

Research Article

Legal Protection for Children as Perpetrators of Sexual Violence

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ORCIDAchmad Arifulloh: <https://orcid.org/0000-0002-7133-8119>**Abstract.**

Children as perpetrators of sexual violence crimes presents a complex dilemma in the Indonesian criminal justice system. On the one hand, there is a need to provide justice for victims and enforce the law, but on the other hand, the state is obliged to provide special protection for children involved in the law based on the Child Criminal Justice System Law (UU SPPA). Children in conflict with the law, whether due to coercion, ignorance, or environmental factors, require a different approach from adult perpetrators. This research is normative legal research using a statutory and conceptual approach. Data collection was carried out through a literature study of primary legal materials such as laws and regulations, secondary legal materials in the form of books and scientific journals, and tertiary legal materials. The results of the study show that the legal system in Indonesia has adopted the principle of the best interest of the child through diversion and restorative justice mechanisms. Legal protection is provided at every stage of the trial, from investigation to post-decision guidance, with a focus on rehabilitation rather than retribution. Child perpetrators can be subject to action, not criminal sanctions in prison, which are adjusted to their age and level of guilt. However, its implementation still faces challenges such as social stigma, limited capacity of foster institutions, and harmonization between the rights of children as perpetrators and the rights of victims.

Keywords: children, criminal, sexual, violence

1. Introduction

Sexual violence stands as one of the most severe crimes, threatening social order and inflicting profound trauma upon its victims. The urgency of this issue in Indonesia is underscored by national data. For instance, the Indonesian Child Protection Commission (KPAI) recorded 89 cases of children as perpetrators of sexual crimes in their 2021 annual report, which is part of a larger cohort of children in conflict with the law requiring special protection 2022. This situation creates a complex challenge, as the issue escalates in complexity when the perpetrator is also a child.

From a criminological standpoint, the behavior of child perpetrators of sexual violence can be understood through various theoretical frameworks, notably Social Learning

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Theory. This theory posits that deviant behavior, including sexual aggression, is not an inherent trait but rather an acquired characteristic, learned through processes of observation, imitation, and reinforcement within an individual's social environment. This suggests that external influences, such as exposure to violence, dysfunctional family dynamics, or negative peer associations, can contribute to the development of such behaviors.

In Indonesian legal parlance, a child who commits a criminal act is designated as a “Child in Conflict with the Law” (Anak yang Berkonflik dengan Hukum-ABH), defined as an individual under the age of 18 suspected of a criminal act (Wiyono, 2016). The overarching philosophical bedrock for the management of ABH cases is the principle of the “best interest of the child”. This principle mandates that in all decisions and actions concerning children, their best interests must be afforded primary consideration (Londa, et al., 2023). Consequently, the approach to juvenile offenders cannot mirror that for adults. The paradigm shifts from a focus on punitive measures (retribution) toward recovery and guidance (rehabilitation and restoration). A restorative justice approach becomes central, aiming to repair the harm caused to the victim and the community, while also facilitating the social reintegration of the child offender (Kurniawan, 2018).

However, translating this ideal principle into practice is fraught with difficulty. Law enforcement officials often face public pressure demanding harsh punishment for perpetrators of sexual violence, irrespective of their age (Novianti, 2015). Furthermore, the undeniable rights of victims to justice, recovery, and restitution must remain a priority. Striking a delicate balance between protecting the child perpetrator and fulfilling the rights of the victim constitutes the primary challenge for the criminal justice system (Aditya & Luthfi, 2020).

Within this complex operational environment, this research endeavors to conduct an in-depth analysis of how Indonesia's existing legal framework extends protection for children as perpetrators of sexual violence. Specifically, it aims to delineate the various forms of protection available, to examine the operational mechanisms of diversion and restorative justice, and to critically assess the challenges encountered in their practical implementation. By doing so, this study seeks to contribute to a more nuanced understanding of juvenile justice in Indonesia and to identify potential avenues for strengthening the effectiveness of the system in upholding both the rights of children and the principles of justice for all.

