

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

The Urgency of Pancasila Values in the Regulation of Criminal Acts of Sexual Violence Against Children

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Abstract. *Law enforcement in cases of sexual violence against children still faces various obstacles, one of which is the lack of regulations regarding the criminal act of sexual violence, which still do not include the restoration of the rights of child victims of sexual violence. This article, using a normative juridical method, aims to examine the ability of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence to realize the restoration of the rights of child victims of sexual violence. In reality, it was found that there is ambiguity regarding the definition of sexual violence that can open the door to the legalization of adultery and abortion, as well as criminalization in terms of marriage and household life, as stated in Article 1, Article 11, Article 15, Article 17, and Article 19 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, while the ambiguity in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence will complicate law enforcement regarding cases of sexual violence against children in the future when Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence is enacted, so there is a need for synchronization of the criminal justice system in various aspects in addressing the problem of sexual violence against children which is increasingly rampant, for this reason Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence needs to be harmonized again with Pancasila which is the source of all sources of law or the ratio legis politik of criminal law in Indonesia.*

Keywords: *Children; Pancasila; Sexuality; Violence.*

1. Introduction

Lately, everyone has been reading and listening to media outlets discussing the issue of sexual violence against children in various regions. The National Commission for the Protection of Women's Annual Report noted 1,120 cases of sexual violence in 2018.¹ Meanwhile, the

¹Chantika Bathari, Open Your Conscience and Care About Sexual Violence, Accessed via geotimes.co.id, November 12, 2024.

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Foundation for Concern for Children, later abbreviated as KAKAK, noted that in the period of 2000 there were 90 (ninety) cases of sexual violence against children with child victims reaching 18 people. Furthermore, research conducted by Solihin as an academic at Gadjah Mada University together with the Indonesian Child Welfare Foundation conducted through the Center for tourism research and development of Gadjah Mada University (UGM), stated that child abuse had occurred from 1999 to 2002 in seven major cities in Indonesia with a total number of cases of 3,969 cases, where child abuse was divided into various acts of violence against children consisting of: 1) sexual abuse of 65.8%; 2) physical abuse of 19.6%; 3) emotional abuse of 6.3%; and 4) child neglect of 8.3%.² Then the Kompas daily noted that the number of victims of violence against children also increased from 12,285 in 2019, 12,425 in 2020, and to 15,972 in 2021.³ In 2024, the number of sexual violence against children in Semarang City reached 259 cases.⁴

Despite this, vulnerable victims must still flee in fear from the cruel grip of perpetrators of sexual violence, and perpetrators of sexual violence cannot be eradicated from this country overnight. Amidst a society that continues to flee helter-skelter from the issue of violence against children, the government is also perceived as incapable of protecting a single child from the cruelty of perpetrators of sexual violence in any region of the country. This inability is demonstrated, among other things, by Draft Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, currently being discussed by legislators who are more familiar with the current issue of sexual violence against children.

Like a flame far from the flame, Jazuli's statement above clearly demonstrates that Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence marginalizes children by containing an unclear definition of abortion. Furthermore, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence also does not clearly and comprehensively address the protection and restoration of victims' rights and conditions. This is evident in the lack of technical regulations for implementing victim recovery, both in terms of the victim recovery implementation system and the parties with specific rights and responsibilities regarding rights recovery. Furthermore, the ambiguity of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence can

²M. Anwar Fuadi, Psychological Dynamics of Sexual Violence: A Phenomenological Study, *Psychoislamika*, Journal of Islamic Psychology, Institute for Research and Development of Psychology and Islam (LP3K), Volume 8, No. 2, 2011, p. 192.

³<https://nasional.kompas.com/read/2022/01/20/12435801/laporan-kasus-kekerasan-terhadap-anak-dan-perempuan-meningkat-3-tahun#:~:text=Number%20of%20reports%20of%20cases%20of%20violence%20against,pada%202020%2C%20dan%20menjadi%2015.972>, accessed on November 12, 2024

⁴<https://ppt-dp3a.semarangkota.go.id/>, accessed November 12, 2024.

The Urgency of Pancasila Values in the ...
(Ricky Boy Siallagan)

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

complicate law enforcement in eradicating sexual violence, including against children. Based on the various explanations provided, it can be concluded that Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence still has many weaknesses, which will clearly impact the development of law enforcement. Anomalies in the world of law enforcement, including in the case of sexual violence against children, will ultimately result in the destruction of the child's future by contracting various diseases, trauma, and loss of honor. This clearly contradicts the First, Second, and Fifth Principles of Pancasila, while also significantly violating the mandate of the fourth paragraph of the preamble to the 1945 Constitution of the Republic of Indonesia. Therefore, it can also be said that the vagueness of the provisions contained in each article of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence will be able to damage various dimensions of values and the continuity of children's lives in the context of society as a whole.

