

Child Consent in Child Sexual Intercourse Crimes Linked to Marriage Dispensation Policy

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Abstract. *Through the reform of the 2023 Criminal Code, the government has demonstrated its commitment to child protection by categorizing sexual intercourse with a child as an expansion of the offense of rape. However, neither the 2023 Criminal Code nor other applicable regulations provides adequate clarification regarding the element of consent, thereby creating ambiguity in law enforcement. In addition, Indonesia recognizes marriage dispensation, which indirectly legalizes sexual intercourse with children within the marital relationship. This study aims to examine the criminal offense of sexual intercourse with a child and analyze the resulting legal disharmony. The methods employed were a literature review and interviews with several parties to strengthen the analysis. The findings indicate that the criminal offense of sexual intercourse with a child under Article 473 of the 2023 Criminal Code has evolved alongside the expansion of the offense of rape. However, the lack of clarification and understanding regarding a child's consent to sexual intercourse often creates legal uncertainty, as demonstrated in Decision No. 172/Pid.Sus./2020/PN Prp. Furthermore, the existence of overlapping regulations concerning marriage dispensation creates legal dualism and is frequently exploited as a loophole to avoid criminal liability. Therefore, the government needs to enforce and clarify the concept of child consent in cases of sexual intercourse and review the regulations governing marriage dispensation to achieve maximum protection for children.*

Keywords: *Consent; Dispensation; Intercourse; Marriage; Sexual.*

1. Introduction

The update to Law No. 1 of 2023 concerning the Criminal Code (KUHP 2023) was based on the reason that the Wetboek van Strafrecht (old KUHP) was deemed incompatible with the values that exist and develop in today's society. The numerous articles that were revoked and the perception that the old KUHP no longer met the aspirations of the people also underpinned this update. (Draft Academic Manuscript of the Draft Law on the Criminal Code (KUHP), 2015)

Among the changes to the Criminal Code is the expansion of the crime of rape which was considered irrelevant. Article 285 in the old Criminal Code was then updated and expanded in

Article 473 of the 2023 Criminal Code by adding a number of aspects, one of which is related to the categorization of sexual intercourse with children as stated in Article 473 paragraph (2) Letter (b) as one of the criminal acts of rape. Sexual intercourse with children or Statutory rape, is not a new regime in Indonesian criminal law. The prohibition on sexual intercourse with children was previously stated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (UUPA) which states "Everyone is prohibited from committing violence or threats of violence to force a child to have sexual intercourse with him or with another person." ((UUPA, 2014)Article 76D)

The 2023 Criminal Code also addresses this issue in Article 473, specifically in paragraphs (2) and (4). However, neither the 2023 Criminal Code nor the UUPA provide a sufficient definition of child sexual intercourse. Quoting from Merriam-Webster, child sexual intercourse is defined as sexual intercourse with someone who is under the legal age. Some also define child sexual intercourse as unforced sexual intercourse between an adult and someone who is not legally old enough to consent to such behavior. ing and needs to be a concern for every country because children are very vulnerable to becoming victims of sexual acts. Until November 2024, according to data released by the Ministry of Women's Empowerment and Child Protection (Kemen PPPA), there were at least 8,726 cases of sexual violence against children. This figure has decreased compared to 2023, where the number of cases of sexual violence against children even reached 10,932 cases.(Number of Violence Cases in 2024, 2024)Therefore, the 2023 Criminal Code update with the expansion of the criminal offense of rape is certainly a new hope to be able to reduce the number of sexual violence in Indonesia, especially against children. Moreover, this also confirms the Preamble to the Convention on the Rights of the Child (CRC) and Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which states that children must grow in an environment that supports the development of their personality.

However, this update does not fully provide the expected protection. This is due to the lack of clarity in the involvement of consent or the child's agreement to want sexual intercourse to take place. As in the case of Decision Number 172/Pid.Sus/2020/PN Prp, which involved a 21-year-old perpetrator and a 14-year-old child victim. In the verdict, the perpetrator was subject to a minimum sentence of 5 (five) years imprisonment with a fine of 300 (three hundred) million rupiah because he was legally and convincingly proven guilty of committing a crime as regulated in the provisions of Article 81 paragraph (2) of the UUPA. However, in this case, a dissenting opinion emerged from Judge 1, who considered the minimum sentence unfair and burdensome on the perpetrator. The perpetrator's culpability in this case cannot be equated with that of a sexual predator who uses threats or violence in their actions. One reason for this is the victim's consent to the intercourse.(Decision No. 172/Pid.Sus/2020/PN Pr, 2020)

This case demonstrates the legal uncertainty in Indonesia. Neither the 2023 Criminal Code nor the Basic Agrarian Law (UUPA) explain to what extent a child's involvement in a sexual act can be considered a mitigating or aggravating factor. The law should, however, guarantee the

protection of the rights and obligations of the community. Therefore, the law must be clear and firm in its enforcement. Radbruch places legal certainty as one of the primary goals of law, alongside justice and expediency. According to him, achieving the desired justice requires legal certainty. Legal certainty is a crucial component of justice itself. (Leawoods, 2000) Another issue that requires attention before the 2023 Criminal Code is enacted in 2026 is the overlapping regulations. This could undoubtedly hinder optimal law enforcement. For example, the concept of child sexual intercourse with the marriage dispensation provisions in Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage (the Marriage Law) is evident.

