



EQUALITY OF LEGAL PROTECTION FOR CHILDREN VIS-À-VIS THE LAW IN CASES OF SEXUAL INTERCOURSE AND ABUSE IN THE PERSPECTIVE OF CHILD PROTECTION LAW

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Kata Kunci:

Perlindungan Hukum Anak, Hubungan seksual, Pelecehan, Perlindungan anak

Abstrak

Pemeriksaan anak adalah bentuk kekerasan seksual yang sangat menghancurkan. Tujuan dari penelitian ini adalah untuk menyelidiki dan menganalisis kesetaraan perlindungan hukum bagi anak-anak dalam kasus hubungan seksual dan penyalahgunaan, dengan fokus pada perspektif hukum perlindungan anak. Penelitian ini menggunakan metode yang penelitian hukum yuridis normative. Hasil penelitian menunjukkan hukum hukum yang sudah ditetapkan sudah Sebagian berjalan bagi korban kekerasan pad anak. Kesimpulan penelitain ini membahas apakah proses diversifikasi yang dilakukan oleh otoritas penegak hukum dalam Sistem Peradilan Anak untuk remaja yang menghadapi masalah hukum karena tuduhan hubungan seksual dan/atau penganiayaan mencerminkan non-diskriminasi gender.

Keywords:

Child Legal Protection, Sexual Relations, Abuse, Child Protection

Abstract

Child rape is a devastating form of sexual violence. This study aims to investigate and analyze the equality of legal protection for children in cases of sexual relations and abuse, focusing on the perspective of child protection law. This study uses methods that research normative juridical law. The results showed that the established legal law has partially worked for victims of child violence. The study's conclusions address whether the diversion process undertaken by law enforcement authorities in the Juvenile Justice System for adolescents facing legal problems due to allegations of sexual intercourse and/or maltreatment reflects gender non-discrimination.

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INTRODUCTION

Sexual crimes, particularly rape, have emerged as a grave concern in Indonesia. However, it's observed that many victims and their families refrain from reporting these crimes to authorities, and the media often underreports such incidents. Child rape is a particularly devastating form of sexual violence. The definition of rape in Minister of Education and Culture, Research and Technology Regulation 30/2021 has faced criticism for potentially disregarding moral implications, as it focuses on sexual relations without considering marriage (Uswatina et al., 2021) (Nurbayani & Wahyuni, 2023).

Researcher Agus Purwadianto emphasizes that rape, in empirical terms, involves sexual violence or coercion, with male perpetrators against female victims, irrespective of their marital status (Purwadianto et al., 2019). Such violence can involve genital penetration or insertion of objects into the victim's body, without their consent. Rape can occur within or outside of marriage, in specific settings, times, and under particular laws.

Gender-based violence, including sexual violence against women, is recognized in the UN Declaration on the Elimination of Violence against Women. Rape is a substantial category within violence against women in Indonesia, with reported cases being a significant concern (Sulastry, 2022) (Subarkah & Tobroni, 2020).

Legal Framework

Indonesia has established legal provisions to address rape cases. Initially, the Criminal Code (KUHP) contained provisions related to morality crimes, including those related to sexual offenses. For example, Article 285 of the Criminal Code addresses rape, prescribing a maximum prison sentence of twelve years for those who force sexual intercourse upon a woman against her will.

Causes of Rape

Several factors contribute to the occurrence of sexual crimes, including environmental, sexual, technological, and telecommunication factors. The proliferation of pornographic websites, fuelled by rapid advancements in technology and telecommunications, has made access to explicit content easier, which has been linked to the rise in sexual violence.

Rape Culture

Rape culture, characterized by the normalization or acceptance of rape and sexual violence, stems from an ideology of male dominance over women. It involves objectifying women's bodies and treating them as targets for male violence. This term gained prominence during the second wave of the feminist movement in the 1970s.

Beyond Female Victims

While rape predominantly affects women, it's essential to recognize that men can also be victims. Society often overlooks male victims, and there is a tendency to blame them if they come forward with their experiences. Internet-facilitated rape (IFR) is a term used to describe rape cases that begin with online interactions and subsequently lead to sexual assault, primarily involving minors.

Child Protection Laws

Indonesia has laws and regulations aimed at protecting children from sexual violence. The Child Protection Law defines children as individuals under 18 years of age and outlines measures to ensure their well-being and protection from abuse.

Legal Inconsistencies

There are inconsistencies in defining children and setting age limits for sexual consent and marriage in Indonesian law. While the Child Protection Law sets the age of consent at 18, other laws like the Criminal Code and Marriage Law establish different age limits. These inconsistencies can create legal conflicts and impact child protection efforts.

Protection for Child Perpetrators

Indonesia also has provisions for child perpetrators involved in sexual offenses. The Juvenile Justice System Law aims to protect children who commit criminal acts (ABH), offering diversion as an alternative to criminal prosecution.

