

## **Legal Review of Children as Perpetrators of Criminal Acts of Sexual Intercourse Against Children (Case Study at Cirebon District Court)**

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**Abstract.** *The crime of sexual intercourse committed by a child against a victim of the same age is an extraordinary problem, one of which is seen in the problem of the criminal system for the perpetrator, on the one hand the perpetrator who is a child cannot be subject to criminal penalties like an adult perpetrator because of considerations of mental growth and considerations of the child's future. The type of this thesis research is a type of Normative legal research. Based on the results of the research conducted, it can be seen that the basis for the judge's considerations in deciding the case of a child as a perpetrator of a crime of sexual intercourse with a child in the Cirebon District Court consists of legal 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 have been proven. Meanwhile, sociologically in his decision, the judge considered the aggravating factors for 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. Meanwhile, 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 his 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. Legal consequences of the Judge's Decision in the case of Children as Perpetrators of Sexual Intercourse Against Children at the Cirebon District Court, 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, children who commit sexual intercourse with children can also be subject to criminal sanctions as regulated in Article 285 of the Criminal Code.*

**Keywords:** *Children; Criminal; Legal; Sexual Intercourse.*

## 1. Introduction

The Child Protection Law regulates various aspects aimed at protecting children from crime, exploitation, and neglect. Although it has undergone several revisions, there are still several challenges in its implementation. One of the main issues is the difficulty of proving sexual crimes against children in court due to the lack of evidence and the courage of victims to speak up. In the case of Decision No. 37/Pid.Sus/2021/PN.Btl, a perpetrator of a sexual crime against a child was found guilty based on witness statements and post-mortem evidence, but the trial process showed pressure on child witnesses to testify in court. The TPKS Law is an important breakthrough that provides a new legal framework for handling sexual crime cases. This regulation covers various forms of sexual crimes that have not been specifically regulated in the Criminal Code, such as sexual harassment, sexual exploitation, and sexual slavery. However, the implementation of the TPKS Law still faces various obstacles, especially related to the understanding of law enforcement officers in interpreting this law effectively. In Decision No. 58/Pid.Sus/2023/PN.Jkt, the judge imposed a heavy sentence on perpetrators of sexual crimes based on the TPKS Law. This decision is a landmark because it successfully uses new provisions in the TPKS Law to punish perpetrators who were previously difficult to prosecute under the Criminal Code.

Crimes against morality are very common in this era, one of which is sexual intercourse. Sexual intercourse crimes include forms of oppression and crimes committed by individuals against other people or groups. This 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 the perpetrators, but children can also be involved in sexual intercourse crimes. These cases can occur in various places, such as at school, in the neighborhood, and even in the family environment. Many incidents of sexual intercourse crimes involve children as perpetrators, showing the complexity of this problem and the need for attention to prevention, education, and proper law enforcement. Children have great potential as the future successors of the nation, as well as being a reflection of the values that will shape the nation in the future. They play a crucial role and have special characteristics, so that the physical, mental, and social development of children must be supported through guidance, protection, and a good environment. Education plays a central role in shaping the character of children, so that they can develop their positive potential well.<sup>1</sup> Children are a valuable 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 still protected, even when they are still in the womb. Child Protection refers to various efforts made to save and handle children when they make mistakes or become victims of crime. This will have a long-term psychological impact on children.<sup>2</sup>

The state and society also have a very significant role in determining the fate of children. One of the state's obligations in protecting children is to provide special legal protection for them. This legal protection means the existence of regulations and implementations that are expected to guarantee the rights of every child so that they can live an optimal life as

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

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

individuals whose rights are guaranteed. In addition, it is very important to ensure that children are protected from injustice, crime, neglect, discrimination, exploitation, and other bad actions so that they can contribute to building the nation for future generations.<sup>3</sup> Law Number 23 of 2002 concerning Child Protection was born as a government initiative in the framework of legal reform, with the aim of ensuring the protection of children's rights in the aspects of life, growth, and development, as well as protecting them from crime and discrimination. However, over time, the implementation of this regulation was considered ineffective because there was an overlap between sectoral regulations relating to the definition of a child. Therefore, after about twelve years of its enactment, this regulation was amended and resulted 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 intentionally commit acts of deception, a series of lies, or persuade a child to have sexual intercourse with themselves or another person.
3. If the above criminal act is committed by a parent, guardian, child caretaker, educator or education staff, the penalty will be increased by 1/3 of the sentence imposed in paragraph (1).

