

Legal Analysis of The Criminal Responsibility of Children in The Criminal Act of Insulting Children to Commit Sexual Interculation (Study of Decision Number 1/Pid.Sus.Anak/2025/Pn Bjm)

Robby Akbar ¹⁾ & Gunarto ²⁾

¹⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: robbyakbar.std@unissula.ac.id

²⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: gunarto@unissula.ac.id

Abstract. *This research aims to analyze the criminal responsibility of children in the crime of inducing a child to engage in sexual intercourse, using the case study of Decision Number 1/Pid.Sus.Anak/2025/PN Bjm. The research focus includes the application of criminal liability principles to children, the legal factors influencing children's criminal liability, special legal treatment and protection, as well as efforts to reform laws and policies on children's criminal law enforcement to make it more effective in the future. The research method uses a juridical-normative approach, with analysis of court decision documents, relevant legislation, and legal literature. The research results indicate that the application of the principles of criminal responsibility for children prioritizes guidance and rehabilitation, not solely retributive punishment. Legal factors such as the age of criminal responsibility, the ability to be held accountable, the element of fault, and the causal relationship are the main considerations in determining a child's accountability. Additionally, diversion mechanisms, legal protection, and psychological support are important instruments for ensuring children's rights are protected. This research also highlights the need for legal and policy updates, including improving diversion mechanisms, integrating restorative justice principles, using information technology for monitoring rehabilitation programs, and adopting best practices from other countries that are effective in reducing child recidivism. In conclusion, the application of the principles of juvenile criminal responsibility in Indonesia has already integrated theories of criminal responsibility, rehabilitation, and restorative justice, but legal and policy reforms are still needed to improve effectiveness, fairness, and protection for both child offenders and victims.*

Keywords: *Criminal Liability of Children; Child Protection Act; Inducing a Child to Engage in Sexual Intercourse.*

1. Introduction

Indonesia, as a state based on the rule of law and the Pancasila state, prioritizes the values of justice, humanity, and the protection of human rights as the primary foundation for the

Master of Law, UNISSULA

implementation of the state and law. Pancasila, as the philosophical foundation of the state, has a second principle, "Just and Civilized Humanity," which serves as the moral basis for law enforcement, which must focus on protecting human dignity, especially children as the next generation.

In line with this, the 1945 Constitution of the Republic of Indonesia (UUD 1945) is also the highest constitution which serves as a source of law and a basis for the administration of the state, including the implementation of the protection of children's rights. The 1945 Constitution contains fundamental provisions that expressly guarantee human rights and children's rights, and serves as a guideline for the formation of other laws and regulations. Article 28B paragraph (2) of the 1945 Constitution states that every child has the right to survival, growth and development, and the right to protection from violence and discrimination. This provision emphasizes that the state must provide legal protection to children so that they can grow and develop optimally. maximum benefit, without experiencing any form of violence or discrimination. This protection encompasses a holistic approach, encompassing physical, mental, and social aspects.

Furthermore, Article 28D paragraph (1) of the 1945 Constitution guarantees that every person receives recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law. This article provides the legal basis that children as legal subjects have the right to receive treatment that is appropriate to their characteristics and needs, including in the context of criminal justice. In addition, Article 34 paragraph (1) of the 1945 Constitution states that the state is responsible for caring for the poor and neglected children. This provision emphasizes the state's obligation to provide special attention to children who are in vulnerable situations and require protection.

Children, as the younger generation, are a resource and will continue the nation's struggle. Children are development assets that will safeguard, maintain, and enhance existing development outcomes. Therefore, children require protection to ensure harmonious and balanced physical, mental, and social growth and development. Regulations are expected to balance the diverse and sometimes conflicting needs and interests of individuals, ultimately creating security and peace in society.

However, in reality, the systems of life that have been regulated by various regulations are still widely ignored, as evidenced by the numerous criminal cases that arise. Although the government has provided mental health training to the community through various means, it is hoped that this will reduce legal violations within the community.

Children are a vulnerable group who are often easy targets for victims of various forms of violence, both in the domestic environment, social environment, and other environments.¹ Violence against children can occur in physical, mental, sexual, or economic forms. Of course, children who are victims of violence need optimal legal protection as stipulated in the Indonesian legal system. Women are often vulnerable victims of crime

¹ Djamaludin Djamaludin, James Simanjuntak, and Reynhard Christian Fatunlibit, "Legal Assistance for Women and Children Victims of Violence in Obtaining Justice," *Legal Empowerment: Journal of Legal Service* 3, no. 1 (2025): 1–8, <https://doi.org/10.46924/legalempowerment.v3i1.265>.ISSN.

Master of Law, UNISSULA

because they are perceived as second-class individuals. The stigma of weakness and powerlessness is a primary reason perpetrators target them, especially those in positions of authority that are much higher.²

Child protection is a fundamental aspect of legal and social development in Indonesia. Children, as the nation's future generation, have rights that must be protected so they can grow and develop optimally without experiencing violence or harmful treatment. With the changing times, new challenges have emerged in law enforcement for children, particularly regarding sexual crimes involving children as both perpetrators and victims.

Furthermore, the Constitutional Court, through Decision No. 25/PUU-XI/2013, emphasized that child protection is a fundamental human right and must be fully protected by the state. In this decision, the Constitutional Court emphasized that the state is obliged not only to protect children's right to life and development but also to provide special treatment in the criminal justice system to prevent harm to children's future.³ The Constitutional Court's decision is an important step in strengthening the legal basis for child protection as a fundamental right that must be guaranteed by the state, as well as encouraging the application of the principle of restorative justice in enforcing criminal law against children.⁴

As a predominantly Muslim country, Indonesia considers the Quran to be the primary source of moral and legal teachings for Muslims. Constitutionally, Indonesia recognizes religious diversity and guarantees religious freedom. However, socially and culturally, Islamic values are highly influential in shaping legal and moral norms in society, including in the area of child protection.⁵ The Quran is not only a spiritual guide, but also serves as a source of law (al-shari'ah) that regulates social relations and safeguards the welfare of the community. In the context of child protection, the Quran emphasizes the importance of maintaining the moral purity, honor, and rights of children as beings who must be protected from all forms of harm and injustice. In the context of the crime of inducing children to engage in sexual intercourse, two Quranic verses provide a very strong moral and ethical basis for rejecting and condemning all forms of exploitation of children, namely:

QS An-Nur [24]: 26

"Good women for good men, and good men for good women."

This verse emphasizes moral and ethical principles in social relationships, particularly in the context of marriage and sexual relations. The terms "good woman" and "good man" refer to individuals who possess noble morals, maintain chastity, and adhere to religious and social norms. Therefore, persuading children to engage in sexual intercourse clearly contradicts

²Nurul Fitriana, "Why Are Women Often Victims of Crime?" Kompas TV, 2022. (https://www.kompas.tv/nasional/272756/mengapa-perempuan-sering-menjadi-korban-kejahatan?page=all#goog_rewarded), accessed on August 8, 2025.

³Constitutional Court Decision Number 25/PUU-XI/2013 concerning Child Protection as a Fundamental Human Right.

⁴Yudha Hartono, "Child Protection in Constitutional Court Decisions," *Journal of Law and Development* 51, no. 2 (2021).

⁵Siti Fauziyah, "The Role of Islamic Values in Protecting Children from Sexual Crimes," *Jurnal Ilmiah Al-Hikmah* 12, no. 2 (2021).

Master of Law, UNISSULA

these values, as it involves a violation of moral purity and the exploitation of physically and mentally immature children.

QS Al-Isra [17]: 31

"And do not kill your children for fear of poverty. We will provide for them and for you. Indeed, killing them is a great sin."