Initially, the amendment to the Marriage Law was intended to equalize the rights of prospective brides and grooms in terms of the minimum age to be able to apply for a marriage dispensation. However, along with the amendment, the Marriage Law in Article 7 paragraph (2) also added exceptions to the age requirements stipulated in paragraph (1). Under certain conditions, marriages can be conducted for those who have not reached the age limit by applying for a marriage dispensation. In relation to child sexual intercourse, granting a child permission to marry is the same as allowing the child to engage in sexual intercourse within the bonds of marriage. Therefore, indirectly this marriage dispensation actually provides legalization for engaging in sexual intercourse with children. Furthermore, granting marriage dispensations also has the potential to create a legal loophole for perpetrators of child sexual intercourse to escape criminal liability. Marriage is often a shortcut for the families of perpetrators and victims of rape to resolve issues peacefully. The issue of child marriage itself is a major concern experienced by every country. Indonesia itself is among the countries with the highest absolute marriage rates in the world. Citing Press Release Number B-116/SETMEN/HM.02.04/05/2024, the marriage rate experienced a decline in 2023, but in reality, this decline still far exceeded the 2020-2024 National Medium-Term Development Plan (RPJMN), which targeted 8.74% by 2024. ("Minister of Women's Empowerment and Child Protection: Child Marriage Rate Drops to 6.92 Percent, Exceeding RPJMN Target," 2024)

Child marriage and child sexual intercourse, both within and outside of marriage, are issues that the government must address. A comprehensive explanation of sexual intercourse, particularly in relation to children's consent to sexual acts, is essential to ensure maximum protection and enforcement. Both child sexual intercourse and marital dispensation are regulated equally in the Indonesian legal hierarchy, so their enforcement will continue to overlap.

Previously, researchers have found several similar studies. This research includes:

- a. *"Legal Dilemma between Law on Child Protection and Marriage Law in Addressing Early Marriage"* The work of Winsherly Tan et al. (2024) which compares the dispensation of marriage with child sexual intercourse in the UUPA

- b. Legal Analysis of the Criminal Act of Sexual Intercourse by a Child against a Child on the Basis of Mutual Consensus Based on the Principle of the Best Interests of the Child (Study of Decision No. 8/Pid.Sus/2021/PN SGR) by Arty et al. is a case study that focuses on the perpetrator and victim in the criminal act of sexual intercourse carried out with mutual consent.
- c. Legal Study of the Criminal Act of Sexual Intercourse Against Children (Case Study of Decision Number 29/Pid.Sus-Anak/2022/Pn.Mnd) by Tatumpe A. & Imon L. Which examines the consent of children in acts of sexual intercourse due to coaxing and a series of lies.
- d. *Dispensation of marriage in the perspective of children's rights: Best interests of the children* by Chusnida, & Anggriawan discusses child marriage in Indonesia by analyzing it using the principle of the best interests of the child
- e. Child marriage or statutory rape? A comparison of law and practice across the United States, by Van Roost, K., Horn, M., & Koski, A. Discusses the conflict between child marriage and the prohibition of child sexual intercourse in the United States.

Researchers, referring to previous research, want to further examine the concept of child sexual intercourse as intended in the 2023 Criminal Code. In addition, this study will also discuss the relationship between the prohibition of child sexual intercourse and the determination of marriage dispensation, as well as evaluate its legal implications for the protection of children's rights in Indonesia in the future. Based on this background, the researcher draws two issues that will be studied further. The first problem to be studied is how the concept of child sexual intercourse in Indonesia is intended in the 2023 Criminal Code. The second problem is how the concept of child sexual intercourse will intersect with the regulations related to marriage dispensation in the 2023 Criminal Code. This study aims to discuss what is meant by child sexual intercourse in the legislation in Indonesia, especially after the revision of the Criminal Code which categorizes child sexual intercourse as a criminal act of rape. In addition, this study will also discuss the rules on child sexual intercourse that contradict the rules on marriage dispensation. Thus, conclusions will be drawn on how the rules on child sexual intercourse should be enforced.

