

Child Perpetrators and Victims: Criminal Policy Approaches to Sexual Violence in Indonesia through Restorative Justice

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Abstract

Criminal law embodies the principle of *ultimum remedium*, which means that prosecution is considered a final measure in law enforcement. This principle does not seek to eliminate punishment for offenders but rather aims to protect society from crimes by using prosecution as a last resort. Offenses are not only committed by adults but also by minors. With the rapid advancement of information and telecommunication technology, sexually explicit content has become widely available through electronic media. As a result, many children mimic behaviors they have seen or heard about, particularly since they are often given access to electronic devices such as smartphones and computers with internet access. This ease of access sometimes occurs without sufficient parental supervision, exposing children to inappropriate content. Given this context, the author is motivated to conduct research titled Criminal Policy for Addressing Sexual Violence Committed by Minors Against Minors in Indonesia. This study aims to explore effective legal measures and policies to address and mitigate such incidents. The research employs a qualitative method grounded in the theory of sanctions and the theory of legal effectiveness. By utilizing a criminological approach, the study seeks to analyze crime patterns associated with sexual violence perpetrated by minors. This includes examining the socio-cultural factors that contribute to such behaviors and evaluating the current legal framework's effectiveness in addressing these issues. Through this research, the author hopes to shed light on the complexities of juvenile delinquency in the context of sexual violence and to propose informed policies that can better protect minors from both committing and becoming victims of such offenses. The findings are expected to contribute to the development of a more effective criminal justice system that balances punitive measures with rehabilitative approaches, ultimately aiming to create a safer and more just society for all.

1. Introduction

According to data from the National Commission on Violence Against Women (Komnas Perempuan), there were 2,363 reported cases of sexual violence against women in Indonesia in 2021, with rape cases constituting 25% of the total sexual violence cases.¹ Furthermore, data from the Ministry of Women's Empowerment and Child Protection (PPPA) indicate that, based on the Online Information System for the Protection of Women and Children, there were 11,952 reported cases of violence against children, with 58.6% of these cases involving sexual violence against children. Additionally, the Indonesian Child Protection Commission (KPAI) reported that the number of children in conflict with the law reached 1,434 cases,

¹ Aditya Widya Putri, "Darurat Kekerasan Seksual, Tiap Pekan 1 Kasus Di Satuan Pendidikan," Katadata.Co.Id, June 3, 2023.

predominantly involving sexual violence.² The statistical data related to sexual crimes, particularly against children, highlight that Indonesia can be considered in a state of emergency regarding sexual crimes. Numerous sexual crimes occur where children are victims, and it is not uncommon for children to be perpetrators of sexual crimes against their peers.

Criminal law possesses the characteristic of *ultimum remedium* (the last resort), meaning that the punishment of criminals is to be used as a last measure in law enforcement. The existence of the *ultimum remedium* principle in criminal law does not imply the abolition of punishment for criminals. Crimes are committed not only by adults but also by minors.³ According to Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 on Child Protection (hereinafter referred to as Law No. 35/2014), a child is defined as "a person who is not yet 18 (eighteen) years old, including a child who is still in the womb." In principle, applying the concept of punishment to children is considered unwise and imprudent. This view is based on the understanding that children still have the opportunity to reform their integrity in the future.⁴ Various media outlets have reported on cases of crimes affecting children, particularly cases of sexual violence or molestation against minors. What is particularly distressing is that the perpetrators of these molestations are often the children's own teachers, who are supposed to be educating them at their schools. Some high-profile cases of child molestation that have shocked Indonesia and the educational world include a case involving a prominent cleric's child from a *pesantren* in Jombang. The suspect is one of the teachers at the *pesantren*, with 5 female students as victims. The case has now reached the indictment stage at the Surabaya District Court. The perpetrator has been charged by the Public Prosecutor with three accusations: Article 285 of the Indonesian Penal Code (KUHP) on rape with a maximum penalty of 12 years imprisonment, Article 289 of the KUHP on indecent acts with a maximum penalty of 9 years imprisonment, and Article 294 paragraph 2 of the KUHP with a maximum penalty of 7 years imprisonment.⁵

The most recent case that has caused a stir among the public is the rape of a minor high school student by three perpetrators. What has drawn significant public attention to this case is the relatively lenient sentence imposed by the Lahat District Court and the prosecution's demand. The Public Prosecutor's Office (PPO) demanded a 7-month prison sentence for the defendants, while the Panel of Judges issued a slightly longer sentence of 10 months in prison. Several criticisms have been voiced by legal experts and practitioners, including lawyer Hotman Paris, who has pointed out anomalies in the sentencing. Hotman explains that the verdict fails to provide a sense of justice for the victim's family, considering the long-term

² Sri Wahyuningsih, *Buku Saku Pendidikan Layanan Khusus, Seri 1: Pendidikan Bagi Anak Berhadapan Dengan Hukum (Abh)* (Jakarta: Direktorat Sekolah Dasar, Direktorat Jenderal Pendidikan Anak Usia Dini, Pendidikan Dasar, Dan Pendidikan Menengah, Kementerian Pendidikan, Kebudayaan, Riset, Dan Teknologi, 2021).