2. Research Methods

This article, using a normative juridical method, aims to examine the ability of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence to realize the restoration of the rights of child victims of sexual violence.

3. Results and Discussion

3.1. Protection of Child Victims of Sexual Violence

Children as victims require immediate assistance. Investigators, without a social report from a professional social worker, can directly refer children as victims to a hospital or institution that handles matters related to child protection according to the condition of the child as victim.⁵What is meant by "requiring immediate medical attention" is a condition where a child is suffering, either physically or psychologically, and needs to be addressed immediately.⁶

Children as Victims and/or Children as Witnesses in Need protection to obtain protection from institutions that handle witness and victim protection or social protection houses in accordance with the provisions of laws and regulations.⁷When examining a child as a victim and/or a child as a witness, the judge may order the child to be taken out of the courtroom.⁸Children as Victims

⁵ Article 91 paragraph (2) of Law Number 11 of 2012 concerning SPPA.

⁶ Explanation Article 91 paragraph (2) of Law Number 11 of 2012 concerning SPPA.

⁷ Article 91 paragraph (4) of Law Number 11 of 2012 concerning SPPA.

⁸ Article 58 paragraph (1) of Law Number 11 of 2012 concerning SPPA.

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

and/or Children as Witnesses have the right to all protection and rights regulated in statutory regulations.⁹

Basically, victims have a central position in the criminal justice system.¹⁰ Therefore, victims must be given the utmost care. The rights granted in Law Number 11 of 2012 concerning the Child Protection System (SPPA) are crucial. Given the victim's crucial role in uncovering crimes, the diversion process allows victims to understand why they were victims of a crime and to seek compensation from the perpetrator. must be given to restore the situation to its original state, the state before the crime that befell the victim occurred. This is known as restorative justice. As stated by Tony Marshall, as quoted in the chapter II, that the restorative concept emphasizes justice that can restore.¹¹ This concept has been accommodated by the SPPA Law regarding the protection of Child Victims as stated in Article 90 and Article 91 of the SPPA Law.

However, more specifically related to child protection regulations, Indonesia also has Law Number 23 of 2002 concerning Child Protection. This law also regulates the types of children who are victims of a crime, namely: children who are victims of abuse of narcotics, alcohol, psychotropics, and other addictive substances (napza), children as victims of kidnapping, sale, trade, children as victims of violence, both physical and/or mental, children with disabilities, and children as victims of mistreatment and neglect.¹² children as victims of riots, children as victims of natural disasters,¹³ and children as victims of criminal acts.¹⁴

3.2. The Urgency of Pancasila Values in the Regulation of Criminal Acts of Sexual Violence Against Children

Chambliss and Seidman state that any action taken by stakeholders, implementing institutions, or lawmakers is always within the complex context of social, cultural, economic, and political forces, among others. All these social forces are at work in every effort to implement applicable regulations, implement sanctions, and participate in the overall activities of implementing institutions. Ultimately, the roles played by legal institutions and institutions are the result of

⁹ Article 89 of Law Number 11 of 2012 concerning SPPA.

¹⁰ Lilik Mulyadi, *Compilation of Criminal Law from the Perspective of Theory and Practice*. Bandung: Mandar Maju, 2007, p. 165

¹¹ Zehr, H & Mika, H, "Fundamental concepts of Restorative Justice", *Contemporary Justice Review* 1, 1998, pp. 47–55

¹² Article 1 paragraph (15) of Law Number 23 of 2002 concerning Child Protection

¹³ Article 60 of Law Number 23 of 2002 concerning Child Protection

¹⁴ Article 64 paragraph (1) of Law Number 23 of 2002 concerning Child Protection

The Urgency of Pancasila Values in the ...
(Ricky Boy Siallagan)

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

the interplay of various factors.¹⁵ The influence of social forces in the working of this law is clearly described by Seidman as follows:¹⁶

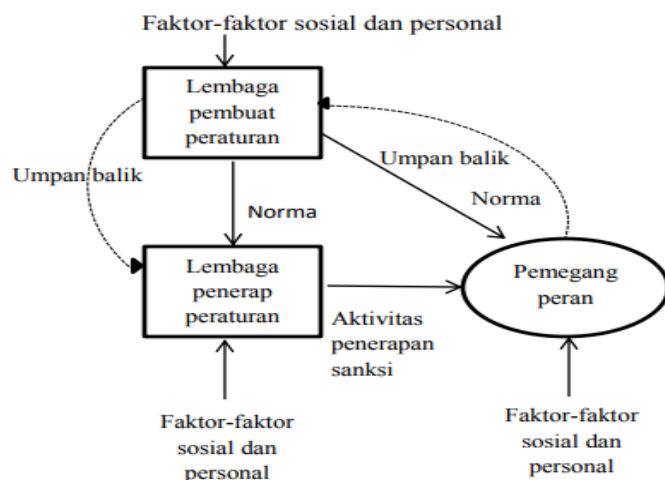


Chart I:

