place and without general will, in the sense that it is carried out by one of the parties burdening other parties. , this has a very bad impact especially for the victims. Because the victims receive physical and psychological threats, this related to human rights violations and will degrade the dignity and dignity man, especially health physique, mentally, And spiritual. Besides That, Also

classified as acts that violate human morality and decency, among others other contact with the genitals and other body parts that can stimulate sexual desire. This is for example done with massaging the genitals or to stroke genitals, hugging and kissing the victim.

Child protection has been united in Law No. 35 Year 2014 with in a way firm determined right child, For give Protection of children still requires a protection law the formation of laws is deemed necessary considering that protection child in all its aspects is part from activity development national. Protection law For child that is that accountability of parents, family, government, society and country in is series activity Which implemented continously for the sake of to protect the rights of the child. In this activity, it continues and directed towards the child's body and child development, both in terms of mentally, physique, social and also spiritual. Action Which intended For realize life Which best for child expected as successor a nation and state that has potential, is resilient, and has nationalism. can inspired by morals noble and Pancasila values.

According to dictionary law, obscene have meaning vile, dirty, No indecent because it violates decency and morality. Indecent behavior is any form of behavior, Good Which done to self Alone or person other, Which involving, or relating to, the genitals or other parts of the body, which can stimulate social desire. Obscenity may be the most important part from the problems in Indonesia today, based on the philosophy of Pancasila. This is very contrary to our

religious society.

Case of sexual harassment against child lately more increasing and worrying. If a child becomes a victim of a crime and must witness it, then he must be protected and enjoy his rights. in accordance with Article 59 of Law Number 17 of 2016 on Child Protection, which states that state institutions have task And not quite enough answer For give protection special to child.

The surrounding environment has a big influence on behavior and personality child. For that's it child need guidance, guidance And protection from person old, Teacher And person mature other in time its development. Protection child Already There is And introduced by the government to combat the crime of sexual harassment. The crime of sexual harassment against children can be considered as an immoral crime that can be detrimental the future of children, the crime of sexual abuse needs to be handled properly seriousness of law enforcement officers in Indonesia towards the crime of indecent assault towards children as regulated in Article 82 in conjunction with Article 76E of Law no. 35 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection Which the formula is : Every person with on purpose do violence or threat violence, force, do cheattrickery, or a series of lies or persuading a child to do something or allowing indecent acts to be committed, shall be punished by imprisonment for a minimum of 5 years. (five) And most long 15 (five twelve) year And fine most Lots Rp.5,000,000,000.00 (five billion) rupiah).

### **Formulation Problem**

From description in on then that can made formulation problem is :

- a. How to Setup Action Criminal Molestation Towards Children in Perspective Child Protection Act.
- b. How is Accountability Criminal To Perpetrator Molestation Children Based on the Perspective of Child Protection Law in Indonesia

### **Theoretical Basis on the Urgency of Legal Protection for Children**

According to Article 1 Paragraph (2) of Law Number 35 of 2014 concerning Child Protection, it is stated that:

“Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and honor and receive protection from violence and discrimination.”

In general, child protection efforts can be divided into direct and indirect protection, and legal and non-legal protection. Direct protection efforts include: providing something to protect and save children from something that is dangerous, preventing anything that can harm

or sacrifice children, supervision, guarding against disturbances from within or outside themselves, coaching (mental, physical, social), socialization of formal and informal education, care (asah, asih, asuh), rewards , regulations in laws and regulations. (Eko Riyadi,2022)

Meanwhile, indirect protection efforts include: preventing other people from causing harm, sacrificing the interests of children through statutory regulations, increasing proper understanding of children as well as their rights and obligations, counseling on child and family development, providing something that benefits children, development (mental, physical and social) of participants other than the child concerned in the implementation

Legal protection for children in general in international documents states that legal protection for children can be interpreted as an effort to protect the law against various freedoms and human rights of children and various interests related to the welfare of children. Sudikno Mertokusumo stated that legal protection is in accordance with the theory of legal interpretation, namely one method of legal discovery that provides a clear explanation of the text of the law so that the scope of the rules can be determined in relation to certain interpretations. (Nur Afdhaliyah,2019)