2. Research Methods

The research method used in this study is a legal research method, analyzing library materials relevant to the research topic. The first discussion utilizes a comparative legal method, comparing the provisions on child sexual intercourse in national laws, such as the Child Protection Law (UUPA) and the 2023 Criminal Code, with a number of other countries' regulations and international conventions. This will determine how the concept of child sexual intercourse should be understood and enforced. The second discussion will be conducted by examining a number of literature sources and engaging in discussions with several parties to strengthen the findings. These include Ms. Dian Sasmita, a member of the Indonesian Child

Protection Commission (KPAI), and Ms. Maidina Rahmawati, Deputy Director of the Institute for Criminal Justice Reform (ICJR). This will allow for comprehensive conclusions to be drawn as input and suggestions for strengthening law enforcement in Indonesia, particularly regarding the implementation of the crime of rape in the 2023 Criminal Code and its relationship to marriage dispensation.

3. Results and Discussion

3.1 The Concept of Child Sexual Intercourse in the 2023 Criminal Code

To better understand child sexual intercourse, it's necessary to first understand the meaning of sexual intercourse and children separately. R. Soesilo defines sexual intercourse as the union of the male and female genitals with the goal of producing offspring. An act is considered sexual intercourse when the penis enters the vagina, resulting in the release of semen. He also stated that sexual intercourse in the context of sexual violence is an act that violates morality, including lust. (R. Soesilo, 1995) Furthermore, in practice, citing Decision No. 96/Pid.Sus./2021/PN Son, sexual intercourse is the act of intercourse between humans. In a broader context, sexual intercourse refers not only to the meeting of the female and male genitals but also to other acts related to or referring to sexual intercourse. (Decision No. 96/Pid.Sus./2021/PN Son, 2021). Furthermore, the definition of a child can vary depending on the regulations of each country. However, in general, according to international law, as stipulated in the Convention on the Rights of the Child (CRC), a child is defined as any person under the age of 18 unless otherwise provided by law. ((Article 1) Convention on the Rights of the Child, 1989) Singapore, through the Children and Young Persons Act 1993, defines a child as a person who is under 14 years of age. (Children and Young Persons Act 1993 (2020 Rev. Ed.), Section 2 (Interpretation), 2020) whereas in Georgia the Code of Georgia prohibits all forms of sexual acts against anyone under the age of 16. (Code of Georgia Title 16, Section 16-6-3: Statutory Rape, 2024)

In line with the CRC, Indonesian positive law as stated in Article 1 paragraph 1 of the UUPA and Article 150 of the 2023 Criminal Code defines a child as a person who has not reached the age of 18. Therefore, what is meant by child sexual intercourse in the view of Indonesian positive law is a sexual act committed against a person who is under the age of 18 or has not reached adulthood according to applicable law. Initially, the rules on child sexual intercourse in Indonesian positive law were not directly categorized as a criminal act of rape as regulated in some countries. But it was first categorized as a form of crime against children in the UUPA.

The UUPA itself adopts a child rights-based approach (CRBA), so its main focus is on child welfare by paying attention to ensuring children's rights. (Article 4 paragraph (2) UUPA) This child protection is strengthened by the TPKS Law which categorizes it as a form of sexual violence. The TPKS Law prioritizes a victim-centered approach. Although the TPKS Law does not specifically regulate child sexual intercourse, categorizing child sexual intercourse as a form of sexual violence can strengthen protection and recovery for victims, especially child victims. So

that children can regain their rights to continue their lives. Meanwhile, the 2023 Criminal Code emphasizes more on criminalizing perpetrators; matters related to victim recovery and protection are not explained in detail as in the TPKS Law and UUPA. This proves that the Criminal Code uses an offender-centric approach in its approach. The Criminal Code in this case focuses on how the elements of sexual intercourse against children constitute a criminal offense. In the 2023 Criminal Code, child sexual intercourse is made one of the expanded forms of rape regulated in Article 473. This change makes child sexual intercourse not only an immoral act but more seriously classified as one of the crimes against the body, namely rape. Along with the expansion of the concept of rape, child sexual intercourse has also been expanded as a result of this categorization. To facilitate a comparative study of the provisions on child sexual intercourse in the UUPA and the 2023 Criminal Code, researchers provide a breakdown of the relevant articles in the table below.