The Working of Personal and Social Forces

Lawrence M. Friedman further stated that law consists of structural, substantive, and cultural components. Friedman's definition of substance, structure, and culture is as follows:¹⁷

- a. The structural component is the institution created by the legal system, which has various functions to support its operation. This component allows us to see how the legal system provides services for the regular processing of legal materials.
- b. Substantive components, namely as output from the legal system, in the form of regulations, decisions used by both the regulating and regulated parties.
- c. Lawrence M. Friedman refers to the cultural components, consisting of values, attitudes, perceptions, customs, ways of doing, ways of thinking, and opinions that influence the operation of the law as legal culture. This legal culture serves as a bridge connecting legal regulations with

¹⁵William J. Chambliss and Robert B. Seidman in Esmi Warassih, *Legal Institutions: A Sociological Study*, UNDIP Press, Semarang, 2011, p. 10.

¹⁶*Ibid.*, p. 11.

¹⁷Esmi Warassih, *Legal Institutions: A Sociological Study*, (Semarang: Diponegoro University Publishing Agency, 2011), p. 28.

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

the legal behavior of all citizens.

Based on the theories of Chambliss, Seidman, and Friedman, it is clear that law enforcement efforts to eradicate cases of sexual violence against children cannot be viewed piecemeal or partially, but rather must be viewed holistically from various perspectives. The development of law enforcement efforts to eradicate cases of sexual violence against children is influenced by several factors, including:

a. Legal Regulatory Factors

A closer look at Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence reveals numerous ambiguities within its provisions. Article 1, paragraph 1 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence clearly states that sexual violence is:

Any act of degrading, insulting, attacking, and/or other acts against a person's body, sexual desires, which results in a person being unable to give consent in a free state, due to unequal power relations/or gender relations, which results in/or can result in physical, psychological, sexual suffering/or misery, economic, socio-cultural and/or political loss.

Based on the text of Article 1 number 1 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, it is clear that sexual acts that make children as objects of lust by sexually exploiting children cannot be considered acts of sexual violence if they are carried out on the basis of mutual consent. In other words, this article opens the door wide to the occurrence of adultery involving minors. Furthermore, Article 2 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence states that:

The elimination of sexual violence is based on the principles:

- 1) Respect for human dignity and worth;
- 2) Non-discrimination;
- 3) Best interests of the victim;
- 4) Justice;
- 5) Benefit; and
- 6) Legal certainty.

The Urgency of Pancasila Values in the ...
(Ricky Boy Siallagan)

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

If we look at the statement of Article 2 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence above, it is clear that the values that serve as the basis for the formation of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence are only the values contained in the second, third, fourth, and fifth principles of Pancasila, while the basic values as contained in the first principle of Pancasila are not included as the basic principles for the formation of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. Basically, each principle and value that makes up the principles in Pancasila cannot be separated from one another.

Article 15 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence in interpreting abortion always requires acts of coercion and pressure on the victim, so that abortions carried out without coercion and pressure on the victim cannot be interpreted as an unlawful abortion.

Furthermore, Article 17 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence explains that sexual violence is committed in the form of abuse of power through violence, threats of violence, deception, a series of lies, or other psychological pressure so that a person cannot give true consent to marriage. This article can be used as a way for someone, whether a child against their parents or another person against a person's parents, to carry out criminalization so that a child or person cannot marry according to their parents' or someone else's wishes.

Furthermore, Article 19 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence defines sexual violence as perpetrated by restricting a person's freedom of movement or depriving them of their freedom, with the intention of subjecting them to the sexual needs of themselves or others for a specified period of time. This article could open the door for a wife or husband to criminalize their partner under the pretext of domestic sexual slavery.

In addition to the various issues outlined in the articles above, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence also does not clearly address sexual violence against men. Yet, men, including boys, can also be victims of sexual violence. The Indonesian Child Protection Commission (KPAI) stated that in 2018, 122 boys were victims of sexual violence, significantly higher than the 32 cases of sexual violence against girls in 2018.¹⁸ Furthermore, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence does not clearly address victim recovery. This is evident in the lack of technical regulations for implementing victim recovery, either regarding the system for implementing victim recovery or the parties with specific rights and responsibilities regarding rights recovery.