## **2. Research Methods**

This research is a normative legal research. The selection of the type of research is based on a conceptual approach, legislation, case approach or comparative approach.<sup>4</sup> The idea that the review of the research is based on laws and regulations and other materials related to the Legal Review of Criminal Acts of Sexual Intercourse Committed by Children Against Children.

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

<sup>4</sup>Final Project Writing Guidelines (THESIS), Master of Law Program, Islamic University of Indonesia, Yogyakarta, 31 July 2010, p. 10.

### 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 live, 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, and also provide legal protection 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 liability of children, special treatment is needed because children have different characteristics than adults. This can be viewed in terms of emotional maturity, mentality, and understanding of the law which is different from adults. The criminal liability 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 relate 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, in the settlement process, diversion must be attempted. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System explains the definition, 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 the case in the district court. Diversion is not an 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, The imposition of criminal penalties on children is the last step (ultimum remedium) which is only carried out after all other efforts that are more beneficial to the child can no longer be attempted. Based on the various views that exist, 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 cannot immediately receive the threatened punishment, 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 with 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 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 is stated that children in conflict with the law are children 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, it 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 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 with a Child, indecent acts against a Child, and/or sexual exploitation of a Child.

In the criminal act of sexual intercourse committed by a child against a child, legal protection for the child is not only for the victim who is a child but legal protection must also be given to the child as the perpetrator 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 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 is stated that children who in conflict with the law are children 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, it 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 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 with a Child, indecent acts against a Child, and/or sexual exploitation of a Child. In the criminal act of sexual intercourse committed by a child against a child, legal protection for the child is not only for the victim who is a child but legal protection must also be given to the child as the perpetrator 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 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



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The position of child protection for 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 an effort to enforce the law that can protect the rights of children who are perpetrators of sexual intercourse is also regulated in Article 23 of Law of the Republic 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 Protection of Witnesses and Victims, a victim is a person who experiences physical, mental, and/or economic suffering caused by 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 the age of 18 (eighteen) years who experiences physical, mental, and/or economic suffering caused by a criminal act. Muladi defines victims as people who, either 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 victims of crime 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 Nation Congress on the Prevention of Crime and the Treatment of Offenders, which took place in Milan, Italy, September 1985. One of its recommendations states: "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

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

of returning property rights or replacing the losses suffered by the victim, the cost of negligence that has been done so that it causes victims, which is a stipulation of the law as a form of service and fulfillment of rights).<sup>6</sup>

The issue of restitution to victims of crime in the context of the relationship between the perpetrator and the 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 expected that a sense of social responsibility will be instilled in the perpetrator so that the value of restitution in this case does not only lie in its efficacy in helping the victim, but also functions as a tool to make the perpetrator aware of his "debt" (due to his actions) to the victim. In practice, in almost many countries, this concept of restitution is developed and also given to victims of crime for their suffering as victims of criminal acts. In this concept, the victim and his family must receive fair and appropriate compensation from the guilty person or third party responsible. 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 fall, provision of services and rights of recovery.<sup>7</sup>

