

CRIMINAL CODE BILL ARTICLE 414 AND SEX EDUCATION IN INDONESIA

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Abstract

Sex education in Indonesia still taboos to talk in an educational context; however, sexual abuse, free sex, and abortion are increasing more and more. This situation more likely will get in an emergency when criminal code bill article 414 about showing contraception tools to children is applied because it is considered cut off sexual education teaching and against HIV/AIDS and family planning campaign. This article focuses on analyzing criminal code bill article 414 toward sex education in Indonesia and discussing possible solutions for including sex education in the school curriculum. Several critics addressed in criminal code article 414, and several solutions were given in this article for including sex education in the Indonesian curriculum. There is some limitation occurred toward this article, especially, the literature which addressed this issue is limited. In addition, it seems the experts are not discussing about this issue regularly.

Pendidikan seks di Indonesia masih tabu untuk dibicarakan dalam konteks pendidikan; namun, pelecehan seksual, seks bebas, dan aborsi semakin meningkat. Situasi ini kemungkinan besar terjadi dalam keadaan darurat ketika RUU KUHP pasal 414 tentang menunjukkan alat kontrasepsi kepada anak-anak diterapkan karena dianggap memotong pengajaran pendidikan seksual dan menentang HIV/AIDS dan kampanye keluarga berencana. Artikel ini berfokus pada analisis RUU KUHP pasal 414 terhadap pendidikan seks di Indonesia dan membahas solusi yang memungkinkan untuk memasukkan pendidikan seks dalam kurikulum sekolah. Beberapa kritik dibahas dalam pasal 414 KUHP, dan beberapa solusi diberikan dalam artikel ini untuk memasukkan pendidikan seks dalam kurikulum Indonesia. Ada beberapa batasan yang terjadi pada artikel ini, terutama, literatur yang membahas masalah ini terbatas. Selain itu, tampaknya para ahli tidak membahas masalah ini secara reguler.

Keywords: Sex education, Curriculum, Contraception tools

Introduction

The first time the author was introduced about sex education formally when participating in sex education and HIV/AIDS prevention in Bali 2010. The workshop aims to introduce and socialize how sex education can be taught in schools; however, until now, including sex education in the curriculum formally is still debatable. Although implicitly sexual education has been taught in schools in biology, religion, and social science, it will never be enough for students to understand about sexual education.

There are several reasons sex education is still lacking attention to be taught formally in schools, e.g., many people still think that teaching sex education is taboo especially for Muslim scholars, in addition, there was a misconception about teaching sex education, some parent judges that teaching sex education is teaching how to do sexual intercourse.¹ According to Iyer (2014) at least, there are four different kinds of barriers to the delivery of high-quality school-based HIV prevention and sex education in Asia, especially in Indonesia namely; (1) cultural and contextual factors i.e., religious and political beliefs have a strong influence, they can inhibit discussion of sex in school and social context, (2) lack of a detailed sector policy and government involvement, (3) lack of access to financial, (4) material and technical resources, and limited attention to teacher training.²

Lacking government involvement is one factor that inhibits teaching sex education in Indonesia.³ So far, there is not a law or an obligation for schools to include sex education as a subject in the curriculum except implicitly teaching in limited disciplines. Other than that, sex education is taught in after-school programs by government or non-government organizations such as PIK-R. However, this is

¹ Florence B. Benell, "Frequency of misconceptions and reluctance to teach controversial topics related to sex among teachers", *Research Quarterly. American Association for Health, Physical Education and Recreation*, vol. 40, no. 1 (1969), p. 11.

² Padmini Iyer, David Clarke, and Peter Aggleton, "Barriers to HIV and sexuality education in Asia", *Health Education*, vol. 114, no. 2 (2014), p. 118.

³ Terence H. Hull, Eddy Hasmi, and Ninuk Widyantoro, "'Peer' educator initiatives for adolescent reproductive health projects in Indonesia", *Reproductive Health Matters*, vol. 12, no. 23 (2004), p. 29.

considered not adequate to acknowledge children and teenagers about sex education. Furthermore, by proclaiming criminal code bill article 414 about showing contraception tools to children more likely will cut off sex education in schools and at home. Therefore, this study will focus on analyzing criminal code bill article 414 toward sex education in Indonesia and discussing possible solutions for including sex education in the school curriculum.