Table 1. Comparison of Articles of the Child Protection Law and the 2023 Criminal Code

UUPA	Criminal Code 2023
Elements of the Article	
Article 76 D: Each person committing violence or threats of violence forcing a child to have sexual intercourse with him or another person. Article 81 paragraph (2) deliberately carrying out tricks, a series of lies, or persuading a child to have sexual intercourse	Article 473 paragraph 2: Including the crime of rape (...) b. sexual intercourse with a child; (...) Article 473 paragraph (4): refers to: Article 1: Sexual intercourse with violence or threat of violence verse 2c: sexual intercourse with someone who is unconscious or helpless; Article 2d: sexual intercourse with people with mental and/or intellectual disabilities; Article 3: things like inserting genitals and/or other body parts, or foreign objects into the anus or mouth;
Criminal Threats	
Article 81 paragraph (1) imprisonment of 5 - 15 years and a maximum fine of 5 billion rupiah (Aggravating) Article 81 paragraph (3) The penalty is increased by one third if it is committed by a parent, guardian, child caretaker, educator or education staff.	Article 473 paragraph (4) imprisonment of 3 - 15 years and a fine of category IV to category VII (Aggravating) Article 473 paragraph (9) The penalty is increased by one third if the victim is a biological child, stepchild, or child under guardianship.

Source: Personal research data

The first difference, as explained previously, is the classification of child sexual intercourse, which in the 2023 Criminal Code is defined as a crime against the body. Crimes against the body (*misdrijven tegen het lijf*) aim to protect the body's interests from acts that cause injury or pain to the victim. (Purba, 2022) Therefore, the focus of child sexual intercourse in the Criminal Code is not only because the crime is committed against children, but also because the act of sexual intercourse is considered to injure and harm the body. This differs from the purpose of the UUPA law (*recht wessenchau*), which focuses on guaranteeing children's rights so they can participate maximally in society. (Article 3) Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, 2014).

This means that the UUPA's legal framework prohibits sexual intercourse with children because it is considered an act that hinders the fulfillment of children's rights to grow and develop. The 2023 Criminal Code considers that as long as sexual intercourse is committed against a child, it is considered a criminal act of rape. Thus, the 2023 Criminal Code implicitly emphasizes the disregard for the element of a child's consent in the act of sexual intercourse. Even if sexual intercourse with a child is consensual, the 2023 Criminal Code still views such an act as harming the child's body and is therefore punishable.

The second difference between the 2023 Criminal Code and the UUPA is the definition of sexual intercourse. Previously, Articles 76D and 81 of the UUPA only viewed statutory rape narrowly, specifically regarding sexual intercourse; acts other than sexual intercourse were categorized as indecent acts against children. The UUPA clearly distinguishes between indecent acts against children and sexual intercourse with children as two distinct crimes. As long as the elements of sexual intercourse as defined by R. Soesilo are not met, the basis for criminal punishment is Article 76E and Article 82 of the UUPA concerning indecent acts. Indonesia, through the 2023 Criminal Code, broadly defines sexual intercourse, following a number of countries that have already categorized anal and oral acts as sexual intercourse.

One of them was reported by the Center of Children's Advocacy, which provides the meaning that all forms of penetration are sexual intercourse. (What Is Statutory Rape, 2014) This means that acts such as oral, anal, or other sexual acts performed with hands or other objects are classified as sex or acts of intercourse. For example, in Decision Number 77/Pid.Sus/2021/PN Nab., the defendant initially intended to forcibly insert his genitals into the victim's vagina, but according to his confession, this intention was not realized because the victim was only 8 years old. The defendant then chose to insert his three fingers into the victim's genitals three times, which damaged the victim's hymen, as evidenced by the Visum Et. Repertum Letter No. 445/15/III/2021. (Decision No. 77/Pid.Sus/2021/PN Nab, 2021)

The judge found the defendant guilty of committing child sexual intercourse based on the consideration of witness testimony stating that the defendant had penetrated the victim's genitals, so that the element of sexual intercourse was fulfilled. As a result, the perpetrator was then charged with the first charge because it was proven that he had committed an act of violence against a child to have sexual intercourse with him with a sentence of 7 (seven) years and a fine of 100 (one hundred) million rupiah. If in this case there is no witness testimony stating that penetration has occurred so that the element of sexual intercourse is fulfilled, then the defendant cannot be punished for child sexual intercourse but will be punished for indecent acts. (Decision No. 77/Pid.Sus/2021/PN Nab, 2021)

The 2023 Criminal Code update eroded the boundaries between indecent acts and child sexual intercourse as a result of the expansion of the act of rape. Child sexual intercourse is no longer defined narrowly, limited to penetration between the penis and vagina only, but also includes acts such as inserting genitals or other body parts into the anus or mouth and acts of

penetration using foreign objects (Article 473 paragraph (3) of the 2023 Criminal Code). Therefore, the 2023 Criminal Code conceptually views this case as a crime of rape as well as a crime against the body.

The final difference lies in how the perpetrator initiates sexual intercourse. As seen in the table, the UUPA states that sexual intercourse with a child can be carried out by physical coercion through violence or threats of violence to induce the child to engage in sexual intercourse. The UUPA also identifies psychological elements that can initiate sexual intercourse with a child, such as telling a series of lies, making promises, using deception, or using persuasion.

