

CRIMINAL LIABILITY OF PERPETRATORS OF SEXUAL VIOLENCE IN LAW NO. 12 OF 2022 CONCERNING CRIMINAL ACTS OF SEXUAL VIOLENCE

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Abstract

The accountability of perpetrators of criminal acts in Indonesia has been regulated in formal procedural instruments that have been established by the state. So far, in the process of criminal accountability in the settlement of crimes of sexual violence, there have been pros and cons in society due to the inefficiency of sanctions and fines given to perpetrators of crimes and the failure to protect the rights of victims of crimes of sexual violence. Law Number 12 of 2022 concerning Crimes of Sexual Violence exists to answer public concerns, and contains rules regarding sanctions and fines as well as fulfilling the protection and rights of victims of crimes of sexual violence. The type of research used in completing this research is normative legal research. The legal sources used are secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The technique used in collecting data for this research is to collect secondary data consisting of primary legal materials and secondary legal materials that are related to the subject matter of the research. All research data that has been collected, analyzed using qualitative normative methods. Law Number 12 of 2022 concerning Crimes of Sexual Violence constitutes a complete, just, and formal foundation for perpetrators and victims of sexual violence.

Keywords: Criminal Liability, Person, Sexual Violence

A. INTRODUCTION

The term criminal act comes from a term known in the Dutch Islamic criminal law, namely *Strafbaar feit*. *Strafbaar feit* consists of three words, namely *straf*, *baar* and *feit*. *Straf* is translated with criminal and legal. *Baar* translates can or can. *Feit* translates actions, events, offenses and deeds¹. Criminal acts are the basic meaning in criminal law (normative juridical). Crime or evil deeds can be interpreted juridically or

¹ Adami Chazawi, *Criminal Law Lesson 1*, PT. Raja Grafiado, Jakarta, 2007, Him 69



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criminologically, Crime or evil deeds in a juridical, normative sense are acts as manifested in abstracto in criminal regulations².

According to P.A.F. Lamintang, that every criminal act in the Criminal Code in general can be described into two types, namely subjective and objective elements. As for what is meant by "subjective" elements, they are elements that are attached to the perpetrator or that are related to the perpetrator and include it, namely everything contained in his heart. Meanwhile, what is meant by "objective" elements are elements that are related to circumstances, namely the circumstances in which the action of the perpetrator must be carried out³.

Criminal law is a law that has special characteristics, namely in terms of sanctions. Every time we are faced with the law, our thoughts will lead to something that binds someone's behavior in society. In it there are provisions about what must be done and what must not be done, as well as the consequences. The first is what we call other laws, especially the form of sanction, which is negative which is called criminal (punishment). It can take various forms from being forced to take his property because he has to pay a fine, deprived of his freedom because he is sentenced to imprisonment or imprisonment, and can even be deprived of his life if it is decided to be sentenced to death⁴.

According to Sita Aripurnami, sexual violence is the most cruel act of human rights violations against women and children, therefore this act is classified as a crime against humanity by the United Nations. These acts of violence include, among others: sexual harassment, domestic violence, rape, and breach of promise⁵.

The resolution of criminal problems in Indonesia has been regulated in formal procedural instruments that have been established by the state. These rules are listed in the Criminal Procedure Code (KUHP), which is a guideline in the settlement of criminal cases. But unfortunately, in practice, formal law is often used as a repressive tool for law enforcers. Several criminal cases, such as theft, murder, and other crimes, are decided far from a sense of injustice, both for the suspect, the victim, and the community. This raises questions about how effective the criminal process in Indonesia is in overcoming crime in society. The ultimate goal of criminalization is to provide a deterrent effect for perpetrators, create security and order in society and for law enforcement. All forms of punishment need to consider the parties involved in the crime. In formal law in Indonesia, attention is more focused on the perpetrators of crimes, while victims do not receive attention from the state. The imprisonment system, as a solution to deter perpetrators, turned out to be ineffective because it was unable to reform the behavior of criminals.