This verse emphasizes the importance of protecting children's right to life and prohibits all forms of violence that threaten their survival and well-being. Protecting children is a moral and social obligation, and actions that harm children, including sexual exploitation, are a grave sin that must be prevented.

In the context of the crime of persuading a child to engage in sexual intercourse, these two verses provide a strong moral and ethical foundation. QS An-Nur reminds us that sexual relations should only occur between individuals who meet the requirements of maturity and good morals, while QS Al-Isra emphasizes the strict prohibition against any actions that endanger children, both physically and psychologically. Persuasion of children is a form of exploitation that damages the child's purity and future and violates the right to life and protection guaranteed by the Quran. Therefore, this crime must be dealt with firmly in accordance with state law, while also being strengthened by moral guidance based on Islamic values.

In the context of national law, the state has actually responded to the need for child protection. Law Number 23 of 2002 is the main legal umbrella for child protection in Indonesia. This law emphasizes that every child has the right to protection from violence, discrimination, and exploitation in various forms, including sexual crimes. Article 59 paragraph (1) of the Child Protection Law expressly states that every child has the right to protection from acts of violence and other forms of exploitation.

In the context of crimes involving children and sexual intercourse, this provision provides a solid legal basis for protecting child victims and also considers the legal aspects of child perpetrators. This highlights the significance of the Child Protection Law in addressing and addressing sexual violence against children, as well as the need for effective law enforcement.⁶

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System was also introduced to specifically regulate the handling mechanism for children in conflict with the law, emphasizing the principle of restorative justice. This principle aims to ensure that the resolution of juvenile criminal cases does not solely focus on punishment, but rather on restoring the child's condition so that they can grow and develop healthily, both psychologically and socially. For example, Article 5 states that juvenile criminal justice must be carried out with due regard for the child's best interests and based on the principles of justice, benefit, and legal certainty. This law also regulates special treatment for children in the judicial process to prevent excessive criminalization, including the implementation of

⁶ R Nugraha, A & Prasetyo, "Legal Protection for Child Victims of Sexual Violence," *Journal of Law and Development* 48, no. 4 (2018).

Master of Law, UNISSULA

closed examination processes and guidance in special institutions. The implementation of the Juvenile Criminal Justice System Law provides hope in balancing child protection with the needs of law enforcement, particularly in cases of sexual crimes involving children as perpetrators or victims.⁷

The Indonesian Criminal Code regulates the crimes of inducement and sexual intercourse, particularly in articles that protect children from sexual exploitation. Article 293 of the Criminal Code states that anyone who intentionally induces a child to commit an indecent act is subject to criminal penalties, particularly if the victim has not reached the age stipulated by law. Furthermore, Article 294 of the Criminal Code regulates the protection of girls in matters of sexual intercourse, including inducement and coercion. This provision refers to the age limit of children, which is explicitly regulated to provide maximum legal protection. In this context, the articles of the Criminal Code provide criminal sanctions for perpetrators of inducement of children to engage in sexual intercourse while also strengthening legal protection for children as victims.

In addition to the Law and the Criminal Code, there are implementing regulations that support the implementation of child protection, such as Government Regulation Number 17 of 2010 concerning the Implementation of the Child Protection Law, which regulates the technical details of child protection, including the mechanisms for handling cases of violence and sexual exploitation. Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Child Cases, which regulates the procedures and principles of restorative justice in the juvenile criminal justice process. These regulations strengthen the national legal framework to ensure maximum protection for children, while also providing an operational basis for law enforcement officials in handling cases of child inducement to engage in sexual intercourse.

Although Indonesia has various legal frameworks governing child protection, including Child Protection Law No. 23 of 2002, the Juvenile Criminal Justice System Law No. 11 of 2012, and provisions in the Criminal Code, in reality, many challenges and problems remain in enforcing these laws. The phenomenon of the crime of persuading children to engage in sexual intercourse is a serious and complex social and legal problem. Children involved in these cases can be either perpetrators or victims, which presents unique challenges in law enforcement.

The fundamental principle in enforcing the law against children is the principle of the best interests of the child, which requires that all legal actions be oriented not only toward punishment but also toward the protection, rehabilitation, and restoration of the child's overall development. However, in practice, this is often difficult to achieve due to various obstacles.

From a legal perspective, there is a dilemma in determining the criminal responsibility of children. The legal system must be able to uphold justice for victims and society without neglecting the child's rehabilitation and development needs as an immature individual. This

⁷ D Wulandari, N & Hidayat, "Principles of Restorative Justice in the Juvenile Justice System in Indonesia," *Journal of Law and Justice* 6, no. 1 (2020).

Master of Law, UNISSULA

requires a balanced approach between punishment and special protections based on legal provisions and the principles of restorative justice.

The legal facts that occurred, Decision Number 1/Pid.Sus.Anak/2025/PN Banjarmasin became the central case study in this research. That the child of MR Bin ES, intentionally carried out deception, a series of lies, or persuaded the child to have sexual intercourse with him or with other people, which was done repeatedly even though the victim child refused the child's invitation but was still forced and promised to be responsible if she became pregnant so that the victim child was willing to have sexual intercourse with the child.

This decision illustrates how the juvenile criminal justice system handles cases of child sexual inducement, including the application of legal norms, the principle of special treatment for children, and the challenges that arise in practice. In this decision, the judge confronts two important aspects: the application of positive legal norms and the principle of special treatment for children. The analysis of this decision is expected to provide a comprehensive picture of the effectiveness of juvenile criminal law in handling cases of sexual exploitation of children, while also assessing the extent to which the principles of restorative justice and the best interests of the child are applied in the judicial process.

2. Research Methods

This research uses a normative juridical approach, which emphasizes the study of relevant laws and regulations, legal doctrine, and court decisions. This approach is appropriate for analyzing the legal aspects and criminal liability of children based on applicable legal norms and provisions.⁸

3. Results and Discussion

3.1. Application of the Principle of Criminal Responsibility to Children in the Crime of Persuading Children to Commit Sexual Intercourse Based on Decision Number 1/Pid.Sus.Anak/2025/PN Bjm

Criminal liability is the legal obligation of an individual to receive criminal sanctions for actions committed if the action meets the criteria of a criminal act and is committed with a fault for which he can be held responsible. This principle is based on the principle of "no punishment without fault" (geen straf zonder schuld), which indicates that criminal sanctions can only be applied if there is a link between the unlawful act and the fault of the perpetrator.⁹

Criminal liability is essentially a system established by law, imposing sanctions on individuals who violate it. When viewed from the perspective of the occurrence of a prohibited act, an individual will be held criminally responsible for that behavior if it violates the law.¹⁰ Criminal liability is a legal consequence specifically for individuals who commit acts that violate

⁸ Sri Mamuji Soekanto Soerjono, *Normative Legal Research: A Brief Objective* (Jakarta: Raja Grafindo, 2017), p. 75.

⁹ Leden Marpaung, *Principles and Basis of Indonesian Criminal Law* (Jakarta: Sinar Grafika, 2018), p. 45.

¹⁰ Wahyuni, Irawan, and Rahmah, "Criminal Liability for Performers of the Persecution of Religious Figures in Indonesia."

Master of Law, UNISSULA

criminal law, where the act fulfills the elements of a criminal act and is carried out with a mistake that can be proven legally, so that the perpetrator deserves to be given criminal sanctions in accordance with the provisions of laws and regulations.