The difference between child sexual intercourse in the two regulations is that the 2023 Criminal Code only focuses on actions that occur physically against children, it does not mention actions as regulated in the UUPA such as involving seduction or a series of lies. The perpetrator's initiation to have sexual intercourse with a child as regulated in Article 473 paragraph (4) of the 2023 Criminal Code can be in the form of coercion with violence or threats of violence, in a helpless or unconscious condition, as well as sexual intercourse with people with mental or intellectual disabilities.

However, the similarities between the two regulations are that neither regulates the child's voice in sexual intercourse (consent). The powerlessness of children is the greatest challenge in child protection efforts. The element of consent should be a key point that needs to be regulated. Fundamentally, sexual intercourse with a child differs from rape, which generally requires coercion and the lack of consent from the victim. (Legal Information Institute, 2025)

In cases of child sexual intercourse, the child's consent should be disregarded. The child's consent does not automatically eliminate the perpetrator's criminal liability. In fact, child sexual intercourse generally does not require the perpetrator to intentionally engage in sexual intercourse with a minor. (Phipps, 1997)

Blackstone argues that a child's consent cannot justify sexual acts because the child is considered incapable of making informed judgments. A child's consent should not be a consideration in sentencing. Violence or the threat of violence need not be proven in cases of child sexual intercourse. David Finkelhor also argues that consent is only possible if the person knows and understands what they are agreeing to and has the freedom to say yes or no. These conditions, as stated by Finkelhor, cannot be met by children. Finkelhor added that children lack the necessary information about sexual relations to make informed decisions about sexual matters. Children are considered to lack sufficient experience to understand the physical, psychological, and emotional consequences of sexual activity. (Phipps, 1997)

For example, in Decision Number 398/Pid.Sus/2018/PN Mdn, the perpetrator convinced the 16-year-old victim to have sex with words of love and promises to marry her in the future. (Hutagalung et al., 2022) This ruling illustrates that the UUPA implicitly disregards the child's consent. It is understandable that under the UUPA, consent is not viewed as arising from

the child themselves, but rather as a consequence of the perpetrator's role in instigating such consent.

However, on the other hand, for example in Decision No. 172/Pid.Sus/2020/PN Prp. It is understood differently. Jatmiko Pujo Raharjo, SH as member judge 1 wrote a dissenting opinion on the sentencing of the perpetrator. Jatmiko considered the minimum sentence of 5 (five) years very burdensome for the perpetrator. According to him, the sentence imposed should be sufficient with a prison sentence of 1 (one) year and 4 (four) months and a fine of 100 (one hundred) million rupiah which if not met will be replaced with a prison sentence of 1 (one) month. His opinion is based on the provisions of the Circular Letter of the Supreme Court Number 1 of 2017 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2017 which states that the imposition of a sentence below the minimum can be carried out with a number of special considerations such as there being reconciliation between the victim and the perpetrator and consideration of various scientific aspects.(Decision No. 172/Pid.Sus/2020/PN Pr, 2020)

Jatmiko requested a sentence below the minimum for the perpetrator, based on four reasons. First, there is concern that the punishment imposed will have a negative impact and cause further harm to the perpetrator in the future. Furthermore, the perpetrator is still young and of productive age, and is also the breadwinner of the family and must support his younger siblings. Second, the perpetrator has demonstrated awareness and regret for his actions. Furthermore, the perpetrator's family has demonstrated good faith toward the victim's family by taking responsibility. Third, Jatmiko believes that exogenous factors influenced the perpetrator's thinking, thus deeming his actions impure. This is due to the influence of globalization, such as the flow of promiscuity and lack of parental supervision. Fourth, there is the victim's consent. As is known, the perpetrator and victim had been in a romantic relationship for a week, and the sexual intercourse that occurred was agreed upon by both victims.(Decision No. 172/Pid.Sus/2020/PN Pr, 2020)

The chronology of the incident even explains that the child victim had asked the perpetrator about their planned sexual intercourse over the phone. This proves that the intercourse was consensual. Therefore, the perpetrator's culpability cannot be equated with that of a pedophile or other sexual predator. The perpetrator is deemed deserving of a lighter sentence than the minimum sentence. The uncertainty in both cases could undoubtedly destabilize Indonesian law enforcement. There is no legal certainty regarding how a child's consent can be used as a basis for a perpetrator's defense. The government has taken a fairly progressive step by categorizing child sexual intercourse as a form of rape and a crime against the physical. However, no explanation has been found regarding the child's consent in sexual acts.(Decision No. 172/Pid.Sus/2020/PN Pr, 2020)

In general, adults should act to guide children in the best interests of the child. Therefore, a child's consent to sexual intercourse should not be used as a mitigating factor for the

perpetrator's actions. The child's consent is considered to have been influenced by the perpetrator, either through sweet promises or persuasion. Child sexual intercourse should not be judged based on how it was committed, making it illegal, but rather on the law's determination of its illegality. (Ni'mah, 2025) Therefore, the law should absolutely stipulate that consent is not something that excuses the perpetrator in acts of child sexual intercourse.