Critics toward Criminal Code Bill Article 414

It was stated in criminal code bill article 414 about showing pregnancy prevention tools that “Any person who openly displays, offers, broadcasts in the form of writing, or shows how to get contraception tools for children will get fine as the first category (IDR 1.000.000).”⁴ There are many kinds of contraception tools that easily found and displayed in stores in Indonesia, such as a condom, pills, path, and others. Some people consider showing such as things are typical in this era because of the increasing of abortion, married by accident, free sex, and reproduction diseases, e.g., HIV/AIDS, and hepatitis.

Because the easiness to find and people consider that it is something useful to sell to decrease abortion and sexual disease becomes one reason why this article debatable and gets some critics from several societies. Other than these, many words used in this article consider multi-interpretations such as the use of any person, show, and children. Any person can be for everyone without exception; parents, teachers, trainers, and volunteers who work in a non-government organization to minimize abortion cases and free sex can criminalize by this article. Although, in article 416 stated that there would be not convicted if carried out by authorized officials in the context of implementing family planning, prevention of sexually transmitted infections, or for education and health education reason, and including competent volunteers assigned by the authorized by the government, some terms are still doubtful.

Education and health education reason in this context has no further explanation whether parents at home who have contraception

⁴ Indonesian Government, Criminal code bill article 414 about showing pregnancy prevention tools, Jakarta, 2019.

tools at home then explain the use of those contraception tools to their children, or parents asked help for their children to buy contraception tools are considered in educational purpose or not. What about teachers who explain contraception tools at schools or volunteers who work in a non-government organization without any authorization proof from the government working for street children at risk of sexual abuse, rape, abortion, and any kinds of sexual threats. Is it also considered an educational purpose? If it is yes, it would be fine, and however, if it is considered not, article 414 will risk many people.

It is essential to highlight that according to article 35 2014 about children protection, children are considered as persons whose ages under 18 years old. It means children who are around 13 – 18 years old cannot be shown contraception tools. In reality, children at this age start to be curious about everything, including sexual intercourse. They will explore to the internet for their curious.

According to Wurtele & Perrin (1992), at the age of 13 – 16 children start to need information and have questions about the social relationship and sexual custom, sexual experimentation between adolescents of the same age and gender is common. First, sexual intercourse will occur for approximately one-third of teens.⁵ This data was taken in the nineties. We can imagine the sexual question and sexual experiment more increase right now as the increase in the use of smartphones and the internet. In addition, the survey has been done by Reckitt Benkiser about free sex in 500 teenagers in Indonesia found that 33 % of teenagers have done sex intercourse.⁶ Without introducing sex education, including prevention of sexual disease tools, more children or teenagers will be at risk.

Besides, these several reasons also can be a consideration in order to apply this rule: numerous experts think that Criminal Code Bill Article 414 will probably against the family planning program of the government; the journalist who wrote about contraception tools might be reported as a criminal. Sellers who display contraception tools in

⁵ Wurtele, Sandy K., and Cindy L. Miller-Perrin, *Preventing child sexual abuse: Sharing the responsibility*, vol. 2 (London: University of Nebraska Press, 1993).

⁶ Giovanni Dio Prasasti, “Riset: 33 Persen Remaja Indonesia Lakukan Hubungan Seks Penetrasi Sebelum Nikah”, *Liputan6.com* (Jul 19, 2019), <https://www.liputan6.com/health/read/4016841/riset-33-persen-remaja-indonesia-lakukan-hubungan-seks-penetrasi-sebelum-nikah#>, accessed Aug 20, 2019.

their shops might also be disadvantages. Furthermore, this catchall article is contra-productive with the attempt of HIV/AIDS prevention. It was stated in article 21 of 2013 that from ten of HIV/AIDS prevention rules, six of them contain rules of using condom HIV/AIDS prevention campaign. Instead of authorizing the rule, it probably would be beneficial if the government start to think of the law of implementing sex education curriculum or family and health education curriculum in middle and high schools.

