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

## **Legal Protection for Children as Perpetrators of Sexual Crimes**

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**Abstract.** *The crime of sexual intercourse committed by children against victims of the same age is an extraordinary problem, one of which is seen in the problem of the criminal system against the perpetrator, on the one hand the perpetrator who is a child cannot be punished like an adult perpetrator because of considerations of mental growth and considerations of the child's future. However, on the other hand the victim who is also the same age as the perpetrator or is also a child cannot do much to receive justice for the perpetrator's actions that have damaged his future. The type of research in this thesis is a type of Normative juridical research. Based on the results of the research conducted, it can be seen that the basis for the judge's consideration in deciding the case of a child as a perpetrator of the crime of sexual intercourse against a child in the Cirebon District Court consists of juridical considerations used by the judge, namely, proof of the crime committed, whether the act has fulfilled the elements of rape referred to in Article 285 of the Criminal Code, and from all the statements of the witnesses and the explanation of the prosecutor's demands, it can be concluded that all elements of the crime of rape committed by the defendant are proven. While sociologically in his decision the judge considered the things that aggravated the defendant, namely: The actions committed by the defendant were inhumane, because the defendant committed harassment and immoral acts against the victim who was still a minor, especially the defendant also threatened the victim, this caused the victim to be afraid and traumatized to the point that the victim did not want to go to school. While the mitigating factors for the defendant were: the defendant admitted all his actions, although at first the defendant denied it, the defendant also expressed regret for having committed these actions against the victim who was considered his own lover or girlfriend, and the most important thing in the judge's consideration was that the defendant was still classified as a child. The legal consequences of the judge's decision in the case of Children as Perpetrators of Sexual Acts Against Children in the Cirebon District Court are that legally perpetrators of sexual acts against children can also be subject to criminal sanctions as regulated in Article 81 of Law Number 35 of 2014 concerning Child Protection, children who commit sexual acts against children can also be subject to criminal sanctions as regulated in Article 285 of the Criminal Code.*

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## 1. Introduction

Crimes against morality are prevalent in this era, one of which is sexual intercourse. Sexual intercourse involves forms of oppression and crime committed by individuals against other individuals or groups. It can be experienced by adults and children, or even between children themselves. The victims of this crime are often more vulnerable individuals. Not only adults can be perpetrators, but children can also be involved in sexual intercourse. These cases can occur in various settings, such as at school, in neighborhoods, and even within the family environment. Many incidents of sexual intercourse involve children as perpetrators, demonstrating the complexity of this problem and the need for attention to prevention, education, and appropriate law enforcement.

Child Protection Law Number 35 of 2014 states that sexual intercourse is considered part of moral norms. Sexual intercourse is a crime that is difficult to detect and uncover because all parties involved—the perpetrator, the victim, and the victim's and perpetrator's families—are reluctant to report the incident. One reason is that Indonesian society generally considers sexual intercourse to be shameful and taboo to discuss.

Children hold enormous potential as the future of the nation and reflect the values that will shape the nation in the future. They play a crucial role and possess unique characteristics, so their physical, mental, and social development must be supported through guidance, protection, and a positive environment. Education plays a central role in shaping children's character, enabling them to develop their positive potential.<sup>1</sup>

Children are a precious generation in a country, so every child has the right to be respected and protected. In the context of human rights, children's rights are protected even while they are still in the womb. Child protection refers to various efforts made to rescue and handle children when they commit mistakes or become victims of crime. This will have long-term psychological impacts on children.<sup>2</sup>

Children are considered individuals in the process of growing. It can also be said that children are individuals who are not yet fully developed. Because they have age limits that influence how

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<sup>1</sup>Wigiati Soetodjo. 2006. Criminal Law for Children. Bandung: PT. Refika Aditama. p. 5

<sup>2</sup>Moeljatno. 2008. Principles of Criminal Law. Jakarta: PT. Rineka Cipta. p. 25

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they think and act, children are not yet able to distinguish between right and wrong. Therefore, proper and effective supervision is crucial, both for children and society. This aims to protect the rights of every child and prevent negative external influences that could impact their development.