Furthermore, in some situations, children are forced to engage in sexual intercourse. Economic factors and poverty sometimes push children into various activities, such as prostitution, to survive. This biases the child's consent to sexual intercourse. In the aforementioned cases, the child's consent should not be considered, especially for children. Some countries, such as India and Malaysia, have even drafted laws that differentiate between willingness and consent. They consider a child to be able to initiate sexual activity, but are deemed psychologically incapable of giving consent to intercourse. (Ibrahim, 2014) Unlike Malaysia and India, Indonesia does not have clear regulations regarding child consent.

Therefore, for the sake of legal certainty and maximum law enforcement, the government needs to further examine the purpose of prohibiting child sexual intercourse. If the goal is to protect children, then the article on child sexual intercourse should apply absolutely, without requiring the child's consent. Child sexual intercourse has the potential to jeopardize a child's future, especially as girls are highly vulnerable to early pregnancy, which can be dangerous.

However, if the goal is a fair resolution for both the perpetrator and the child victim, it is necessary to determine the extent to which consent can be used as evidence in child sexual intercourse cases. This is to prevent misuse that could result in greater harm to the child. Even if it is not explicitly regulated in legislation, law enforcement should at least understand and agree on how child consent should be viewed in court. These differing understandings and perspectives among law enforcement officers are what make the law unclear and uncertain.

3.2 Child Intercourse in Marriage Dispensation

In addition to the lack of understanding among law enforcement and the limited concept of child consent in sexual intercourse, the marriage dispensation regulation actually exacerbates the situation. Marriage dispensation is one of the challenges in enforcing regulations regarding child sexual intercourse in Indonesia, especially when the 2023 Criminal Code is implemented in 2026. Consent for sexual acts should only be given to those who have reached the age of consent, or the age at which a person is legally considered competent to give their primary consent to marriage or make decisions regarding sexual relations.

Regarding the age regulations themselves, in Indonesia they are quite diverse. In criminal law, the age of consent was initially regulated in Article 287 paragraph (1) of the Old Criminal Code concerning the prohibition of sexual intercourse with women under 15 years old. Article 287 became irrelevant after the ratification of the UUPA which set the age limit for children at 18 years. Meanwhile, civil law, through amendments to the Marriage Law, changed the age limit

for marriage to 19 years for both bride and groom. Previously, the limit regulated in the Marriage Law was 16 years for women and 19 years for men.

However, with the 2019 amendment to the Marriage Law, judges can grant permission to waive the age of consent through a marriage dispensation requested by parents. The dispensation can be requested by stating urgent reasons or reasons that make marriage a last resort for the prospective bride and groom. (Marriage Law, 2019) There is no definitive guideline for how urgent reasons are considered when granting a dispensation request. Several reasons submitted and granted were deemed not to be "very urgent." For example, in the case of Decision No. 32/Pdt.P/2019/PA.CLG, the request was granted because the child's relationship was so close that there was concern that the child would commit adultery. The judge granted the request to avoid future harm, which is irrelevant because the feared adultery could have been prevented by other means. (Hadiati & Brilianci, 2023) Furthermore, this urgent reason explanation is vulnerable to abuse due to the lack of definitive regulations, as in the case of the sale and purchase of marriage dispensations in Sumedang Regency, West Java. A total of 1,622 dispensations were traded for a fee of 600,000 rupiah between 2021 and 2024. (M. Luffan D., 2025)

Not only is the definition of urgent reasons unregulated, this regulation also conflicts with several other regulations. Looking at Indonesian legislation, Ms. Maidina Rahmawati, Deputy Director of ICJR, stated in a personal interview on September 3, 2025, that the Marriage Law should reflect on the UUPA, specifically Articles 76D and 81, and prohibit marriage dispensations. This is because the UUPA prohibits child sexual intercourse, while marriage dispensations permit it. However, because some communities remain conservative, the dispensation regulation is considered reasonable and permissible. Based on this, it is clear that criminal law, through the 2023 Criminal Code, prioritizes the interests of children by protecting them from sexual abuse that could hinder the fulfillment of their rights. On the other hand, civil law prioritizes the interests of society and the parents of children. In fact, 7 out of 10 cases of marriage dispensations are not due to pregnancy, but rather because the children love each other and fear of violating religious and social norms. (Sumner, 2020)