In Article 9 and Article 14 of Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Crime, it is stipulated that investigators and public prosecutors inform victims of the right to file for restitution. In filing for restitution, the applicant can show the identity of the victim and perpetrator, a description of the events experienced, a description of the losses suffered, and the amount or number of restitution to be filed (Article 7). Protection of victims of crime in the form of providing compensation for victims by perpetrators of crimes is actually not without problems. The obstacle that arises is when the perpetrator of the crime does not have the ability or assets to pay compensation to the victim. In relation to this, Sudarto stated that the criminal imposition of the obligation to pay compensation imposed on the perpetrator will have meaning if the perpetrator is able to pay. If he is unable, and it can be estimated that most of the people who commit crimes are among those who are unable.<sup>8</sup>

Article 11 of the SPPA Law states that the results of a diversion agreement can be in the form of, namely, peace with or without compensation, return to parents/guardians, participation in education or training at educational institutions or LPKS for a maximum of 3 (three) months; or community service. Basically, a diversion agreement is like an agreement in general, which means that the provisions for the 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, namely the agreement of the parties in the agreement (agreement), the ability of the parties in the agreement (capacity); a certain thing (certainty of terms), and a lawful cause (considerations). If Article 1330 of the Civil Code prohibits minors/still under guardianship from making agreements, then in a diversion agreement, the voice and opinion of the child who is a suspect and/or victim are also taken into account in

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

<sup>7</sup>*Location, cit.*

<sup>8</sup>*Location, cit.*

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 since the enactment of Law No. 13 of 2006, Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims (hereinafter abbreviated as Law No. 31 of 2014) was enacted. In its general explanation, it is stated that with the development of law in society, several significant weaknesses in the implementation of Law No. 13 of 2006 have emerged, so that changes are 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 includes 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 LPSK Decision.
- (3) Submission of a restitution application can be made before or after a court decision 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 may 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 a victim of a crime dies, restitution is given to the victim's family who are the victim's heirs.

If examined carefully, the provisions on restitution still contain a number of problems. Law No. 31 of 2014 has indeed accommodated several provisions on the restitution mechanism for victims of criminal acts that were previously regulated in PP No. 44 of 2008 so that it can be said that these provisions are now on par with the Criminal Procedure Code. Thus, law enforcement officers can now be "forced" to use the restitution mechanism regulated in Law No. 31 of 2014, which has a wider restitution reach than the Criminal Procedure Code because the provisions on 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 LPSK Decision. This means that the right to obtain restitution cannot apply to all victims of criminal acts. This right only applies to victims of certain criminal acts whose determination is also unclear because it is only stated as "determined by a LPSK Decision". In the explanation section, this verse is stated



quite clearly, even though there is no clarity about 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 existence of 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 a restitution sentence that has permanent legal force is read out. If there has been money deposited through an investigator or public prosecutor that is placed in a 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, 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 that guarantees the perpetrator. If the prosecutor has not seen any restitution money in the minutes since seven days after the case was decided 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, an agreement on this matter is then made into a minute, after which the prosecutor supervises the progress 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 the perpetrator being a child, restitution is provided by the parent or guardian". Although restitution related to the type of compensation sanction for victims committed by the perpetrator has been regulated in cases of sexual intercourse committed by a child against another child, it does not regulate the amount of restitution that must be given and what mechanism can be implemented if the parent or guardian of the perpetrator of sexual intercourse does not carry out their restitution obligations to the victim.

Based on the various explanations available, it is clear that neither diversion nor restitution for children who commit sexual intercourse against other children is able to realize the recovery of the condition of the sexual intercourse victim. This is clearly unfair when compared to the impacts that sexual intercourse victims must receive, namely:<sup>9</sup>

a. Disturbing social emotional, including difficulty in blending in with the environment and unstable emotions. This can be reflected in the difficulty in building healthy social relationships, feeling alienated. Furthermore, children are also at risk of experiencing intimidation or rejection from peers, which affects their mental balance and happiness.

b. Post-Traumatic Stress Disorder (PTSD). Child victims of sexual abuse can experience