³ Mustakim Mahmud, "Penerapan Sanksi Pidana Anak Menurut Undang-Undang Sistem Peradilan Pidana Anak," *Indonesian Journal Of Criminal Law* 1, No. 2 (December 31, 2019): 128-38, <https://doi.org/10.31960/Ijocl.V1i2.381>.

⁴ Gunawan Hadi Purwanto, "Peran Pembimbing Kemasyarakatan Dalam Perspektif Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak," *Justitiable-Jurnal Hukum* 3, No. 2 (August 14, 2021).

⁵ Erwin Yohanes, "Kasus Pencabulan, Anak Kiai Jombang Sebut Dakwaan Jaksa Tidak Cermat," www.merdeka.com, 2023, <https://www.merdeka.com/peristiwa/kasus-pencabulan-anak-kiai-jombang-sebut-dakwaan-jaksa-tidak-cermat.html>.

impacts on the victim, including severe depression and lifelong trauma.⁶ Although the three perpetrators are still minors, they are approaching adulthood and used physical violence to carry out their crime. The case has ultimately attracted the attention of the Attorney General, who has investigated and suspended the Lahat District Attorney and the prosecutor handling the case.⁷

Perpetrators of child sexual violence are not limited to adults; children also engage in such acts against other children. This phenomenon is exacerbated by the advancement of information and telecommunication technologies, which have led to the widespread dissemination of sexually explicit content through electronic media. As a result, many children imitate behaviors they have seen or heard about, given that they are now familiar with and have access to electronic devices such as smartphones and computers equipped with internet connectivity. This ease of access to information, coupled with parental neglect in providing protection for children and information technology, contributes to the problem.

Several studies discuss restorative justice for juvenile offenders, such as those by Anggara Dwi Putra⁸, Jaka Prima⁹, Rosikhu, et.al¹⁰ and Arman¹¹. However, the distinction of this research lies in its focus on Criminal Policy for Addressing Sexual Violence Committed by Children Against Children, linked with restorative justice. This study highlights a more holistic and rehabilitative approach to handling cases of sexual violence perpetrated by children against children, aiming to provide more effective and humane solutions compared to traditional criminal justice approaches. Based on the aforementioned description, child sexual harassment is defined as any verbal statement or coercion of sexual acts/behaviors/movements directed at a child, which causes the child, as the victim of such harassment, to feel uncomfortable, traumatized, fearful, depressed, or physically injured. From this description, the author is interested in conducting a study entitled "Child Perpetrators and Victims: Criminal Policy Approaches to Sexual Violence in Indonesia through Restorative Justice."

2. Methods²

The type of research employed in this study is normative legal research, which involves normative case studies of legal behavior products.¹² This type of research is a scientific procedure aimed at discovering the truth based on the logic of legal science from a normative perspective. Normative legal research focuses on the inventory of positive law in Indonesia

⁶ Aji Yk Putra And Reni Susanti, "Duduk Perkara Kasus Pemerkosaan Siswi Sma Di Lahat Hingga 2 Pelaku Divonis 10 Bulan Penjara," *Regional.Kompas.Com*, January 5, 2023, <https://Regional.Kompas.Com/Read/2023/01/05/174121478/Duduk-Perkara-Kasus-Pemerkosaan-Siswi-Sma-Di-Lahat-Hingga-2-Pelaku-Divonis?Page=All>.

⁷ Irwanto, "Ini Alasan Jpu Tuntut Ringan Ke Terdakwa Pemerkosa Siswi Sma Di Lahat," *Www.Merdeka.Com*, January 30, 2023.

⁸ Anggara Dwi Putra, "Restoratif Justice Sebagai Alternatif Penyelesaian Perkara Tindak Pidana Anak, Sesuai Dalam Uu Sistem Peradilan Pidana Anak," *Jurnal Restorative Justice* 4, No. 1 (May 31, 2020): 1-10, <https://doi.org/10.35724/Jrj.V4i1.2711>.