2. Methods

This study systematically employs a normative legal research methodology. This methodological approach is inherently centered on the meticulous analysis of positive legal norms, foundational legal principles, and the crucial aspects of vertical and horizontal synchronization within the existing legal framework. The inquiry is meticulously guided by the application of the following distinct approaches: Statutory Approach: The statutory approach involves a comprehensive and systematic analysis of all pertinent legislation that directly addresses the legal protection of juvenile perpetrators of sexual violence. Key statutes that form the bedrock of this analysis include Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA), Law No. 35 of 2014 on Child Protection, and Law No. 12 of 2022 on the Crime of Sexual Violence (UU TPKS). Case Approach: The case approach involves an in-depth and critical analysis of a specific court verdict to illuminate the practical application and interpretation of legal norms in a real-world judicial setting. For the purposes of this study, Decision No. 3/Pid.Sus-Anak/2022/PN Bkn serves as the focal point of analysis. This particular case provides concrete insights into how judges exercise discretion, apply legal principles, and navigate the complexities of juvenile sexual offense cases within the Indonesian legal system. The examination will explore the judge's reasoning, the factors considered, and the ultimate disposition of the case, demonstrating the practical implications of the legal framework. Conceptual Approach: The conceptual approach facilitates a rigorous analysis of the core legal concepts that underpin the framework of child protection in Indonesia. These foundational concepts are instrumental in shaping the philosophical and practical orientation of the juvenile justice system:

Best Interest of the Child: This paramount principle dictates that all decisions concerning children must prioritize their overall well-being and future development. It requires a holistic consideration of the child's physical, psychological, emotional, and educational needs.

Restorative Justice: This approach emphasizes repairing the harm caused by crime, engaging victims, offenders, and communities in a process of resolution. It seeks to address the underlying causes of the offense and facilitate the offender's reintegration into society.

Diversion: As an extra-judicial mechanism, diversion aims to steer children away from the formal criminal justice system, particularly for minor offenses, to prevent negative labeling and promote alternative forms of resolution.

Data sources for this research are categorized to ensure a comprehensive understanding of the legal landscape: Primary legal materials, such as specific legislation and formal court decisions; secondary legal materials, including scholarly books and peer-reviewed journals; and tertiary legal materials, such as legal dictionaries and encyclopedias.

The data analysis is conducted qualitatively, employing a descriptive-analytical method. This involves interpreting the gathered legal texts, principles, and case specifics to provide a nuanced description of the legal framework and its practical application. The descriptive-analytical approach allows for an in-depth exploration of the “how” and “why” behind the legal provisions and judicial decisions, moving beyond mere surface-level descriptions to offer comprehensive insights into the subject matter.

3. Result and Discussion

3.1. The Regulatory Framework for Protecting Juvenile Perpetrators of Sexual Violence

Legal protection for children in conflict with the law, particularly those who commit sexual violence, is robustly governed by a series of interconnected national legal instruments. The cornerstone of this regulatory framework is Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA). This landmark legislation fundamentally altered the approach to handling juvenile cases, shifting the prevailing paradigm from a retributive model, which emphasizes punishment, to a more restorative one, focusing on rehabilitation and reintegration. A crucial tenet of the UU SPPA is its explicit establishment of imprisonment as a measure of last resort (*ultimum remedium*) for juvenile offenders (Pramukti & Primaharsya, 2015). This principle underscores the judiciary’s preference for alternative, non-custodial interventions whenever possible.

Complementing this, Law No. 35 of 2014 on Child Protection provides a general foundation for the rights of all children, including the right to special protection for those within the justice system. Most recently, Law No. 12 of 2022 on the Crime of Sexual Violence (UU TPKS), while primarily focused on victim protection, also accommodates the special handling of child perpetrators in alignment with the UU SPPA. Therefore, these laws are not in conflict; they are complementary, ensuring that the handling of a child perpetrator is always governed by the juvenile justice system.

Most recently, Law No. 12 of 2022 on the Crime of Sexual Violence (UU TPKS) has been enacted. While its primary focus is on enhancing protection and providing justice for victims of sexual violence, the UU TPKS also meticulously accommodates the special handling of child perpetrators, ensuring that such cases are managed in full alignment with the principles established in the UU SPPA. This demonstrates a legislative commitment to a harmonized approach, where the rights and needs of both victims and child perpetrators are considered within a restorative and rehabilitative framework. Therefore, these three key laws—the UU SPPA, Law No. 35 of 2014, and the UU TPKS—are not in conflict; rather, they are mutually complementary, ensuring that the handling of a child perpetrator is consistently governed by the principles and procedures of the juvenile justice system. This multi-layered legal framework signifies Indonesia's commitment to a progressive and child-centric approach to juvenile crime.