The state and society also play a significant role in determining the fate of children. One of the state's obligations in protecting children is to provide them with special legal protection. This legal protection means the existence of regulations and implementation that are expected to guarantee the rights of every child so that they can live optimal lives as individuals whose rights are guaranteed. Furthermore, it is crucial to ensure that children are protected from injustice, crime, neglect, discrimination, exploitation, and other harmful acts so that they can contribute to building the nation for future generations.<sup>3</sup>

Law Number 23 of 2002 concerning Child Protection was enacted as a government initiative within the framework of legal reform, with the aim of ensuring the protection of children's rights in aspects of life, growth, and development, as well as protecting them from crime and discrimination. However, over time, the implementation of this regulation was deemed ineffective due to overlapping sectoral regulations relating to the definition of a child. Therefore, after approximately twelve years of its enactment, this regulation was amended, resulting in Law Number 35 of 2014 concerning Child Protection.

Article 2 of Law No. 35 of 2014 emphasizes that the implementation of child protection must be based on the values of Pancasila and the 1945 Constitution. Law No. 35 of 2014 concerning Child Protection regulates the crime of sexual intercourse. This provision is outlined in Article 76D, which states that "Any criminal act or threat of a crime that forces a child to have sexual intercourse with the perpetrator or another person is a violation."

Details regarding criminal penalties that apply to Article 76D are explained in Article 81:

- 1) Any violation of Article 76D will be subject to imprisonment for a minimum of 5 years and a maximum of 15 years, as well as a maximum fine of IDR 5,000,000,000.00.
- 2) The above criminal provisions also apply to individuals who deliberately commit acts of deception, a series of lies, or persuade children to have sexual intercourse with themselves or other people.
- 3) If the above crime is committed by a parent, guardian, child caretaker, educator or education

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<sup>3</sup>Lamintang. 1997. Fundamentals of Indonesian Criminal Law. Bandung: Citra Aditya Bakti. p. 11

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staff, the penalty will be increased by 1/3 of the sentence imposed in Paragraph (1).

In the criminalization of children, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is used as a reference. The Juvenile Criminal Justice System refers to the process of handling children's cases involving the law, from the investigation stage to post-sentence guidance. The principles emphasized in this system are the best interests of the child, protection, non-discrimination, justice, respect for children, child development and survival, balance, deprivation of liberty and punishment as a last resort, and avoiding punishment that harms children.

Children are the nation's future generation and must be protected from all forms of crime and exploitation. In the context of Indonesian law, children as perpetrators of criminal acts, particularly in cases of sexual intercourse with children, is a complex issue that requires special attention. Articles in laws and regulations, particularly Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (UU PA) and Law Number 12 of 2022 concerning Criminal Acts of Sexual Crimes (UU TPKS), regulate various aspects related to the protection and handling of children as victims and perpetrators of sexual crimes.

On the one hand, the Child Protection Law affirms children's rights to be protected from all forms of crime and discrimination, both as victims and perpetrators. Articles in the Child Protection Law emphasize that the handling of children as perpetrators of crimes must consider their best interests, provide fair treatment, and adhere to the principle of rehabilitation. This aims to ensure that children involved in criminal acts still have the opportunity to improve themselves and return to society without lasting negative stigma.

On the other hand, the TPKS Law is a special regulation that addresses sexual crimes, including sexual intercourse with children. This law regulates the prevention, protection, and handling of sexual crimes, taking into account aspects of justice for victims and providing a holistic recovery mechanism. The TPKS Law also tightens sanctions against perpetrators of sexual crimes, including children who engage in sexual intercourse with other children. This presents a major challenge in Indonesian criminal law, particularly in aligning the protection needs of child victims with the rights of child perpetrators.

Therefore, a study of children as perpetrators of sexual intercourse with children is crucial for understanding how the application of laws and regulations, particularly the Child Protection Law and the Child Protection and Protection Law, can provide justice for all parties involved. This study also aims to explore various approaches that are more oriented toward recovery and rehabilitation for child perpetrators, which are expected to provide better legal solutions and

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support children's role as productive and integrated future generations.

In juvenile criminal justice, children can be suspects, victims, or witnesses. A child is considered a suspect when they are between 12 and 18 years old and are suspected of committing a crime. A child is considered a victim when they are under 18 and experience mental or physical suffering or material loss as a result of the crime. A child is considered a witness when they are under 18 and provide useful information in the legal process, from investigations to court hearings, regarding criminal cases they witnessed, experienced, or learned about.