⁹ Jaka Prima, "Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Anak," *Josh: Journal Of Sharia* 3, No. 01 (January 29, 2024): 40-45, <https://doi.org/10.55352/Josh.V3i01.702>.

¹⁰ Muhammad Rosikhu, Opan Satria Mandala, And Saparudin Efendi, "Keadilan Restorative Justice Dalam Sistem Peradilan Pidana Anak," *Jurnal Kolaboratif Sains* 6, No. 7 (July 8, 2023): 605-11, <https://doi.org/10.56338/Jks.V6i7.3712>.

¹¹ S Arman, "Restorative Justice Dalam Penyelesaian Tindak Pidana Yang Dilakukan Oleh Anak," *Sawerigading Law Journal* 2, No. 1 (March 7, 2023): 54-64, <https://doi.org/10.62084/Slj.V2i1.330>.

¹² Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2016).

and is also related to legal principles and doctrines, legal systematics, legal comparisons, and legal history.

3. Results and Discussion

3.1. Criminal Sanctions for Sexual Violence Against Children in the Juvenile Justice System

Forms of violence against children are not limited to physical violence, such as murder, abuse, or sexual violence, but also include non-physical violence, such as economic, psychological, and religious violence. As a form of child protection in Indonesia, the legislators, through laws such as the Criminal Code (KUHP), Law No. 23 of 2002 as amended by Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 on Child Protection, Law No. 23 of 2004 on the Elimination of Domestic Violence, and Law No. 11 of 2012 on the Juvenile Criminal Justice System, provide various forms of legal protection related to child protection against sexual violence. The forms of child protection provided by the Child Protection Law, the Domestic Violence Elimination Law, and the Juvenile Criminal Justice System Law are adoptions, compilations, or reformulations of the forms of child protection already regulated in the Criminal Code.¹³ Although Indonesia has laws related to Child Protection, the existing regulations have not had a positive impact on children in Indonesia. The reality is that sexual violence continues to affect children, resulting in severe psychological trauma that disrupts their mental health during their growth and development. Additionally, there are other factors, such as the prolonged economic crisis, which have devastated the national financial condition and created political chaos. Consequently, the implementation of provisions from various Conventions, the Child Protection Law, and other regulations related to child protection appears to be justifiably postponed.¹⁴

KUHP contains several articles that provide protection for children against sexual violence. This protection is demonstrated through the imposition of criminal penalties (sanctions) on perpetrators. The relevant provisions in the KUHP include: 1) Issues related to intercourse are regulated in Articles 287, 288, and 291; 2) Acts of indecency are regulated in Articles 289, 292, 293, 294, 295, and 298. Therefore, the form of legal protection provided by the KUHP for children against sexual violence constitutes criminal liability for the perpetrators. This liability does not directly and concretely address the damages or suffering of the victims but focuses more on personal/individual accountability.

The Child Protection Commission, in data from January 1, 2024, reported that there were 4,227 cases of sexual violence against children across Indonesia, with the following details:

¹³ Irvan Rizqian, "Upaya Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Kekerasan Seksual Dikaji Menurut Hukum Pidana Indonesia," *Journal Justiciabelen (Jj)* 1, No. 1 (January 12, 2021): 51, <https://doi.org/10.35194/Jj.V1i1.1115>; Lyza Sari Rahayu And Fariz Farrih Izaddi, "Perlindungan Hukum Terhadap Anak Dari Kekerasan Seksual Di Lingkungan Pesantren Ditinjau Dari Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual Dan Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak," *Jurnal Riset Ilmu Hukum* 3, No. 2 (December 24, 2023): 75-80, <https://doi.org/10.29313/Jrih.V3i2.2768>.

¹⁴ Rizqian, "Upaya Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Kekerasan Seksual Dikaji Menurut Hukum Pidana Indonesia"; Lyza Sari Rahayu And Fariz Farrih Izaddi, "Perlindungan Hukum Terhadap Anak Dari Kekerasan Seksual Di Lingkungan Pesantren Ditinjau Dari Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual Dan Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak."