Challenges in Reporting and Prosecution

Reporting and prosecuting child sexual abuse cases face significant challenges in Indonesia. Factors such as social stigma, economic vulnerability, and the sensitive nature of the crime often deter victims and their families from reporting incidents. Additionally, there is a lack of proper case processing and insufficient evidence in many cases, resulting in low prosecution rates. Addressing sexual crimes, especially against children, is a complex challenge in Indonesia. Legal inconsistencies, cultural factors, and social stigma contribute to the underreporting and low prosecution rates of these cases. Effective solutions should include legal reforms, improved victim

support systems, and public awareness campaigns to combat rape culture and protect children from sexual violence

Research conducted by Heriwi Aovilia on "Legal Protection of Child Victims of Sexual Abuse" (HERIWI, 2023). This study does not yet explain the law vis-à-vis the law, but the similarities in this study are in the legal protection of child victims of sexual abuse. This research is expected to make a significant contribution to our understanding of the complexity of child legal protection in the context of sexual abuse, especially in sexual relations. The results of this research can be the basis for further policy development in improving child protection in the legal realm, ensuring that the legal system can provide an optimal response to cases involving children as victims.

The primary objectives of the research are multifaceted, encompassing a comprehensive exploration of legal facets. Firstly, the study aims to identify and delineate key legal principles relevant to the subject matter under scrutiny. Secondly, it seeks to delve into the systematic aspects inherent in the legal framework, unraveling the intricacies that govern the legal landscape. Furthermore, the research endeavors to undertake a critical evaluation, assessing the alignment of existing laws and regulations with the identified legal principles. Lastly, a fundamental goal is to foster an understanding of the core elements constituting the legal system, providing a holistic perspective on the subject of investigation. Through these overarching objectives, the research aims to contribute to a nuanced comprehension of the legal context under consideration.

RESEARCH METHOD

In this research, we use a method called "normative juridical legal research." This method focuses on understanding how laws impact children involved in the legal system, both as victims and offenders. We examine how laws are applied, especially in the criminal justice system, including the rules outlined in the Criminal Procedure Code and related laws. To gain a deeper understanding, we also conduct field research by visiting places like police stations, prosecutor's offices, and courts. This helps us observe how legal theory aligns with real-world practice.

Our primary goal is to uncover the legal principles that underpin criminal law in Indonesia and how they are put into practice, especially in cases involving children in conflict with the law.

We use case studies to directly analyze specific cases, considering whether the criminal justice system's actions align with the principles of juvenile justice. We apply established legal methods to extract principles and reasons from Indonesia's legal system.

Data collection involves primary and secondary sources. Primary data includes court decisions related to cases involving children, while secondary data includes documents on child-related issues and research from national and international journals. We also consider the opinions of legal experts found in books and media.

Our primary data source consists of information about criminal acts involving minors, particularly sexual offenses. We rely on legal texts like the Criminal Procedure Code, Criminal Code, Child Protection Law, and Children's Court Law. We also examine specific court decisions concerning underage boys sentenced for sexual offenses.

Secondary sources include relevant books and laws related to sexual offenses, aiding in our analysis of facts presented in court decisions—the primary source of our research. We refer to legal dictionaries to clarify any ambiguous terms or concepts.

RESULT AND DISCUSSION

Treatment of Children Facing Legal Actions

Article KUHP regulates sexual intercourse/rape, but only a few articles explicitly state that the victim of sexual intercourse/rape is a child. For example, Article 290 paragraph (2) of the Criminal Code (KUHP) states that whoever commits an indecent act with someone while knowing or should reasonably suspect that the person is under fifteen years of age or, if their age is unclear, that they are not of marriageable age, will be subjected to criminal penalties (SYAM, 2021). Subsequently, Article 290 paragraph (3) of the KUHP states that if someone persuades another person while knowing or should reasonably suspect that the person is under 15 (fifteen) years of

age or, if their age is unclear, that they are not of marriageable age, to commit or allow indecent acts to be performed or engage in extramarital sexual intercourse with another person, they will be subjected to criminal penalties.

Article 292 of the KUHP also explains that an adult who commits indecent acts with a person of the same sex, knowing or should reasonably suspect that they are not yet of legal age, is subject to a maximum prison sentence of fifteen years, regarding the prohibition of homosexual practices with minors (Alfajri, 2021). Article 293 of the KUHP addresses the giving or promising of money or goods, abuse of power arising from a certain relationship, or intentional deception to induce a minor to engage in indecent acts and engage in sexual intercourse outside of marriage. This is punishable by a maximum prison sentence of 5 (five) years.

There are various forms and types of terms related to sexual assault, such as sexual exhibitionism, which is the deliberate display of genitals to a child; and voyeurism, where adults kiss children with lust. Fondling involves touching a child's genitals, and fellatio is when adults force a child to engage in oral contact. In the context of the judiciary, the policy of diverting children who commit criminal acts was initiated during the era of President Susilo Bambang Yudhoyono, where the term used was "out-of-court settlement." This term became popular during the Bibit-S. Rianto-Chandra M. Hamzah case, which provided the public with a new lesson – that cases could be resolved outside of court. Diversion for children and out-of-court settlements represent a new concept because, until then, the general public believed that cases could only be resolved through the judicial system, but now they can be settled outside of court (non-litigation pathway).