The Role of National Law in Implementing Sex Education in Indonesia

The aspiration to implement sex education in Indonesia has been voiced since years ago. However, the government still difficult to accept for several reasons, such as sex education is taboo. In 2015, the Family planning organization (PKPI) had submitted the request to Constitutional court to review article 37 number 1 law of chapter 20, the year 2003, about physical and health education in the national education system.⁷ According to PKPI, sex education should also be included in article 37 because children and teenagers also have the right to learn about sex education. The reason why the constitutional court rejects the request is that sex education has been taught in other subjects such as biology, religion, and physical education.

Furthermore, Budiharjo, a former commissioner of the Indonesian child protection commission (KPAI), stated that children protection should also consider sex education, mainly to prevent children from pornography and sexual abuse.⁸ Data from KPAI in Indonesia in 2018 about sexual abuses who are done by the teacher to their students about 177 cases, consists of 135 male, and 42 females, this data published in *Tirto.id* on September 27, 2018.⁹ The lack of sex education knowledge

⁷ The Jakarta Post, "MK rejects petition for sex education on school curriculum", *The Jakarta Post* (Nov 5, 2015), <https://www.thejakartapost.com/news/2015/11/05/mk-rejects-petition-sex-education-school-curriculum.html>, accessed Aug 21, 2019.

⁸ Budiharjo, "Pendidikan Seks Anak & Urgensi UU Sistem Perbukuan", *Sindonews.com* (Feb 25, 2017), <https://acdpinonesia.wordpress.com/2015/11/05/mk-tolak-uji-materi-pendidikan-seks-pada-kurikulum-sekolah/>, accessed Aug 21, 2019.

⁹ Alfian Putra Abdi, "KPAI Dorong Kemendikbud Beri Pendidikan Seksual Pada Murid Sekolah", *Tirto.id* (Dec 27, 2018), <https://tirto.id/kpai-dorong>

become the primary cause of this problem. By looking at the sexual abuse and free sex case which increase more and more, sex education right now is not taboo anymore because everyone can access easily in media. Teaching them in schools is one way to protect them from misleading information that they get from the internet.

Instead of authorizing criminal code bill article 414 that will inhibit sex education in Indonesia, it is better if the government starts to concern about educational sex law. The government should present to legalize the national bill of textbook system, especially the material about sex education for children. It is important to highlight most developed countries have reduced sexual diseases and sexual issues such as early pregnancy and sexual abuse for teenagers by implementing sex education in their curriculum. Four countries; the relationship between school-based sex education policies and sexual health of young people has been investigated in the Netherlands, France, Australia, and the United States. These four countries have authorized their sex education curriculum in their national law. The result shows that the earlier sex education taught in school, the more positive sexual health outcomes.¹⁰

Sex Education Approach in Indonesian Context.

Lindberg (2012) had surveyed 2.505 female and 2.186 male about how sex education associated with teen and young adult sexual behavior. The research found that comprehensive sex education has positive impacts on adolescents and teenagers compared to the group that did not receive sex education group. If teenagers have no sex education, it will lead to social problems such as early pregnancy.¹¹

Indonesia is very diverse; hence, it causes more complications to find effective methods or programs to teach sex education. However, some programs that have been applied in the US or other developed

kemendikbud-beri-pendidikan-seksual-pada-murid-sekolah-dcGf, accessed Aug 21, 2019.

¹⁰ Heather Weaver, Gary Smith, and Susan Kippax, "School-based sex education policies and indicators of sexual health among young people: a comparison of the Netherlands, France, Australia and the United States", *Sex Education*, vol. 5, no. 2 (2005), p. 171.

¹¹ Lindberg, Laura Duberstein, and Isaac Maddow-Zimet, "Consequences of sex education on teen and young adult sexual behaviors and outcomes", *Journal of Adolescent Health*, vol. 51, no. 4 (2012), p. 332.

countries can be used as references then modified based on the Indonesian context. Planned Parenthood Los Angeles (PPLA) had implemented “The Right Based – Approach Framework” of a sex education initiative for 9th-grade students in Los Angeles.¹² The researchers conducted several programs to implement sex education curriculum which are:

