

CHAPTER I

INTRODUCTION

A. Background Study

Child is a gift from God to human. Every married couple wants a beautiful baby, but not every married couple has a chance to have a child. Children are the next generation of nation and the successor of development, meaning children are prepared as the subject of implementing sustainable development and the holder of the future control of country, no exception in Indonesia. That's why children are the greatest gift from God.

Indonesia as a state of law upholds the rights of every citizen. Every human being has the rights to obtain legal protection for both adult and children without exception. The terms of child protection are used in different ways by different organizations in different situations.¹ In Indonesia 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 the dignity and dignity of humanity, and receive protection from violence and discrimination.²

¹ Dan O'Donnell and Dan Seymour, "Child Protection: A Handbook for Parliamentarians," *Handbook for Parliamentarians No 7*, 2004, 170, doi:10.1098/rspb.2006.3659. Pages 8.

² "UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 35 TAHUN 2014 TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 23 TAHUN 2002 TENTANG PERLINDUNGAN ANAK," no. 1 (2014): 1–45, doi:10.1007/s13398-014-0173-7.2. Article 1 sub para 2.

Crime is increasing in the form of not only crime of life or poverty, but also another crime, including crimes involving the appearance of a property, crimes of sexual abuse that not only affects adults but also affect children. Child sexual abuse itself defined as any sexual activity between a child and closely related family member or between a child or an adult or older child from outside the family. It involves either explicit force or coercion or, in cases where consent cannot be given by the victim because of his or her young age, implied force.³

Sexual abuse on children is a lot happening and needs serious attention and treatment considering the consequences of child sexual abuse can cause prolonged trauma for the child. This trauma can adversely affect the poor physical and mental health of the child. The child will face the educational problems like dropping out from school, poor parenting skills later in life, homelessness, vagrancy and displacement, and in the end, it could shorten the lives of the children.⁴

Child sexual abuse are often practiced by some known by the child, including parents, other family members, caretakers, teachers, employers, law enforcement authorities, state and non-state actors and other children. Sexual abuse on children occur in homes, schools, institutions, workplaces, in travel and tourism facilities. The action included in child sexual abuse are incest, rape

³ Sussanna Greijer, Japp Doek, and Interagency Working Group, *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*, 2016, doi:10.1021/ja209246z. Pages 19.

⁴ O'Donnell and Seymour, "Child Protection: A Handbook for Parliamentarians." Pages 8.

of child, child sexual molestation, sexual touching of children, sexual harassment of a child, and online child sexual abuse.⁵

In 2014 the United Nation Children's Emergency Fund (UNICEF) estimates around 120 million girls under the age 20 have been subjected to forced sexual intercourse or other forced sexual acts at some point of their lives. Boys also report been experiences of sexual abuse. Yet the magnitude of sexual abuse is hidden because of its sensitive and illegal nature. Most children and families don't report cases of sexual abuse because of stigma, fear and lack of trust in the authorities. Social tolerance and lack of awareness also contribute to under-reporting.⁶

The World Health Organization (WHO) estimates 20% girls and 5%-10% boys have suffered sexual abuse as children. In the United State, approximately 44% of rape victim under the age of 18, and approximately 15% are under age 12. In 93% of cases of sexual abuse on child were reported, the perpetrator was known by the victim: 34% were family members and 59% acquaintances. Sexual abuse of boys is one of the few types of abuse of child is more likely to occur outside the home than in it.⁷

⁵ Greijer, Doek, and Interagency Working Group, *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*. Pages 20.

⁶ "Sexual Violence against Children | Child Protection from Violence, Exploitation and Abuse | UNICEF," accessed December 23, 2018, https://www.unicef.org/protection/57929_58006.html.

⁷ O'Donnell and Seymour, "Child Protection: A Handbook for Parliamentarians." Pages 106.