Research by Erna Setiawati et al. reveals that dispute resolution outside of court has long been known to our ancestors through a consensus forum (Setiawati, Handayani, & Kuswardinah, 2017). However, from a legal perspective, especially within the framework of juvenile justice, this settlement method is known as "diversion" or "penal mediation." Law No. 3 of 1997 concerning Juvenile Courts, when examined in greater detail, contains weaknesses in its substantive provisions, especially when measured against what is contained in international instruments, particularly UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), specifically Rule 11, concerning diversion. Law No. 3 of 1997 concerning Juvenile Courts does not regulate diversion. In Law No. 11 of 2012, diversion is mentioned for the first time with a legal definition, referring to the diversion of children in conflict with the law from criminal judicial proceedings to non-criminal judicial proceedings.

Diversion is one form of restorative justice. This approach emerged in the 1960s as a model for resolving criminal cases. In the mid-1970s, the principles of restorative justice, with all its forms of participation, such as reconciliation between victims and offenders, began to be applied by a small group of activists, criminal justice system personnel, and some experts in North America and Europe. These principles were disseminated organically, and the movement was not initially organized as a reform movement (Yunus, 2021).

In 1974, a restorative justice movement was launched in Canada, initially as an alternative measure for juvenile offenders. This movement marked the introduction of the Victim Offender Reconciliation Program (VORP). The program generated high levels of satisfaction for both victims and offenders, leading to the development of experimental restorative justice programs in North America and Europe, such as VORP in the United States and the United Kingdom in 1978. New Zealand was the first country in the world to apply restorative justice, initially addressing crimes, school discipline, and conflicts between citizens and the government, and eventually extending it to ordinary court cases through Family Group Conferences (FGC).

Furthermore, restorative justice was applied to more serious crimes. Northern Ireland applied restorative justice as an alternative to addressing violent crimes. Eastern Europe implemented restorative justice as part of the court reform process. The application of restorative justice in Africa can be seen in the revitalization of indigenous practices, increased use of community service penalties, and national responses to civil wars and genocides. The Middle East applied restorative justice based on traditional conflict resolution processes. In other regions of

Asia, restorative justice was applied in juvenile justice, allowing case resolution to be excluded from the judicial process.

Mexico implemented restorative justice after an amendment to Article 20 of the Constitution, which recognized the rights of victims and required a review of sentencing policies. Efforts were made to introduce alternatives to imprisonment by involving victims in mediating with offenders. Prison would only be used for serious offenders.

Belgium introduced a mediation institution in 1993, which was the embryo of restorative justice. This mediation, supervised by the prosecution and the courts, was successful and was eventually incorporated into the Criminal Procedure Code in 2005. The code stipulated that offenses, ranging from minor to the most severe, could be referred to mediation. Spain expanded the scope of mediation, initially limited to simple compensation, by increasing the role of victims in resolving disputes.

Current legislation now regulates meetings between juvenile offenders and victims through mediation, allowing them to express remorse and determine the amount of compensation for the victim. Sri Lanka implemented restorative justice through the Mediation Act of 1988, which applied to minor offenses such as minor insults, light defamation, and certain offenses in the Penal Code. If mediation failed, the case could be referred to court, accompanied by a "failed mediation" certificate from the Mediation Council.

Thailand applied restorative justice through legal provisions, particularly for child cases with prison sentences of less than 5 years, which were referred to family meetings or Family Community Group Conferencing (FCGC), known as "Justice for Social Harmony." The application of restorative justice has also spread widely to the United States, Africa, Korea, and Russia, including the Council of Europe, the European Union, and the United Nations. The emergence of restorative justice was a criticism of the criminal justice system with ineffective imprisonment in resolving social conflicts. Restorative justice is an alternative in the criminal justice system that emphasizes an integrated approach between offenders, victims, and the community as a whole to find solutions and restore positive relationships in society. The focus of restorative justice is on repairing the harm caused by criminal behavior by bringing the parties together to determine the best way to resolve the case (Irawan, Bawole, & Rorie, 2022).

The enactment of Law No. 11 of 2012 on the Juvenile Justice System strengthened child protection in Indonesia and provided an opportunity for restorative justice. This law introduced the concept of diversion aimed at protecting children in conflict with the law, child victims of crimes, and the community in general as a form of diverting child case resolutions from criminal judicial proceedings to non-criminal judicial proceedings to achieve restorative justice (Ikhsan, 2018) (Febrianty & Murti, 2022).

Efforts to combat crime through non-penal approaches involve prevention without using criminal law, influencing public perceptions of crime and punishment through mass media. The concepts of out-of-court settlement, diversion, and restorative justice are alternative methods of resolving criminal offenses aimed at informal resolution involving all parties related to the crime that occurred. Resolution using these concepts is a form of criminal resolution that has developed in several countries to address crime (Dalimunthe, 2021).

The juvenile criminal justice system must prioritize a restorative justice approach. Restorative justice is a method of resolving criminal cases by involving the offender, victim, the offender's family, the victim's family, and other relevant parties in finding a fair solution that emphasizes restoring the situation to its previous state, rather than seeking revenge. One way to achieve this justice is through diversion. In general, diversion is the authority of law enforcement to take discretionary actions in addressing or resolving child misconduct issues without taking a formal path.

Article 6 of Law No. 11 of 2012 states the objectives of diversion, including:

1. Achieving peace between the victim and the child.
2. Resolving child cases outside the judicial process.
3. Preventing the child from being deprived of their freedom.
4. Encouraging community participation.