Criminal liability is not merely the imposition of sanctions, but rather a legal mechanism to ensure that the punished individual is truly capable of being held responsible, has malicious intent (*mens rea*) for his actions, and is not in a condition that eliminates guilt such as the existence of excuses or justifications. Therefore, the application of criminal liability must adhere to the principle of *nullum crimen sine culpa* (no crime without fault), as well as consider substantive justice. In other words, in addition to the formal elements regulated by law, it is also important to consider the humanitarian aspects, the background of the perpetrator, and the impact of the action.

The general description of criminal liability above also clearly states that juvenile criminal liability has fundamentally different characteristics from adult criminal liability, both in terms of its philosophical basis, legal approach, and the objectives of law enforcement. This difference arises from the recognition that children are individuals who are still in the biological, psychological, and social development phase, so that their level of intellectual maturity and emotional control are not yet fully realized. In developmental psychology, children cannot fully understand the consequences of each action, so the evaluation of guilt (*schuld*) and intent (*mens rea*) must take into account the limitations of this thinking ability.¹¹

This principle of differential treatment is also in line with international legal instruments, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and the Convention on the Rights of the Child (CRC), which Indonesia has ratified through Presidential Decree Number 36 of 1990. Both instruments emphasize that criminalization of children must be a last resort and in the shortest possible time, with the main orientation being rehabilitation and social reintegration.

Based on this, the analysis of the application of the principle of criminal responsibility to children in the case of the crime of "persuading children to engage in sexual intercourse" must look not only at the formal aspects of fulfilling the elements of the crime, but also at the extent to which the judge has accommodated the principles of child protection and social recovery in his decision.

In modern criminal law, including in Indonesia, recognition of the special circumstances of children is translated into a differential treatment policy, namely the implementation of a different legal system than adults. This is explicitly reflected in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), which not only regulates the minimum age of criminal responsibility (12 years) but also prioritizes out-of-court case resolution mechanisms through diversion and the principle of restorative justice. This approach is clearly different from adult criminal justice, which predominantly uses a retributive justice model and emphasizes the imposition of punishment as retribution for wrongdoing.

¹¹ Soedjono Dirdjosisworo, Introduction to Indonesian Criminal Law (Bandung: PT Refika Aditama, 2010), p. 87.

Master of Law, UNISSULA

Children in Indonesia's criminal justice system are considered individuals still developing, requiring different legal treatment than adults. This special treatment aims not only to uphold the law but also to ensure the best interests of the child, as stipulated in the Convention on the Rights of the Child (CRC), ratified through Presidential Decree No. 36 of 1990.¹²

The primary legal basis governing juvenile justice is Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), which came into effect on July 31, 2014, replacing Law No. 3 of 1997 concerning Juvenile Courts. This change created a new paradigm that emphasizes legal protection and rehabilitation for children in conflict with the law.

The SPPA Law in Article 1 number 3 defines a child as "a person who in the case of a delinquent child is 12 (twelve) years old but has not yet reached 18 (eighteen) years old and has never been married, including children who are still in the womb." In the context of the criminal justice system, children can be in three legal positions, namely as children in conflict with the law, children who are victims of criminal acts, and children who act as witnesses to criminal acts.

The uniqueness of the juvenile justice system lies in the application of specific principles that distinguish it from the general justice system. These principles include diversion, which is an effort to resolve cases outside the courts to protect children from the negative stigma resulting from the criminal justice process (Article 7 of the Juvenile Justice and Child Protection Law); restorative justice, which focuses on restoring relationships between perpetrators, victims, and the community (Article 1 number 6 of the Juvenile Justice and Child Protection Law); and the imposition of educational and rehabilitative criminal sanctions, such as in-house or out-of-house counseling (Article 71 of the Juvenile Justice and Child Protection Law).

Muladi emphasized that the criminal justice system for children must balance child protection and law enforcement, so that punishment for children should be the ultimum remedium or the last resort after all non-criminal alternative solutions have been tried.¹³ Indonesia's juvenile criminal justice system is built on a legal framework that prioritizes protection, development, and social reintegration. This approach aims to mitigate the negative impact of the judicial process on a child's future while ensuring the rule of law.

Likewise, in relation to the Criminal Justice System, there are several subjects in it, namely according to Article 1 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely children who are in conflict with the law, children who are victims of criminal acts and children who are witnesses to criminal acts, and are defined as:

a) Children in Conflict with the Law, hereinafter referred to as Children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old, who are suspected of committing a crime.

¹²Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child.

¹³ Muladi, Selected Chapters on the Criminal Justice System (Semarang: UNDIP Publishing Agency, 2015), p. 245.

Master of Law, UNISSULA

b) Children who are victims of criminal acts, hereinafter referred to as child victims, are children under 18 (eighteen) years of age who experience physical, mental and/or economic suffering caused by criminal acts.

In the context of Indonesian criminal law, children who commit crimes are specifically regulated through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). This law emphasizes that the application of the principle of criminal responsibility for children does not strictly follow the general provisions of the Criminal Code (KUHP), but rather utilizes mechanisms, procedures, and *lex specialis* philosophies. The SPPA comprehensively regulates the age limit for criminal responsibility, child-friendly judicial procedures, the obligation to implement diversion, and special protections during the legal process.

As a *lex specialis*, the SPPA provides exceptions to several provisions of the Criminal Code, particularly regarding the form of sanctions, judicial procedures, and the orientation of sentencing. For example, prison sentences for children are limited in duration and are only imposed if diversion efforts are unsuccessful. This principle shifts the orientation from punishment-oriented to rehabilitation-oriented, where the primary goal is to restore children to their role as productive members of society.¹⁴ Thus, any analysis of the application of criminal responsibility for children in certain cases, including cases of persuading children to engage in sexual intercourse, must always refer to the provisions of the Child Protection Act as the main reference.

In this context, the paper specifically examines Decision Number 1/Pid.Sus.Anak/2025/PN Banjarmasin as a concrete example of the application of the principle of criminal responsibility for children in the case of the crime of persuading children to engage in sexual intercourse. This decision was chosen because it illustrates the dynamics of the application of juvenile criminal law in crimes against morality involving children as perpetrators and victims who are also in a vulnerable age group. Analysis of this decision is important to understand the extent to which law enforcement officers consistently apply the provisions of the SPPA Law, both in the examination stage in court, determining the form of sanctions, and special treatment required by law.

By examining the legal considerations of the panel of judges in this decision, this study seeks to identify whether the basic principles of juvenile criminal liability, such as the principle of child protection, the principle of the best interests of the child, and the principle of proportionality of sanctions, have been implemented appropriately. This also provides an overview of the legal and practical challenges faced in handling cases involving juvenile perpetrators of crimes against morality.

Based on Decision Number 1/Pid.Sus.Anak/2025/PN Banjarmasin, the defendant in this case is an 18-year-old boy (hereinafter referred to as the Child), who was charged with committing the crime of persuading a child to engage in sexual intercourse. The victim in this case is also under 18 years of age, namely 14 years old, so legally categorized as a child. The chronology of the case is as follows:

¹⁴LilyMulyadi, loc.it.