The interpretation of the judge is an explanation that leads to the implementation that can be accepted by the community regarding legal regulations on concrete events. This interpretation method is a means of knowing the meaning of the law. The justification lies in the usefulness of implementing concrete provisions and not for the sake of the method itself. 10 The urgency or importance of legal protection for children as victims of crime should be given because children as the successors of the nation and state must continue to be maintained and their welfare must be protected. (Ismantoro Dwi Yuwono,2015)

The quality of protection for children should have the same degree or level as protection for adults. Because everyone has the same position before the law. Therefore, the state together with the entire community works together in providing protection to children from victims of criminal acts committed by irresponsible people who use children as a place of crime. (Hambali Thalib,20233)

Children are an inseparable part of the survival of humans and the sustainability of a nation and state so that they will be able to be responsible for the sustainability of the nation and state. Every child needs to get the widest possible opportunity to grow and develop optimally, both physically, mentally, and socially. For this reason, it is necessary to make protection efforts to realize child welfare by providing guarantees for the fulfillment of rights without any discriminatory treatment.

The state upholds Human Rights (HAM), including Children's Rights which are

marked by the guarantee of protection and fulfillment of children's rights in the 1945 Constitution of the Republic of Indonesia and several other provisions of laws and regulations, both national and international. This guarantee is strengthened through the ratification of international conservation on Children's Rights, 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.

The state, government, local government, society, family and parents are obliged to provide protection and ensure the fulfillment of children's human rights in accordance with their duties and responsibilities. (Arif Gosita,1999) The most important thing in legal protection for victims of child molestation is to think about the future because victim protection should not only be carried out until the verdict is complete but must continue until the child is truly worthy of his life again and can live and develop in accordance with what the child should receive. (Ni Made Darmakanti,2022)

In the process of investigation to trial, legal assistance is needed for child victims of sexual abuse. Because in this case a child will definitely express all the rights that have been experienced, therefore legal assistance is needed such as law enforcement and even parents of child victims of sexual abuse, in the process of investigation to trial will be asked to explain or not asked to explain a child victim that has been experienced (Susani Triwahyuningsih,2018) . Legal protection for children is a law that guarantees children's rights and obligations. The problem of legal protection for children is one side of the approach to protecting Indonesian children. The problem is not only approached legally, but requires a broader approach, namely economic, social and cultural.

In this law it is clearly stated that children are the potential and successors of the nation's ideals whose foundations have been laid by the previous generation. That children are not yet able to maintain and protect their own welfare, therefore, protection for children is the responsibility of the government in protecting the rights of these children. The Indonesian government has actually made various efforts to protect these children based on the law. Formally, namely by issuing several laws related to children, namely Law of the Republic of Indonesia Number 17 of 2016 concerning the second amendment to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, and ratifying several international conventions related to children. This clearly shows the government's efforts in dealing with the problem of sexual violence against minors, but in practice in the field, until now legal protection efforts for child victims of sexual violence are still unclear, as well as the procedures for how children can get legal protection. (Reza Ayu Pratiwi,2019)

## **2. METHOD STUDY**

Method study Which used is descriptive analytical. Study Which nature give description to object Which researched, analyze a regulation law. Study This use method legal normative, with approach Which nature qualitative. Method research legal normative is method study Which referring to on norms laws contained in statutory regulations. Data sources that used are secondary data sources such as: books, journals, articles and information from *websites* or data obtained by researchers indirectly from the object but from other sources, both oral and written. Information materials the can be:

- a. Material Law Primary that is ingredients law Which tie, for example Criminal Code (KUHP), and the Criminal Code Law Program Criminal (Criminal Procedure Code), Constitution Number 35 Year 2014 About Protection Child.
- b. Material Law Secondary that is ingredients Which close the relationship with primary legal materials that support the writing of this thesis and can help complete material law primary, like : writing for expert, paper or work write.
- c. Tertiary Legal Materials are materials that provide information about primary legal materials and secondary legal materials, such as the internet, newspapers, and media others. With this method, data is collected through library materials, books, and other theoretical sources, and the results of this research as a solution to main problem in thesis This. All over data Which Already obtained And collected will then be reviewed and analyzed. This data will be analyzed in a way qualitative Which right outlined in a way descriptive. Based on study The qualitative method aims to interpret qualitatively And describe in a way complete with main problem Which furthermore analyzed For to reveal truth understand truth the.