1. Field-testing research: Pilot studies to compare the impact of the new classroom curriculum of 12 sessions to a basic curriculum of 3 sessions. Ten schools, 2.608 students, and 1.915 parents have participated in this program. After two years of implementation, preliminary data showed the increase of students bringing condoms and reporting more comfortable talking about sexuality.
2. Testing the discussion of key concepts: This program has been tested in 8 focus group discussion with 50 teens and three focus group discussions with 21 parents. The result shows that students are more comfortable to talk about sex and to have access to health service for asking about sexual issues.
3. Sex education in the classroom: Facilitators ask students to write anonymous questions which are then screened and answered by topics. In general, boys had more questions about anatomy while girls asked more about behavior.
4. Peer – advocacy training: Training students to be resources for sexual and reproductive health to other students.
5. Engaging parents: Providing classes for parents to offer information that is relevant to adult and facilitate conversation between parents and their children.
6. Involving teachers: Teachers observe how the trainers in this program teach students about sex education.
7. Sexual health services: Involving sexual doctors and nurses to provide information how to access sexual health services for students.
8. Using film as tools for critical discussion
9. Training of facilitators: Training more facilitators from universities to teach students.

¹² Magaly Marques and Nicole Ressa, “The Sexuality Education Initiative: a programme involving teenagers, schools, parents and sexual health services in Los Angeles, CA, USA”, *Reproductive health matters*, vol. 21, no. 41 (2013), p. 124.

The results show that students have a better understanding of human sexuality, healthy aspects of human development, human rights, and access to health care. Also, by these program students and their parents can be engaged in a conversation about sexual behavior (Marques, 2013). School-based sex education and family homework also have an impact on reducing early sexual behavior among adolescents. School-based sex education includes giving homework to students about sex education that allows them to discuss with their parents. The results show from the survey of 706 students in Massachusetts that school-based family homework can positively affect students' sexual behavior.¹³

Sexual health topics have been also covered in U.S physician assistant (PA) programs to promote and introduce sex education. Data shows that 68 % PA programs covered sexual anatomy in their gross anatomy labs, genital infection and birth control topics, along with LGBT topics. The study by Seaborne (2015) suggests that incorporating PA in sexual education will give broad understanding to teenagers and adolescents about sex education.¹⁴ In another survey by Charmaraman (2012), 795 eight grade students in eight ethnically diverse schools in Massachusetts were surveyed about the sex education topics. The research indicates that simple sexual topics were more frequently discussed than a complex sexual issue, and single gender classroom asked more questions about sexual education topics. It seems that single gender class students are more comfortable to engage in discussion about sexual topics in young ages cross ethnicities.¹⁵

Sexual education related to religion has been examined in the U.K with the Muslim community where parents perceived that sex education has potential risk The research suggests that in order to account for the

¹³ Jennifer M. Grossman, Alice Frye, Linda Charmaraman, and Sumru Erkut, "Family homework and school-based sex education: delaying early adolescents' sexual behavior", *Journal of School Health*, vol. 83, no. 11 (2013), p. 810. pp. 810-817.

¹⁴ Lori A. Seaborne, Ronald J. Prince, and David M. Kushner, "Sexual Health Education in US Physician Assistant Programs", *The journal of sexual medicine*, vol. 12, no. 5 (2015), p. 1158.

¹⁵ Linda Charmaraman, Alice J. Lee, and Sumru Erkut, "What if you already know everything about sex? Content analysis of questions from early adolescents in a middle school sex education program", *Journal of Adolescent Health*, vol. 50, no. 5 (2012), p. 527.

religious barriers, developing a sex education program needs to be contextualized around sociocultural and ideological assumption.¹⁶ Accordingly, this study will involve experts in religion, education and culture to examine the curriculum in the United States to be contextualized in Indonesia.

One example curriculum that can be used is the Family Life and Sexual Health (FLASH) in Indonesia is curriculum of Washington State, United States of Amerika. There are four kinds of FLASH curriculum exist in Washington State; FLASH for elementary school, FLASH for middle school, FLASH for high school, and FLASH for special education. Family life and sexual health (FLASH) can be adapted while considering religion, culture, and ethnicity. Ministry of education should arrange the curriculum together with experts in religion, education, culture, and health.

The example of FLASH in Washington state curriculum overview for grade 4,5, and 6 in elementary school can be seen as follows:¹⁷

Note: The example of Family Life and Sexual Health (FLASH) lesson plan can be seen in appendix.