² Sudikno Mertokusumo, *Getting to Know the Law, Liberty*, Yogyakarta, 1999, p. 10

³ P.A.F. Lamintang, *Fundamentals of Indonesian Criminal Law*. Sinar Baru, Bandung, 1984, pp. 173-174

⁴ Teguh Prasetyo, *Criminal Law, Cet II*, PT Raja Grafindo Persada, Jakarta, 2011, page. 2.

⁵ Sita Aripurnami, *Violence Against Women, Aspects of Socio-Cultural Aspects and Article 5 of the Women's Convention*, Alumni, Bandung, 2000, p-113.

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Therefore, it is necessary to consider other approaches to resolve criminal cases, in order to realize the criminal objectives as mentioned above⁶.

B. RESEARCH METHODS

This research method is a juridical-normative legal research method, using literature studies or documentary studies from primary legal materials such as laws and regulations, secondary legal materials including books and journals on legal theories, legal experts' views, and tertiary legal materials including court decisions on environmental cases by examining existing legal principles, norms, and principles related to the principles *In Dubio Pro Natura* as a data collection technique. Juridical-normative legal research is carried out to explore knowledge and find legal rules, legal principles, or elements of environmental law related to the principles of *In Dubio Pro Natura* in answering the legal issues faced, especially in Indonesia. The theory in this study uses the Prevention Theory with the goal of to the wider community and the perpetrators of crimes so that they do not repeat their criminal acts,⁷ and Distributive Environmental Justice Theory with the aim that Sustainability can be realized if there is justice and environmental factors in sustainability efforts.⁸ Knowledge of the topics discussed will be studied in laws and regulations related to the environment and forestry, government regulations governing environmental governance, books, journals and reports, and court decisions issued for solving problems related to the environment.⁹

C. RESULTS AND DISCUSSION

1. Factors Causing Children to Commit Violent Crimes

Children are the mandate and gift of God Almighty which is also inherent in their dignity and dignity as a whole human being. Children are the sprouts, potentials, and young generations who inherit the ideals of the nation's struggle, have a strategic role and have special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future. In order for every child to be able to shoulder this responsibility in the future, he needs to get the widest opportunity to grow and develop optimally, both physically, mentally and socially, and with noble character, so that it is necessary to make protection efforts to realize the welfare of children by providing guarantees for the fulfillment of their rights and treatment without discrimination.

Deviations in behavior or unlawful acts committed by children are caused by various factors, including the negative impact of rapid development development, globalization flows in the field of communication and information, advances in science

⁶ Ali Sodiqin. "Restorative Justice in the Crime of Murder: A Perspective of Indonesian Criminal Law and Islamic Criminal Law". *Ash-Shir'ah: Journal of Sharia and Legal Sciences*. Vol. 49, No. 1, June 2019. p. 2

⁷ Ayu Efridadewi, *Criminal Law Module*. UMRH Press, 2020.

⁸ Andri Gunawan Wibisana, "Justice in One (Intra)Generation: An Introduction Based on the Taxonomy of Environmental Justice". *Legal Pulpit Vol 29 No. 2*, pp. 294-295, 2017.

⁹ Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020), PDF e-book, 45-52.

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and technology, and changes in lifestyle and way of life as parents. This has brought fundamental social changes in people's lives and has a great influence on children's values and behavior. Children who lack or do not receive affection, nurturing and guidance as well as coaching in the development of attitudes, self-adjustment behaviors, as well as supervision from parents, guardians or foster parents will be easily dragged into the flow of community associations and their environment that is not healthy and detrimental to their personal development.¹⁰

Due to the influence of the surrounding circumstances, it is not uncommon for children to participate in criminal acts. It can be caused by persuasion, spontaneity or just following along. Even though it is still a criminal act. However, for the sake of children's growth and mental development, it is necessary to pay attention to the distinction between treatment in procedural law and criminal threats. A child who is in conflict with the law is a child who is involved in legal problems or as a perpetrator of a criminal act, while the child is not considered capable of taking responsibility for his actions, considering his immature age and growing up.¹¹

Factors that cause children to commit violent crimes include¹² :

1. Internal Factors

a. Emotional Power

An immature child is one who is not yet twenty-one years old and has not yet married, therefore at that age the child does not have the balance to be able to control his emotions or cannot restrain his biological desires, this of course can cause an aberration because the child has not been able to control his emotions.

b. Age

Children as perpetrators who are not yet 18 years old are a very vulnerable period where at this time a child really wants to know everything and in this growth period the attitude and mentality are not stable so that they do bad deeds.