## **3. DISCUSSION ANALYSIS**

### **Regulation of Criminal Acts of Child Molestation in the Perspective of the Child Protection Law in Indonesia**

The crime of sexual abuse is a type of crime that has a very bad impact, especially on the victim, because sexual abuse will violate human rights and can damage human dignity, especially against the soul, mind and descendants. The crime of sexual abuse against children as victims is regulated in the Criminal Code and in special regulations, namely as follows:

- a. Criminal acts of child molestation based on the Criminal Code:

The crime of child molestation under the Criminal Code is contained in in Article 290 paragraph (2) and (3), 292, 293, and 294 paragraph (1) of the Criminal Code,

namely:

1. Article 290 of the Criminal Code: "Threatened with a maximum imprisonment of seven years:

- a. Whoever commits an obscene act with a person who he knows or should suspect is not yet fifteen years old or, if his age is not clear, is not yet marriageable;
- b. "Any person who induces a person whom he knows or should suspect to be under fifteen years of age or whose age is not clear or who is not yet marriageable, to commit or allow an obscene act to be committed, or to have sexual intercourse outside of marriage with another person."

2. Article 292 of the Criminal Code

"An adult who commits an indecent act with a person of the same sex, who he knows or should reasonably suspect is a minor, is subject to a maximum prison sentence of five years."

3. Article 293 paragraph (1) of the Criminal Code

Whoever, by giving or promising money or goods, misuses the bearer of the rights arising from a relationship of circumstances, or by misleading intentionally induces a minor of good conduct to commit or allow an obscene act to be committed with him, even though he knows or should reasonably suspect his minority, shall be punished by a maximum imprisonment of five years.

4. Article 294 paragraph (1) of the Criminal Code

Any person who commits an obscene act with his child, stepchild, adopted child, child under his supervision, who is not yet an adult, or with a minor whose care, education or care is entrusted to him or with his servant or underling who is a minor, is threatened with imprisonment for a maximum of seven years in prison.

b. Criminal acts of child molestation based on the Law on Child Protection.

The Law on Child Protection emphasizes that the responsibilities of parents, families, communities, governments and the state are a series of activities carried out continuously to protect children's rights. The series of activities must be sustainable and directed to ensure the growth and development of children, both physically, mentally, spiritually and socially. This action is intended to realize the best life for children who are expected to be potential, resilient successors of the nation, who have nationalism inspired by noble morals and Pancasila values.

The crime of indecent assault committed by adults against children is subject to Article 76D and 76E of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely as follows; Article 76D, namely "Everyone is prohibited from committing violence or threats of violence to force a child to have sexual intercourse with him or with another person". Article 76E, namely "Everyone is prohibited from committing

violence or threats of violence, forcing, committing trickery, committing a series of lies, or persuading a child to commit or allow indecent acts to be committed".

Visum et Repertum is one of the 5 (five) valid forms of evidence regulated in Article 184 paragraph (1) in conjunction with Article 187 of the Criminal Procedure Code (KUHP), namely written evidence. In relation to child molestation, the results of the Visum et Repertum from a doctor play an important role because this letter shows that it is truly medically proven that the child has experienced a criminal act of molestation.

In essence, every criminal act must consist of external elements (facts) by the act, containing behavior and consequences caused by it. According to Moeljatno quoted by Syamsudin and Aris, the elements or elements of a criminal act are as follows:

- a. Behavior and consequences (actions);
- b. The circumstances or conditions accompanying the act;
- c. Additional circumstances that aggravate the crime;
- d. Objective unlawful elements; And
- e. Subjective unlawful elements.

Every criminal act can generally be described in terms of elements which can basically be divided into two types of elements, namely subjective elements and objective elements.

The elements of the crime of child molestation in the Criminal Code are as follows:

1. Article 290 paragraph (2) of the Criminal Code

a. Objective elements

1. Indecent acts;
2. With one;
3. The person is not yet 15 years old or if the age is unclear, the person concerned is not yet ready to be married.

b. Subjective elements

It is known or should be suspected that the age is not yet 15 years. Indecent acts are always related to acts of the body or body parts, especially parts that can stimulate lust. For example, the genitals, breasts, mouth and so on which are considered to violate public morality. The object of the crime according to Article 290 paragraph (2) of the Criminal Code can be a man or a woman.