The child's consent is also necessary to strengthen the enforcement of regulations on child sexual intercourse and marriage dispensations. If the child's consent is considered absolute and cannot justify child sexual intercourse, then the consideration of the child in marriage dispensations should be regulated similarly. Because marriage dispensations essentially legalize child sexual intercourse. Conversely, if the child's consent is considered a consideration in sentencing, it is necessary to re-examine the objectives of the 2023 Criminal Code, the Basic Agrarian Law, and the Marriage Law. It is important to understand that consent to marriage does not only mean consent to establish a household, but also consent to engage in sexual intercourse within the bonds of marriage. In the case of children, this creates a legal dualism. While civil law permits child sexual intercourse through a marriage dispensation, the criminal law regime prohibits it.

At least the 2022 SUSENAS recorded 13.5% of women and 1.67% of men married before the age of 19. This data represents a significant decrease compared to previous years. However, at least 1.4 million girls and 190,000 boys married between 2018 and 2022.(Judiasih et al., 2025)These figures certainly demonstrate that child marriage is a serious problem in Indonesia. Girls Not Brides reports that approximately 2% of girls marry by age 15, and 16% by age 18. For boys, at least 5% marry by age 18.(Child Marriage Prevalence Rates, 2024)This makes Indonesia one of the countries with the highest number of child marriages in the world.

The causes of child marriage can vary, including requests from the child themselves, economic factors, cultural factors, educational factors, the child committing adultery, and/or the child becoming pregnant.(Judiasih et al., 2025)In addition to these factors, the role of parents is certainly crucial. Essentially, the key difference between sexual intercourse under a marital dispensation under civil law and sexual intercourse under criminal law is the involvement of the child's parents' consent. Applications for dispensation can only be submitted by parents or legal guardians, as stipulated in the Marriage Law. Data presented by the 18+ Coalition and UNICEF Indonesia shows that in Mamuju, Bogor, and Tuban, parents who applied for marital dispensation for their children considered it a preventative measure against acts that violate norms. Only 14 of the 377 cases requested dispensation because the child was already pregnant; the remainder requested dispensation due to personal concerns of the parents.(Coalition 18+ & Unicef Indonesia, 2020)

Parents, as legal guardians, certainly have rights over their children. However, as stated in the CRC, parents must prioritize the child's best interests when making decisions regarding their child's future. Likewise, the government is obligated to support this by guaranteeing protection and facilitating an environment that supports the child's growth and development. This is to ensure legal certainty and maximum protection for children, taking into account the child's best interests. Marriage dispensation regulations need to be reviewed. Is parental and child consent sufficient to permit child marriage? Legalizing marriage also means permitting sexual intercourse with children, which is prohibited under criminal law. According to an interview on August 15, 2025, with Ms. Dian Sasmita, a representative of the Indonesian Child Protection Commission (KPAI), regulations related to this dispensation require additional supporting regulations. According to her, the current focus of the rules and the process for applying for marriage dispensation seem to favor child marriage itself. However, the government should place more emphasis on parental understanding and preventive measures that can prevent children from engaging in risky behavior.

Another issue is the concern that marriage dispensation provides a middle ground for perpetrators to escape criminal penalties. This is because Indonesian society views rape as a disgrace for the victim and her family. It is not surprising that many victims do not report their experiences and sometimes even marry their rapists. For example, in one case, the rape was committed by the daughter of a Bekasi Regional People's Representative Council member (AT) against the victim (PU), who was 15 years old at the time of the incident. AT and PU were not

dating, but they lived together and had had sexual intercourse repeatedly. AT's attorney argued that the perpetrator was willing to marry through a marriage dispensation to avoid the sin of adultery. However, in this case, the victim refused to allow the marriage to take place.(Simanjuntak, 2021)

Another example is the rape case that occurred in Purworejo involving siblings DSA and KSH, who were 15 and 17 years old at the time of the incident. DSA and KSH had been raped by 13 men who were their own neighbors since 2023. This case began to be widely discussed after news reported that one of the victims, DSA, was married under Islamic law to one of the suspects because she had given birth to a child. It was known that the victim's father had died and her mother suffered from mental disorders, making both of them vulnerable to pressure. The Islamic marriage was carried out after mediation, it is suspected that the perpetrator wanted to protect himself from legal entanglement by marrying the victim. The victim agreed to the offer, but later filed a report again because the perpetrator did not provide spiritual support for the victim and her child.(Gani, 2024)

These two cases demonstrate that it's not impossible for rapists to marry their victims, especially if they are children. As in the case of the rape of DSA, child marriage can be a compromise to avoid criminal prosecution. Furthermore, children are vulnerable to child grooming, which makes decisions or consent less than purely their own. Child grooming is identified as a manipulative and systematic act of deception aimed at facilitating sexual abuse while reducing the risk of exposure.(Winters et al., 2022)For example, the child grooming incident that was widely discussed in 2024 between a teacher and her student in Gorontalo. The perpetrator provided the victim with attention she lacked from her family, ultimately leading the victim to develop a romantic relationship and even have sex with him.