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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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PTSD, which is characterized by symptoms such as constant recollection of the abuse, nightmares, or prolonged anxiety when faced with situations that remind them of the traumatic experience.

c. Impacting low self-esteem and feeling lonely, Experiences of sexual abuse can affect the way children see themselves. They may feel worthless or doubt their self-worth as a result of the harmful behavior. In addition, they may also feel guilty or ashamed of what happened, even if they do not fully understand that they were victims of abuse. Of course, this can interfere with the development of their self-esteem.

d. At risk of becoming a perpetrator in the future. Why is that? Because the victim experiences drastic changes in their sexual understanding and behavior that are not in accordance with their developmental stage. In addition, the risk of becoming a perpetrator in the future also increases as a result of the traumatic experience.

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

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

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:

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 intentionally commit acts of deception, a series of lies, or persuade a child to have sexual intercourse with themselves or another person.
3. If the above criminal act is committed by a parent, guardian, child caretaker, educator or education staff, the penalty will be increased by 1/3 of the sentence imposed in paragraph (1).

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<sup>10</sup>Interview with AKP Suijani Dwi Hartati as Head of Women's Empowerment Unit of Cirebon Police, April 4, 2025.

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, with violence or the 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."

Meanwhile, sexual abuse of its victims tends to have a traumatic impact on both children and adults, but these cases are often not revealed because of the denial of the sexual violence incident. We can see in several cases, child victims tend to cover up the events they experienced for various reasons, including shame or fear of the perpetrator. There is a tendency for negative emotions to arise due to sexual violence, for example, a helpless and tortured condition when revealing the incident of sexual abuse, even in some cases physical impacts such as trembling, muscle spasms, and headaches are found in victims of sexual violence. Sexual abuse experienced by children is a traumatic experience that has a deep and lasting impact on their lives. This violence, whether physical, emotional, or sexual, leaves wounds that are not only visible on the body, but also on the soul. For children who are victims, the incident of violence often turns into a nightmare that continues to haunt their minds, difficult to forget, even after time has passed.<sup>11</sup> Meanwhile, legally, with the absence of special attention in the juvenile criminal justice system so far towards victims, the optimization of the restoration of the rights of child victims of sexual intercourse cannot be realized. This clearly deviates from the objectives of criminal law according to the theory of combined objectives of punishment.

The use of the term sanction comes from the Dutch term "straf" in criminal law is often known as the term "criminal". The elements and characteristics of criminal law as stated by Mahrus Ali, as follows:<sup>12</sup>

1. Criminal punishment is essentially the imposition of unpleasant suffering;
2. The penalty is given intentionally by the authorities;
3. Criminal penalties are imposed on a person who commits a crime as stated in the law;
4. Criminal punishment is a state condemnation of a person for breaking the law.

*Reformation* or reform has the meaning of improving or rehabilitating criminals. This is intended so that every criminal can change into a better person and be useful in society. Reform is carried out together with prevention efforts. In its development, reform and prevention efforts have mostly failed to change criminals into better and more useful people in society. This view is shown by the large number of recidivists after serving their prison sentences.<sup>13</sup>

*Restrain* has the intention of isolating criminals from society. This aims to separate criminals from society so that society can feel safer. Meanwhile, what is meant by retribution is revenge against criminals who commit crimes. This system of punishment objectives has many pros and cons. Those who are in favor state that by eliminating the retribution system, it is the same as creating the Magna Carta for law breakers. The Magna Carta is the first step in a long

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<sup>11</sup>Interview with AKP Suijani Dwi Hartatias Head of Women's Empowerment Unit of Cirebon Police, April 4, 2025.

<sup>12</sup>Mahrus Ali, Basics of Criminal Law, (Jakarta: Sinar Grafika, 2012), p. 186.