2. Article 290 paragraph (3) of the Criminal Code

a. Objective elements

1. Persuade;



2. The victim is not yet fifteen years old or if her age is unclear, she is not yet ready to be married.
3. Committing indecent acts, committing indecent acts, or having sex outside of marriage.
- b. Subjective elements What is known is that the age is not yet fifteen years old, or if it is not clear, the age concerned is not yet ready to marry. Persuading is the act of influencing the will of another person so that the will of that person is the same as his will. In persuading is attracting the will of a person in a way that is tempting. The nature of enticing is more appropriate, because the person being persuaded is a child who is psychologically still innocent or naive whose will is more easily influenced than an adult.
3. Article 292 of the Criminal Code
  - a. Objective elements
    1. Indecent acts;
    2. Performed by adults;
    3. Same sex.
  - b. Subjective elements That which is known to be immature or that which should be suspected to be immature. This article protects minors from people known to be homosexuals and lesbians. Homosexuals and lesbians are attracted to people of the same sex (homosexuals), while lesbians are women whose characteristics are lust for the same sex (homosexual women).

The elements of the crime of child molestation in the Law on Protection are as follows:

1. Article 76D of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.
  - a. Each person;
  - b. Has committed violence or threatened violence to force a child to have sexual intercourse with him or another person.
2. Article 76E of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.
  - a. Each person;
  - b. Committing violence or threats of violence, forcing, committing fraud, telling a series of lies, or persuading a child to commit or allow indecent acts to be committed;
  - c. In the case of several acts being committed together which must be viewed as separate acts and therefore constitute several crimes which are subject to the same principal punishment.

## **Criminal Responsibility for Perpetrators of Child Molestation**

To avoid the need If a person's mental health is questionable, a psychiatrist will conduct an examination and issue a certificate stating that the individual cannot be held responsible for all his activities that commit immoral acts against minors and if the person does it must be held responsible according to what he does whether it is in a conscious or unconscious state, unconscious in the sense of drinking alcoholic beverages. (Nursariani Simatupang,2018)

When a person is held accountable for their actions as a result of committing a crime. In essence, criminal culpability is a mechanism established by criminal law to respond to the violation of certain "consent agreements" of an act.( Tjut Dhien Shafina,2018)

Criminal liability must be concerned with the criminal law must function For give birth to public Which fair And prosperous, material And spiritual. Law criminal play a role for prevent or overcome such actions No desired. In addition, using the criminal law option with negative sanctions must pay attention to the costs and work opportunities of authorized officials so that its implementation does not result in excessive workload. Criminal liability or when someone has committed a crime can have the following formula: (Maidin Gultom, 2014)

1. Able to take responsibility
2. Error
3. There isn't any reason forgiving

Accountability criminal in law criminal in know with existence three the main elements, namely:

1. Element deeds. deeds someone is connecting factor and basis for imposing criminal sanctions on action person the.
2. Element Person or Actor. Subject crime or man So, in knowledge This about inner self, namely the perpetrator's mistake. Only with this internal relationship can the perpetrator be held accountable for prohibited actions. And only achieved If There is a crime Which the perpetrator can in criminal law.
3. Element criminal looking from the perpetrator. Sanctions criminal is suffering Which with on purpose dropped to people who carry out actions that meet certain conditions. To be responsible answer in a way criminal, must There is error. There is two type errors, namely intentional and negligent.
  - a. Deliberation consists of 3 (three) types, namely as follows:
    1. Intentional so that the perpetrator can asked for accountability and easy understood by public general. If his intention is a crime like that, then the perpetrator deserves to be

punished. Because with Meaning the, perpetrator very want to reach a as a result, which become reason main from threat punishment This.