3.2. Diversion and Restorative Justice as Primary Protection Mechanisms

The most tangible and operational form of protection enshrined within the UU SPPA is the mechanism of diversion. Diversion is an extra-judicial process meticulously designed to shield children from the potentially detrimental effects of the formal criminal justice system, such as negative labeling (Maulana, 2022), stigmatization, and the trauma associated with traditional court proceedings. This process involves a structured meeting or series of meetings that bring together the child perpetrator, their parents or guardians, the victim's family, and a crucial figure known as a Community Counselor from the Correctional Center (BAPAS). The Community Counselor plays a critical role in facilitating mediation and negotiation between the parties, aiming to reach a mutually agreeable resolution outside of court (Santoso, 2017). The objective is to find a resolution that addresses the harm caused, fosters reconciliation, and promotes the child's rehabilitation, rather than solely focusing on punitive measures.

Even in instances where diversion attempts are unsuccessful and a case inevitably proceeds to a formal court hearing judges are strongly encouraged to apply the principles of restorative justice. This means that judicial discretion is heavily weighted towards imposing "actions" (*maatregel*) rather than traditional criminal "penalties" (*straf*). This distinction is fundamental to the juvenile justice system. "Actions" are rehabilitative measures designed to address the child's behavior and facilitate their positive development, while "penalties" are punitive in nature. The overall effectiveness of

this restorative approach within the broader Indonesian legal system remains a key area of ongoing study and evaluation (Erdin, Shofiana, & Indar, 2024). The success of diversion and restorative justice hinges on the willingness of all parties to engage in dialogue, the availability of appropriate alternative programs, and the commitment of legal professionals to these child-centric principles.

a. Sanctions and Interventions for Juvenile Perpetrators of Sexual Violence

In strict adherence to the *ultimum remedium* principle, sanctions imposed upon child offenders in Indonesia are rigorously circumscribed, ensuring that punitive measures are considered only as a last resort. The UU SPPA meticulously categorizes available sanctions into two primary types: penalties and actions. The fundamental distinction between these two categories clearly reflects the system's overarching focus on rehabilitation over mere punishment.

The imposition of an “action” is frequently the preferred and most common outcome in juvenile cases. Such actions are diverse and tailored to the individual needs of the child and the circumstances of the offense. A prominent example is placement in a Special Child Development Institution. primary objective of LPKA placement is to ensure that the child receives appropriate psychological rehabilitation, educational support, and vocational training in an environment entirely segregated from adult inmates (Sofyan, 2020). This separation is crucial to prevent the negative influence of adult offenders and to provide a specialized setting conducive to the child's development and reform. Other “actions” can include community service, participation in specific educational or therapeutic programs, or placement under the supervision of a community counselor.

The specific intervention or “action” to be imposed is not arbitrarily determined. Instead, it is the result of a meticulous and comprehensive deliberation by the presiding judge. The judge carefully considers several critical factors: the profound impact of the criminal act on the victim and the community, the precise age of the child offender, and their unique psychosocial background. This crucial psychosocial information is primarily derived from the community social inquiry report (Litmas), which is prepared by the BAPAS counselor and provides an in-depth assessment of the child's living conditions, family environment, educational status, and developmental needs. This holistic approach ensures that the chosen intervention is not merely punitive but genuinely conducive to the child's long-term rehabilitation and successful reintegration into society.

3.3. Case Study Analysis: The Rehabilitative Verdict in Decision No. 3/Pid.Sus-Anak/2022/PN Bkn

To provide a concrete and illustrative analysis of how these principles are applied in practical judicial settings, this study thoroughly examines the decision rendered by the Bangkinang District Court (PN Bangkinang). This case serves as a powerful demonstration of Indonesia's juvenile justice system in action.

The Case: The specific case involved a 17-year-old child perpetrator who was charged with committing sexual intercourse with a child victim, a violation of Article 81, paragraph (2) of the Child Protection Law.

The Legal Process and Judge's Considerations: The trial record meticulously documents that a diversion process was indeed attempted in this case. However, the parties involved unfortunately failed to reach an amicable agreement through mediation, which necessitated the case proceeding to a formal court hearing. During the subsequent trial, the presiding judge undertook a comprehensive and thoughtful consideration of a multifaceted set of factors.

A critical component of the judge's deliberation was the community social inquiry report (Litmas) from the BAPAS counselor. This report is an indispensable tool in juvenile cases, providing an in-depth socio-psychological profile of the child, their family environment, educational background, and potential for rehabilitation. In addition to the Litmas, the judge carefully weighed several mitigating factors presented during the trial. These included the child's demonstrated politeness throughout the proceedings, his genuine expression of remorse for the offense, his status as a student, and significantly, the fact that the victim's family had expressed forgiveness towards the perpetrator, even in the absence of a formal peace agreement. These mitigating circumstances played a crucial role in shaping the judge's ultimate decision.