2. External Factors

a. Educational Factors

Education gives an important meaning in a person's life, because the higher the level of education, he will understand the limits that must be made, be responsible and always be creative in daily life.

b. Environmental Factors

¹⁰ Supramono, Gatot. 2000. *Procedural Law of Children's Court*. Jakarta: Djambatan

¹¹ Purnianti, Mamik Sri Supatmi, and Ni Made Martini Tinduk. *Analysis of the situation of the juvenile justice system in Indonesia*. Unicef Indonesia, 2002. thing. 2

¹² Kamilatun, Nisa Fadhilah. "Criminal Sanctions for Children as Perpetrators of Sexual Harassment Crimes". *Fair: Journal of Law Vol. 7 No.2*



The family environment is a place of early education that is accepted, especially for a child, because the child will emulate and imitate the behavior in the family, if there is often violence in the family, it will affect his soul over time. In addition, in the environment where he lives, he often commits criminal acts, but the situation seems as if this is an ordinary thing, an environment that is not such will affect his soul over time.

c. **Liquor and Drugs**

Liquor or drug use, liquor or drugs is one of the causes of criminal acts, at first the perpetrator does not dare to commit a criminal act, but after he drinks liquor or uses drugs, then there is a desire or courage this is because in liquor and drugs there is alcohol and active substances that can affect his soul to commit criminal acts.

d. **Economic Factors**

The poverty factor is the main cause of crime, the main thing is the inadequacy of basic economic needs, so that to suffice the path that can be taken, namely by working anything so that there is no one to supervise the family/children.

e. **Internet Factor**

Internet abuse is something that affects children's mindsets, parental supervision about internet use is still very minimal, because not all parents understand the use of the internet itself. The ease of accessing the internet can be used by children who have deviant behavior to see pornographic content that results in bad things and worse, children can act recklessly by practicing the scenes they see from the pornographic content without thinking long about what the consequences will be in the future

In addition to the above, the factors that cause children to commit sexual violence are:

1. **Religious Factors**

If an obedient person carries out his worship correctly, of course this will be able to fortify him from committing crimes, let alone committing sexual violence, because every religious teaching must teach its adherents not to commit crimes, let alone indulge their lust in terms of committing adultery, therefore the role of religion is very important to provide an understanding to children that behavior that approaches adultery is an act of sin.

2. **Parental Supervision Factors**

Parents are figures who carry responsibility in the lives of their children, especially when their children are still in the early age range. Parents are couples who are responsible for meeting all the needs of their children, both physical and psychological. Physical and psychological health in children will support their various activities and this will have a positive impact on their future preparation.

2. Criminal Liability of Children as Perpetrators of Sexual Violence

Basic application

The application of criminal sanctions against perpetrators of sexual violence is not only against adults, but also applies to children who commit sexual violence crimes. Law No. 12 of 2022 concerning the Crime of Sexual Violence does not clearly regulate the criminal sanctions imposed on children as perpetrators of sexual violence. However, the application of criminal sanctions against children as perpetrators of sexual violence is used in Law Number 35 of 2014 concerning Child Protection to apply criminal sanctions against children who are in conflict with the law.

The reason for using the UUPA in this case is so that the rights of children while undergoing legal proceedings can still be fulfilled and protected. Children in conflict with the law are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing criminal acts.

Children who commit criminal acts of molestation can be held criminally responsible if they have reached the age of 14 (fourteen) years. If at the time of committing the crime the child is over 12 (twelve) years old, but has not reached the age of 14 (fourteen) years, then the criminal threat that can be given to the child is a maximum of 1/2 (half) of the adult prison sentence. However, if the criminal act committed by the child is threatened with the death penalty or life imprisonment, then the penalty imposed is a maximum prison sentence of 10 (ten) years.