5. Instilling a sense of responsibility in the child.

Diversions are mandatory in the child justice system when handling child cases. At the investigation, prosecution, and examination stages of child cases in the district court, diversion must be attempted. However, diversion is not mandatory in cases where the crime carries a prison sentence of more than seven years. It also does not apply to repeat offenders who commit the same crime.

The implementation of the Juvenile Court Law in the handling of cases involving delinquent child perpetrators tends to stigmatize children, which is very detrimental to their psychological development in the future. According to criminological studies, stigmatization or stigma of children as delinquent perpetrators has the potential to encourage them to repeat their actions. One of the government's efforts to prevent and address juvenile delinquency is through the implementation of the Juvenile Criminal Justice System through Law No. 11 of 2012.

The diversion process involves consultations with the child, parents or guardians, the victim, and/or their parents or guardians, Probation Officers, and Professional Social Workers, based on a restorative justice approach. Additionally, when necessary, consultations may involve Social Welfare Officers and/or the community. The diversion process must consider:

1. The interests of the victim.
2. The welfare and responsibility of the child.
3. Avoiding negative stigma.
4. Avoiding retaliation.
5. Community harmony.
6. Propriety, morality, and public order.

In the child criminal justice system, diversion must be prioritized, starting from the investigator, prosecutor, and judge, and must take into account:

1. The category of the crime.
2. The child's age.
3. The results of the social study conducted by the Probation Officers.
4. Support from the child's family and the community.

Diversions must be agreed upon by the victim and/or the victim's family and the child and their family. However, there are exceptions, which include cases involving crimes that are offenses, minor crimes, crimes without victims, or cases where the victim's loss is not greater than the local minimum wage. Divergence agreements for resolving offenses, minor crimes, crimes without victims, or cases where the victim's loss is not greater than the local minimum wage may be reached by the investigator with the offender and/or their family, the Probation Officer, and may involve community figures. Divergence agreements reached by the investigator based on the Probation Officer's recommendation may include:

1. Restitution if there is a victim.
2. Medical and psychosocial rehabilitation.
3. Return to the child's parents or guardians.
4. Participation in education or training at educational institutions or Community-Based Rehabilitation Centres (LPKS) for a maximum of three months.
5. Community service for a maximum of three months.

The results of the agreement are documented as diversion agreements. The results of the diversion agreement are communicated by the immediate superior of the responsible official at each level of review to the District Court in its jurisdiction within a maximum of 3 (three) days from the date the agreement is reached to obtain a decision. The decision must be made within a maximum of 3 (three) days from the date the diversion agreement is received. After receiving the decision, the investigator issues a decision to terminate the investigation, or the prosecutor issues a decision to discontinue the prosecution.

Diversion refers to a space for consensus discussions among community members, but when it fails or the diverse decision is not implemented, legal action can be pursued through the court system. This is stipulated in Article 13 of Law Number 11 of 2012.

Koesno Adi provides insights into the benefits of diversity for the police institution when it is implemented. Here are Adi's expressions regarding diversity:

1. The police force is the only law enforcement agency in the criminal justice subsystem with a network that extends to the district level. Therefore, structurally, the police force is the law enforcement agency closest to and most easily accessible to the public. With such an institutional landscape, the police force is the most likely law enforcement agency to have a network that reaches the lowest levels (village level).
2. In terms of quantity, the police force has a significantly larger number of personnel compared to other law enforcement agencies. While it is acknowledged that not every police officer is committed to handling crimes committed by children, having an adequately sized workforce can greatly assist in the resolution of crimes committed by children.
3. Since the police force is the first law enforcement agency involved in the criminal justice process, diversity at the police level serves the purpose of ensuring that children are kept away from involvement in the criminal justice process for as long as possible. Thus, the negative impact of children coming into contact with law enforcement can be minimized.

In the police force, specifically in North Jakarta Metro Police, there are several Standard Operating Procedures (SOPs) followed by the Child and Woman Protection Unit (Unit PPA) in handling sexual assault and/or molestation cases. These SOPs include:

1. **Sharing:** When a victim approaches the Child and Woman Protection Unit in North Jakarta Metro Police, the first action taken is to have a discussion with the victim or the victim's family about the incident they have experienced, if Unit PPA members assess that there are elements of criminal activity based on the victim's account.
2. **Assisting the victim in filing a police report:** After confirming the presence of elements of criminal activity in the victim's account as narrated by the victim or their family, the police officers from the Child and Woman Protection Unit will assist in filing a police report.
3. **Immediate medical examination (Visum):** After assisting in filing a police report, Unit PPA members will immediately take the victim to Bhayangkara Hospital for a medical examination (Visum). This is done to facilitate the substantiation process since the criminal act is recent, and the results of the medical examination are expected to shed light on the criminal incident.
4. **Obtaining initial statements from the child or their parents:** This depends on the victim's condition; if it is not possible to take the victim's statement initially, it is deferred.
5. **Reporting to the Head of the Criminal Investigation Division (Kasat Reskrim):** This is done for the sake of follow-up actions by superiors in taking initial measures based on the victim's report.
6. **Scene of the Crime Examination (SCE), also known as Crime Scene Investigation (CSI):** This is carried out to gather other necessary evidence required in solving the criminal case.
7. **If the victim feels threatened, the Child and Woman Protection Unit will coordinate with P2TP2 or the Department of Social Affairs to place the victim in a safe house.** The police are informed about the process of placing the victim in any safe house by P2TP2 or the Department of Social Affairs.