Master of Law, UNISSULA

That the child of MR Bin ES, on Saturday, August 31, 2024 at approximately 09.30 WITA or at least at a time still in 2024, located at Jalan Rawa Sari Ujung Gg. Rawa Makmur Rt.072 Rw.004 Kel. Pelambuan Kec. West Banjarmasin City of Banjarmasin, precisely at the child's house, or at least in another place that is still included in the jurisdiction of the Banjarmasin District Court which has the authority to examine and try this case, "intentionally carried out deception, a series of lies, or persuaded the child to have sexual intercourse with him or with another person", which act was carried out by the child above in the following ways:

That at the time and place mentioned above, the victim's child was in the child's room, at that time the child entered the child's room and lay down beside the victim's child while kissing the victim's child's cheek, then the child came out of the child's room for approximately 5 (five) minutes and returned to the room and lay down beside the victim's child saying "such a rich man" while kissing the victim's child's lips, at that time the victim's child tried to refuse but the child convinced him by saying "just once, if you get pregnant you will have to take responsibility anyway" then the child laid the victim's child on the bed and with full passion the child groped the victim's child's breasts using the child's right hand, then the child lifted the victim's child's house dress and took off his pants and underwear then the child inserted the child's penis into the victim's child's vagina with a back and forth motion for approximately 5 (five) minutes until finally the child climaxed and released the child's sperm on the victim's child's stomach after that the victim's child cleaned himself in the bathroom while the child went to the living room to meet the child's friends.

Then at around 12.00 WITA the child's friends came home from the child's house then the child went back into the room and invited the victim child to have sexual intercourse by promising that the child would be responsible if anything happened while laying the victim child down then the child took off the victim child's pants and underwear and inserted the child's penis into the victim child's vagina with a back and forth motion for a few moments then the child asked the victim child to change positions on top of the child and we had sexual intercourse with an up and down motion for approximately 10 (ten) minutes, feeling tired because the child did not climax finally the victim child asked the child to stop having sexual intercourse then the child and the victim child lay down in the child's room until 22.00 WITA the victim child returned to the witness child's house using a Maxim online motorcycle taxi.

Then on Sunday, September 1, 2024, at 08.00 WITA on Jl. Rawa Sari Ujung Gg. Rawa Makmur Rt.072 Rw.004 Kel. Pelambuan Kec. West Banjarmasin City, the Victim Child returned to the Child's house accompanied by the Witness Child, where when at the Child's house at that time the Victim Child was playing with the Child's younger sibling, then around 12.00 WITA the Child invited the Victim Child into the Child's room, because at that time he wanted to charge his cellphone battery then when the Victim Child was busy watching videos on Tiktok the child hugged while kissing the Victim Child's cheeks and lips and invited him to have sex again by removing the Victim Child's pants and underwear while squeezing her breasts the Child then inserted the child's penis into the Victim Child's vagina with a back and forth motion for a few moments did not have time to climax and ejaculate, the Victim Child asked the Child to stop on the grounds that he wanted to urinate, so the Child stopped having sex.

Master of Law, UNISSULA

Then at around 14.00 WITA the child again invited the victim child to enter the child's room and have sex as before, at that time when the child took off the child's pants, the victim child also took off his underwear then the child inserted the child's penis into the victim child's vagina with a back and forth motion for a few moments then the child asked the victim child to switch positions with the child below and the victim child above with an up and down motion and again changed positions with a back and forth motion until finally the child climaxed and released the child's sperm on the victim child's stomach, after that at around 22.00 WITA the victim child went home with the child to the front of the child's house alley then the victim child was taken by an online taxi to his friend's house. However, the victim child refused the child's invitation but was still forced and promised to be responsible if she got pregnant so that the victim child was willing to have sex with the child.

Based on the chronology of the case above, the article imposed is related to a single charge as regulated in Article 81 paragraph (2) of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely related to the criminal act of persuading a child to have sexual intercourse.

This position emphasizes that in cases involving two children, the status of the perpetrator and victim remains legally distinct based on their roles, ages, and actions. The perpetrator can still be held criminally responsible under the specific provisions of the Child Protection Act, while the victim has the right to receive special protection from the state, both physically and psychologically.

In the case of Decision Number 1/Pid.Sus.Anak/2025/PN Banjarmasin, even though the perpetrator and victim are both children, the application of the principle of no punishment without fault (*geen straf zonder schuld*) remains the basis. This principle emphasizes that a person can only be punished if there is an element of fault (*schuld*) which includes the ability to be responsible, the existence of an inner relationship in the form of intent (*dolus*) or negligence (*culpa*), and the absence of a reason for forgiveness which the author explains:

1) The perpetrator (defendant)

The defendant is 18 years old, which according to Article 1 number 3 and Article 69 paragraph (2) of the SPPA Law is categorized as a child who can be held criminally responsible. This age is legally considered to have a certain level of maturity to understand the consequences of their actions, although the responsibility and sanctions are different from those of adults. In this case, the defendant carried out conscious persuasion with the aim of having sexual intercourse, so that the element of intent is fulfilled. Thus, the principle of culpability recognizes the existence of errors that can be held criminally responsible, even through a special juvenile justice mechanism.

2) Victim

The victim was 14 years old and a child victim of a crime under Article 1, point 4, of the Child Protection Law. Although the victim expressed consent, this consent was legally ineffective because she lacked the legal capacity to give sexual consent. Therefore, the victim cannot

Master of Law, UNISSULA

be positioned as a perpetrator or co-responsible, but rather as a party entitled to protection.

In line with this, if we look at Indonesian criminal law, the criminal responsibility of children is specifically regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). For a child to be held criminally responsible, four basic requirements must be met:¹⁵

1) Age Requirement

Based on Article 1 number 3 and Article 69 paragraph (2) of the SPPA Law, children who can be held criminally responsible are children who are 12 years old but not yet 18 years old. Children under 12 years old cannot be punished, but can be given guidance measures or returned to their parents/guardians.

2) Responsible Ability

Children must be able to understand the consequences of their actions. If a child suffers from a mental disorder or mental retardation that prevents them from realizing the consequences of their actions, they cannot be held criminally responsible (Article 44 of the Criminal Code applies *mutatis mutandis* to children).

3) Error (Schuld)

Mistakes can be intentional (*dolus*) or negligent (*culpa*). In children, the assessment of misconduct must take into account their level of psychological development, emotional maturity, and environmental influences.

4) Causal Relationship

There must be a clear causal relationship between the child's actions and the consequences prohibited by law. The assessment of causality in children is not fundamentally different from that in adults, but the involvement of other parties (e.g., adult persuasion) must be taken into account.

The criminal liability of children differs fundamentally from that of adults. For children, the age limit for criminal responsibility is between 12 and under 18, while for adults, the age limit is 18 and above. The legal process for children uses the Juvenile Criminal Justice System, with principles of restorative justice and diversion, while adults are processed through general courts. Sanctions for children emphasize development, protection, and social reintegration, while those for adults are more oriented toward punishment and deterrence. Furthermore, in assessing a child's culpability, psychological factors and emotional maturity are important considerations, which are not always the primary considerations in sentencing adults.

Regarding Decision Number 1/Pid.Sus-Anak/2025/PN Bjm as described above regarding the chronology and sentencing, of course the following elements can be considered:

¹⁵ Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law).

Master of Law, UNISSULA

1) Each person

That the element of every person according to the doctrine of criminal law is not an element of a criminal act, but rather an element of an article, so it is worth considering to avoid the occurrence of error in persona and the elements in this article lead to the legal subject, namely a person as a human being (natulijke person) as a holder of rights and obligations who can be held responsible for the actions accused of the child who is suspected of being the perpetrator of the crime.

The Public Prosecutor has presented a child named MR Bin ES, in court with the child's identity based on Family Card Number 6371032612070644 issued by the Head of the Population and Civil Registration Service of Banjarmasin City which states that the child is MR Bin ES, born on October 3, 2006. So at the time of the incident, MR Bin ES was 17 (seventeen) years old.

Based on the provisions of Article 1 number 1 of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, it explains the definition of a Child is a person who is not yet 18 (eighteen) years old including a child who is still in the womb. Therefore, regarding the Children of MR Bin ES, they still have the status of Children and during the trial the Children did not deny their identity. Thus, based on the above considerations, the Judge is of the opinion that the first element has been fulfilled.