The Indonesia Child Protection Commission (KPAI) in 2015 found 218 cases about child sexual abuse. While in 2016 the KPAI found 120 cases about child sexual abuse. And in 2017 there are 116 cases about child sexual abuse.⁸ Meanwhile in 2018 child sexual abuses cases increase 26% from 2017.⁹ Based on data from the KPAI the sexual abuse of child in Indonesia is dominated by boys. It is proven, in 2017 the victim and the perpetrator by boys are 54% and girls are 46%.¹⁰

The head of Indonesian Child Protection Commission (KPAI), Susanto, said that had received 223 complaints about sexual abuse in February 2018 and this happens in almost all regions. First, the sodomy case in Aceh with a total of 26 children, then in Tangerang there were 45 children aged 7-15 years old. Then in Jambi there were 50 boys who became victims.¹¹

Also, the KPAI Commissioner for Education, Retno Listyarti, stated that the data she got from the East Java Regional Police was related to sexual abuse against children in East Java at the beginning of 2018 entering the end of February, the number of child victims has reached 117 children with 22

⁸ “Tahun 2017, KPAI Temukan 116 Kasus Kekerasan Seksual Terhadap Anak | Komisi Perlindungan Anak Indonesia (KPAI),” accessed December 23, 2018, <http://www.kpai.go.id/berita/tahun-2017-kpai-temukan-116-kasus-kekerasan-seksual-terhadap-anak>.

⁹ “Pusdatin Komnas PA Indonesia Catat Angka Kekerasan Seksual Anak Paling Tinggi - Tribun Manado,” accessed December 23, 2018, <http://manado.tribunnews.com/2018/08/20/pusdatin-komnas-pa-indonesia-catat-angka-kekerasan-seksual-anak-paling-tinggi>.

¹⁰ “Kasus Kekerasan Seksual Anak Didominasi Laki-Laki | Komisi Perlindungan Anak Indonesia (KPAI),” accessed December 23, 2018, <http://www.kpai.go.id/berita/kasus-kekerasan-seksual-anak-didominasi-laki-laki>.

¹¹ “Miris! Ada 223 Kasus Kekerasan Seksual Anak Dalam Dua Bulan Terakhir,” accessed February 10, 2019, <https://www.idntimes.com/news/indonesia/linda/223-kasus-kekerasan-seksual-anak-dalam-dua-bulan-terakhir-1/full>.

perpetrators. While in 2017 there were 393 child victims with 66 male perpetrators.¹²

Based on the data of child sexual abuse obtained from various regions in Indonesia, shows that the current condition of Indonesia is very vulnerable to child sexual abuse acts. To prevent the increasing of sexual abuse in children, the participation of community, government and all parties is needed in terms of legal protection for children.

By ratifying the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990 on August 25, 1990, shows that Indonesia recognizes the existence of children's rights as one of the human rights parts. This means that Indonesia has an obligation to protect, fulfill, respect and encourage children's rights in accordance with the contents of the Convention on the Rights of the Child to protect children victims of sexual abuse. The Law No. 35 of 2014 concerning Child Protection is the purpose of the implementation of The Convention on the Rights of the Child.

Because of children's rights are part of human rights, it means that everyone must know that a child has several recognized rights. The increasing number of child sexual abuse cases makes us wonder if the implementation of the Convention on the Rights of the Child has been well implemented or vice

¹² Ibid.

versa. So, it needs to be known about how the implementation of the Convention on the Rights of the Child against child sexual abuse in Indonesia.

B. Research Questions

1. Can the Convention on the Rights of the Child directly have implemented in the court in Indonesia against child sexual abuse case?
2. What provisions of the Convention on the Rights of the Child are transformed into Law No. 35 of 2014 concerning Child Protection related to the child sexual abuse?
3. Are the transformed provisions of the Convention on the Rights of the Child into Law No. 35/2018 effective handle child sexual abuse?

C. Research Objectives and Benefits

1. Research Objectives

The objectives of this research as follows:

- a. To analyze the Convention on the Rights of the Child could directly implemented in the court in Indonesia against child sexual abuse or not.
- b. To analyze the provisions of the Convention on the Rights of the Child which transformed into Law No. 35 of 2014 concerning Child Protection.
- c. To analyze the effectiveness of the transformed provisions of the Convention on the Rights of the Child into Law No. 35 of 2014 in handling child sexual abuse cases.

2. Research Benefits

The benefits of this research as follows:

a. Practically

1) For government it is expected to be an input to be able to improve and increase human resources.

2) For Indonesian Child Protection Commission For it is hoped that it can be an input to overcome the problem of child sexual abuse in Indonesia.

b. Theoretically

1) For educational institutions, especially for Universitas Internasional Batam, hopefully can contribute ideas on the implementation of the Convention on the Rights of the Child against child sexual abuse in Indonesia.

2) For the community, this research is expected to be able to add insight to the community about the Convention on the Rights of the Child and motivate them to work together to protect children's rights, especially legal protection for child sexual abuse victim.