¹⁸Alfan Hilmi, KPAI: Victims of Sexual Violence Were Dominated by Men in 2018, Accessed via nasional.tempo.co, November 12, 2024.

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

From the various explanations above, it is clear that Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence was drafted with various provisions that still have many shortcomings and have vagueness in each of its articles. The vagueness related to the omission of provisions regarding men as objects in sexual violence and the vagueness in Articles 15, 17, and 19 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence will ultimately result in the violation of Pancasila values that have not been fully transformed in Article 2 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. This can also result in violation of the values of humanity and justice as stated in the fourth paragraph of the preamble to the 1945 Constitution of the Republic of Indonesia and Article 28D number 1 of the 1945 Constitution of the Republic of Indonesia concerning equality before the law. In addition, the issue of ambiguity in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence also violates the mandate of Article 29 number 2 of Law Number 39 of 1999 concerning equal recognition before the law. Furthermore, if we look at the thoughts of Chambliss and Seidman on this aspect of legal regulations, the influence of social and personal forces also contributed to the issue of ambiguity in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, social and personal forces can be seen from the political process of forming Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence which seems not to be based on a clear legislative ratio but is based on the interests of a certain group that subtly wants to make Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence a means of legalizing adultery, as well as criminalization in a cultural order of family life and marriage culture in Indonesia. This aims to shift Eastern cultural values, as enshrined in Pancasila, into liberal values that condone adultery, abortion, and LGBT (Lesbian, Gay, Bisexual, and Transgender) movements. This is evident in the ambiguous provisions in Articles 1, 11, and 15 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence.

b. Law Enforcement Factors

With the culture of law-making as a mouthpiece, law enforcers are unable to separate themselves from the value-free textual elements of law. The ambiguity in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence will clearly create another problem in the world of law enforcement in Indonesia. This is because law enforcers will only use the ambiguous provisions of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence as the main basis for resolving the issue of sexual violence against children. Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence does not clearly regulate the technicalities of imposing sanctions on perpetrators of sexual violence against children, where the perpetrator is also still a minor. Furthermore, the absence of rehabilitation for child victims of sexual violence in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence also results in

The Urgency of Pancasila Values in the ...
(Ricky Boy Siallagan)

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

ineffective rehabilitation for child victims of sexual violence. Furthermore, the lack of regulation of adultery between children and adults or between children, which has resulted in the sexual exploitation of children, will ultimately make it difficult for normative law enforcement to prosecute perpetrators of sexual violence against children. Furthermore, the lack of clear regulation of sexual violence against men will also complicate the eradication of sexual violence against boys, the majority of whom are victims of adult abuse in this country.

c. Community Cultural Factors

Furthermore, the definition of sexual violence in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, which opens the door to adultery and abortion at one's own will without pressure, will result in perpetrators of sexual violence against both boys and girls becoming more emboldened. This is because, in addition to the culture of fear of reporting due to the assumption that sexual violence within the family is disgraceful, the ambiguity of Articles 1 and 15 provides a new way for perpetrators of incest or sexual violence perpetrated by parents or siblings against children or their wards to easily escape the clutches of the law. This factor is the main factor in the ineffectiveness of eradicating sexual violence when viewed based on the provisions as stipulated in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence when enacted.

If we look at the various explanations as above, it can be said that in viewing law enforcement in cases of sexual violence against children, it cannot be viewed from just one aspect but must be viewed holistically from various aspects, namely the regulatory aspect, the enforcement aspect of the regulations, and the cultural aspect of society in viewing sexual violence against children. The integrated criminal justice system perspective states that there are subsystems that influence the performance of a criminal justice system in achieving its goal of reducing criminal cases in society. These subsystems operate through a mechanism known as synchronization between the criminal justice subsystems, which are the components that make up the criminal justice system. Essentially, this perspective adopts Friedman's theory used in analyzing the Criminal Justice System. The forms of synchronization of the criminal justice system (CJS) are as follows:¹⁹

a. Substance Synchronization

Synchronization in the substantive area is synchronization related to legislation. In this substantive area, the government is required to create legal regulations or legislation that

¹⁹Sugiharto, Criminal Justice System and a Glance at Criminal Justice Systems in Various Countries, UNISSULA, Semarang, 2012, pp. 21-24.