<sup>13</sup>Location, cit.

historical process leading to the creation of constitutional law.<sup>14</sup>The view of those who are pro the retribution system shows how the primitive nature of criminal law is indeed difficult to eliminate. Furthermore, those who are against the retribution system state that the retribution system is a barbaric legal system.<sup>15</sup>or uncivilized.<sup>16</sup>

Then Deterrence is an effort to create a deterrent effect on defendants or other members of society who have the potential to commit crimes by punishing a defendant so that by punishing a convict, it will set an example for others. Deterrence aims to make everyone afraid to commit crimes by seeing the punishment imposed on a perpetrator of a crime.

Nowadays, the purpose of criminal law is increasingly moving towards a more humane and rational system. The purpose of criminal law is not merely to satisfy the revenge of victims and injured parties as adopted by the retribution system. In its development in various countries, the purpose of punishment is a system that combines deterrence and reformation. Even more than that, in various parts of the world, they are also starting to look for new alternative systems to educate criminals in addition to imposing criminal sanctions. The death penalty, which is included in the retribution system, has begun to receive a lot of criticism from various communities in the world.

The UK through the Homicide Act in 1957 limited the death penalty to capital murder. While non-capital murder is only subject to life imprisonment. Meanwhile, in the Netherlands, imprisonment of less than three months can be replaced by imposing a fine. Meanwhile, in England, the United States, and Japan, the probation and parole system is known, namely a conditional criminal system and conditional release.

Imprisonment for a short period of time will only create criminal skills education for minor criminals in prison, so alternative punishment is one option that deserves attention. In its development, there are three types of theories regarding the purpose of punishment. The three types of theories regarding the purpose of punishment are:

a. Absolute theory or retribution theory or vergeldings Theorien

The absolute theory first appeared at the end of the 18th century. The groups that adopted this theory were Immanuel Kant, Hegel, Herbart, Stahl, and Leo Polak, including philosophers who came from Catholic and Islamic teachings.

This theory states that the purpose of punishment is not merely to improve the perpetrator of the crime to become a good and useful person in society. Furthermore, this theory states that criminal acts contain elements for the imposition of punishment. So it can also be said that the absolute theory states that every criminal act must be punished without having to consider the benefits of the punishment imposed on the perpetrator.

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<sup>14</sup>id.m.wikipedia.org, Magna Carta, Downloaded May 12, 2018.

<sup>15</sup>According to the Big Indonesian Dictionary, bar-bar is uncivilized, so a bar-bar nation is an uncivilized nation that has a rude and cruel nature.

<sup>16</sup>Andi Hamzah, op, cit, p. 28-29.

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This view is what makes the theory of retribution called the absolute theory. Punishment is seen as something absolute, not something that is optional but rather a necessity. So the essence of punishment is retribution.

Vos further shows that this theory of retribution or absolute is divided into subjective retribution and objective retribution. The theory of subjective retribution is retribution for the perpetrator's mistakes. Meanwhile, objective retribution is retribution for the perpetrator due to his actions carried out in the outside world.

Vos's thoughts on the theory of subjective retribution are in line with Kant's thoughts. Kant stated that criminal law is an ethical demand, so that every crime must automatically be accompanied by punishment. So it can also be stated that criminal law is an ethical demand for justice.

Meanwhile, Hegel saw the purpose of punishment as a combination of subjective retribution theory and objective retribution theory. Leo Polak further details the variations of the form of retribution theory into:

1. The theory of defense of legal power or defense of state power or rechtsmacht of gezagshandhaving;
2. The theory of profit compensation or voordeelscompensatie;
3. The theory of eliminating everything that is the result of an act that is against the law and insulting or onrechtsfustrering en blaam;
4. The theory of retribution in implementing legal equality or the legal equality of justice;
5. The theory to counter the tendency to satisfy the desire to do things that are contrary to morality or dry van onzedelijke neigingsbevredining;
6. Objectifying theory or objectiving theory

Polak further added that criminal penalties must fulfill three elements, namely:

1. The actions carried out can be condemned as actions that are contrary to ethics, morality and objective legal order;
2. Criminal law may only pay attention to what has already happened, so that criminal law is not a preventive measure in this case;
3. Of course, the severity of the punishment must be balanced with the severity of the crime, this is necessary so that there is no punishment for perpetrators who exceed the limit.



b. Relative theory or objective theory or doel theorien

This theory places the purpose of punishment not solely for retaliation but in accordance with a rational legal basis with output in the form of preventive efforts. So that criminal sanctions are not used for retaliation but are used as preventive efforts so that everyone does not commit crimes. The preventive efforts in this theory consist of general prevention and special prevention. The following will be explained further:

General prevention requires everyone in general not to commit a crime that is prohibited by criminal law. The oldest form of this prevention is the prevention carried out during the French revolution, at that time general prevention was carried out to scare every member of society so as not to commit a crime by imposing a torture sentence that was publicly displayed. This prevention model was also carried out in Latin countries, this is shown by the existence of an adage stating "nemo prudens punit, quia peccatum, sed ne peccetur" which means that in order for the general public to be truly afraid of committing a crime, a fierce and cruel punishment is needed and by being publicly displayed.

Then Muller in his work entitled *De Straft in het Straftrecht*, *Tidjschrift van Strafech*, stated that the concrete straf pleging door de rechter, which means that the preventive effect of criminal law does not lie in the execution of the criminal law or in the threat of criminal law, but in the determination of the criminal law by the judge.

Utrecht further stated that Muller's theory is more in line with the model of collective society or indigenous society. Furthermore, what is meant by special prevention is prevention aimed at preventing the intention of the perpetrator of the crime so that a crime does not occur either in the past or will occur.

Furthermore, Van Hamel stated that what is meant by special prevention is:<sup>17</sup>

1. Criminal penalties must contain a frightening element in order to prevent criminals from committing crimes;
2. Criminal penalties must contain elements that are capable of reforming criminals;
3. Criminal law contains elements of destroying criminals if criminals cannot be reformed;
4. The sole purpose of a criminal law is to maintain legal order.

Combined theory or verenigings theorien

This theory is built from the desire to create a balance between the elements of retaliation with the aim of improving the perpetrators of the crime. According to the combined theory, the purpose of punishment is not only to repay the criminal's mistakes but also to protect

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<sup>17</sup>Andi Hamzah, *Principles of Criminal Law*, Rineka Cipta, Jakarta, 2010, p. 28.

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society, by creating order. This theory uses both of the above theories (absolute theory and relative theory) as the basis for punishment, considering that both theories have weaknesses, namely:<sup>18</sup>

- a. The weakness of the absolute theory is that it gives rise to injustice because in imposing punishment it is necessary to take into account the available evidence and the intended retribution does not have to be carried out by the state;
- b. The weakness of the relative theory is that it can lead to injustice because perpetrators of minor crimes can be given heavy sentences, public satisfaction is ignored if the aim is to improve society, and preventing crime by intimidation is difficult to implement.

Integrative theories can be divided into three groups, namely:

- a. An integrative theory that emphasizes retaliation, but must not exceed the limits of what is necessary and sufficient to maintain social order;
- b. An integrative theory that emphasizes the defense of social order, but must not be heavier than a suffering that is in accordance with the severity of the act committed by the prisoner;
- c. Integrative theory which assumes that there must be a balance between the two things above.

So it can be concluded that in essence, criminal law is a protection for society and retaliation for unlawful acts. In addition, Roeslan Saleh also stated that criminal law contains other things, namely that criminal law is expected to be something that will bring harmony and criminal law is an educational process to make people acceptable again in society.<sup>19</sup>In that context, Muladi proposed a combination of criminal purposes that are considered suitable with sociological, ideological, and philosophical-juridical approaches based on the basic assumption that criminal acts are disturbances to the balance, harmony, and compatibility in community life, which results in individual or societal damage. Thus, the purpose of criminal punishment is to repair individual and social damage caused by criminal acts. The set of criminal purposes are:

- 1) prevention (general and specific),
- 2) community protection,
- 3) maintaining community solidarity,
- 4) recompense/balance.<sup>20</sup>

Meanwhile, regarding criminalization, Barda Nawawi said that criminalization must be directed at two targets, namely:

- a. Community protection;
- b. Protection and guidance for individual criminals and victims.