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|---|--------------|--|
| 1 | Introduction | Consideration for others; ground rules; slang vs. medical terms; defines “sexuality”, and anonymous question boxes. |
| 2 | Family | Defines family; differences and similarities among families; communication in families; the importance of family. |
| 3 | Self-esteem | Keys to feeling good about one's self; “I belong.” “I can do things.” “People appreciate me.”; and helping others feel the same. |
| 4 | Sex roles | Defines sex role; development of sex roles; and recognition of historical figures of both genders in various fields. |

¹⁶ Tabatabaie, Alireza, “Childhood and adolescent sexuality, Islam, and problematics of sex education: a call for re-examination”, *Sex Education*, vol. 15, no. 3 (2015), p. 276.

¹⁷ King County, “FLASH lesson plans for Elementary schools”, Public Health Seattle and King County (Last Updated July 16, 2018), <https://www.kingcounty.gov/depts/health/locations/family-planning/education/FLASH/elementary-school.aspx>, accessed Aug 23, 2019.

| | | |
|-------------|-----------------------------|---|
| 5 | Friendship | What makes someone a friend? making friends; keeping friends and being a good friend. |
| 6 | Decision making | Active vs. passive decisions; one model: Consider alternatives, consequences, feelings and beliefs. |
| 7 & 8 | Sexual exploitation (abuse) | Kinds of touch; defines exploitation; children's rights; recognizing exploitation; preventing it; reporting it; resources; and helping a friend. |
| 9 & 10 | Puberty | Defines puberty; changes and timing of puberty; bra and athletic supporter; hygiene products; and feelings/fears/myths about puberty. |
| 11& 12 | Reproductive system | Correct medical terms for locations and function of each part; ovulation; sperm production; fertilization. |
| 13 & 14 | Pregnancy | Normal pregnancy; basic genetics; fetal development and twinning; the importance of prenatal care, good nutrition, and avoiding alcohol during pregnancy. |
| 15, 16 & 17 | HIV/AIDS | Healthy concern vs. unhealthy fear; defines “communicable disease”; transmission: asymptomatic infection vs. symptomatic infection vs. AIDS; attitudes, decision-making, assertiveness. |
| 19 | Review and resources | Review of key vocabulary; how to use the phone book to find community health and information resources. |

Source: adapted from FLASH curriculum of Washington State.

By looking at the syllabus overview above, there are some similarities between Indonesian culture and religion teaching. For instance, sex role, in Islam, since kids, parents are assigned to introduce sex roles to their children, and Islam suggests separate men and women bedrooms when they are seven years old. Furthermore, the cleanliness of organ reproduction also become significant attention in Islam and Indonesian culture. If those all combined in one study, there will be excellent teaching for children in Indonesia. To make it real, it is needed to call experts to discuss together.

Conclusion

With the increase of sexual disease, abortion, and free sex rates, the government needs to be more careful in making the decision to authorized regulations about contraception tools. There are several reasons criminal code bill article 414 need to be more discussed further, first of all, the article is a catchall article that probably would criminalize parents, journalists, activists, teachers, and religion scholars who intentionally or unintentionally use and show pregnancy prevention tools. Secondly, the article against the government program of family planning and HIV/AIDS prevention. Thirdly, it will more limit educators and non-government organizations to apply sex education at schools.

Instead of focusing on this article, it would be better if the government start to think to authorized and create laws for sex education in Indonesia. It is essential to highlight that sex education is not taboo anymore because children can find and learn it through the internet and from their friends. Education stakeholders should present to design a sex education curriculum based on students' needs while still adapting Indonesian culture and religious teaching. The roles of laws are somehow important for a realization.

This study is still far from perfection; some limitations occurred, such as the data was found in the newspaper, due to the release data from the government is uneasy to find through the internet. The author still lacks information regardless of criminal code bill article 414 because there are not many experts to write about this article, and even we could not find in peer-review articles.

Further studies and research need to be done to find more accurate data. Field research to interview experts should be addressed to find broader insight on how criminal code bill article 414 impacts positively or negatively on societies. All in all, support from governments or non-government organization are needed to conduct further research for sex education in order to have a fix curriculum that can be used in Indonesia.

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