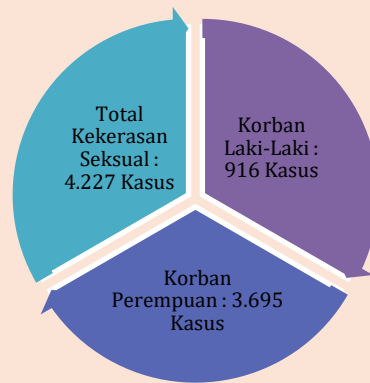


Figure 1. Number of Sexual Violence Cases by Gender in 2023¹⁵

According to the report data presented by the Ministry of Women's Empowerment and Child Protection dated January 1, 2024, it is stated that the number of sexual violence cases involving female victims is higher than those involving male victims. The data indicates that female victims of sexual violence total 3,695 out of 4,227 cases, or 87.41%. In contrast, the number of male victims is 916, representing 21.67% of the total cases. Addressing sexual violence against children requires a comprehensive approach, which includes education, prevention, law enforcement, and support for victims. Efforts involving the entire community, including families, schools, government, and non-governmental organizations, are crucial to addressing this issue.

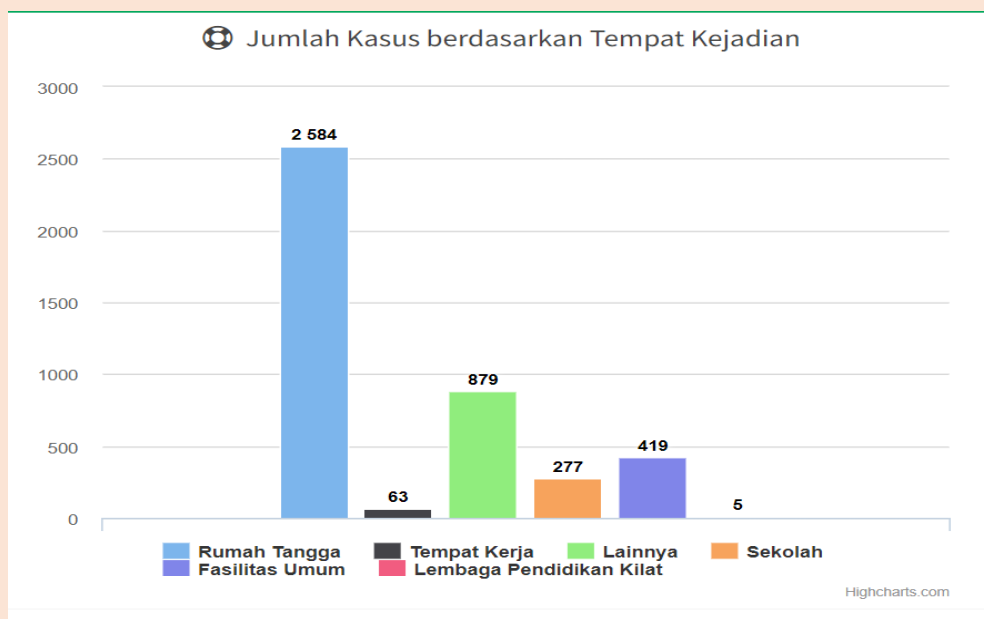


Figure 2. Number of Sexual Violence Cases by Location of Incident in 2023¹⁶

According to KPAI's annual report, cases of sexual violence against children in Indonesia continue to increase each year. KPAI notes that the majority of victims are female children. However, official data from KPAI may not cover all cases as many victims do not report the violence they experience. This ministry also collects data on sexual violence against children

¹⁵ Kementerian Pemberdayaan Perempuan Dan Perlindungan Anak, "Peta Sebaran Jumlah Kasus Kekerasan Menurut Provinsi, Tahun 2024," Kekerasan.Kemenpppa.Go.Id, March 19, 2024.

¹⁶ Kementerian Pemberdayaan Perempuan Dan Perlindungan Anak.

in Indonesia. They collaborate with relevant agencies to gather data and provide services for victims of sexual violence. According to data from the Online Information System for Women's and Children's Protection (Simfoni PPA), from January to November 2023, there were 15,120 cases of violence against children, with 12,158 female child victims and 4,691 male child victims. Sexual violence cases have consistently ranked first in terms of the highest number of victims from 2019 to 2023.¹⁷ Factors such as stigma, fear, and lack of awareness about children's rights can contribute to the low reporting rates. Addressing the challenge of tracking sexual violence against children requires a holistic and collaborative approach from various parties, including the government, law enforcement agencies, non-governmental organizations, and society as a whole. It is crucial to strengthen the reporting system, raise public awareness, and provide adequate support for victims of sexual violence.