2) Intentionally committing deception, a series of lies or persuading the child to have sexual intercourse with him or another person.

That intention can be distinguished into three forms of mental attitude, namely intention as an intention to achieve a goal, intention with a conscious certainty or intention with a conscious possibility. That based on the existing legal facts revealed in the trial, the act was carried out up to 9 times by seducing and deliberately persuading the child with a series of lies and tricks to persuade him to have sexual intercourse with him which was carried out against the "child" was also fulfilled.

In this case, the judge first assessed the defendant's age as a basis for determining whether the person concerned could be held criminally responsible as a child. Based on the birth certificate submitted in court, it was proven that the defendant was 18 years old at the time of the act, as evidenced by the family card and the defendant's identity in court. This fulfills the provisions of Article 69 paragraph (2) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law), which stipulates that children aged 12 years or older can be held criminally responsible.

Next, the judge assessed the element of "fault" by referring to the theory of intent (dolus). From the testimony of witnesses and the defendant, it was revealed that the defendant consciously engaged in persuasion with words aimed at influencing the victim to agree to have sexual intercourse. The fact that the defendant was able to plan and carry out the act indicates the presence of intent (mens rea), awareness, and the ability to distinguish

Master of Law, UNISSULA

between good and bad actions, which are important elements in the principle of no crime without fault (geen straf zonder schuld).

The judge based his decision on Article 81 paragraph (2) of Law No. 17 of 2016 concerning the Second Amendment to the Child Protection Law, which regulates criminal penalties for anyone who persuades a child to have sexual intercourse with him or another person. In his considerations, the judge examined the element of "persuading," which is proven through a series of seductive words, giving attention, and intensive communication that builds the victim's trust until he is willing to carry out the act.

The element of "intercourse" was proven through the victim's testimony, witness testimony, and a post-mortem examination confirming the existence of sexual intercourse. Meanwhile, the victim's status as a child was proven through the victim's birth certificate, which indicated her age of 14 at the time of the incident. This confirms that the victim was a minor who is legally incapable of giving valid consent to sexual intercourse, thus fully applying all protections under the Child Protection Law.

In this case, before imposing a criminal penalty or action, in the aquo case, the Judge will pay attention to the following matters:

- That according to Article 69 of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, children can only be sentenced to criminal penalties or take action based on the provisions of this Law;
- That the suggestion/recommendation in the Community Research Results Report for the trial in the name of Muhammad Rifani Als Fani Bin Edy Sugianto, Register Number: Lit.ABH/Bapas Bjm/I/2025-8 dated January 21, 2025, compiled by Abdul Hair, SH, First Community Guidance Officer at the Class I Banjarmasin Correctional Center, is to place him in the Class I Martapura Special Child Development Institution with a "prison sentence" as stipulated in Article 71 paragraph (1) letter e and paragraph (3) of the Republic of Indonesia Law Number 11 of 2012 concerning the Child Criminal Justice System (SPPA), with the consideration that he will receive special guidance, especially in the fields of skills and religion;
- That the main criminal penalties for children based on Article 71 Paragraph (1) of Law Number 11 of 2012 concerning the Child Criminal Justice System include:
 - a. Criminal warning;
 - b. Criminal with the following conditions:
 - 1) Coaching outside the institution;
 - 2) Community services; or
 - 3) Supervision;
 - c. Job training;
 - d. Development within the institution; And

Master of Law, UNISSULA

e. Prison;

With regard to the responsibility for the child's actions, the judge also further considers the following matters:

- 1) That the child's act of having sexual intercourse violates religious, social and legal norms;
- 2) The Community Guidance Officer (PK) from the Class I Banjarmasin Correctional Center (BAPAS) stated in the trial that the recommendation was to impose a prison sentence with the intention that the child receive more intensive guidance;
- 3) The parents of Muhammad Rifani, also known as Fani Bin Edy Sugianto, have been negligent in supervising and educating their child, hoping that their child will learn a valuable lesson about the impact of the mistakes he has made for his future life.

Based on these considerations, the judge finally ruled that the child perpetrator of the crime of persuading a child to have sexual intercourse with the following verdict:

1. Declaring that the child has been legally and convincingly proven guilty of committing the crime of persuading the child to have sexual intercourse with him as in the Public Prosecutor's indictment;
2. Sentencing the child to a prison sentence of 4 (four) years and 6 (six) months of job training at the Banjarmasin City Job Training Center;
3. Determine that the period of arrest and detention that the child has served is deducted in full from the sentence imposed;
4. Determine that the child will remain detained in the Class IIA Banjarmasin Penitentiary;
5. Establishing evidence in the form of:
 - 1 (one) piece of night blue t-shirt;
 - 1 (one) pair of grey jeans;

Returned to the Child of the Perpetrator.

- 1 (one) pair of purple underwear;
- 1 (one) pair of black long leggings;
- 1 (one) black sweetener;

Returned to the Victim's Child

6. Charge the child to pay court costs of IDR 5,000.00 (five thousand rupiah);

By considering the impact of criminal punishment for children and the intent and purpose of criminal punishment for children, the Judge in the aquo case agrees with the recommendation of the Community Guidance Officer to impose a prison sentence, however, as in the provisions of Article 81 paragraph (3) of Law Number 11 of 2012

Master of Law, UNISSULA

concerning the Juvenile Criminal Justice System which in essence explains the guidance in a Special Child Guidance Institution until the child is 18 (eighteen years old). Therefore, the placement is carried out in the Class IIA Banjarmasin Correctional Institution.

From the author's analysis, the application of the principle of criminal responsibility in this decision demonstrates that the judge assessed each element of the crime in a hierarchical manner, from age to culpability to proof. This approach ensures that the principle of culpability is maintained while maintaining maximum protection for victims who are also children.

The criminal responsibility of children in criminal acts always gives rise to legal debate, because children are seen as both perpetrators and subjects who must be protected. In Decision Number 1/Pid.Sus.Anak/2025/PN Banjarmasin, the Panel of Judges ruled on the case of a child who was the defendant in the crime of persuading a child to engage in sexual intercourse. This crime is regulated in Article 81 paragraph (2) in conjunction with Article 76D of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which emphasizes the prohibition on anyone persuading a child to engage in sexual intercourse.

Normatively, the elements of the offense charged by the Public Prosecutor were proven based on the facts of the trial, including the act of persuading, the legal subject being a child as the perpetrator, and the victim also being a child. In this case, the judge considered that even though the perpetrator was still a child, his actions fulfilled the elements of a criminal act so that criminal responsibility could still be imposed on him. This is in line with the criminal law doctrine that criminal responsibility is attached if the perpetrator is proven capable of being responsible (*toerekeningsvatbaarheid*) and fulfills the element of fault in the form of intent (*dolus*).

Based on the results of the review of the decision, the author found that the judge in this case had referred to the principles of restorative justice as regulated in Article 6 and Article 7 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law), although its implementation was not fully carried out through the diversion mechanism. Indications of the application of this principle are evident from the efforts to consider the social conditions, family environment, and the future of the defendant, and emphasize the need for guidance in the Special Child Development Institution (LPKA) as an alternative to imprisonment that applies to adults.

However, there are also several problems that arise in applying the principle of criminal responsibility of children in the crime of persuading children to have sexual intercourse.

1) There is an imbalance between the protection of children as perpetrators and as victims. On the one hand, the law emphasizes maximum protection for child perpetrators through guidance and rehabilitation, while on the other hand, victim protection must also be strictly maintained, as victims are not yet able to legally give consent. This imbalance requires judges to carefully balance the interests of perpetrator rehabilitation and the restoration of victims' rights.