Children involved in legal conflicts and under the age of 14 will only be subject to non-criminal measures. These measures include returning to their parents, handing them over to a designated party, treatment in a mental hospital, or treatment at a Social Welfare Institution (LPKS). In addition, children are also required to attend formal education or training provided by the government or private institutions. Other measures include revocation of their driver's license (SIM) and remedial measures for the crime. However, for children aged 14 and over, there is the possibility of criminal penalties. The types of penalties that can be imposed on them are in line with Article 71 of Law Number 11 of 2012 concerning the Child Protection and Child Protection Agency (SPPA), including:

1. The main penalties are job training, conditional sentences (institutional guidance, supervision, community service), warning sentences, and guidance in prison and institutions.
2. Additional penalties include confiscation of profits obtained from fulfilling customary obligations and from criminal acts committed.

Cases of sexual assault on children are not limited to urban areas, but also occur quite frequently in rural areas, such as in Cirebon Regency. One case there involved an underage girl who was sexually assaulted by several of her fellow schoolmates, also children.

## **2. Research methods**

The type of legal research used is non-doctrinal. In this non-doctrinal legal research, law is conceptualized sociologically as an empirical phenomenon that can be observed in life. In terms of its substance, law is seen as a social force that is empirical in form, but which is seen legally and works to pattern the actual behavior of citizens. Then, in terms of structure, law is a judicial institution that works to transform inputs (strictly legal material in abstracto in abstracto, namely the product of the political system) into outputs (strictly decisions in concreto) which in this way influence and direct the form and process of social interaction that occurs in society. In this perspective, according to Soetandyo, law will appear as a natural fact that will certainly be

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subject to regularities (nomos) or uniformities (uniformities).<sup>4</sup>

### 3. Results and Discussion

#### 3.1. Basic Considerations of Judges in Deciding on Cases of Children as Perpetrators of Criminal Acts of Sexual Intercourse Against Children at the Cirebon District Court

Teenagers or children as part of the social structure, have the right to receive protection, attention, and guarantees for their future. This is in accordance with Article 28B paragraph (2) of the 1945 Constitution, which explains that every child has the right to survive, develop, and receive protection from various forms of violence and discrimination. In addition, all provisions in Law Number 35 of 2014 concerning Child Protection emphasize that every child must have the right and obligation to receive protection from parents, society, and the state, also providing legal protection guarantees for children from acts of violence, sexual harassment, and detrimental treatment. In certain contexts, discussions about criminal liability require special attention, such as when the perpetrator of a crime is a child. Based on Article 1 paragraph (1) of Law Number 35 of 2014 which is an amendment to Law Number 23 of 2002 concerning Child Protection, a child is defined as someone who is not yet 18 years old. In addition, based on Article 1 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, a person accused of committing a crime is classified as a child in conflict with the law. Furthermore, the word "child" means a person aged between 12 and 17 years. When discussing the criminal responsibility of children, special treatment is required because children have different characteristics from adults. This can be seen in terms of emotional maturity, mental maturity, and understanding of the law which is different from that of adults. The criminal responsibility of minors cannot be limited only to the provisions outlined in the Criminal Code. The legal provisions in the Criminal Code are conventional, because they are related to the objectives of Dutch colonial law. This occurs even though human activities are increasingly complex. In line with Article 103 of the Criminal Code. If a child commits a crime, diversion must be attempted in the resolution process. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System explains the meaning, objectives and process of diversion. The definition of diversion according to Article 1 paragraph (7) reads, "diversion is the transfer of the settlement of a child's case from the criminal justice process to a process outside the criminal justice system." Furthermore, according to Article 7 paragraph (1), the implementation of diversion is mandatory in every stage of the child criminal justice system, starting from investigation, prosecution, to the examination of cases in district courts. Diversion is not an

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<sup>4</sup>Nurul Qamar and Farah Syah Rezah, *Doctrinal and Non-Doctrinal Legal Research Methods, Social Politic Genius*, Makassar, 2020, pp. 50-54.