In Law No. 23 of 2002 on Child Protection, as amended by Law No. 35 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection, provisions are made to safeguard children. This law serves to provide special protection for children's rights against various forms of violence, including sexual violence. Specifically, Article 15 of Law No. 35 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection states that every child has the right to protection from: 1) Abuse in political activities; 2) Involvement in armed conflicts; 3) Involvement in social unrest; 4) Involvement in events involving violence; 5) Involvement in warfare; and 6) Sexual crimes. Sexual crimes are one of the offenses that receive particular attention in child protection matters. This is clearly reflected in Article 15 of the law, which affirms that every child has the right to protection from sexual crimes. The increasing number of sexual violence incidents affecting children in Indonesia highlights the need for this protection, as children are particularly vulnerable to threats and harm from sexual offenders, given their inability to resist or protect themselves from such dangers.¹⁸

Sexual harassment of children is not only regulated under the Criminal Code (KUHP) but also under more specific regulations outlined in Law No. 35 of 2014 on Child Protection, particularly in Articles 81 and 82. These articles stipulate that: the punishment for perpetrators of sexual crimes against children is a minimum of 5 years and a maximum of 15 years imprisonment, along with a fine of at least IDR 5,000,000,000 (five billion rupiah). In contrast, the KUHP provisions in Articles 287 and 292 specify that the maximum imprisonment for perpetrators of indecent acts against children is 9 years (Article 287) and 5 years (Article 292), respectively. This indicates that Law No. 35 of 2014 on Child Protection, as a special law (*lex specialis*), imposes more severe penalties compared to those stipulated in the KUHP. Law No. 23 of 2002 on Child Protection explains in Article 80 paragraphs (1), (2), and (3) as follows:

1. Any person who violates the provisions as referred to in Article 76C, which states: "Any person is prohibited from placing, allowing, committing, ordering to commit, or participating in committing violence against children," shall be punished with imprisonment for a maximum of 3 years and 6 months and/or a maximum fine of IDR 72,000,000 (seventy-two million rupiah).
2. If the child as referred to in paragraph (1) suffers serious injury, the perpetrator shall be punished with imprisonment for a maximum of 5 years and/or a maximum fine of IDR 100,000,000 (one hundred million rupiah).

¹⁷ Kementerian Perempuan Dan Perlindungan Anak, "Kolaborasi Berkelanjutan Lintas Sektor Dan Regional, Kunci Atasi Kasus Kekerasan Terhadap Anak," www.kemenpppa.go.id, January 6, 2024, <https://www.kemenpppa.go.id/page/view/ntaxng==#:~:Text=>.

¹⁸ Ahmad Yunus And Fathorrahman Fathorrahman, "Kejahatan Seksual Terhadap Anak (Perspektif Hukum Indonesia)," *Hukmy: Jurnal Hukum* 2, No. 1 (April 21, 2022): 70-82, <https://doi.org/10.35316/Hukmy.2022.V2i1.70-82>.

3. If the child as referred to in paragraph (2) dies, the perpetrator shall be punished with imprisonment for a maximum of 15 years and/or a maximum fine of IDR 3,000,000,000 (three billion rupiah).

Article 80 paragraph (4) of Law No. 35 of 2014 on Child Protection specifically regulates the crime of child abuse within the family, accompanied by criminal sanctions: the penalty is increased by one-third of the provisions referred to in paragraphs (1), (2), and (3) if the abuse is committed by the parents. The duties and responsibilities of the state and government in implementing child protection are affirmed in Articles 21 to 25 of Law No. 35 of 2014 on Child Protection, which encompass these obligations and responsibilities. The form of child protection provided by the Child Protection Law, the Law on the Elimination of Domestic Violence, and the Juvenile Criminal Justice System is an adoption, compilation, or reformulation of the forms of child protection already regulated in the KUHP. The KUHP contains several articles that provide protection for children against sexual violence, demonstrating this protection by imposing criminal sanctions on the perpetrators.¹⁹

Cases of sexual violence against children pose significant difficulties in resolution, both at the stages of investigation, prosecution, and sentencing. In addition to the aforementioned challenges, there are also difficulties in proving such crimes, such as rape or indecent acts, which are typically committed without the presence of witnesses. Sexual violence against minors inevitably impacts the psychological and overall development of the child. The psychological effects on children can result in prolonged trauma, leading to unhealthy behaviors such as excessive fear, disturbed emotional development, and ultimately mental retardation. This condition can become a lasting traumatic memory for the child victim of molestation. The active role of law enforcement officers in combating sexual crimes is crucial. From a sociological perspective, this is because the acts regulated by the Law are extraordinary and have significant impacts on society. Therefore, in this context, the consideration of alternative sanctions is set aside, as it is deemed appropriate to directly impose criminal sanctions on the perpetrators of such crimes. Nowadays, criminal sanctions are not considered the "last resort" (*ultimum remedium*) but have become the primary choice (*premium remedium*) for dealing with actions that violate existing laws and harm society.²⁰ The imposition of criminal sanctions on perpetrators of child sexual abuse is challenging when considering criminal sanctions as *ultimum remedium*, especially in light of Law No. 35 of 2014 amending Law No. 23 of 2002 on Child Protection.