Master of Law, UNISSULA

2) There are potential deficiencies in proving the elements of motivation and culpability in children who are not yet mentally mature. Child perpetrators may not fully understand the consequences of their actions, making demonstrating intent (*mens rea*), awareness, and the ability to distinguish between right and wrong more difficult than in adults. This presents a legal challenge in ensuring that the elements of criminal responsibility are met without neglecting the principle of no punishment without fault (culpability).

3) There are challenges in applying restorative justice principles to sensitive cases such as rape. Cases involving sexual crimes against children require extra care to ensure that the diversion process or restorative efforts do not cause additional trauma to the victim. Furthermore, communities and families often have high expectations for sanctions against perpetrators, so the implementation of restorative justice needs to be balanced with transparent, educational, and psychologically sensitive methods for both children.

From these three root causes, the author concludes that the application of the principle of juvenile criminal responsibility in cases of child sexual intercourse charges faces three main challenges: balancing protection, proving the guilt of minors, and implementing restorative justice in sensitive case contexts. Identifying the root causes of these problems provides the basis for developing recommendations for improving law and policy so that law enforcement against children involved in crimes against morality is more efficient and balanced.

When linked to the theory of criminal responsibility, this decision demonstrates that the judge continues to uphold the principle of no crime without fault (the principle of culpability), by assessing the defendant's capacity to take responsibility based on their age and mental development. However, because the defendant is a child, the enforcement of criminal responsibility is carried out within a special legal framework that takes into account age limits and the child's protection needs.

The judge's approach is also relevant to rehabilitation theory, where punishment is viewed as a means to correct the offender's behavior through education, guidance, and personality development. Furthermore, this decision reflects the theory of restorative justice, which emphasizes restoring the relationship between the offender, the victim, and the community. Although not all of the process is conducted through a diversion forum, the direction of the decision still reflects a balance between protecting the community, restoring the victim's condition, and fulfilling the defendant's rights as a child. Thus, the ultimate goal achieved is not only retribution, but also guidance, recovery, and preventing the recurrence of criminal acts.

The restorative justice approach is evident in this decision because the judge took into consideration the defendant's age, who is still a child, and the diversion efforts during the investigation stage, even though no agreement was reached due to the severity of the crime. Furthermore, the type of punishment chosen emphasizes developmental and educational punishment, rather than repressive punishment. This shows that the application of juvenile criminal responsibility is not separated from the restorative principle, even though diversion was unsuccessful.

Thus, Decision Number 1/Pid.Sus.Anak/2025/PN Banjarmasin reflects the application of the principle of proportional criminal responsibility for children, which, on the one hand, upholds legal norms and protects child victims, while also addressing the needs of child perpetrators through educational punishment. This aligns with Article 71 of the Juvenile Justice System Law, which emphasizes that punishment for children is directed more toward developmental measures, rather than mere punishment.

3.2. Legal Factors Influencing the Criminal Responsibility of Children and the Legal Treatment and Special Protection of Children Who Perpetrate Criminal Acts in the Juvenile Criminal Justice System

In Indonesian criminal law, juvenile accountability is regulated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). This law emphasizes the protection of children's rights and the principle of restorative justice in the juvenile criminal justice system.¹⁶ However, in some cases, children can still be held legally responsible if they fulfill the elements of guilt stipulated in criminal law.

1. Legal Factors Influencing the Criminal Responsibility of Children

For children in conflict with the law, the criminal responsibility of children is influenced by a number of determinative legal factors, as explained in the application of the decision above which the author has described, providing an overview for analyzing what factors influence the criminal responsibility of children, namely as follows:

1) Age Limit for Criminal Responsibility

The age at which a person can be held criminally responsible is known as the age of criminal responsibility, which is the age at which a person can be charged and punished for a crime they have committed. Internationally, the minimum age for criminal responsibility varies widely, although there is no scientific evidence that this difference is significant across countries. There is no evidence to suggest significant cultural differences in regulations or policies worldwide.¹⁷

The determination of the age limit is not merely formal, but also takes into account the child's emotional, intellectual, and mental maturity. Therefore, criminal responsibility for children is not automatically imposed upon reaching the age; judges must still assess the child's ability to understand their actions and their consequences. Children under the age of 12 cannot be held criminally responsible, but may be subject to guidance, supervision, or returned to their parents/guardians, in accordance with the child protection principles underlying the Child Protection Act.

¹⁶ Desi Permatasari Pohan, Marlina Marlina, and Edy Ikhsan, "Criminal Liability of Children in Conflict with the Law in Premeditated Murder," *Locus: Journal of Legal Science Concepts* 3, no. 3 (2023): 151–60, <https://doi.org/10.56128/jkih.v3i3.296>.

¹⁷ M. Hendri Agustawan, Pujiyono Pujiyono, and Umi Rozah, "Age of Criminal Responsibility for Children in a Neurolaw Perspective," *Journal of Law Enforcement and Justice* 4, no. 2 (2023): 67–80, <https://doi.org/10.18196/jphk.v4i2.18206>.

Master of Law, UNISSULA

This approach reflects legislators' efforts to balance justice and protection for child offenders, while emphasizing the role of guidance and rehabilitation as the primary goal of the juvenile criminal justice system, not merely punishment.

If it is related to the decision Number 1/Pid.Sus-Anak/2025/PN Bjm, in which the perpetrator is 18 years old, so based on the provisions of Article 1 number 1 of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, it explains that the definition of a Child is a person who is not yet 18 (eighteen) years old including a child who is still in the womb. Thus, regarding the Children of MR Bin ES, they still have the status of Children and during the trial the Children did not deny their identity, namely with Family Card Number 6371032612070644 issued by the Head of the Population and Civil Registration Service of Banjarmasin City which states that on behalf of the Children of MR Bin ES, born on October 3, 2006. So at the time of the incident the Children of MR Bin ES were 17 (seventeen) years old. Thus, based on the above considerations, the Judge is of the opinion that the first element has been fulfilled.

This is of course also in accordance with Article 69 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), children who are 12 years old but have not yet reached 18 years old can be held criminally responsible. This age is determined based on psychological considerations, namely the emotional, intellectual, and mental maturity of the child. Children under the age of 12 cannot be held criminally responsible and must be returned to their parents or guardians. This means that in this case, the status of a child or adult is determined not at the time of arrest or trial, but at the time of committing the crime. Therefore, even though at the time of trial the child perpetrator is 18 years old, the handling still follows juvenile justice procedures.

2) Responsible Ability and Mental Maturity

The ability to be responsible is a state of psychological maturity and normality which is characterized by three abilities, namely understanding the meaning and consequences of one's actions, understanding that the action violates social norms, and having the freedom of will to carry out the action.¹⁸

In practice, the element of capacity for responsibility in criminal law is embodied in the calculation of mental capacity, meaning under normal or abnormal conditions (impaired mental capacity from birth or due to illness), as well as the minimum age limit for criminal responsibility. Based on this, children under the age of 12 are considered by lawmakers to lack the capacity for responsibility because they lack psychological maturity.¹⁹

Thus, in essence, the assessment of a child's capacity for responsibility is conducted through a psychological examination, parental testimony, and a report from the Community Guidance Officer (PK). The goal is to assess the extent to which the child understands the consequences of their actions. Children who are not mentally mature may not fully

¹⁸<https://marineews.mahkamahagung.go.id/artikel/diseminasi-doktrin-vicarious-liability-sistem-peradilan-anak-0sQ>, accessed on August 15, 2025.

¹⁹Ibid.

Master of Law, UNISSULA

understand the consequences of their actions, which can affect the criminal responsibility that can be imposed on them.