Article 41 of the Juvenile Justice System Law also addresses the issue of prosecution by the Public Prosecutor. Public prosecutors for juvenile cases are appointed based on a Decree of the Attorney General, with requirements including:

1. Having experience as a public prosecutor;
2. Having an interest, attention, dedication, and understanding of child issues; and
3. Attending technical training on juvenile justice.

In upholding the law in the investigation and prosecution of cases of sexual abuse against children by the Child and Woman Protection Unit of North Jakarta Metro Police, several obstacles and challenges can be observed in various aspects:

1. **From the Victim's Perspective:**
 - a. If the victim is a child under 3 years old, obtaining statements can be challenging. Therefore, the Child and Woman Protection Unit in North Jakarta Metro Police makes

efforts to establish rapport by engaging in play activities and offering food, or treats like ice cream.

- b. If the child victim is traumatized, the unit typically seeks assistance from a psychologist to obtain statements.
 - c. Child victims with intellectual disabilities: In such cases, the Child and Woman Protection Unit in North Jakarta Metro Police seeks assistance from special education teachers, for example, for victims with autism.
2. Lack of Eyewitnesses:

Crimes of sexual abuse against children usually lack eyewitnesses. Therefore, the police often rely on alibis, such as identifying who last communicated with the victim and other relevant details.

3. Prosecutor Requests for Witnesses:

This poses a challenge because there are typically no witnesses in these cases. However, in practice, case files submitted to the prosecutor's office are often returned with instructions (P-19) from the Public Prosecutor to locate witness statements to anticipate the absence of witnesses. Typically, the police request an exposé of the case at the Prosecutor's Office so that all parties understand the nature of the case.

4. Fugitive Perpetrators:

Since the perpetrators are sometimes neighbors or acquaintances, the police create a Wanted Person List (Daftar Pencarian Orang or DPO) in coordination with other police precincts. If the suspect is apprehended, the respective police precinct informs the Child and Woman Protection Unit of North Jakarta Metro Police, who then takes custody of the suspect.

5. Delayed Reporting:

In some cases, parties may have attempted to resolve the matter privately, and only when no agreement is reached do they report the criminal incident to the police. This can be a challenge, as it may affect the clarity of medical examination results. However, in practice, there is an agreement that such reports indirectly acknowledge the occurrence of a criminal act. Therefore, the police still conduct medical examinations, and all parties are interviewed as needed.

Similar to the investigative phase, the Juvenile Justice System Law also provides an opportunity for Public Prosecutors (JPU) who do not meet the requirements to handle cases involving children to be conducted by public prosecutors who handle cases involving adults. Under the Juvenile Justice System Law, public prosecutors handling cases of children in conflict with the law must include a letter stating that *Diversi* was unsuccessful. In the police force, during the reconstruction of cases involving children in conflict with the law, investigators need to be certain that the individual is truly the perpetrator. During reconstruction, the suspect will spontaneously reenact the actions they took during the crime, step by step. This helps in building a stronger case and ensuring the accuracy of the suspect's or witness's statements.

After the police have completed the case and issued a Discontinuance of Investigation Order (Surat Perintah Penghentian Penyidikan or SP3), the prosecutor can halt the prosecution. This is permitted based on the Indonesian Code of Criminal Procedure (KUHAP). The KUHAP mentions two reasons as the basis for the Prosecutor to halt the prosecution: technical reasons and policy reasons.

The authority not to prosecute for technical reasons is due to the existence of three conditions as regulated in Article 140 paragraph (2) letter a of the Indonesian Code of Criminal Procedure (KUHAP), as follows:

1. If there is insufficient evidence;
2. If the incident does not constitute a criminal act;
3. If the case is legally closed.

The authority to close a case and not prosecute for policy reasons is because prosecutors are empowered to set aside cases. This authority is exercised for the sake of legal interests, public interests, individual interests, and the principle of opportunity. This is regulated in Article 14 Letter h of the KUHAP and explained in Article 77 of the KUHAP (Ratnasari, Lasmadi, & Sudarti, 2021). It acknowledges the authority of the Attorney General to set aside cases. By

considering the reasons for setting aside cases, it can be possible to set aside a juvenile case for the reason of diversion in the interest of both the public and the individual, especially when the community expresses that it does not need to be resolved formally through the judicial process, the victim has forgiven and has received compensation. It is reasonable to terminate the prosecution of such a juvenile case.

Regarding the successful diversion process as stipulated in Article 42 paragraph (3) of the Child Justice System Law (UU SPPA), the Prosecutor conveys a diversion report along with the diversion agreement to the Chair of the District Court to issue a decree.