Referring to the ideal legal framework, handling land disputes is expected to provide dignified justice for all parties involved.²¹ However, in reality, litigation processes aimed ideally often fall short in effectively resolving plantation disputes. These disputes tend to favor compromise approaches to achieve satisfactory solutions for all involved parties. In efforts to provide legal certainty and protection for land rights holders, the issuance of certificates is regarded as an official form of proof of ownership rights. Although Law No. 5/1960 does not

¹⁹ Ratih Probosiwi And Daud Bahransyaf, "Pedofilia Dan Kekerasan Seksual: Masalah Dan Perlindungan Terhadap Anak," *Sosio Informa* 1, No. 1 (August 24, 2015), <https://doi.org/10.33007/Inf.V1i1.88>; Ryan Maulana And Rochmani Rochmani, "Hukuman Kebiri Bagi Pelaku Kekerasan Seksual Terhadap Anak (Pedofilia) Berdasarkan Uu Perlindungan Anak," *Jurnal Ilmiah Dinamika Hukum* 23, No. 2 (October 4, 2022): 135–51, <https://doi.org/10.35315/Dh.V23i2.9081>.

²⁰ Shinta Rukmi Budiastuti And Wibowo Murti Samadi, "Penerapan Penjatuan Sanksi Diversi Sebagai Alternatif Sanksi Pidana Penjara Untuk Anak Pelaku Tindak Pidana," *Research Fair Unisri* 5, No. 1 (February 12, 2021): 81, <https://doi.org/10.33061/Rsfu.V5i1.4578>.

²¹ Annisa Shafarina Ayuningtyas, Rosita Candrakirana, And Fatma Ulfatun Najicha, "Perlindungan Hukum Bagi Pemegang Sertifikat Hak Atas Tanah Dalam Kasus Sertifikat Ganda," *Jurnal Discretie* 1, No. 1 (April 30, 2020): 69, <https://doi.org/10.20961/Jd.V1i1.50222>.

specifically mention the term for the proof of land rights certificate, Government Regulation No. 10/1961 and Article 1 number 20 of PP No. 24/1997 state that such documents are called certificates. These certificates replicate the land book and survey letter, bound together with a cover paper applied by the Ministry of Agrarian Affairs. These documents are issued by the land office at the district/city level and include information about land rights, management rights, waqf land, ownership of apartment units, and even registered mortgage rights listed in the respective land books.

The legal regulation regarding criminal responsibility for perpetrators of sexual violence against children in Indonesia is specifically governed by Law No. 35 of 2014, which amends Law No. 23 of 2002 on Child Protection. Article 76D states: "Everyone is prohibited from committing violence or threats of violence to force a child to have intercourse with him or her or with another person." Article 76E states: "Everyone who commits violence or threats of violence, forces, deceives, conducts a series of lies, or persuades a child to commit or allow indecent acts." To tackle crime, a rational effort from society is required, through criminal policy. Crime prevention policies or efforts are essentially an integral part of social protection efforts. Therefore, it can be said that the main objective of criminal policy is "the protection of society to achieve social welfare."²²

3.2. Factors Influencing the Occurrence of Sexual Violence by Children Against Other Children

The violence experienced by children is not merely a psychological issue that occurs only in dysfunctional families, with frustrated parents, and impoverished families unable to cope with life's pressures. Child abuse is a social issue for all of us, requiring the collective attention of all societal layers because the victims of these incidents are not limited to one or two families or merely expressions of deviant behavior. Although family environments may be disappointing, the number of child victims and perpetrators of crimes has transcended geographical boundaries and communities; it can happen to anyone, anywhere.²³ Sexual harassment results in increasingly widespread issues, including becoming a legal problem when victims of sexual harassment bring their cases to legal institutions seeking justice. Sexual harassment is categorized as a form of gender discrimination. In cases of sexual harassment against children, it does not matter whether the victim is male or female. According to the Vienna Declaration, sexual crimes against children include all forms of sexual abuse and sexual violence perpetrated by adults. It is undeniable that sexual violence is characterized by the fact that the perpetrator is the party who holds power in relation to the child as the victim.²⁴

It is assumed that sexual harassment can cause deeply traumatic psychological situations for the victim, affecting the psyche more than the physical body. In some cases, it can even lead to psychological issues such as post-traumatic stress disorder (PTSD).²⁵ Sexual violence is a moral criminal issue that has become a central national and even global problem, necessitating the urgent identification of the best methods to reduce the proportion of children who become victims and perpetrators of sexual violence. Romli Atmasasmita explains that the factors influencing children to commit sexual harassment are grouped into two categories:

²² Made Oka Cahyadi Wiguna, "Pemikiran Hukum Progresif Untuk Perlindungan Hukum Dan Kesejahteraan Masyarakat Hukum Adat," *Jurnal Konstitusi* 18, No. 1 (May 27, 2021): 112-37, <https://doi.org/10.31078/jk1816>.