2. Intentional malice This malicious certainty exists when the perpetrator's actions are not directed at the result that is the basis of the action, but he is fully aware that the consequences will be follow his actions in matter What even.
  3. Realizing this intentional possibility, it was apparently not accompanied by shadow certainty that results Which wanted will happened, but only imagine possibility mere from results that. Also in the relation with negligence, Because is error form Which make somebody responsible responsible for his actions. (Faisal, 2021)
- b. Negligence (Culpa). Negligence is between intentional and deliberate, but fault is considered lighter than deliberate. Therefore Therefore, the crime is a quasi-delict ( *quasideliet* ), so the punishment is reduced. Violation There is two type that is negligence consequent And crime without consequences, but threatening the crime is that negligence Alone, difference both of them very easy understood that is Negligence that results from his actions. If this result occurs, it has occurred. violation. Negligence, for they Which No need take action whatever Because negligence That Alone is a crime.
- Elements Which including in act criminal negligence is:
- a. No make assumption law What even, although That show that the defendant believe that consequence from his actions No will occurs if the belief is not true. The error lies in the wrong thinking/concept that needs to be eliminated. The defendant did not believe that the prohibited consequences could occur as a result of his actions. The error is not having a vague idea that the consequences Which Possible is attitude Which dangerous.
  - b. Carelessness Which required in a way law in context This refers to the lack of research on the policies, skills/cautions that found in state/manner act certain

Criminal penalties are more severe in nature compared to penalties in other legal fields (civil law or state administrative law).<sup>35</sup> This type of criminal sanction in the Criminal Code is regulated in Book I General Provisions Article 10 of the Criminal Code that criminal penalties are divided into two, namely the first principal penalty consisting of the death penalty, imprisonment, detention, fines, and closure. Second, additional penalties consisting of the revocation of certain rights, confiscation of certain goods, and the announcement of the judge's decision. (Frans Maramis,2012)

Book I of the Criminal Code is a foundation that also applies to criminal regulations outside the Criminal Code, so that criminal sanctions formulated by lawmakers are guided by Article 10 of the Criminal Code. Law Number 23 of 2002 concerning Child Protection which

has been amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, in formulating sanctions against acts referred to as criminal acts or violence against children is also guided by Article 10 of the Criminal Code. (Emy Rosna, Abdul Fatah, 2020)

The types of sanctions that can be imposed for such acts are imprisonment and fines formulated cumulatively or alternatively. Criminal sanctions regarding indecent acts against children are specifically regulated outside the Criminal Code, namely in Article 1 of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, namely:

Several provisions in Law Number 23 of 2002 concerning Child Protection (State Gazette of the Republic of Indonesia of 2002 Number 109, Supplement to the State Gazette of the Republic of Indonesia Number 4235) as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (State Gazette of the Republic of Indonesia of 2014 Number 297, Supplement to the State Gazette of the Republic of Indonesia Number 5606) are amended as follows: (Moeljatno, 2008)

The provisions of Article 81 are amended to read as follows:

1. Any person who violates the provisions as referred to in Article 76D shall be punished with imprisonment of at least 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).
2. The criminal provisions as referred to in paragraph (1) also apply to anyone who intentionally commits deception, a series of lies, or persuades a child to have sexual intercourse with him or another person. 3)
3. In the case of a criminal act as referred to in paragraph (1) being committed by a parent, guardian, person who has a family relationship, child caretaker, educator, education personnel, officer who handles child protection, or is committed by more than one person together, the penalty shall be increased by 1/3 (one third) of the criminal threat as referred to in paragraph (1).
4. In addition to the perpetrators as referred to in paragraph (3), an additional 1/3 (one third) of the criminal threat is also imposed on perpetrators who have been convicted for committing a crime as referred to in Article 76D.
5. In the event that the criminal act as referred to in Article 76D results in more than 1 (one) victim, results in serious injury, mental disorder, infectious disease, impaired or loss of reproductive function, and/or the victim dies, the perpetrator shall be sentenced to death, life

imprisonment, or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years.

6. In addition to being subject to the criminal penalties as referred to in paragraph (1), paragraph (3), paragraph (4), and paragraph (5), the perpetrator may be subject to additional penalties in the form of announcing the perpetrator's identity.
7. The perpetrators as referred to in paragraph (4) and paragraph (5) may be subject to action in the form of chemical castration and the installation of electronic detection devices.
8. The actions referred to in paragraph (7) are decided together with the main criminal penalty by including the time period for carrying out the action.
9. Additional penalties and actions excluded for child perpetrators

Based on Roeslan Saleh's opinion above, it can be understood that in applying criminal sanctions and criminal responsibility, it is not only seen from the aspect of the occurrence of the crime but also the ability to be responsible and the purpose of the punishment to create justice based on legal certainty, Roeslan Saleh further said Regarding punishment and criminal responsibility, Roeslan Saleh stated: "regarding how, the law is what determines who is considered as the responsible perpetrator. Once it has been confirmed that someone is the one who must be held accountable for the criminal act that occurred, then the next step is to confirm whether he also meets the requirements needed for that responsibility." (Febrina Annisa)

That from the opinion it can be concluded about the conditions for whether or not someone can be held accountable is not only limited based on Article 44 of the Criminal Code but must also be seen other conditions for the occurrence of a crime so that there is a balance between the act and the ability to be accountable. By applying a criminal sanction for 5 years to the perpetrator of the crime, the author does not agree with the decision.