Diversions can also be carried out at the level of the Court. When examining juvenile cases, judges must adhere to the provisions of the Child Justice System Law. The judges in this context are those appointed based on the decision of the Chief Justice or other officials designated by the Chief Justice upon the proposal of the respective Chief of the District Court through the Chief of the High Court. The requirements to be appointed as a judge in this regard are as follows:

1. Have experience as a judge within the general judicial system;
2. Have an interest, attention, dedication, and understanding of Child-related issues; and
3. Have undergone technical training in Child justice.

Similar to the Police Investigators and Prosecutors, the Child Justice System Law also provides an opportunity for judges who do not meet the qualifications of juvenile judges to conduct examinations for adults.

The protection of children is afforded sufficient legal coverage by the government, but violations of children's rights in the law enforcement process by the Police continue to occur. Actions such as the arrest process not being accompanied by an arrest warrant, lack of notification to the child's family, and the use of physical or mental violence during interrogation (including beatings, shouting, and coercion to admit guilt) are observed (Wibowo, 2021). In the prosecution stage, one common practice is the excessive duration of child detention. During the trial phase, judges often fail to consider the social investigation reports prepared by the Social Welfare Worker (Bapas). Court proceedings proceed without the presence of legal counsel for the child, and there is no request for input from the child's parents during the proceedings.

Treatment of Child Witnesses

The Law on the Juvenile Justice System (UUSPA) addresses issues related to child witnesses. In general, children who serve as witnesses are included in Chapter 1, Part 2, defining children in conflict with the law, child victims of crimes, and child witnesses to criminal acts. Children who serve as witnesses are further defined in Chapter 1, Part 5, as "Child Witnesses," which refers to children under the age of 18 who can provide testimony for investigation, prosecution, and courtroom examination of a criminal case that they have heard, seen, and/or experienced themselves.

The prevention of child sexual abuse places special emphasis on situational-based prevention. The author believes that the prevention of sexual abuse based on the rational choice theory can be the key to protecting children. However, such strategies are more suitable for organizations or even public places than domestic or virtual settings.

Child protection is a complex issue that gives rise to various further problems that cannot always be addressed on an individual basis. Article 28B of our constitution states that "Every child has the right to survival, growth, and protection from violence and discrimination."

The state's protection against child sexual violence targets the revelation of child sexual issues in unexpected places, such as boarding schools or churches. Herry Wirawan, a religious teacher in Bandung, raped 12 female students, some of whom became pregnant and gave birth. Most of the victims were residents of Garut Regency. Parents sent their children to school with the hope of providing them with a good education, but instead, sexual crimes occurred in this institution.

The perpetrator held power in this child rape case because he was a teacher in the school environment. The threat of obedience to the teacher served as a shield for the perpetrator, while the victims were in a vulnerable position, forced to comply with the teacher's will. Moreover, they were lured with promises of financial support for college and marriage.

In this dissertation research, it was found that there is still a limited understanding and expertise among law enforcement officials in handling cases of violence against children. The use of articles from the Child Justice System Law is not correctly implemented from the investigation stage to the court. This is particularly evident when a child perpetrator, physically appearing as an adult, faces the law. However, only identity documents such as the Identity Card (KTP) should be used, and testimonies from witnesses should confirm that the perpetrator is indeed underage.

The involvement of social workers in cases of child sexual abuse is also minimal, and the support of various social institutions capable of advocating and defending children's rights is required to protect children facing the law, whether as perpetrators, victims, or witnesses.

This conclusion shows that the perspective of the Critical Legal System (CLS), which states that equality in the law is considered utopian, is indeed true. The law is not objective and neutral but heavily depends on social and political processes. It is also essential to note that sexual relationships with children are considered illegal without considering consent (informed consent) or mutual agreement because children are deemed incapable of giving valid consent. This applies primarily to girls, even if the relationship is consensual between both parties. Society often holds a moral view that sexual relationships outside of official marriage are unacceptable.

Children approaching adolescence or already in their teenage years have an interest in experimenting and giving meaning to their sexual experiences (Octavia, 2020). In this context, they are considered sexual subjects. The author argues that children show sexual interest and engage in sexual behaviors with other children long before reaching puberty. As stated by Michel Foucault, in the nineteenth century, children were not considered asexual or sexually innocent beings but rather had sexual potential and were often involved in masturbation. Therefore, a "survivor" of child sexual abuse is not always entirely passive and powerless. Some victims may feel that they made choices, no matter how small, leading to the initial incident and the continuation of sexual relationships reported to the police.

Norm of Sexual Consent

Consent is often a determining criterion in categorizing whether an act constitutes sexual abuse and violence or not. For instance, sexual abuse involves any sexual activity where consent is not given or cannot be given. The presence or absence of sexual consent, or a person's ability or inability to give sexual consent, can differentiate between consensual and criminal or harmful acts. However, the concept of consent is rarely discussed comprehensively. The conceptualization of consent is often accepted as a given, relying mostly on assumed common sense rather than uniform or explicitly defined definitions. Furthermore, sexual consent has primarily been analyzed from a legal perspective, focusing on specific sexual activities, and the overt communication of consent plays a crucial role in legal cases.