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effort to mediate between children in conflict with the law and the victims or their families, but diversion is a type of punishment that is not formally recognized. Meanwhile, Imposing a criminal sentence on a child is the last resort (*ultimum remedium*) which is only carried out after all other efforts that are more beneficial to the child have no longer been attempted. Based on various existing views, it is clear that criminal responsibility according to Law No. 11 of 2012 concerning the Juvenile Criminal Justice System views children as perpetrators of sexual intercourse crimes as not being able to immediately receive the punishment threatened, especially in Article 76D of Law No. 35 of 2014 which is an amendment to Law No. 23 of 2002 concerning Child Protection which states that "Every criminal act or threat of a crime that forces a child to have sexual intercourse with the perpetrator or another person is a violation." Children who commit sexual intercourse also cannot be subject to Article 4 paragraph (2) letter c which states that in addition to the Criminal Act of Sexual Violence as referred to in paragraph (1), the Criminal Act of Sexual Violence also includes sexual intercourse against children, indecent acts against children, and/or sexual exploitation of children. In the crime of sexual intercourse committed by a child against a child, legal protection for children is not only for the victim who is a child but legal protection must also be given to children as perpetrators of the crime of sexual intercourse. In the application of protection for children in sexual crimes, both victims and perpetrators are given legal protection based on Law Number 11 of 2012 concerning the Juvenile Justice System. The principle of legal protection for children must be in accordance with the Convention on the Rights of the Child as ratified by the government of the Republic of Indonesia with Presidential Decree Number 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child. In Article 1 number 2 of Law Number 11 of 2012 concerning the Juvenile Justice System, it states that children who are in conflict with the law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts. In the juvenile justice law, not only protects children as victims or witnesses of criminal acts but also protects children as perpetrators of criminal acts who are considered children in conflict with the law." Children who commit sexual intercourse cannot be subject to Article 4 paragraph (2) letter c which states that in addition to the Criminal Act of Sexual Violence as referred to in paragraph (1), the Criminal Act of Sexual Violence also includes sexual intercourse against children, indecent acts against children, and/or sexual exploitation of children. In the criminal act of sexual intercourse committed by children against children, legal protection for children is not only for the victims who are children but legal protection must also be given to children as perpetrators of the criminal act of sexual intercourse. In the application of protection for children in sexual crimes, both victims and perpetrators are given legal protection based on Law Number 11 of 2012 concerning the Child Justice System. The principle of legal protection for children must be in accordance with the Convention on the Rights of the Child (Convention on

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The position of protection for children who are perpetrators of sexual intercourse as referred to in Article 1 number 2 of Law Number 11 of 2012 concerning the Juvenile Justice System is realized through strict regulations regarding Restorative Justice and Diversion which are intended to avoid distancing from the judicial process so as to avoid stigmatization of children who are in conflict with the law, with the hope that children can return to being good individuals. The existence of diversion as a law enforcement effort that can protect the rights of children who are perpetrators of sexual intercourse is also regulated in Article 23 of Law of the Republic

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of Indonesia Number 12 of 2022 concerning Criminal Acts of Sexual Violence which states that "cases of Criminal Acts of Sexual Violence cannot be resolved outside the judicial process, except for Child perpetrators as regulated in the Law".

According to Article 1 paragraph (2) of Law Number 13 of 2006 concerning Witness and Victim Protection, a victim is a person who experiences physical, mental, and/or economic suffering resulting from a criminal act. In Article 1 of the SPPA Law, a child who is a victim of a criminal act, hereinafter referred to as a child victim, is a child under 18 (eighteen) years of age who experiences physical, mental, and/or economic suffering caused by a criminal act. Muladi defines victims as people who, individually or collectively, have suffered losses, including physical or mental, emotional, economic losses, or substantial disruption to their fundamental rights, through acts that violate criminal law in each country, including abuse of power.<sup>5</sup>

The importance of protecting crime victims has received serious attention, as can be seen in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power by the United Nations as a result of The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which took place in Milan, Italy, September 1985. In one of its recommendations it is stated: "Offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims, their families or dependents. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights" (the perpetrator or those responsible for an unlawful act, must provide restitution to the victim, family or guardian of the victim. The restitution is in the form of returning property rights or replacing losses suffered by the victim, losses due to negligence that has resulted in victims, which is a legal determination as a form of service and fulfillment of rights).<sup>6</sup>

The issue of restitution to crime victims in the context of the relationship between perpetrator and victim is a manifestation of the resocialization of the perpetrator's responsibility as a member of society. Through the resocialization process, it is intended and hoped that a sense of social responsibility will be instilled in the perpetrator, so that the value of restitution in this case lies not only in its effectiveness in helping the victim, but also serves as a tool to make the perpetrator aware of his "debt" (the result of his actions) to the victim. In practice, in almost

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<sup>5</sup>Muladi, Human Rights: Essence, Concept and Implications from the Perspective of Law and Society, Bandung: Refika Aditama, 2005, p. 108.