The provisions of Article 64 paragraph (1) of the Criminal Code state that 'if between several acts, even though each is a crime or violation, there is a relationship in such a way that it must be viewed as one continuing act, then only one criminal regulation can be imposed, if different, the one imposed contains the most severe principal criminal threat'. The judge should also consider the impact of the defendant's actions committed against the victim of indecent assault, by imposing the heaviest sentence considering that the impact of the defendant's actions caused severe trauma and caused disgrace from the defendant's actions committed against the victim and imposing a sentence that is burdensome for the Defendant of the Criminal Act of Indecent Assault.( Fahrurrozi, 2018)

The crime of indecent assault is not only regulated in the Criminal Code but it is also regulated in the Republic of Indonesia Law Number 17 2016 Concerning the Second

Amendment to Law Number 23 year 2002 About Protection Child. Perpetrator molestation No again being charged with the articles contained in the Criminal Code, but more specifically applied Constitution Republic Number 17 Year 2016 About Second Amendment to Law Number 23 of 2002 Concerning Child protection. This is in line with the principle of *lex specialis derogat legi generali*, which means Special Law (Law of the Republic of Indonesia) Indonesia Number 17 of 2016 Concerning the Second Amendment to Law No. Invite Number 23 Year 2002 about Protection child) put aside Constitution Which general in nature (Criminal Code).

Action Criminal Molestation can done by anybody And against anyone. Anyone who commits a crime of indecent assault must be responsible for the mistakes that have been made. The thing that most concerning is when children become victims of criminal acts molestation.

Child Which become victim in violence molestation will experience trauma Which very heavy And prolonged consequence incident the, most child Which has become victim No easy For forget incident bad Which has they experience. A child Which Already become victim violence molestation This need have special companion to recover from the trauma he has experienced. Trauma from violence molestation This differentiated become six group that is: Depression. Eating Disorders, *Syndrome Trauma Molestation*, *Hypoactive Sexual Desire Disorder*, And *dyspareunia*. All trauma on violence molestation the can handled although No easy and no direct but it takes a long time long. Trauma This can managed with Good If get support And help Which appropriate, so that victim from violence This can healed in a way gradually And can accept fact. (Haritsa, 2022)

Accountability Criminal child as a perpetrator of a criminal act of indecent assault based on Article 82 Paragraph (1) Constitution Republic Indonesia Number 35 Year 2014 about Protection Child Which state:

"Every person Which with on purpose do violence or threat violence, force, do cheat trickery, a series of lies or persuading a child to do something or let done action obscene, convicted with imprisonment of up to 15 (fifteen) years and a fine of up to Lots Rp. 5,000,000.00 (five billion rupiah)".

Connection the perpetrator with his actions determined by the responsible ability of the perpetrator. He realizes the essence of action Which will he did, can to know depravity from action And can determine whether will he did action the or not. There is none there is "reason for forgiveness", that is ability responsible, form will with on purpose or alpha, there is nothing deleted his mistake or there is nothing there is forgiving, is including in the sense error.

In Article 64 Paragraph 3 Special Protection for children who become victim act criminal as meant in Paragraph 1 implemented through, that is:

1. Effort rehabilitation, Good in institution and also outside Institution
2. Effort protection from news identity through media mssa And avoid labeling
3. Giving guarantee safety for witness victim And witness expert, Good physique, mentally, and also social.
4. Granting access to obtain information regarding case developments.