The Verdict: After careful consideration of all evidence and factors, the panel of judges found the child guilty of the charged offense. However, in a clear and deliberate application of the rehabilitative philosophy underpinning the UU SPPA, the judge chose to sentence the child not to imprisonment, but to a specific "Tindakan" (Action). The final verdict mandated Job Training (Pelatihan Kerja) at the "Alyakin" Social Welfare Institution (LPKS) in Pekanbaru for a period of 6 (six) months. This decision exemplified the system's commitment to non-punitive, rehabilitative measures.

Analysis of the Verdict: This specific verdict from the Bangkinang District Court serves as a potent, real-world illustration of Indonesia's juvenile justice system operating precisely as intended.

Prioritizing Rehabilitation over Retribution: Despite the undeniable gravity of the crime committed, the judge consciously and deliberately opted for a non-custodial, rehabilitative measure. This judicious choice underscores a deep understanding that the paramount goal for a child offender is their correction and successful reintegration into society, rather than solely imposing punitive punishment. It reflects a recognition that incarceration, particularly for children, can often lead to further negative outcomes and hinder their development.

The Power of Judicial Discretion: The case strikingly highlights the critical and influential role of judicial discretion within the juvenile justice framework. The judge skillfully utilized the comprehensive set of facts presented during the trial—especially the compelling mitigating factors and the crucial recommendation from the BAPAS counselor—to apply the lightest possible sanction that still held the child accountable while focusing on his future.

Application of Ultimum Remedium Principle: This verdict stands as the quintessential application of the ultimum remedium principle. The judge meticulously exhausted all other considerations and determined that a rehabilitative “action” was sufficient and, crucially, more appropriate than the “last resort” of imprisonment. This outcome powerfully demonstrates that even for serious crimes, the Indonesian juvenile justice system provides a viable pathway that actively seeks to avoid incarceration (Ananta & Ilham, 2024). The case effectively showcases the system's capacity to uphold its foundational principles even in challenging circumstances.

a. Challenges in Implementation

While the case study of Decision No. 3/Pid.Sus-Anak/2022/PN Bkn illustrates a successful application of Indonesia's rehabilitative juvenile justice principles, it is imperative to acknowledge that the system is far from flawless and continues to grapple with significant challenges in its practical implementation. These challenges often hinder the full realization of the “best interest of the child” principle and the broader aims of restorative justice.

Failure of Diversion: The very case examined in this study, despite its positive ultimate outcome, serves as a poignant example of the failure of diversion. The case ultimately proceeded to trial because the diversion attempt did not yield a successful

agreement between the parties. This highlights a fundamental difficulty inherent in mediating serious cases, particularly those involving sexual violence, where victim trauma can be a significant barrier to reaching an amicable agreement. The profound trauma experienced by victims of sexual violence can constitute an immense barrier to reaching an amicable, restorative agreement through mediation. Victims and their families often seek formal justice and accountability, which can be difficult to reconcile with the diversionary aim of avoiding formal judicial proceedings. The emotional and psychological toll on victims can make it challenging for them to engage in a process that requires empathy and a willingness to forgive, particularly when the perpetrator is a child, which adds another layer of complexity to the dynamic.

Social Stigma and Public Pressure: Beyond the institutional capacity issues, another formidable challenge resides in the pervasive social stigma associated with child perpetrators of sexual violence. Public sentiment in Indonesia, as in many societies, often leans heavily towards demanding severe and punitive measures for perpetrators of sexual violence, irrespective of their age. This public demand is frequently driven by a deeply ingrained desire for retribution, rather than a nuanced understanding or focus on the child's potential for rehabilitation.

This pervasive societal pressure frequently undermines the very principles of diversion and restorative justice that the Indonesian legal system strives to uphold. A prime example of this challenge is observed when victims or their families explicitly reject diversion attempts because the demand for formal, punitive justice outweighs the rehabilitative aims of the juvenile justice system. The societal narrative around sexual violence, coupled with the desire for justice for victims, often creates an environment where restorative approaches, particularly for child perpetrators, are met with skepticism and resistance, making it challenging for law enforcement officials and judges to consistently implement the mandated protective measures.

Limited Institutional Capacity: One of the most significant practical challenges in effectively implementing rehabilitative actions for child offenders is the limited institutional capacity of the Special Child Development Institutions (LPKA) across Indonesia. While there are 33 LPKAs nationwide, a number that appears substantial on paper, many of these facilities operate under conditions of severe overcapacity. A concerning report from the Directorate General of Corrections in 2022 revealed that correctional facilities, including LPKAs, were operating at 105% over their designed capacity. This alarming level of overcrowding inevitably compromises the quality and effectiveness of rehabilitation programs.