Sandra et al.'s research on the permissible age for giving sexual consent in several Spanish-speaking countries is interesting to explore. After analyzing articles referring to sexual crimes in the penal codes of 21 Spanish-speaking countries, Sandra et al. found that the minimum age set for minors to provide valid sexual consent ranged from 13 years in Argentina to 18 years in the Dominican Republic, Ecuador, and Equatorial Guinea. The legal age for sexual consent for minors was set at 14 years in 10 out of the 21 analyzed countries. The legal age for sexual consent is applied by almost half of the studied countries, followed by those who set it at 16 years, 15 years, 19 years, and, finally, the lowest 13 years. Sandra mentioned that Chile and Paraguay exhibited different legal ages for sexual consent for heterosexual and homosexual behaviors. For heterosexual behavior, the legal age for sexual consent was set at 14 years in both cases, while for homosexual partners, the legal age for consent varied, being 17 in Paraguay and 18 in Chile.

The Romeo and Juliet laws in Bolivia, Costa Rica, Panama, Puerto Rico, Spain, and Uruguay mean that sexual relationships involving minors with a certain age difference are not considered sexual abuse. For example, the "Romeo and Juliet" law from the State of Florida in the United States was enacted during the Legislative Session of 2007. This law aimed to address concerns about middle school-aged teenagers being labeled as sexual offenders or sexual predators as a result of engaging in consensual sexual relationships. The stigma and consequences associated with this classification have lifelong implications affecting matters such as the

perpetrator's future job prospects, their ability to attend their own children's school events, and where they can reside. These laws do not clearly distinguish between young "Romeo and Juliet" sexual offenders who engage in consensual sexual relationships and offenders who harm children and pose a real risk to society.

The existence of Romeo and Juliet Laws aim to protect young sexual offenders whose ages are relatively close to those of their victims and who engage in consensual sex to prevent them from being registered as sexual offenders. Some states, like Florida, have done this through the use of motions or petitions for registration relief; some have provided age difference provisions, while others have gone further by legalizing specific sexual behaviors between minors and/or those close in age to them to avoid not only registration requirements but also previously associated criminal charges related to sexual conduct.

The requirement for a not-so-significant age difference is crucial in Romeo and Juliet Laws. For example, victims must be at least 14 years old, the offender must not be more than 4 years older than the victim at the time of the offense, and the victim must consent to sexual behavior. Even in Spanish-speaking countries, the minimum age for sexual consent varies among the countries.

Moreover, the minimum age for sexual consent varies between countries. Fourteen years is the most commonly mentioned age among respondents, representing more than half of the sample. However, the range varies from 13 to 18 years. The age considered for various types of offenses is determined by the judicial powers of each state, without regard to universal and logical criteria regarding the treatment of minors in their sexual protection.

The author's analysis asserts that reaching a consensus on the age of sexual consent is a challenging task due to the lack of clear rules in international law. Although there are "Romeo and Juliet" clauses to protect active underage subjects in some sexual offenses by preserving their sexual freedom. Western or Spanish-speaking countries have "Romeo and Juliet" provisions to serve as a basis for protecting legal rights, freedom, and sexual compensation. These clauses exempt criminal liability for sexual offenses as long as adolescents have agreed to engage in sexual relationships with their peers.

Another important aspect to consider is the existence of discriminatory laws based on gender and sexual orientation regarding the age of sexual consent. For example, in Chile and Paraguay, 17-18 is the age set for valid sexual consent for participating in homosexual acts. This consideration constitutes discrimination against the LGBTI community, criminalizing homosexual sexual relationships due to the lack of equality based on sexual orientation, which, in turn, violates their fundamental rights.

Comparison of Diversi with Customary Law in Indonesia

The previous discussion attempted to examine the Romeo and Juliet Law applied in countries such as Bolivia, Costa Rica, Panama, Puerto Rico, Spain, and Uruguay, which allows consensual sexual relationships involving minors within a certain age difference and does not classify them as sexual abuse. The "Romeo and Juliet" law from the state of Florida in the USA, enacted during the Legislative Session of 2007, stipulates that if there is a maximum age gap of 4 years between minors engaging in consensual sexual activity, then it should not be deemed as a criminal offense. Adolescents of middle school age were labeled as sexual offenders or sexual predators as a result of participating in consensual sexual relationships. The stigma and consequences accompanying this classification have lifelong effects, affecting aspects such as the perpetrators' future job opportunities, their ability to attend their children's school events, and their place of residence. The records do not differentiate between the "Romeo and Juliet" sexual offenders who engaged in consensual sexual relationships and those who harmed children, posing real risks to society.

If this were applied in Indonesia, the perpetrator/defendant in this study would not be subject to molestation charges. The relationship between the perpetrator and the victim is less than 4 years apart, and there is no element of coercion due to their status as a couple. For example, CA, who was sentenced to up to 10 years, should be protected under the Romeo and Juliet Law. CA is a young sexual offender whose age is relatively close to that of the victim.

The age requirement not being significantly different is essential in the Romeo and Juliet Law. In the three cases presented in this study, as long as there was sexual consent recognized by the state, similar to the laws in Bolivia, Costa Rica, Panama, Puerto Rico, Spain, and Uruguay, they would not be incarcerated, unless force was involved. For instance, if the victim was at least 14 years old, the perpetrator was not more than 4 years older, and the victim consented to sexual intercourse, then they would be protected by the law.