²³ Kayus Kayowuan Lewoleba And Muhammad Helmi Fahrozi, "Studi Faktor-Faktor Terjadinya Tindak Kekerasan Seksual Pada Anak-Anak," *Esensi Hukum* 2, No. 1 (July 27, 2020): 27-48, <https://doi.org/10.35586/Esensihukum.V2i1.20>.

²⁴ Kayowuan Lewoleba And Helmi Fahrozi.

²⁵ Dadang Hawari, *Kekerasan Seksual Pada Anak* (Jakarta: Ui Press, 2013).

a. Intrinsic Motivation, intrinsic motivation refers to motives that become active or function without external stimuli, as the individual already has an internal drive to act. Intrinsic motivation includes:

1. Intelligence Factor: This involves the child's intelligence, considering their ability to weigh and decide on matters.
2. Age Factor: This is a primary factor contributing to criminal behavior.
3. Gender Factor: Statistically, male delinquency is more prevalent than female delinquency.
4. Child's Position in the Family: Research indicates that the child's birth order in the family is one factor influencing behavior formation.

b. Extrinsic Motivation, extrinsic motivation refers to motives that require external stimuli to become active and function. Extrinsic motivation includes:

1. Family Factor: This is the closest social environment for the child in their maturation process and character formation.
2. Education Factor: Schools serve as an essential instrument for character formation after the family.

Another perspective is presented by Hari Saherodji, who states that the emergence of crime is caused by two factors:²⁶

1. Internal Factors: These include the child's psychology, biology, and morality, which require the family's role in control.
2. External Factors: These include socio-cultural aspects, economic conditions, and media influences.

In addition to socio-cultural, economic, and media factors, other external factors also influence the increase in sexual violence against children, both as perpetrators and as victims, including:²⁷

1. The minimal collective awareness of child protection in school environments. According to the Child Protection Law, there are five pillars in the implementation of child protection: parents, family, community, government, and state.
2. The impact of pornography and pornographic actions with high accessibility in the digital era. As mentioned earlier, mass media has not only positive but also negative effects.
3. The existence of disharmony among legislative products related to child issues.

3.3. Criminal Policy for Addressing Sexual Violence Against Children

a. Addressing Sexual Violence Through Non-Penal Measures

Non-penal policies for addressing juvenile delinquency in Indonesia are implemented through diversion efforts with a restorative justice approach.²⁸ Referring to Article 1, point 7 of Law No. 11/2012 on the Juvenile Criminal Justice System, diversion is defined as the transfer of a child's case resolution from the criminal justice process to an out-of-court process.

²⁶ Hari Saherodji, *Pokok-Pokok Kriminologi* (Jakarta: Aksara Baru, 1980).

²⁷ Kayowuan Lewoleba And Helmi Fahrozi, "Studi Faktor-Faktor Terjadinya Tindak Kekerasan Seksual Pada Anak-Anak."

²⁸ Anshori Anshori, "Pola Praktik Penyelesaian Tindak Pidana Anak Di Lamongan Dalam Perspektif Restorative Justice," *Al-Jinayah Jurnal Hukum Pidana Islam* 6, No. 2 (December 14, 2020): 344–68, <https://doi.org/10.15642/Aj.2020.6.2.344-368>; Febrina Annisa, "Penegakkan Hukum Terhadap Anak Yang Melakukan Tindak Pidana Pencabulan Dalam Konsep Restorative Justice," *Adil: Jurnal Hukum* 7, No. 2 (August 3, 2017): 202–11, <https://doi.org/10.33476/Ajl.V7i2.355>; Andrie Irawan And Wahyono Wahyono, "Restorative Justice Bagi Anak Pelaku Pidana Dalam Kuhp Baru Di Indonesia," *Sanskara Hukum Dan Ham* 2, No. 03 (April 30, 2024): 169–78, <https://doi.org/10.58812/Shh.V2i03.373>.

