Ethics Analysis And Legal Protection Of Sexual Abuse Of Children With Disabilities

Aditya Nefa Wiranda¹, Yeni Widowaty²
adityanefawiranda27@gmail.com
¹,² Master of Law, Muhammadiyah University Yogyakarta, Indonesia

Article Info

Received: 2023-08-12
Revised: 2024-02-21
Accepted: 2024-06-29

Abstract

This research aims to analyze ethics and legal protection, as well as develop a deeper understanding of the impact of sexual abuse on children with disabilities. Furthermore, this article uses a normative juridical method. The research seeks to explain and describe in detail the legal norms relating to the protection of children with disabilities from sexual abuse. The findings in this research are that legal protection against sexual abuse of children with disabilities requires a holistic approach. Law Number 8 of 2016 provides a strong foundation by emphasizing equal rights in the judiciary and accessibility of public facilities. Protection strategies, such as special norms, harsh penalties, responsive justice systems, and supervision, demonstrate full commitment to realizing security and justice. The concept of the state of material law supports preventive and repressive protection, ensuring effective implementation. Judges’ considerations and analysis of legal ethics are the main pillars in upholding justice, ethics, and human rights. By integrating all these aspects, the legal protection system can be optimal in protecting children with disabilities from sexual abuse fairly and ethically.

I. Introduction

Children are the heirs of descendants and the successors of ideals. Children are also prepared to have a strategic role and have special characteristics and traits that guarantee existential continuity in a country and nation in the future (Noer, 2019). Therefore, treatment of children must require special or specialized treatment and emotional stability (Andini, 2019). Article 1, paragraph (1) of the Republic of Indonesia Law number 35 of 2014 concerning child protection is a person who is not yet 18 years old, including children who are still in the womb (Kemensesneg, 2014). Children have the
right to growth and development, the right to survival, and the right to protection from physical and sexual violence and discrimination, as stated in state constitution number 35 of 2014 (Fazli, 2004).

A child who is a victim of sexual violence needs special attention. Special treatment involving parents, government, and society is needed (Kurniasari, 2019). When children experience sexual violence in their past, the child will have the potential to commit acts of violence when they grow up. Children who experience sexual violence will also experience trauma, both physical and psychological. UU no. 23 of 2002 Article 20 states that the state, government, community, family, and parents are obliged and responsible for implementing child protection (Melati, 2016). This article explains that every citizen must play a role in implementing child protection (Sekaran et al., 2018). When sexual violence occurs against children, it is the concern and responsibility of every citizen (Hasbi Umar et al., 2017).

Child sexual abuse is a form of detrimental crime, not only physically and mentally damaging the victim but also violating human rights. In this context, children with disabilities are a vulnerable group who often face a higher risk of sexual abuse (Rohmah et al., 2015). According to Law Number 8 of 2016, people with disabilities are people who experience physical, intellectual, mental, and sensory limitations for a long period in interacting with the environment and can experience inequality in access to information, education, and health services. This may increase their vulnerability to sexual exploitation and abuse (Kayowuan et al., 2020). Children with disabilities often experience inequalities in access to information, education, and health services, which can increase their vulnerability to sexual exploitation and abuse. Protecting and guaranteeing the rights of children with disabilities is an important effort to prevent sexual harassment against this vulnerable group (Jamaludin, 2021).

However, the regulation of criminal sanctions for perpetrators of criminal acts of sexual abuse against children with disabilities still does not have a law that specifically regulates it. However, there is a legal framework that can be used as a reference in child protection, especially in the Child Protection Law Number 35 of 2014 and Government Regulations instead of Law Number 1 of 2016, which is the second amendment to Law Number 23 of 2002 concerning Child protection (Suryandi et al., 2020). In this framework, criminal sanctions are regulated for perpetrators of crimes of sexual violence against children, which can include cases of sexual abuse against children with disabilities. Although no law explicitly addresses the molestation of children with disabilities, the Child Protection Law and its derivative regulations provide a legal basis that can be used as a basis for regulating criminal sanctions. This reflects efforts to create uniform protection for children, including those with disabilities, from all forms of sexual violence (Wahyuningsih et al., 2022).