It's possible that this marriage dispensation could actually facilitate pedophiles' ability to legally engage in sexual intercourse with children. Furthermore, numerous cases of child sexual intercourse are based on statements designed to deceive children. In preparation for the implementation of the 2023 Criminal Code, a review of the marriage dispensation is certainly necessary. In an interview with the Indonesian Child Protection Commission (KPAI), Dian Sasmita stated that the regulations regarding the dispensation should not be abolished, but the government needs to create additional policies that better support child protection. In line with this, Maidina Rahmawati, in an interview with the ICJR, stated that the urgent reasons for the marriage dispensation need to be further elaborated. Judges also need to understand and ensure that children submitted for the dispensation are not victims of child grooming or other sexual acts. Furthermore, both Dian and Maidina emphasized the crucial role of parents and the community in preventing child marriage.

The government must clarify the sexual intercourse of children referred to in the 2023 Criminal Code and its relationship to child marriage, which is legalized through dispensations. Conservative societies view marriage dispensations as a preventative measure to avoid norm

violations. Researchers agree with Ms. Dian and Ms. Maidina that parental decisions have a significant impact on their children's futures. Therefore, the government needs not only to conduct outreach efforts to prevent child marriage, but also to firmly emphasize what is prohibited and what is permitted. Before allowing child marriage, consideration should also be given to other legalized aspects of the process, such as sexual intercourse within child marriages.

The existence of conflicting regulations actually creates legal uncertainty and confusion in society. Marriage dispensations are considered to save children from unregistered marriages, which are widely practiced by parents. However, at the same time, they actually open up other opportunities that endanger children. Furthermore, child marriage itself is regulated as a criminal act against children, namely forced marriage, in Article 10 of the TPKS Law. In this case, the marriage dispensation regulation contradicts child protection regulations in Indonesia, both in the UUPA, the TPKS Law, and the 2023 Criminal Code. Furthermore, child sexual intercourse is essentially illegal and can endanger children, including intercourse within the bonds of marriage. Therefore, the government needs to review the implementation of Article 7 of the Marriage Law regarding the marriage dispensation regulation. External factors such as parents' and children's understanding of the impact of marriage also need to be reconsidered to support maximum child protection.

4. Conclusion

Article 473 of the 2023 Criminal Code expands the crime of rape by adding several elements. One of the expansions categorizes the crime of sexual intercourse with a child as part of the crime of rape, which was previously regulated in the UUPA. There are several differences regarding child sexual intercourse in the UUPA and the 2023 Criminal Code. First, the classification of child sexual intercourse in the 2023 Criminal Code is interpreted as a crime against the body, not just a crime against children. Second, there is a difference in the meaning of sexual intercourse, which was previously interpreted narrowly to only the act of sexual intercourse. The meaning of sexual intercourse has also been expanded along with the expansion of the crime of rape. Third, the 2023 Criminal Code differentiates how the perpetrator initiates sexual intercourse with a child, focusing on physical acts such as violence, threats, or a helpless state. Meanwhile, the UUPA also includes psychological approaches such as coaxing, deception, or false promises. However, even after the 2023 Criminal Code update, there is still no explanation regarding the involvement of a child's consent in sexual intercourse. This lack of clarity inevitably creates legal uncertainty in its enforcement. Debates frequently arise regarding the enforcement of child sexual intercourse laws in Indonesia. For example, in Decision Number 172/Pid.Sus/2020/Pn Prp, the dissenting opinion of Judge 1 deemed the minimum sentence too harsh for the perpetrator due to the involvement of the child's consent. Another issue that needs to be addressed before the 2023 Criminal Code is enacted is the Marriage Law, which permits child sexual intercourse through a marriage dispensation. This clearly contradicts the prohibition on child sexual intercourse. Marriage dispensations also have

the potential to create a legal loophole for pedophiles and perpetrators of child sexual intercourse to legally engage in sexual intercourse with children and escape criminal prosecution. Furthermore, children are vulnerable to child grooming, which can bias their consent from being heard by judges. Therefore, in preparation for the upcoming implementation of the 2023 Criminal Code in 2026, the government needs to make several preparations. First, emphasize and clarify the concept of consent in child sexual intercourse to ensure the desired protection. Second, review the regulations on marriage dispensations so that the desired child protection can be effectively enforced.

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