In imposing criminal sanctions against children who are in conflict with the law, including children who commit criminal acts of sexual violence, it is mandatory to pay attention to the needs of the child, especially his rights as a child. The Indonesian Constitution, the 1945 Constitution as the highest norm outlines that "every child has the right to survival, growth and development and the right to protection from violence and discrimination". Based on the Convention on the Rights of the Child, children's rights can generally be grouped into 4 (four) categories, including:

1. The Right To Survival, which is the right to preserve and sustain life (The Right of Live) and the right to obtain the highest standard of health and the best care.
2. Protections Rights are rights in the Convention on the Rights of the Child which include the right to protection from discrimination, acts of violence and neglect for children who do not have families for refugee children.
3. The right to growth and development (Development Rights) is the rights of children in the Convention on the Rights of the Child which includes all forms of education (formal and non-formal) and the right to achieve a decent standard of living for the physical, mental, spiritual, moral and social development of children (the rights of standard of living).



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4. Participation Rights, which include the right of a child to express her/his views freely in all matters affecting the child.

Meanwhile, in the Criminal Code (KUHP) it is emphasized that a person can be held accountable for his actions because of the self-awareness of the person concerned and he has also understood that the act is prohibited according to the applicable law¹³. In the case of a criminal act of sexual violence committed by a child, based on Article 82 paragraph (1) of the UUPA, there is no reason to abolish the crime for the child and be able to take responsibility (physically and spiritually healthy). However, it must be considered that a child in conflict with a child is still a "child" by paying attention to the background of the crime and the values of justice, so it can provide sanctions in the form of actions to children who are in conflict with the law. The forms of sanctions given to Children in Conflict with the Law include: (Djamil, 2013)

1. Return to parents/Guardians;
2. Submission to a person;
3. Treatment in a psychiatric hospital;
4. Treatment at LPKS;
5. Obligation to participate in formal education and/or training held by the government or private bodies;
6. Revocation of driver's license; and/or
7. Improvement due to criminal acts.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System basically aims to protect the rights of children who are in conflict with the law. The protection of the rights of children in conflict with the law is a form of implementation of restorative justice which is carried out through diversion efforts for children in conflict with the law. In Article 1 Number 7 of Law No. 11 of 2012, diversion is the transfer of the settlement of children's cases from the criminal justice process to the process outside the criminal court. In the juvenile criminal justice system, diversion must be sought starting from the level of investigation, prosecution and examination of cases in court. The purpose of diversion is enshrined in Article 6 of Law No. 11 of 2012, namely:

1. Achieving peace between victims and children;
2. Resolving children's cases outside the judicial process;
3. Preventing Children from the Deprivation of Independence;
4. Encouraging the community to participate; and
5. Instilling a sense of responsibility in children.

For the implementation of diversion against Children in Conflict with the Law, there are conditions that must be met. This is regulated in Article 7 paragraph (2) of Law

¹³ M. Nasir Djamil, *Children Not for LAW*, (Jakarta: Sinar Grafika, Cet. 2nd, 2013), p. 34.



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No. 11 of 2012, which states that diversion can only be pursued against criminal acts that are threatened with a prison sentence of less than 7 (seven) years and is not a repetition of the criminal act. This condition is cumulative or must be met both, if one of them is not met, diversion cannot be applied. In the case of a criminal act of sexual violence committed by a child who violates Article 76E of Law of the Republic of Indonesia Number 35 of 2014, diversion cannot be sought, because in this case the violator of Article 76 of Law of the Republic of Indonesia Number 35 of 2014 is charged with a maximum prison sentence of 15 (fifteen) years and a maximum fine of Rp 5,000,000,000,- (five billion rupiah) (Article 82 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2014). Therefore, in the case of a criminal act of molestation committed by a child, it cannot give a verdict in the form of diversion, but in the form of sanctions in accordance with Article 82 paragraph (1) of Law No. 11 of 2012.

D. CONCLUSION

Law No. 12 of 2022 concerning the Crime of Sexual Violence is present as a complement to the Indonesian criminal law instrument which is also used to enforce the law against perpetrators of sexual violence. The presence of Law No. 12 of 2022 concerning the Crime of Sexual Violence will erode the challenges of law enforcement against the crime of sexual violence because it accommodates every aspect of overcoming the crime of sexual violence, ranging from prevention, handling, to efforts to recover victims of sexual violence.