In further developments, it is important to continue to consider the need for more specific and explicit laws regarding criminal acts of sexual abuse against children with disabilities. By formulating more detailed and focused legal provisions, such laws can provide better protection and ensure that perpetrators of sexual crimes against children with disabilities are subject to criminal sanctions commensurate with the severity of the crime. In addition, special legislation will explicitly strengthen the protection of children with disabilities, reflecting the law’s seriousness towards their rights and well-being (Sari...
et al., 2021).

In the context of research on ethical analysis and legal protection of sexual abuse of children with disabilities, the use of legal protection theory and ethical theory is considered a critical analytical tool. Legal protection theory provides a clear legal basis for assessing the protection provided by legal systems, involving analysis of relevant laws, regulations, and international conventions (Umar et al., 2018). In addition, a focus on the effectiveness of legal implementation provides insight into the extent to which such laws and regulations are implemented in practice. On the other hand, ethical theory carries essential moral values in understanding and evaluating the treatment of children with disabilities. Ethical principles, such as justice, equality, and human rights, form the basis for assessing the conformity of protective actions with moral norms. Ethical theory also strengthens the view that every protective action must respect human rights, including the rights of children and people with disabilities, and uphold human dignity (Wismayanti et al., 2019). Using these two theories together provides a holistic approach that deepens understanding of the issue of sexual abuse of children with disabilities. The theory of legal protection provides a concrete, binding basis, while the theory of ethics ensures that every action reflects moral principles and high human values. With the combination of these two theories, research can provide comprehensive analysis and formulate protection policies that are more effective and rooted in solid ethical and legal foundations (Willis, 2018).

Previous research has also discussed similar cases, namely research from (Anwar, 2021), regarding Legal Protection for Children with Disabilities from Violence; apart from that, similar research was also discussed by (Azhar et al., 2023), which discusses sexual violence against women with disabilities who are vulnerable to becoming victims. At the same time, Novelty’s research highlights the importance of integrating ethical dimensions as a central component in handling sexual abuse against children with disabilities. In addition, this research involves analyzing the impact of sexual abuse, more specifically on children with disabilities, opening new perspectives regarding their specific needs and how protection can be adapted to these conditions. An in-depth understanding of the psychological, social, and physical impacts is integral to this research novelty. Engagement with relevant previous research and bringing these concepts into the research framework also makes an important contribution (Mawarni et al., 2023).

By building on previous research findings and methodology, this research creates a more complete narrative and enriches understanding regarding the complexities of sexual abuse in children with disabilities (Gibbs et al., 2020). Thus, the main novelty of this research lies in a thorough investigation of the interaction between ethics and legal protection, as well as the development of a deeper understanding of the impact of sexual abuse on children with disabilities. It is hoped that the results of this research can form the basis for changes in policy, practice, and public awareness, creating safer and more inclusive environments for children with disabilities in the future.

2. Research Method

The approach method used in this research is a normative juridical approach. This
approach was chosen because this research focuses on ethical analysis and legal protection related to the sexual abuse of children with disabilities. The normative juridical approach method allows research to explore the legal and normative framework that regulates the protection of children with disabilities from sexual abuse. The research specification is descriptive (Mawarni et al., 2023). With this approach, the research seeks to explain and describe in detail the legal norms relating to the protection of children with disabilities from sexual abuse. This description includes an explanation of laws, regulations, and legal theories that are relevant to the context of sexual abuse of children with disabilities.

In conclusion, the research results were conducted using a qualitative normative analysis method. A normative analysis approach is used to evaluate the sustainability and effectiveness of existing legal norms in protecting children with disabilities from sexual abuse. Qualitative methods are used because this research is interpretive and does not rely on statistical data. By prioritizing secondary data sources, such as statutory regulations, legal theories, and the opinions of leading legal scholars, this research aims to explore an in-depth understanding of ethical aspects and legal protection related to the issue of sexual abuse of children with disabilities.

About the title "Ethical Analysis and Legal Protection of sexual abuse of Children with Disabilities," a normative juridical approach and a descriptive approach are used to analyze and explain the ethical aspects and legal framework involving sexual abuse of children with disabilities. This research contributes to an in-depth understanding of legal norms that need to be evaluated and updated in order to increase the protection of children with disabilities from the risk of sexual abuse.

3. Results and Discussion

Forms of legal protection for sexual abuse of children with disabilities

Legislation, especially Law Number 8 of 2016 concerning Persons with Disabilities, firmly guarantees legal protection for children with disabilities who are victims of sexual violence. This law underlines the importance of special protection for children with disabilities, covering aspects of physical, psychological, economic, and sexual violence (Octaviana, 2019). Through this law, children with disabilities are recognized as having the same rights to obtain justice and legal protection as children in general. Their rights must be guaranteed and fulfilled throughout the judicial process, ensuring that they receive protection and access to the legal system fairly and equally (Joleby et al., 2021).