<sup>6</sup>Mardjono Reksodiputro, Criminology and the Criminal Justice System, Center for Justice Services and Legal Service, Institute of Criminology, University of Indonesia, Jakarta, 2007, p. 77.

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many countries, this concept of restitution has been developed and is also provided to crime victims for their suffering as victims of crime. Under this concept, victims and their families must receive fair and appropriate compensation from the guilty party or responsible third party. This compensation will include the return of property or payment for damage or loss suffered, reimbursement of costs incurred as a result of the victim's actions, the provision of services and rights of recovery.<sup>7</sup>

Article 9 and Article 14 of Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Child Victims of Crime stipulates that investigators and public prosecutors inform victims of their right to file for restitution. In filing for restitution, applicants can indicate the identity of the victim and perpetrator, a description of the incident experienced, a description of the losses suffered, and the amount or number of restitution they wish to request (Article 7). Protection of crime victims in the form of compensation for victims by perpetrators is not without problems. The obstacle that arises is when the perpetrator does not have the ability or assets to pay compensation to the victim. In this regard, Sudarto stated that the criminal imposition of compensation obligations imposed on the perpetrator will be meaningful if the perpetrator is able to pay. If he is unable, and it can be estimated that most people who commit crimes are among those who are unable.<sup>8</sup>

Article 11 of the Child Protection and Child Protection Law states that the results of a diversion agreement can take the form of peace with or without compensation, return to parents/guardians, participation in education or training at an educational institution or LPKS for a maximum of 3 (three) months; or community service. Basically, a diversion agreement is like a general agreement, which means that the provisions for cancellation of Article 1320 of the Civil Code (KUH Perdata) apply to the agreement. The following are the valid requirements for an agreement based on Article 1320 of the Civil Code: agreement of the parties to the agreement (agreement), the capacity of the parties to the agreement (capacity); a certain thing (certainty of terms), and a lawful cause (considerations). While Article 1330 of the Civil Code prohibits minors/those still under guardianship from making agreements, in a diversion agreement, the voice and opinions of children who are suspects and/or victims are also taken into account in making the diversion agreement. However, the diversion process must still involve adults such as the child's parents/guardians.

On October 17, 2014, approximately 8 (eight) years after the enactment of Law No. 13 of 2006, Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of

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<sup>7</sup>*Loc. cit.*

<sup>8</sup>*Loc. cit.*

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Witnesses and Victims (hereinafter abbreviated as Law No. 31 of 2014) was passed. In its general explanation, it was stated that with the development of law in society, several significant weaknesses in the implementation of Law No. 13 of 2006 were apparent, so that changes were needed to regulate the protection of witnesses and victims in the Law concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims. In connection with these changes in regulation, in terms of restitution for victims of criminal acts, Law No. 31 of 2014 finally included provisions previously regulated in Government Regulation No. 44 of 2008. These provisions are outlined in the following article:

Article 7A

(1) Victims of criminal acts have the right to receive restitution in the form of:

- a. compensation for loss of wealth or income;
- b. compensation for losses incurred as a result of suffering directly related to the criminal act; and/or
- c. reimbursement of medical and/or psychological care costs.

(2) The criminal acts as referred to in paragraph (1) are determined by a LPSK Decision.

(3) Submission of a restitution application can be made before or after a court decision that has obtained permanent legal force through LPSK.

(4) In the event that a restitution application is submitted before a court decision has obtained permanent legal force, the LPSK can submit a restitution request to the public prosecutor to be included in the indictment.

(5) In the event that a restitution application is submitted after a court decision has obtained permanent legal force, the LPSK can submit a restitution application to the court to obtain a decision.

(6) In the event that the victim of a crime dies, restitution is given to the victim's family who are the victim's heirs.

If examined closely, the provisions on restitution still contain a number of problems. Law No. 31 of 2014 has indeed accommodated several provisions regarding the restitution mechanism for victims of criminal acts that were previously regulated in Government Regulation No. 44 of 2008, so it can be said that these provisions are now on par with the Criminal Procedure Code. Thus,

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law enforcement officers can now be "forced" to use the restitution mechanism regulated in Law No. 31 of 2014, which has a wider scope of restitution than the Criminal Procedure Code because the provisions of the restitution mechanism now have the same power as if regulated in the Criminal Procedure Code. However, in this law there is a new provision that actually limits the granting of restitution rights for victims of criminal acts. Article 7A paragraph (2) states that criminal acts as referred to in paragraph (1) are determined by a Decision of the LPSK. This means that the right to receive restitution cannot apply to all victims of criminal acts. This right only applies to victims of certain criminal acts, the determination of which is not clear because it is only stated "determined by a Decision of the LPSK." In the explanation section, this verse is stated quite clearly, even though there is no clarity regarding this verse considering that there is no such provision in Law No. 13 of 2006 and PP No. 44 of 2008.