In relation to the above verdict, as the judge considered, there were no reasons to eliminate criminal responsibility, either as justification or excuse, so the child must be held accountable for his actions. Because the child is capable of taking responsibility, he must be found guilty and sentenced.

3) Elements of Error and Causal Relationship

In criminal law, a person can only be held accountable if they are proven to have committed an act with intent, awareness, or negligence (*mens rea*), and if their act directly resulted in a legally prohibited consequence (*actus reus*). For child perpetrators, proving these elements requires special attention, given that children's cognitive and emotional development is not yet fully mature.

4) Types of Criminal Offenses and Applicable Legislation

The type of crime committed by a child also influences criminal liability. In cases of persuading a child to engage in sexual intercourse, for example, the judge refers to Article 81 paragraph (2) of the Child Protection Law and provisions in the Criminal Code (KUHP) as complements. This shows that applicable laws and regulations also determine the form of criminal liability that can be imposed on the child perpetrator.²⁰In relation to the decision above, it is clear that it has been carried out in accordance with applicable laws and regulations, such as the SPPA Law.

2. Legal Treatment for Child Perpetrators

In the juvenile criminal justice system, legal treatment for children who commit crimes focuses more on guidance and rehabilitation, rather than solely on the retributive punishment applied to adults. One key mechanism is diversion, which is a problem-solving process outside of court, aimed at reducing the negative psychological effects and social stigma that may attach to children. Diversion is implemented by bridging the gap between the child perpetrator, the victim, their family, and other relevant parties, so that recovery and reconciliation can be achieved without going through an emotionally draining judicial process.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System establishes the concept of restorative justice through diversion efforts, which means transferring the resolution of juvenile cases from the criminal justice process to a resolution outside the criminal justice system. The goal is to achieve reconciliation between victims and children, as well as resolving juvenile cases without going through the judicial process, avoiding the theft of children's freedom, and instilling a sense of responsibility in children. Diversion can

²⁰ Gabe horas Silalahi and Padrisan Jamba, "Criminal Responsibility for Children Who Commit Serious Crimes Examined from the Perspective of Indonesian Positive Law," *SCIENTIA JOURNAL: Student Scientific Journal* 5, no. 3 (2023), <https://doi.org/10.33884/scientiajournal.v5i3.7872>.

Master of Law, UNISSULA

only be applied to crimes that carry a prison sentence of less than 7 years and are not repeated offenses.²¹

In addition to the implementation of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, diversion provisions are also stated in Government Regulation No. 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 (Twelve) Years of Age and Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System.

In this case, the judge emphasized the development and rehabilitation aspects for the defendant, who is still 18 years old. This approach aligns with the theory of juvenile criminal responsibility, which emphasizes that children can only be held accountable if they are proven to have the capacity to understand the consequences of their actions (capacity to understand), in accordance with the principle of no punishment without fault (culpability).

The diversion mechanism is applied in a limited manner, prioritizing the restoration of relationships between the defendant, the victim, and the community, thus aligning with the theory of restorative justice. In this theory, the legal focus is not solely on retribution, but also on the social and psychological recovery of the victim, as well as the education and social reintegration of the perpetrator's children.

In considering the verdict, the judge considered the defendant's age, level of culpability, psychological report, and recommendations from the Community Guidance Officer (PK). These considerations demonstrate that the application of legal treatment to the child perpetrator in this decision successfully integrates the theories of criminal responsibility, rehabilitation, and restorative justice simultaneously, in accordance with the objectives of Law No. 11 of 2012 concerning the Child Protection and Child Protection System (SPPA), namely child protection, guidance, and social recovery.

3. Special Protection for Child Perpetrators.

Child perpetrators of crimes receive special legal protection, in accordance with the principles of children's rights stipulated in Law No. 11 of 2012 concerning the Child Protection System (SPPA). During the trial process, children have the right to be accompanied by a parent or guardian, legal counsel, and a Community Guidance Counselor (PK). This assistance aims to ensure that children understand the legal process, receive psychological protection, and are not subjected to excessive pressure, ensuring that children's rights are met.

Furthermore, the identity of the child perpetrator is kept confidential to prevent social stigma and negative psychological impacts that could hinder the rehabilitation and social reintegration process. In Decision Number 1/Pid.Sus.Anak/2025/PN Bjm, the defendant's identity was not made public, and the judge emphasized the need for an educational approach and guidance through programs at the LPKA.

²¹ Vincentius Patria Setyawan and Anastasia Priska Kristianti, "Expansion of Diversion Regulations in Juvenile Courts in Conflict with the Law," *Journal of Legal Certainty and Justice* 4, no. 2 (2022): 116, <https://doi.org/10.32502/khk.v4i2.5557>.

Master of Law, UNISSULA

This legal approach aligns with rehabilitation theory, where the focus of criminal punishment is on improving the child's behavior, and restorative justice theory, which emphasizes restoring relationships between the perpetrator, victim, and community. Thus, special protection for child perpetrators not only safeguards their rights but also supports the goals of social reintegration and preventing recurrence of crime, while fulfilling the principle of proportional and educational criminal accountability for children.

4. Conclusion

Based on the discussion of the research results, the following conclusions can be drawn: 1. The application of the Principle of Criminal Responsibility to children in cases of persuading children to engage in sexual intercourse based on the envoy Number /Pid.Sus-Anak/2025/PN Bjm has been applied by taking into account the special characteristics of children as perpetrators of criminal acts so that it can be said to be proportional in accordance with restorative justice. The judge considers the age, mental maturity, and elements of the defendant's guilt before imposing a sentence. The approach used emphasizes guidance and rehabilitation through the Special Child Development Institution (LPKA), rather than retributive punishment, and applies the principle of restorative justice for recovery for victims and social reintegration of the defendant. 2. Legal factors that influence the criminal responsibility of children as well as legal treatment and special protection for children who commit crimes in the juvenile criminal justice system, namely, such as the age limit for criminal responsibility (Article 69 of the SPPA Law), the ability to be responsible, the element of fault, and the causal relationship between the act and the consequences that arise. Legal treatment of These include diversion mechanisms, programs at the LPKA (Institutional Correctional Institution), and support from parents, legal counsel, and Community Guidance Counselors. Special protection is also provided through identity confidentiality to prevent social stigma and negative psychological impacts. 3. Efforts to reform the law and policy for enforcing juvenile criminal law in the crime of persuading children to engage in sexual intercourse to be more effective in the future require emphasizing the principles of restorative justice, rehabilitation, and the best interests of the child. These reforms include improving diversion mechanisms, protecting child perpetrators and victims, and adjusting the substance of Articles 289 and 296 of the Criminal Code to make punishment more educational and rehabilitative. This step benefits child perpetrators, child victims, and society, thereby making the juvenile criminal justice system more effective, just, and humane in the future.

5. References

Journals:

Agustiawan, M. Hendri, Pujiyono Pujiyono, and Umi Rozah. "Usia Pertanggungjawaban Pidana Anak Dalam Perspektif Neurolaw." *Jurnal Penegakan Hukum Dan Keadilan* 4, no. 2 (2023): 67–80. <https://doi.org/10.18196/jphk.v4i2.18206>.

Djamaludin, Djamaludin, James Simanjuntak, and Reynhard Christian Fatunlibit. "Pendampingan Hukum Bagi Perempuan Dan Anak Korban Kekerasan Dalam Memperoleh Keadilan." *Legal Empowerment: Jurnal Pengabdian Hukum* 3, no. 1

Master of Law, UNISSULA

(2025): 1–8. <https://doi.org/10.46924/legalempowerment.v3i1.265>.ISSN.