In addition, the law stipulates obligations for the government and regional governments to ensure accessibility to public service facilities for people with disabilities. This step aims to support the development of the potential and social functioning of children with disabilities (Vehmas, 2019). By ensuring accessibility, the government is committed to creating an inclusive environment and providing full support for children with disabilities to participate actively in society's social life. In conclusion, Law Number 8 of 2016 provides a strong legal basis for protecting children with disabilities from sexual violence, as well as pursuing their rights in the judicial process and supporting the development of their potential through the accessibility of public service facilities. This reflects a full commitment to creating an inclusive and fair society for all its citizens (Åker
Legal protection against sexual abuse of children with disabilities involves various aspects and strategies to ensure the safety, justice, and fulfillment of children’s rights. Some forms of legal protection that can be taken include:

- **Provide a clear legal basis regarding the protection of children from all forms of violence, including sexual harassment.** These laws should include specific provisions that recognize the conditions and vulnerabilities of children with disabilities. **Persons with Disabilities Act:** Establishes special protection norms for persons with disabilities, including children, to ensure they do not become victims of discrimination and violence. **Deterrent Punishment:** Includes strict and burdensome punishment provisions for perpetrators of sexual abuse of children with disabilities. This aims to create a deterrent effect and ensure justice for victims. **Responsive Justice System:** Ensure that the justice system is child-friendly and capable of handling sexual abuse cases by considering the special needs of children with disabilities, including supporting them in providing testimony. **Accessibility:** Ensure the accessibility of judicial facilities and legal processes for children with disabilities, including providing appropriate and supportive communication facilities. **Supervision and Monitoring:** Implement supervision and monitoring mechanisms for implementing the law on protecting children and persons with disabilities to ensure effectiveness.

To achieve optimal protection, this form of legal protection must be integrated, comprehensive, and focused on the special needs of children with disabilities (Josenhans et al., 2020).

In protecting and fulfilling citizens' civil rights, there is a debate regarding the role of government, which reflects two main concepts: the formal legal state and the material legal state or welfare state. The concept of a formal legal state characterizes a government with a limited role by the principle that "the government with the least power is the best." In this concept, the government is passive and subject to the people's will, depicting a liberalistic view in which individual rights take precedence. The government acts as an entity that implements the rule of law, but its involvement is limited to maintaining order and security (Wissink et al., 2018).
In contrast, the concept of a material legal state or welfare state emphasizes the government's active role in creating general welfare. In this context, the state is considered a tool created by humans to achieve a common goal, namely, realizing a just, prosperous, and happy social order for all its people (Fraser-Barbour, 2018). The government is expected to be proactively involved in creating social justice and prosperity. Forms of legal protection in this context are divided into two, namely preventive and repressive, as follows:

1. **Preventive Legal Protection**

   The government provides Preventive legal protection to prevent rights violations and crimes based on statutory regulations. This regulation functions as a guideline that directs criminal actions, conveys signs, and sets limits in the implementation of obligations, including in the context of sexual abuse against children with disabilities. (Wismayanti et al., 2019). Legislation designed to protect children with disabilities before sexual abuse occurs has become the main instrument in prevention efforts. The aim is not only to avoid criminal acts but also to provide clear guidance to society regarding the norms that must be followed. In the context of sexual abuse of children with disabilities, preventive legal protection is crucial. This involves implementing regulations that recognize and protect the special rights of children with disabilities, provide guidance for the prevention of abuse, and provide mechanisms to address disputes or violations that may occur (Willis, 2018).

   Preventive legal protection also plays a significant role in overcoming the freedom of action the government may have, especially in making decisions based on discretion. With clear and firm regulations regarding sexual abuse of children with disabilities, governments are expected to act carefully and consider the social, moral, and ethical impacts of their decisions (Mawarni et al., 2023). Thus, preventive legal protection not only creates a strong legal foundation to protect children with disabilities from sexual abuse but also provides direction that directs the government to act with wisdom and prudence.

