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LEGAL PROTECTION FOR CHILDREN AS VICTIMS OF THE CRIMINAL OFFENSE OF SEXUAL MOLESTATION FROM THE PERSPECTIVE OF INDONESIAN SPECIAL CRIMINAL LAW

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ABSTRACT

Sexual violence against children, particularly the criminal offense of molestation (pencabulan), constitutes an extraordinary crime that threatens children's growth, psychological health, and future as a vulnerable group. This article aims to analyze the special criminal law framework governing child molestation in Indonesia, its elements and penalties, sentence-aggravation mechanisms, and the protection of child victims' rights. The study employs a normative-juridical method with a statute and conceptual approach, examining the Criminal Code, Law Number 35 of 2014 on the Amendment of Law Number 23 of 2002 on Child Protection, Law Number 17 of 2016, Government Regulation Number 70 of 2020, and related special-criminal-law literature. The findings show that the regulation of child molestation is lex specialis, departing from the general Criminal Code, with the offense's elements comprising acts violating decency committed through violence, threats, deceit, or persuasion directed at a child, as regulated in Articles 76D and 76E in conjunction with Articles 81 and 82 of the Child Protection Law, carrying a special minimum sentence of five years' imprisonment up to the death penalty, with possible aggravation through chemical castration and electronic monitoring devices for certain offenders. Beyond punitive measures, the legal system also provides for the restoration of victims' rights through restitution, psychosocial rehabilitation, and witness protection. Challenges include low reporting rates, evidentiary limitations, slow psychological recovery processes for victims, and ongoing ethical and human-rights debates over chemical-castration sanctions. The study concludes that effective legal protection for child victims of molestation requires strengthened law enforcement guided by the best interests of the child, without disregarding the principles of legal certainty and human rights for all parties.

Keywords: *Child molestation; special criminal law; child protection; chemical castration; victims' rights*

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1. INTRODUCTION

Children are a vulnerable group that requires special protection from the state, the family, and society, as mandated by Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. One of the most serious violations of children's rights is the criminal offense of molestation (pencabulan) — an act violating decency committed against a child through violence, threats of violence, deceit, a series of falsehoods, or persuasion (Ministry of Law and Human Rights of the Republic of Indonesia, 2022). Case-handling data from various regions show that child molestation continues to occur, perpetrated by a diverse range of offenders, including individuals closest to the victim, such as family members, caregivers, and educators.

The regulation of molestation under the Criminal Code (KUHP), specifically Articles 289 through 296, is considered not yet fully adequate to provide special protection for children as victims, whether in terms of the severity of penalties or protective mechanisms. This condition has driven the development of special criminal law in the field of child protection through Law Number 23 of 2002 on Child Protection, as amended by Law Number 35 of 2014, and further strengthened through Law Number 17 of 2016 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 on Child Protection (Rosifany, 2020).

As part of special criminal law, the regulation of child molestation has the character of lex specialis, departing from the general provisions of the Criminal Code, among others through the application of a special minimum sentence, aggravated sanctions for offenders who have an authoritative relationship with the victim, and additional sanctions in the form of chemical castration. At the same time, the legal system is also required to provide comprehensive protection and restoration of victims' rights, rather than focusing solely on the punishment of offenders.

Based on the foregoing, this article addresses three central issues: (1) how the criminal offense of child molestation is regulated within Indonesia's special criminal law system; (2) what the elements of the offense, the applicable penalties, and the mechanisms for aggravating sanctions against perpetrators of child molestation are; and (3) what forms of protection and restoration of child victims' rights exist, along with the challenges faced in law enforcement.

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2. RESEARCH METHOD

This study employs a normative-juridical method (doctrinal legal research) with a statute approach and a conceptual approach. Primary legal materials include the Criminal Code, Law Number 35 of 2014 on the Amendment of Law Number 23 of 2002 on Child Protection, Law Number 17 of 2016, Government Regulation Number 70 of 2020, and Law Number 31 of 2014 on the Amendment of Law Number 13 of 2006 on the Protection of Witnesses and Victims. Secondary legal materials were obtained from books, scholarly journals, and research findings concerning special criminal law and child protection. The analysis was conducted using a descriptive-qualitative approach to address the research questions.

3. RESULTS AND DISCUSSION

3.1 Regulation of the Criminal Offense of Child Molestation within Indonesia's Criminal Law System

In general, the criminal offense of molestation is regulated in Chapter XIV of the Criminal Code concerning crimes against decency, specifically Articles 289 to 296, which govern acts of molestation against persons in general, without any specific provisions for child victims. These provisions were subsequently reinforced by special regulation under the Child Protection Law as a form of criminal law policy providing greater protection for children as victims (Rosifany, 2020). Article 76D of the Child Protection Law prohibits any person from committing violence or the threat of violence to force a child into sexual intercourse, while Article 76E prohibits any person from committing violence or the threat of violence, coercion, deceit, a series of falsehoods, or persuasion to cause a child to commit or permit the commission of an act of molestation (Hukumonline, 2024).

The definition of a child in this context refers to Article 1 point 1 of the Child Protection Law, namely a person who has not yet reached the age of 18 (eighteen) years, including a child who is still in the womb (Universitas Surabaya, CALYPTRA, 2020). The status of this regulation as lex specialis affirms that, in cases of molestation in which the victim is a child, law-enforcement officials are obliged to apply the Child Protection Law rather than the general provisions of the Criminal Code, in accordance with the principle of lex specialis derogat legi generali.