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<sup>18</sup>Koeswadji, Development of Various Types of Criminal Law in the Framework of Criminal Law Development, First Edition, Citra Aditya Bhakti, Bandung, 1995, pp. 11-12.

<sup>19</sup>Muladi and Barda Nawawi, Criminal Theory and Regulation, Alumni, Bandung, 1992, p. 22.

<sup>20</sup>Muladi, Selected Chapters on the Criminal Justice System, UNDIP, Semarang, 1995, p. 61.

So that criminalization should be able to see the interests of society which are then accommodated with the principle of legality and individual interests which are then accommodated with the principle of culpability or the principle of error. So that in terms of criminalization, it is necessary to review the matter of criminal acts and criminal responsibility.<sup>21</sup>

#### 4. Conclusion

The basis for the judge's consideration in deciding the case of a child as a perpetrator of a crime of sexual intercourse with a child in the Cirebon District Court consists of legal 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 have been proven. Meanwhile, 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. Meanwhile, 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 his 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. Legal consequences of the Judge's Decision in the case of Children as Perpetrators of Sexual Intercourse Against Children at the Cirebon District Court, 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, children who commit sexual intercourse with children can also be subject to criminal sanctions as regulated in Article 285 of the Criminal Code.

#### 5. References

##### Books:

According to the Big Indonesian Dictionary, bar-bar is uncivilized, so a bar-bar nation is an uncivilized nation that has a rude and cruel nature.

Andi Hamzah, Principles of Criminal Law, Rineka Cipta, Jakarta, 2010,

Barda Nawawi Arief, Anthology of Criminal Law Regulations, Citra Aditya Bakti, Bandung, 2005,

Final Project Writing Guidelines (THESIS), Master of Law Program, Islamic University of Indonesia, Yogyakarta, 31 July 2010,

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<sup>21</sup>Barda Nawawi Arief, Anthology of Criminal Law Regulations, Citra Aditya Bakti, Bandung, 2005, p. 88.

Master of Law, UNISSULA

Koeswadi, Development of Various Types of Criminal Law in the Framework of Criminal Law Development, First Edition, Citra Aditya Bhakti, Bandung, 1995, pp. 11-12.

Lamintang. 1997. Basics of Indonesian Criminal Law. Bandung: Citra Aditya Bakti. p. 11

Mahrus Ali, Basics of Criminal Law, (Jakarta: Sinar Grafika, 2012), p. 186.

Mardjono Reksodiputro, Criminology and Criminal Justice System, Center for Justice Services and Legal Service, Institute of Criminology, University of Indonesia, Jakarta, 2007, p. 77.

Moeljatno. 2008. Principles of Criminal Law. Jakarta: PT. Rineka Cipta. p. 25

Muladi and Barda Nawawi, Criminal Theory and Regulation, Alumni, Bandung, 1992, p. 22.

Muladi, Human Rights: Essence, Concept and Implications in the Perspective of Law and Society, Bandung: Refika Aditama, 2005, p. 108.

Muladi, Selected Chapters on the Criminal Justice System, UNDIP, Semarang, 1995, p. 61.

Wigiati Soetodjo. 2006. Criminal Law of Children. Bandung: PT. Refika Aditama. p. 5

**Internet:**

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

id.m.wikipedia.org, Magna Carta, Downloaded May 12, 2018.

**Interview:**

Interview with AKP Suijani Dwi Hartatias Head of Women's Empowerment Unit of Cirebon Police, April 4, 2025.