2. **Repressive Legal Protection**

   Repressive legal protection is the final form that relies on punishment to respond to violations or disputes. Punishments such as imprisonment, fines, and additional penalties are a means of law enforcement after a violation is committed. In this context, the principle of legal protection for government activities is rooted in testimony and protection of Human Rights (HAM), focusing on the limitations and placement of government obligations (Gibbs et al., 2020). Legal protection against government actions is based on the principle of the rule of law and the protection and recognition of human rights. History shows that these concepts are directed at establishing limits and obligations for the government in carrying out its actions. General and Administrative Courts in Indonesia are important in providing legal protection against government actions (Fraley et al., 2018). However, people with disabilities often experience poor treatment and a lack of justice in their
surrounding environment. This situation can trigger them to isolate themselves or even be reluctant to participate in social activities. Legal protection against sexual abuse of children with disabilities is becoming increasingly urgent to ensure their rights are protected (Franklin & Smeaton, 2018).

Legal protection for children, including children with disabilities, aims to ensure that all children can undergo normal growth and development, both socially, physically, and mentally. Efforts to protect children must cover various aspects of their lives without inhibiting creativity, initiative, or independence. In the context of sexual abuse of children with disabilities, legal protection must be holistic, taking into account the special needs and challenges they face (Joleby et al., 2021). Thus, legal protection against sexual abuse of children with disabilities requires a comprehensive approach that does not only rely on punishment as a response to violations but also encourages prevention, public awareness, and increased accessibility of the legal system for children with disabilities (Vehmas, 2019).

Judge’s considerations

In the context of sexual abuse of children with disabilities, the judge's considerations play a central role as the juridical core of a decision. This consideration phase involves evaluating and analyzing the facts that emerged during the trial, starting from the indictment, demands, and exceptions of the defendant to the evidence presented and needed in proof (Åker & Johnson, 2020).

The judge’s consideration also includes an in-depth understanding of the articles in the legal regulations that form the basis for the decision. Every legal consideration must be based on the verdict, so every decision has a strong basis in law. In the context of protecting children with disabilities from sexual abuse, the judge's consideration is the main basis for ensuring that justice is served. Judges need to carefully consider the psychological and physical impacts that children with disabilities may experience and ensure that decisions taken are not only based on formal law but also reflect concern for the child’s special rights (Josenhans et al., 2020).

The very important position of the judge’s consideration in the decision is to avoid confusion and questions in the community. Therefore, the legal considerations must be clear, coherent, and accountable, giving the public confidence that the decision is based on the principles of law and justice. Thus, in the context of sexual abuse of children with disabilities, the judge's consideration is not just a formal aspect of the judicial process but is a deep and sensitive foundation for the protection of children’s rights and social justice. A legal consideration in a judge’s decision is considered sufficient if it meets the following minimum consideration requirements:

1. In the context of sexual abuse of children with disabilities, the judge's consideration is a crucial basis for making decisions based on law and legislation. Judges are expected to make comprehensive considerations, including formal and material law, both written and unwritten. When a judge decides without considering legal aspects, whether applicable legislation or relevant juridical principles, the decision can be declared null and void; the implementation of decisions that do not take into account the law can have a serious impact on justice and the public’s sense of trust
in the justice system. Decisions resulting from legal considerations are often referred to as legal decisions. However, it is important to remember that the legality of a decision does not always automatically fulfill society's sense of justice (Wissink et al., 2018). Therefore, judges must be able to bridge the gap between compliance with the law and a deep understanding of the specific context of sexual abuse of children with disabilities. In this case, judges need to combine sensitivity to the rights and protection of children, especially children with disabilities, with a deep understanding of the applicable law. Legal considerations must be a strong basis for the judge's decision to provide legal certainty and fulfill the community's sense of justice. Thus, judges are expected to ensure that every decision is legally valid and effective in realizing social justice (Fraser-Barbour, 2018).

2. Considerations for the sake of realizing justice. One of the aims of laws and regulations is to create justice. Consideration of the judge's decision from the aspect of justice is a very basic and core consideration. This consideration must be placed on the first and foremost priority above considerations according to law and legislation because it turns out that considerations for realizing justice have a very comprehensive content, including philosophical, sociological, psychological, and religious (Tonkin et al., 2018).