3.2 Elements of the Offense, Penalties, and Aggravation of Sanctions

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The elements of the criminal offense of child molestation under Article 76E of the Child Protection Law comprise: (1) any person, as a legal subject who may be either an individual or a corporation; (2) committing violence, threats of violence, coercion, deceit, a series of falsehoods, or persuasion; and (3) a child, as the victim of the act violating decency (Universitas Surabaya, CALYPTRA, 2020). The applicable penalty is set out in Article 82 paragraph (1) of Law Number 17 of 2016, namely imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years, together with a fine of up to Rp5,000,000,000.00 (five billion rupiah) (Hukumonline, 2024).

Law Number 17 of 2016 introduced a number of sanction-aggravation provisions not previously recognized under earlier regulations. Article 81 paragraph (3) provides for a one-third increase in the sentence where the offense is committed by a parent, guardian, a person with a family relationship to the victim, a child caregiver, an educator, an education staff member, a law-enforcement official, or another party who should be protecting the child. Further aggravation applies where the offense is committed on a continuing basis, by more than one person acting together, or results in more than one victim, serious injury, mental disorder, infectious disease, impaired or lost reproductive function, and/or the death of the victim — circumstances under which, in certain conditions, the offender may be sentenced to death, life imprisonment, or imprisonment for a maximum of 20 (twenty) years (Sianipar, Naldo, & Pasaribu, 2025).

3.3 Additional Sanctions and the Controversy over Chemical Castration

In addition to the principal penalty, Law Number 17 of 2016 introduced additional sanctions in the form of public disclosure of the offender's identity, as well as measures such as chemical castration, the installation of electronic monitoring devices, and rehabilitation, as further regulated under Government Regulation Number 70 of 2020 on Procedures for the Implementation of Chemical Castration, Installation of Electronic Monitoring Devices, Rehabilitation, and Public Disclosure of the Identity of Perpetrators of Sexual Violence against Children (Sianipar, Naldo, & Pasaribu, 2025). Chemical castration has on several occasions been imposed by the courts on perpetrators of sexual violence against children where the number of victims exceeds one, with aggravation considered under Article 81 paragraph (7) of Law Number 17 of 2016 (Hukumonline, 2019).

This policy has given rise to legal and human-rights debate, as some observers — including the National Commission on Human Rights (Komnas HAM) — consider that chemical castration

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potentially conflicts with the prohibition against torture and cruel, inhuman, or degrading treatment, as guaranteed under Law Number 39 of 1999 on Human Rights, while its effectiveness in preventing recidivism has also been questioned (Universitas 17 Agustus 1945 Surabaya, 2024; Asyari, 2023). On the other hand, proponents of the policy argue that sanction aggravation is necessary to provide a deterrent effect and maximum protection for children as victims of repeated sexual crimes.

3.4 Protection and Restoration of Child Victims' Rights

Beyond the punishment of offenders, the special criminal law system also comprehensively provides for the restoration of child victims' rights. Article 71D of the Child Protection Law grants a child victim of a criminal offense the right to seek restitution from the offender through a court determination, the technical implementation of which is further regulated in a Government Regulation on procedures for granting restitution. Protection for children as witnesses and/or victims is also governed by Law Number 31 of 2014 on the Amendment of Law Number 13 of 2006 on the Protection of Witnesses and Victims, which guarantees legal and psychological assistance and protection of the victim's identity throughout the judicial process.

The psychosocial recovery of victims is likewise addressed through the provision of rehabilitation services by relevant institutions, including the Ministry of Women's Empowerment and Child Protection, the Women's and Children's Service Unit (UPPA) of the Indonesian National Police, and community-based service organizations, to ensure that child victims receive holistic recovery rather than support oriented solely toward the offender's legal process (Rayyan Jurnal, JLEB, 2025).

3.5 Challenges in Law Enforcement

Law enforcement against the criminal offense of child molestation continues to face a range of challenges. First, low rates of case reporting due to shame, fear, the power relationship between offender and victim, and social pressure within the family and community. Second, evidentiary limitations, given that this offense often occurs without witnesses other than the victim, meaning the child victim's testimony plays a critical role while requiring a child-friendly examination approach. Third, disparities in the application of aggravated sanctions across jurisdictions, including differing judicial considerations in imposing chemical castration (Rayyan Jurnal, JLEB, 2025). Fourth, limited capacity of psychosocial rehabilitation institutions for child victims, particularly in regions with limited access to services.

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4. CONCLUSION

The criminal offense of molestation against children is specifically regulated under the Child Protection Law as a form of lex specialis departing from the general provisions of the Criminal Code, with the elements of the offense consisting of acts violating decency committed through violence, threats, deceit, or persuasion directed at a child. The applicable penalties are severe, ranging from a special minimum sentence of five years' imprisonment up to the death penalty, together with the possibility of aggravated sanctions in the form of chemical castration and electronic monitoring devices for offenders who have an authoritative relationship with the victim or whose offense results in serious consequences.

Alongside its punitive dimension, the legal system also guarantees the restoration of victims' rights through restitution, witness protection, and psychosocial rehabilitation. Nevertheless, the effectiveness of this legal protection continues to face challenges in the form of low reporting rates, evidentiary limitations, disparities in the application of sanctions, and limited victim-recovery services. Strengthened synergy among law-enforcement institutions, the provision of child-friendly examination services, and enhanced capacity of rehabilitation institutions are therefore needed, so that legal protection for child victims of molestation is genuinely oriented toward the best interests of the child, as mandated by universal principles of child protection.

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