Erdin, Erwin, Afi Shofiana, and Indra Jaya Indar. "The Effectiveness of Restorative Justice in Resolving Juvenile Criminal Offenses in Indonesia." *Hakim: Jurnal Ilmu Hukum Dan Sosial* 3, no. 1 (2025): 918–36. <https://doi.org/10.51903/hakim.v3i1.2288>.

Fauziyah, Siti. "Peran Nilai Islam Dalam Perlindungan Anak Dari Tindak Pidana Seksual." *Jurnal Ilmiah Al-Hikmah* 12, no. 2 (2021).

Febri Ana, Gita, and Rehnalemken Ginting. "Analisis Penerapan Pasal 359 KUHP Mengenai Kealpaan Yang Menyebabkan Hilangnya Nyawa Orang Lain (Studi Putusan Nomor: 267/PID.B/2011/PN/SKH)." *Recidive* 4, no. 2 (2015): 184–91.

Hartono, Yudha. "Perlindungan Anak Dalam Putusan Mahkamah Konstitusi." *Jurnal Hukum Dan Pembangunan* 51, no. 2 (2021).

Huda, Chairul. *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*. Jakarta: Kencana, 2011.

Lisi, Ivan Zairani. "Tinjauan Hukum Pidana Dalam Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik Di Indonesia (Review on Criminal Law Pursuant to Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik of Indonesia)," 2008.

Melansari, Kornelia dan D. Iewokeda. "Pertanggungjawaban Pidana Tindak Pidana Terkait Pemberian Delegasi Kewenangan." *Mimbar Keadilan* 14, no. 28 (2019).

Nugraha, A & Prasetyo, R. "Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual." *Jurnal Hukum Dan Pembangunan* 48, no. 4 (2018).

Pohan, Desi Permatasari, Marlina Marlina, and Edy Ikhsan. "Pertanggungjawaban Pidana Anak Yang Berkonflik Dengan Hukum Dalam Tindak Pidana Pembunuhan Berencana." *Locus: Jurnal Konsep Ilmu Hukum* 3, no. 3 (2023): 151–60. <https://doi.org/10.56128/jkih.v3i3.296>.

Safitri, Dwi Andin. "Pengertian Tindak Pidana Dan Unsur-Unsur Tindak Pidana." *Jurnal Judiciary* 14, no. 1 (2025).

Toatubun, Hamza. "Analisis Perkembangan Teori Hukum Pidana." *Jurnal Ilmu Hukum* 11, no. April (2016): 49–57.

Wahyuni, Fitri, Aris Irawan, and Siti Rahmah. "Criminal Liability for Performers of the Persecution of Religious Figures in Indonesia." *JCH (Jurnal Cendekia Hukum)* 7, no. 1 (2021): 107. <https://doi.org/10.33760/jch.v7i1.358>.

Wulandari, N & Hidayat, D. "Prinsip Restorative Justice Dalam Sistem Peradilan Anak Di Indonesia." *Jurnal Hukum Dan Keadilan* 6, no. 1 (2020).

Master of Law, UNISSULA

Books:

Abidin, Andi Hamzah dan Andi Zainal. *Pengantar Dalam Hukum Pidana Indonesia*. Jakarta: Yarsif Watampne, 2010.

Arief, Barda Nawawi. *Bunga Rampai Kebijakan Hukum Pidana*. Bandung: Citra Aditya Bakti, 2002.

Departemen Pendidikan Nasional. *Kamus Besar Bahasa Indonesia*. Jakarta: Balai Pustaka, 2005.

Dirdjosisworo, Soedjono. *Pengantar Ilmu Hukum Pidana Indonesia*. Bandung: PT Refika Aditama, 2010.

Hamzah, Andi. *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta, 2021.

Harahap, M. Yahya. *Hukum Acara Pidana*. Jakarta: Sinar Grafika, 2016.

Jimmy, Marwan M &. *Kamus Hukum*. Surabaya: Reality Publisher, 2009.

Kartini Harahap, Nurhayati, Arafat, dan Itgo Harchi. *Metode Penelitian*. Medan: PT Media Penerbit Indonesia, 2024.

Komisi Nasional Perlindungan Anak. *Pedoman Sistem Peradilan Pidana Anak Di Indonesia*. Jakarta: Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2019.

Lamintang, P A F. *Hukum Pidana Indonesia*. Bandung: Sinar Baru, 1983.

Majid, Abdul. *Strategi Pembelajaran*. Bandung: PT Remaja Rosdakarya, 2013.

Marpaung, Leden. *Asas-Asas Dan Dasar Hukum Pidana Indonesia*. Jakarta: Sinar Grafika, 2018.

Nawawi, Al. *Al-Majmu Syarh Al-Muhamdzab*. Beirut: Dar al-Fikr, 1997.

Raharjo, Satjipto. *Ilmu Hukum*. Bandung: Citra Aditya Bakti, 2000.

Reksodiputro, Mardjono. *Sistem Peradilan Pidana Indonesia*. Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum Universitas Indonesia, 1994.

Sidharta, I Made. *Hukum Perlindungan Anak Di Indonesia*. Jakarta: Raja Grafindo Persada, 2018.

Soekanto Soerjono, Sri Mamuji. *Penelitian Hukum Normatif Suatu Tujuan Singkat*. Jakarta: Raja Grafindo, 2017.

UNICEF. *The Best Interests of the Child in Juvenile Justice*. New York: UNICEF, 2018.

Utrecht. *Hukum Pidana I*. Bandung: Universitas Bandung, 1986.

Wiradi. *Analisis Sosial*. Bandung: Yayasan Akatiga, 2006.

Master of Law, UNISSULA

Zehr, Howard. *The Little Book of Restorative Justice*. New York: Good Books, 2002.

Zuhro, Siti. *Perlindungan Hukum Bagi Anak*. Yogyakarta: LKis, 2017.

Internet:

Badriyah, Siti. "Kerangka Konseptual: Pengertian, Tujuan, Dan Cara Membuat." Gramedia Blog, n.d. https://www.gramedia.com/literasi/kerangka-konseptual/#google_vignette.

Fitriana, Nurul. "Mengapa Perempuan Sering Menjadi Korban Kejahatan?" Kompas TV, 2022.

<https://fh.untar.ac.id/2025/05/09/keadilan-restoratif-sebagai-paradigma-baru-dalam-sistem-peradilan-pidana/>, diakses pada 11 Agustus 2025.

<https://journal.stkipggritrenngalek.ac.id/index.php/kid/article/viewFile/158/104>, diakses pada 13 Agustus 2025.

<https://www.lawyersclubs.com/teori-teori-pemidanaan-dan-tujuan-pemidanaan/>, diakses pada 14 Agustus 2025.

<https://repository.umko.ac.id/id/eprint/258/3/BAB%20%20DIANA.pdf>, diakses pada 14 Agustus 2025.

<https://id.wikipedia.org/wiki/Pembujukan>, diakses pada 14 Agustus 2025.

<https://id.wikipedia.org/wiki/Persetubuhan>, diakses pada 14 Agustus 2025.

<https://marinews.mahkamahagung.go.id/artikel/diseminasi-doktrin-vicarious-liability-sistem-peradilan-anak-0sQ>, diakses pada 15 Agustus 2025.

Regulation:

The 1945 Constitution of the Republic of Indonesia.

Criminal Code (KUHP).

Law Number 1 of 2023 concerning the Criminal Code (new Criminal Code).

Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP).

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Law Number 35 of 2014 concerning Child Protection.

Court Decision Number 1/Pid.Sus.Anak/2025/PN Bjm.