The implementation of restitution can be carried out by investigators and public prosecutors, at this stage when the perpetrator is willing to provide restitution, the investigator and public prosecutor will make a report on the restitution deposit money before a final and binding court decision is made.

Restitution through a court decision is carried out after the judge's decision containing the restitution sentence has permanent legal force. If there is money deposited through the investigator or public prosecutor placed in the designated bank and the judge approves the amount of restitution deposited by the perpetrator, the prosecutor can take the money and hand it over to the victim, but if according to the judge there is an excess then the excess is returned to the perpetrator, while if there is a shortage, the prosecutor can request the shortage from the perpetrator, the perpetrator's family, the party who guarantees the perpetrator. If the prosecutor has not seen the restitution money in the minutes since seven days of the decision of the case with permanent legal force, the prosecutor will form a deliberation forum that invites the perpetrator or his guarantor with the victim and his companion to decide the amount and mechanism for handing over the restitution, the agreement on this matter is then made into a minute, after which the prosecutor monitors the process of handing over the restitution, after the restitution is handed over the prosecutor reports this to the court.

Restitution for child victims of sexual intercourse committed by children is also regulated in Article 37 of the Republic of Indonesia Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, which states that "in the case of a perpetrator being a child, the provision of restitution is carried out by the parents or guardians." Although restitution related to the type of compensation sanctions for victims carried out by the perpetrator has been regulated in cases of sexual intercourse committed by children against other children, it does not regulate the

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amount of restitution that must be given and what mechanisms can be implemented if the parents or guardians of the perpetrator of sexual intercourse do not carry out their restitution obligations to the victim.

Based on the various explanations available, it's clear that neither diversion nor restitution for child perpetrators of sexual intercourse with other children is capable of restoring the victims' condition. This is clearly unfair when compared to the impacts victims of sexual intercourse face, including:<sup>9</sup>

- a. Social and emotional disturbances, including difficulty integrating into the environment and emotional instability, can manifest as difficulty building healthy social relationships and feelings of isolation. Furthermore, children are also at risk of bullying or peer rejection, which can affect their mental balance and well-being.
- b. Post-Traumatic Stress Disorder (PTSD). Child victims of sexual abuse can experience PTSD, which is characterized by symptoms such as persistent flashbacks to the abuse, nightmares, or persistent anxiety when faced with situations that remind them of the traumatic experience.
- c. Impacting low self-esteem and feelings of loneliness, experiences of sexual abuse can affect how children view themselves. They may feel worthless or doubt their self-worth as a result of the harmful behavior. Furthermore, they may feel guilty or ashamed about what happened, even if they don't fully understand that they were victims of abuse. This can undoubtedly interfere with the development of their self-esteem.
- d. At risk of becoming a future perpetrator. Why? Because victims experience drastic changes in their sexual understanding and behavior that are not developmentally appropriate. Furthermore, the risk of becoming a future perpetrator also increases as a result of these traumatic experiences.

Based on various existing explanations, it is clear that in various criminal law regulations, the main objective of criminal law policy has so far been focused solely on punishing acts. While in the juvenile justice system, it is only focused on efforts to protect the rights of children in conflict with the law, without considering the losses that victims should be redressed. Therefore, it is clear that there is no legal certainty and legal justice for child victims of sexual intercourse for the actions of the child who committed sexual intercourse with them.

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<sup>9</sup><https://paudpedia.kemendikdasmen.go.id/galeri-ceria/ruang-artikel/dampak-pelecehan-seksual-pada-anak-usia-dini?ref=MjAzMC05MTZkNzM1Mg==&ix=NDctNGJkMWM0YjQ>, May 21, 2025.