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

prioritizes the interests of the people. As legislation develops, it must be dynamic and continually adapt to changes in society, which is constantly evolving and developing.

b. Structural Synchronization

This synchronization relates to the field of law enforcement. In this area, the role of law enforcement is to uphold all rules mandated by the substantive or legislative fields. This subsystem includes the police, prosecutors, judges, and correctional institutions. Failure of the structural sector to enforce the legal sector will also result in the failure of the SPP to achieve fair criminal law enforcement.

c. Culture Synchronization

The final synchronization is in the cultural sphere. Cultural synchronization relates to the synchronization between criminal law policies and the culture, customs, traditions, and mindsets of the community. Although the substance and cultural sectors are very important, if legal policies and law enforcement officials cannot be accepted and obeyed by a community because they differ from the local culture, customs, traditions, and mindsets, then the laws and law enforcement officials will certainly not be able to effectively enforce existing laws.

In relation to the synchronization of the criminal justice system, Muladi stated that the integrated criminal justice system is a synchronization, harmony and integration consisting of:²⁰

a. Structural synchronization, namely simultaneity and harmony in the framework of relations between law enforcement agencies;

b. Substantial synchronization, namely simultaneity and harmony both vertically and horizontally relating to positive legal regulations;

c. Cultural synchronization is harmony and harmony in internalizing the views, attitudes and philosophy as a whole that underlies the running of SPP.

In order to realize synchronization of the criminal justice system in matters of sexual violence against children, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence must be based on the values of the Almighty God or religious morals, the values of Just and Civilized Humanity or humanism, the values of the Unity of Indonesia or the interests of the nation and state, the values of Democracy Led by Wisdom/Wisdom in Deliberation and Representatives or democracy, and the values of Social Justice for All Indonesian People or justice. In addition to

²⁰Ibid, p. 25.

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Pancasila, criminal law must also be based on general legal principles recognized by all nations in the world or the general principles of law recognized by the community of nations.²¹ Furthermore, the idea of balance in criminal law requires that criminal law also consider the losses suffered by victims. To fulfill this aspect, additional penalties in the form of fines and fulfillment of customary obligations are required, so that in addition to the perpetrator receiving an appropriate punishment, the victim also receives appropriate compensation. Furthermore, the idea of balance in criminal law does not make imperative criminal provisions the primary source; rather, the most important source of criminal law is the judge's judgment and conviction.²² In order to realize this idea, the design Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence should not only be viewed from a single legal textual perspective, but also consider religious values, both spiritual and material, humanitarian values or human rights, unity, democracy, and justice. This is what Barda Nawawi Arief mentioned above:

Criminal law reform is essentially an effort to reorient and reevaluate the socio-political, socio-philosophical, socio-cultural values that underlie and provide content to the normative and substantive contents of the desired criminal law... And, the national legal system, in addition to being able to support national development and the needs of international relations, must also be sourced from and not ignore the values and aspirations that live and develop in society, the values that live in society can be sourced or extracted from customary law values or religious law values.

In order to realize the above, Barda Nawawi stated that:²³

The importance of a humanistic approach in the use of criminal sanctions, not only means that the sanctions imposed on offenders must be in accordance with civilized human values, but must also be able to make offenders aware of the importance of human values and social values in society.

4. Conclusion

Based on the various explanations in the discussion of this paper, it can be concluded that concluded that: That there is ambiguity regarding the definition of sexual violence which can open the door to the legalization of adultery and abortion, as well as criminalization in terms of marriage and household life, as stated in Article 1, Article 11, Article 15, Article 17, and Article 19 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence; The ambiguity in Law

²¹Barda Nawawi Arif, *Anthology of Criminal Law Policy*, Citra Aditya Bakti, Bandung, 2013, p. 41.

²²Ibid, pp. 40-43.

²³Barda Nawawi Arif, *Anthology of Criminal Law Policy*, Citra Aditya Bakti, Bandung, 2013, p. 41.

LICS 2026

Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Number 12 of 2022 concerning Criminal Acts of Sexual Violence will complicate law enforcement regarding cases of sexual violence against children in the future when Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence is enacted; Perpetrators of sexual violence against children will find it easier to escape the clutches of the law if Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence is enacted with all its ambiguous provisions; There is a need for synchronization of the criminal justice system in various aspects in addressing the increasingly serious problem of sexual violence against children; Therefore, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence needs to be re-harmonized with Pancasila, the ideology of the Indonesian nation, the principle, the source of all sources of law, and the legal and political rationale for criminal law in Indonesia. Before enactment, it would be best to re-examine Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence against the touchstones of Pancasila, the constitution, and the values entrenched in Indonesian society. Furthermore, any provisions that remain vague need to be amended. Finally, various provisions not yet included as explained above need to be clearly stated to avoid multiple interpretations of the provisions of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence.

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The Urgency of Pancasila Values in the ...
(Ricky Boy Siallagan)