Is CA already considered an adult, and "diversi" is not applied except for the consideration of sentences exceeding 7 years? The perspective of our criminal justice law enforcement may regard 17 years old as no longer a child; hence, all boundaries set are at 17 years old. Then, there's the position of the victim, DAB, who is still 14 years old, so she is seen as a child and should be punished to the fullest extent. However, CA and DAB are described in the Investigation Report as close friends or a couple.

The definition of molestation by CA against DAB does not seem to be accurate. DAB's status as a 14-year-old who was in a relationship with CA should not be a consideration. In Western cultures, consensual relationships between both parties, even if they are not yet adults, are not considered molestation or sexual abuse.

Does a 14-year-old child have the capacity to give proper consent to actions, and what is their legal status based on chronological age? Based on mutual sexual consent, the enhanced punishment of CA may be inappropriate. In the context of decision-making, the cognitive capacity of a 14-year-old teenager can be considered "like an adult," but their behavior decisions tend to be influenced by their still-developing self-regulation capacity and emotional and social appreciation. For example, underage marriages that occur in many Indonesian tribes are not considered sexual abuse or molestation of a child. At this age, the child who is married is considered an "adult." This shows that different developmental capacities exist, so a mentally advanced child or one who is "like an adult" may not be considered a child even if they are younger than the age specified by legal or social norms.

Based on the above, professional individuals with competence are essential for managing crises in cases of child sexual abuse. Currently, the available crisis interventions in government and private social institutions are often insufficient. This can lead to further problems when individuals experience stress and are unable to adapt or resolve the crisis, resulting in non-conducive and maladaptive conditions. Crises can hinder the healthy and comfortable life of children. These new problems are often the result of unresolved previous crisis cases. Several studies on crisis intervention by counselors have shown positive outcomes in resolving children's issues.

Consulting with a counselor is necessary in cases where coercion is involved. When there is consensual sexual activity between children, the counselor's role shifts from solely protecting the victim to addressing the needs of both parties. Both the perpetrator and the victim become subjects of intervention. The victim's parents often seek their way out, disregarding their daughter's wishes. They tend to insist on criminal penalties for the perpetrator, even though they are aware that the initial engagement was instigated by their child. There is an assumption that the wealthier the child's parents, the less likely they are to compromise or engage in mediation. However, mediation is a recurring theme in every stage of the juvenile justice process.

The application of the law is more based on legal foundations, emphasizing legal certainty. The application of the law is not based on philosophical foundations that consider the outlook on life, awareness, and legal aspirations. The aspiration for equality of rights and status in the law is not fulfilled. Children, as stated in the Child Protection Act, need protection, but this did not happen in the case of CA in this dissertation's research. From a sociological perspective, more consideration is given to meeting the needs of society, suggesting that sexual intercourse and/or molestation can only occur due to strong influences from underage boys (Aviva, 2023).

In Indonesian discourse, a man, especially in the context of traditional marriage where a husband is positioned as having the right to demand sex whenever he wants, regardless of his wife's consent, is considered normal. In such situations, sex within marriage may not be understood as sexual violence. However, coercion between romantic partners or mere persuasion can be interpreted as a form of violence. In some countries, persuasion between peers does not automatically become a criminal act under Romeo and Juliet laws.

Critical legal studies can answer questions about the applicable legal norms. In Indonesia, in addition to national law, customary law also applies. During the New Order era, it was implicitly assumed that customary law could hinder the pace of development (Atmadja & Budiarta, 2018). In reality, customary law is something that exists within society. The development pace pursued by the New Order was through the modernization of law to provide opportunities for industrialization and business through national law—a move that was essentially driven by capitalist values.

CONCLUSION

The first conclusion addresses whether the diversion process carried out by law enforcement authorities in the Juvenile Justice System for juveniles facing legal issues due to allegations of sexual intercourse and/or molestation reflects gender non-discrimination. Discrimination still exists in sexual relationships among underage children. There is no gender equality when it comes to consensual sexual relationships between children; it cannot be justified as non-coercive due to stereotypical negative perceptions that persist towards underage boys. Underage boys are considered the ones who entice and perpetrate sexual acts, even though research shows that the initial instigation for such acts can come from underage girls as well. Consensual relationships remain the fault of the underage boys. The Child Protection Act does not yet provide room for consensual sexual relationships between underage children. Desak Made Pratiwi Dharayanti and A.A Sri Indrawati revealed the fact that the rape of boys by Emayartini in Bengkulu, who raped 6 underage boys, occurred in Indonesia.

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Critical legal studies can answer questions about the applicable legal norms. In Indonesia, in addition to national law, customary law also applies. During the New Order era, it was implicitly assumed that customary law could hinder the pace of development. In reality, customary law is something that exists within society. The development pace pursued by the New Order was through the modernization of law to provide opportunities for industrialization and business through national law—a move that was essentially driven by capitalist values. The Romeo and Juliet laws in the West provide opportunities for consensual sexual relationships between minors. In Indonesia, Islamic law allows minors who have reached the age of maturity to be married, even if they do not meet the requirements of national law. This is known as "Siri" marriage, which is a common way to avoid the criminalization of minors.

The Supreme Court's regulations allow for legal marriage with certain dispensations. Dispensation for marriage is granted by the court to spouses who are not yet 19 years old.

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