The issue of overcapacity is particularly acute in certain regions. Beyond the sheer problem of overcrowding, these institutions frequently face critical shortages of specialized staff. There is a pressing need for more trained counselors, psychologists, social workers, and educators who possess the expertise to address the complex needs of child offenders, particularly those involved in sexual violence cases. Furthermore, many LPKAs suffer from inadequate facilities, lacking the necessary infrastructure, recreational spaces, and educational resources to provide comprehensive and effective rehabilitation programs. These systemic shortcomings severely impede the ability of LPKAs to fulfill their mandated role of providing appropriate psychological rehabilitation, education, and vocational training, thereby undermining the overarching goal of restorative justice.

Prevention and Environmental Factors: The current Indonesian juvenile justice system, while progressive in its rehabilitative aims, remains largely reactive in its approach. It primarily intervenes after a criminal act has been committed, focusing on remediation rather than proactive prevention. There is a critical and urgent need for far greater investment and attention in comprehensive preventative measures that target the root causes contributing to children becoming perpetrators of sexual violence. (Kismanto & Mashdurohatun, 2017).

These root causes are often multifaceted and deeply embedded in societal and environmental factors, including:

Family Dysfunction: Dysfunctional family environments, characterized by neglect, abuse, lack of parental supervision, or exposure to domestic violence, can significantly increase a child's vulnerability to engaging in deviant behaviors.

Poverty: Socioeconomic deprivation can lead to desperation, lack of opportunities, and increased exposure to crime, potentially pushing children into vulnerable situations or towards criminal activities.

Exposure to Pornography: Unrestricted and early exposure to pornography, particularly harmful and exploitative content, can desensitize children, distort their understanding of healthy sexual relationships, and potentially influence aggressive or predatory behaviors.

Negative Peer Groups: Association with peer groups that engage in criminal activity or encourage deviant behavior can exert significant pressure on children, leading them to participate in offenses they might otherwise avoid.

Lack of Education and Awareness: Limited access to quality education, coupled with insufficient awareness campaigns on sexual health, consent, and healthy relationships, can leave children ill-equipped to navigate complex social interactions and understand the consequences of their actions.

Addressing these deep-seated environmental and social factors requires a holistic and multi-sectoral approach involving government agencies, civil society organizations, educational institutions, families, and communities. Without significant investment in preventative programs and policies, the juvenile justice system will continue to be burdened by a reactive approach, struggling to address the influx of children in conflict with the law effectively. A robust preventative framework is essential to complement the rehabilitative efforts of the legal system and to truly safeguard the best interests of all children in society.

4. Conclusion

Indonesia's legal framework for addressing juvenile perpetrators of sexual violence stands as a progressive and commendable system, fundamentally prioritizing the "best interest of the child" through a distinctly restorative and rehabilitative paradigm. This philosophical underpinning is not merely an abstract concept; its practical application is tangibly demonstrated through judicial decisions, as critically analyzed in Verdict No. 3/Pid.Sus-Anak/2022/PN Bkn. This case unequivocally illustrates that even when initial diversion efforts fail in serious criminal matters, the judiciary possesses and actively exercises its authority to apply the *ultimum remedium* principle. This manifests in the deliberate choice of non-custodial "actions," such as job training, over traditional imprisonment, even for offenses as grave as sexual violence. The Bangkinang District Court's verdict serves as a crucial exemplar for a justice system that is dedicated to correction and guidance rather than mere condemnation. Its focus remains steadfast on the child's inherent potential for rehabilitation and their eventual successful reintegration into society as responsible individuals. This commitment underscores a belief that juvenile offenders, given appropriate support and intervention, can be guided away from a path of criminality and towards productive lives. However, the path to full and effective implementation of these progressive principles is not without significant hurdles. Persisting challenges include the crucial need to cultivate greater public acceptance for restorative justice approaches, which often clash with prevailing societal demands for punitive retribution. Furthermore, addressing the critical issue

of inadequate institutional capacity within rehabilitation facilities, such as the Special Child Development Institutions (LPKA), remains paramount. Overcrowding, shortages of specialized staff, and insufficient resources severely impede the effectiveness of rehabilitation programs. Despite these formidable challenges, the consistently demonstrated judicial commitment to the rehabilitative spirit of Indonesia's Juvenile Criminal Justice System Law, as evidenced by cases like the one examined, affirms a promising trajectory for juvenile justice in the nation. Continued efforts in public education, policy reform, and resource allocation are essential to fully realize the transformative potential of this child-centric legal framework.

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