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**3.2. Legal consequences of the judge's decision in the case of a child as a perpetrator of the crime of sexual intercourse against a child at the Cirebon District Court.**

According to AKP Suijani Dwi Hartati as Head of the PPA Unit of the Cirebon Police, the impact of criminalization for children can be:<sup>10</sup>

a. Fear and Loss of Self-Confidence:

Children in conflict with the law or who have been punished may feel afraid of law enforcement officials, legal institutions, and even their parents or other adults. This fear can hinder social and emotional development and lead to a loss of confidence in their own abilities.

b. Trauma:

Severe legal proceedings, especially those involving violence or imprisonment, can cause serious psychological trauma. This trauma can lead to behavioral problems, depression, anxiety, and difficulties in daily life.

c. Behavioral Problems:

Harsh punishment can cause children to experience behavioral problems, such as becoming more aggressive, behaving illegally, or even isolating themselves.

d. Depression and Anxiety:

Children who come into conflict with the law or experience punishment, especially imprisonment, are at risk of developing depression and anxiety. This depression and anxiety can hinder cognitive and social development and lead to difficulties in forming social relationships.

e. Social Stigma:

Criminal penalties can cause children to experience social stigma, which can hinder their opportunities for employment, education, and a normal social life.

f. Damage to Family Relationships:

Frequent or harsh punishment can damage the relationship between children and parents, cause communication breakdowns, and trigger conflict within the family.

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<sup>10</sup>Interview with AKP Suijani Dwi Hartati as Head of the PPA Unit of the Cirebon Police, April 4, 2025.

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g. Deprivation:

Prison sentences can lead to deprivation, which is the lack of opportunities to obtain basic needs such as education, health care, and social support.

Then, legally, perpetrators of sexual intercourse with children can also be subject to criminal sanctions as regulated in Article 81 of Law Number 35 of 2014 concerning Child Protection which states that "Any violation of Article 76D will be subject to imprisonment with a minimum term of 5 years and a maximum of 15 years, as well as a maximum fine of IDR 5,000,000,000.00". The above criminal provisions also apply to individuals who intentionally carry out acts of deception, a series of lies, or persuade children to have sexual intercourse with themselves or other people "If the above criminal act is committed by parents, guardians, child caretakers, educators, or education personnel, then the punishment will be increased by 1/3 of the sentence imposed in Paragraph (1)". Legally, children who commit sexual intercourse with children can also be subject to criminal sanctions as regulated in Article 285 of the Criminal Code which states that "anyone who by violence or threat of violence forces a woman to have sexual intercourse with him outside of marriage, is threatened with rape with a maximum prison sentence of twelve years". While sexual abuse tends to have a traumatic impact on both children and adults, these cases often go unreported due to denial of the sexual violence. In some cases, child victims tend to conceal their experiences for various reasons, including shame or fear of the perpetrator. Negative emotions tend to arise as a result of sexual violence, such as feelings of helplessness and torment when disclosing the sexual abuse. In some cases, physical effects such as tremors, muscle spasms, and headaches are also found in victims of sexual violence. Sexual abuse experienced by children is a traumatic experience that has a profound and lasting impact on their lives. This violence, whether physical, emotional, or sexual, leaves scars that are not only visible on the body but also on the soul. For child victims, the violence often turns into a nightmare that continues to haunt their minds, difficult to forget, even after time has passed.<sup>11</sup> Meanwhile, from a legal perspective, the lack of specific attention to victims in the juvenile criminal justice system has prevented optimal restoration of the rights of child victims of sexual intercourse. This clearly deviates from the objectives of criminal law, according to the theory of combined objectives of punishment.

#### 4. Conclusion

The judge's basis for deciding the case of a child as a perpetrator of the crime of sexual intercourse against a child in the Cirebon District Court consists of legal considerations used by

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<sup>11</sup>Interview with AKP Suijani Dwi Hartati as Head of the PPA Unit of the Cirebon Police, April 4, 2025.

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the judge, namely, proof of the crime committed, whether the act has fulfilled the elements of rape referred to in Article 285 of the Criminal Code, and from all the statements of the witnesses and the explanation of the prosecutor's demands it can be concluded that all elements of the crime of rape committed by the defendant are proven. While sociologically in his decision the judge considered the things that aggravated the defendant, namely: The actions carried out by the defendant were inhumane, because the defendant committed harassment and immoral acts against the victim who was still a minor, especially the defendant also threatened the victim, this caused the victim to be afraid and traumatized to the point that the victim did not want to go to school. While the mitigating factors for the defendant were: the defendant admitted all his actions, even though at first the defendant denied it, the defendant also expressed regret for having committed these actions to the victim who was considered his own lover or girlfriend, and the most important thing in the judge's consideration was that the defendant was still classified as a child.

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Legal Protection for Children as Perpetrators...  
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