The criminal provisions as stated in Law No. 35 of 2014 apply if the perpetrator of child molestation is an adult. If the perpetrator of child molestation is also a child, then the provisions of Article 82 paragraph 2 of the SPPA Law apply, namely the prison sentence that can be imposed on a child is a maximum of 1/2 (one half) of the maximum prison sentence for adults. However, this criminal responsibility can only be applied to child molesters who are 14 years old to under 18 years old. Because if a child commits molestation when he is 12 years old but under 14 years old in accordance with the provisions of Article 69 paragraph 2 of the SPPA Law, he will be subject to sanctions only. Sanctions based on Article 82 paragraph 1 of the SPPA Law include return to parents/guardians; surrender to someone; treatment in a mental hospital; treatment at LPKS; obligation to attend formal education and/or training held by the government or private sector.

*retributive justice* model approach that is only oriented towards the perpetrator and pays less attention to the fate of the victim and what the victim really wants because the victim is not directly involved in determining the resolution of the case. The state represented by law enforcement officers in this case, the Judge in court, generally does not directly take over the rights of the victim in the name of law enforcement through applicable procedures. (Judhariksawan Mustafa Bola, 2004)

The results of the study also show that the factors that influence the criminal responsibility of perpetrators of sexual abuse are age factors and the fulfillment of the victim's rights by the perpetrator and/or the perpetrator's family. The age factor referred to here is the legal consequences that will be imposed by each judge in examining cases of sexual abuse against children will be clearly different both in terms of treatment and the length of imprisonment. Different treatment between child perpetrators and perpetrators who are classified as adults according to the law will also affect the form of sanctions which are criminal responsibility for the actions committed by the perpetrator.

As previously discussed in the explanation of the form of criminal responsibility above, the provisions on maximum and minimum criminal sanctions in accordance with Law

Number 35 of 2014, especially in Article 28, will not be fully applied to perpetrators of child molestation who are still classified as children. So if the perpetrator of child molestation is also a child, then the provisions of Article 81 paragraph 2 of the SPPA Law apply, namely the prison sentence that can be imposed on a child is a maximum of 1/2 (one half) of the maximum prison sentence for adults. With the note that this criminal responsibility can of course only be applied to child perpetrators of child molestation who are 14 years old to under 18 years old. (Laden Marpuang,2004)

The first form of financial responsibility is of course, criminal responsibility carried out by adult perpetrators which can be seen in the provisions of Article 82 paragraph (1) must be seen as inseparable from Article 76E of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, from the explanation of the article above it is known that, criminal responsibility for the crime of indecent acts by adult perpetrators is in the form of imprisonment of at least 5 years and a maximum of 15 years and is subject to a criminal sanction of a maximum fine of five billion rupiah, while for child perpetrators there are differences in terms of handling and burdening of criminal responsibility there are differences between children and adults, but in fact the treatment is also different for children, due to differences in culture and community conditions, which also influence the differentiation of the use of minimum and maximum age limits in positive law in a country.

The existence of such a distinction also reflects the variation in the personal maturity and thinking of children in one country compared to another. Determining a certain age limit used means taking the average measure of personal maturity and thinking of children in general at that age , in a particular country. In this context, the emphasis is on the element of similarity in the child. (Wirjono Prodjodikoro,2003)

#### **4. CONCLUSION**

##### **Conclusion**

The legal provisions for the crime of child molestation against children as stated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, are stated in Article 76 E and Article 82. In Article 82 of Law Number 35 of 2014, it is stated that the legal sanctions imposed on perpetrators of the crime of indecent acts are imprisonment for a minimum of five years and a maximum of fifteen years and a maximum fine of five billion rupiah, while if the perpetrator is the parent, guardian, child caretaker, teacher (educator) then the criminal sanctions are increased by one third of the above threat.

Accountability criminal Which done by perpetrator mature Which can seen in The



provisions of Article 82 Paragraph (1) must be viewed as inseparable with Chapter 76E Constitution Number 35 Year 2014 about Change on Constitution Number 23 Year 2002 about Protection Child, from explanation Chapter in on known that, accountability criminal act criminal molestation by perpetrator who are adults, namely, a minimum prison sentence of 5 years And maximum 15 years and subject to criminal sanctions of a maximum fine (maximum) as much as five billion rupiah.

## 5. SUGGESTION

The suggestion that I can give in this journal is that the legal provisions for child molestation crimes in Indonesia can be implemented properly by the authorities so that it can have a deterrent effect on perpetrators of child molestation crimes and can reduce cases of child molestation crimes in Indonesia.

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