Restorative justice is a process where all parties involved in a specific offense come together to resolve the issue and consider how to address the consequences in the future. This process is fundamentally carried out through discretion (policy) and diversion. As outlined in Article 6 of the Juvenile Criminal Justice System Law, the goals of diversion are: 1) to achieve reconciliation between the victim and the child; 2) to resolve the child's case outside of the court process; 3) to prevent the deprivation of the child's freedom; 4) to encourage community participation; and 5) to instill a sense of responsibility in the child.

Article 10, paragraph (1) of the Juvenile Criminal Justice System Law states that Diversion Agreements for resolving offenses that are violations, minor crimes, victimless crimes, or crimes with victim losses exceeding the local minimum wage can be carried out by investigators in collaboration with the offender and/or their family, community counselors, and may involve community leaders. Paragraph (2) further explains that the Diversion Agreement referred to in paragraph (1), as recommended by the community counselor, may take the following forms:

1. Compensation for the victim's loss, if there is a victim;
2. Medical and psychosocial rehabilitation;
3. Reinstatement to the parents/guardians;
4. Participation in education or training at an educational institution or social service agency for a maximum of three (3) months; or
5. Community service for a maximum of three (3) months.

b. Addressing Sexual Violence Through Preventive Measures

There are three groups that can provide preventive measures to prevent sexual violence against children:

1. **Role of the Family:** Children have rights that need to be enjoyed to ensure comfort within the family environment and to be protected by family or parental affection, or through the fulfillment of other needs, such as psychological or physical. Within a family institution, it can be viewed as an institution because it can fulfill human needs in personality development and human growth. Once all aspects necessary for the child's growth and development are fulfilled, the child will have self-confidence, a sense of security, and be able to self-actualize. A happy family is crucial for the socio-emotional development of a child.
2. **Role of the Community:** The community must be attentive to what happens to other members of society. According to Article 25, paragraph (1) of the Child Protection Law, the community has the responsibility and obligation for child protection through community involvement activities. This means that the Child Protection Law mandates all layers of society, including schools and the broader community, to actively participate in protecting children. When the community condemns or prevents violence against children, it reflects a sense of concern for others. Communities address child issues through the establishment of various Child Protection Institutions (LPA).
3. **Role of Schools:** Schools are the second home for children, providing a broader social environment compared to the family. Schools play a significant role in preventing sexual violence because they have direct access to children and are responsible for the safety and security of their students, as stated in Article 9, paragraph (1) of the Child Protection Law, which declares that "every child has the right to protection from abuse and sexual violence perpetrated by educators, lecturers, school friends, and/or others within the educational unit."

Regarding the Criminal Policy for Addressing Sexual Violence Against Children in Indonesia, it can be concluded that in the examination of cases involving child offenders, a rigid approach cannot be applied, such as "if the crime is sexual violence, then the punishment must be this specific." This is because each case involving a child offender does not always have the same circumstances, the gravity of the offense is not always identical, and the punishment does not have to be uniform. For this reason, juvenile criminal cases do not adhere to strict minimum sentencing rules. On the other hand, the future prospects and potential for rehabilitation of the child must also be considered. Therefore, sentencing for child sexual offenses cannot be viewed rigidly through the Juvenile Justice System Law alone, but must also involve specific discretion exercised by judges for both the offenders and the victims.

4. Conclusions

The provisions on criminal sanctions for sexual violence against children within the Juvenile Justice System are in line with existing regulations. The focus is on resolving cases involving child offenders with a restorative justice approach. Sanctions for sexual violence against children are outlined in the KUHP under Articles 285, 289, 291, and 292. To protect children in Indonesia, the government also regulates criminal sanctions for perpetrators of sexual violence against children in Law No. 23 of 2002, which has been amended by Law No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection, Law No. 23 of 2004 on the Elimination of Domestic Violence, and Law No. 11 of 2012 on the Juvenile Justice System. These laws provide various forms of legal protection related to child protection against sexual violence. Factors influencing sexual violence by children against other children include intrinsic motivations such as intelligence, age (a primary factor in criminal behavior), gender, and the child's position within the family. External factors include the closest social environment in the child's development and character formation, and educational factors, where schools play a crucial role in character development after family influence. Criminal policies for addressing sexual violence against children are generally implemented through non-penal mechanisms. A key aspect of non-penal policy is to encourage solutions outside the criminal justice system, facilitating the reintegration of sexual offenders, particularly children, back into society after completing their sentences. The high incidence of sexual violence offenses involving children requires special attention, not only from law enforcement but from all societal aspects to undertake significant collaborative steps in preventing such crimes.

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