3. Considerations for realizing benefits. The considerations that must be made by judges, especially religious court judges, in handing down decisions must also take into account two things, namely benefits and harms. The judge's consideration is a stage where the panel of judges considers the facts revealed during the trial process (Judge et al., 2019). The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision, which contains justice and legal certainty; besides that, there are benefits for the parties concerned, so the judge's consideration must be addressed carefully, well, and carefully. If the judge's considerations are not thorough, good, and accurate, then the judge's decision originating from the judge's considerations will be annulled by the High Court/Supreme Court (Hawley et al., 2019).

Analysis of legal ethics in sexual abuse of children with disabilities

In developing a legal, ethical analysis related to the sexual abuse of children with disabilities, an in-depth understanding of the moral principles and ethical values that underlie legal protection for this vulnerable group is required. First of all, children’s rights as human rights must be the main basis for assessing justice and protection. The principle of non-discrimination is an important ethical basis, emphasizing that children with disabilities have the same rights regardless of their health condition (Hasbi Umar et al., 2017).

Legal ethics analysis also highlights the importance of prevention and awareness. Efforts to prevent sexual abuse of children with disabilities must be based on ethical values, ensuring that society understands and supports the protection of these children. In addition, sensitivity to the special circumstances of children with disabilities is an inevitable ethical principle, ensuring that legal processes consider their unique needs and challenges (Wismayanti et al., 2019). In this context, the active involvement of victims
becomes an ethical aspect that promotes justice. Law enforcement must provide a platform for children with disabilities to convey their experiences, feel heard, and have a role in the justice process. Awareness of stigmatization and unequal treatment becomes an integral part of ethical analysis, emphasizing the need to create an environment that supports and protects the rights of children with disabilities (Sari et al., 2021).

The balance between justice and protection is an ethical principle that must be upheld carefully. Judges and law enforcers must ensure that decisions reflect a fair balance and provide optimal protection for victims. In the context of integrity and transparency, legal decisions must be accountable, creating public trust in the justice system. Through the application of these ethical principles, it is hoped that legal analysis can provide fair and ethical solutions to sexual abuse of children with disabilities (Wismayanti et al., 2019).

Criminal Sanctions for Perpetrators of Sexual Violence Against Children with Disabilities

It is important to understand that the legal process and criminal sanctions against perpetrators of sexual violence against people with disabilities involve several stages. Below is a further explanation regarding criminal sanctions and legal processes:

**Criminal sanctions:**

1. **Article 285 of the Criminal Code:** Establishes criminal sanctions for rape committed against an unconscious or helpless person. These penalties can include prison sentences.
2. **Article 286 of the Criminal Code:** Regulates criminal sanctions for rape of minors. In the context of people with disabilities who are still children, perpetrators can be subject to criminal sanctions, including prison sentences.
3. **Article 287 of the Criminal Code:** Establishes criminal sanctions for threats or violence to commit obscene acts. If threats or violence occur against persons with disabilities, the perpetrator may be subject to criminal sanctions.
4. **Article 288 of the Criminal Code:** Regulates criminal sanctions for assault to commit obscene acts. If abuse occurs simultaneously with sexual violence against persons with disabilities, criminal sanctions can be applied.
5. **Article 290 Paragraph (1) of the Criminal Code:** Mentions criminal sanctions for rape, with a maximum prison sentence of approximately 7 years.

**Legal Process (Pre-prosecution):**

1. **Report:** Victims or parties who see the incident can make a report to the authorities, such as the police.
2. **Evidence Collection:** Investigators will gather evidence and information necessary to strengthen the case.
3. **Pre-prosecution:** Prosecutors conduct pre-prosecution to determine whether there is enough evidence to proceed to trial.
4. **Mediation or Agreement:** In some cases, mediation or a pre-prosecution
agreement may be entered into as an alternative to court.

5. **Prosecution and Trial:** If the case is deemed appropriate, the prosecutor will charge the perpetrator to court, and the court process will begin.

### 4. Conclusion

Legal protection against sexual abuse of children with disabilities requires a holistic approach. Law Number 8 of 2016 provides a strong foundation by emphasizing equal rights in the judiciary and accessibility of public facilities. Protection strategies, such as special norms, harsh penalties, responsive justice systems, and supervision, demonstrate full commitment to realizing security and justice. The concept of the state of material law supports preventive and repressive protection, ensuring effective implementation. Judges’ considerations and analysis of legal ethics are the main pillars in upholding justice, ethics, and human rights. By integrating all these aspects, the legal protection system can be optimal in protecting children with disabilities from sexual abuse fairly and ethically.

### References