Law No. 12 of 2022 concerning the Crime of Sexual Violence does not clearly regulate the criminal sanctions imposed on children as perpetrators of sexual violence. However, the application of criminal sanctions against children as perpetrators of sexual violence is used in Law Number 35 of 2014 concerning Child Protection to apply criminal sanctions against children who are in conflict with the law.

BIBLIOGRAPHY

BOOKS

- Ali, Zainuddin. 2010. *Legal Research Methods*. Jakarta : Sinar Grafika
- Aripurnami, Sita. 2000. *Violence Against Women, Socio-Cultural Aspects and Article 5 of the Women's Convention*. Bandung : Indonesia Publishing House
- Chazawi, Adami. 2007. *Criminal Law Lessons*. Jakarta : PT. King Gradiado
- Hiarijej, Eddy O.S. 2012. *Theory & Law of Proof*. Jakarta : PT. Glora Aksara Pratama
- Moleong, L. 2002. *Qualitative Research Methods*. Bandung: PT Remaja Rosdakarya.
- Mulyadi, Lilik. 2010. *The Face of the Judge's Decision in the Indonesian Criminal Procedure Decision*. Malang : PT. Citra Aditya Bakti

DOI: [10.29103/REUSAM.VXII1](https://doi.org/10.29103/REUSAM.VXII1).

- Prasetyo, Teguh. 2011. *Criminal Law Cet II*. Jakarta : PT. King Grafindo Persada
- Sukardi. 2020. *Restorative Justice in Indonesian Criminal Law Enforcement*. Bekasi: Rajagrafindo Persada
- Syaufi, Ahmad. 2020. *Construction of a Criminal Case Resolution Model Oriented to Restorative Justice*. Yogyakarta : Blue Ocean
- Tency, Maulida H.Syaiful., Elmi, Ibn. 2009. *Sexual Violence and Divorce*. Malang : Intimedia
- Supramono, G. (2000). *Procedural Law of Children's Court*. Jakarta: Djambatan.
- Djamil, M. N. (2013). *Children are not to be punished*. Jakarta: Sinar Grafika.

LAWS & REGULATIONS

- Constitution of the Republic of Indonesia Year 1945
- Criminal Law (KUHP)
- Criminal Procedure Law (KUHP)
- Law Number 12 of 2022 concerning the Crime of Sexual Violence
- Law No. 13 of 2006 concerning the Protection of Witnesses and Victims
- Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.
- Law No. 11 of 2012 concerning the Juvenile Criminal Justice System
- Government Regulation Number 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children

JOURNALS and INTERNET

- Annisa, F. (2016). Law enforcement against children who commit criminal acts of fornication. *ADIL: Law Journal Vol. 7 No.2, 4*.
- Kamilatun, N. F. (2021). Criminal witnesses against children as perpetrators of sexual abuse. *jurnal.umko.ac.id, 3*.
- Lewokeda, Kornelia Melansari D. "CRIMINAL LIABILITY FOR CRIMINAL ACTS RELATED TO THE GRANTING OF DELEGATION OF AUTHORITY". *Pulpit of Justice, Volume 14 Number 28 August 2018, January 2019*.
- Fadlian, Aryo. "CRIMINAL LIABILITY IN A THEORETICAL FRAMEWORK", *Positum Law Journal Vol.5, No.2, Dec 2020*.
- Muhammad, Hasanuddin. "JURIDICAL IMPLICATIONS OF REGULATING THE RIGHTS OF VICTIMS OF SEXUAL VIOLENCE IN LAW NUMBER 12 OF 2022



DOI: [10.29103/REUSAM.VXII1](https://doi.org/10.29103/REUSAM.VXII1).

CONCERNING SEXUAL VIOLENCE CRIMES". *Surya Kencana Dua Journal: Dynamics of Legal and Justice Issues Vol.9 Number 1 July 2022*.

Mahabbati, Suci., Sari, Isna Kartika. "Comparative Analysis of Rules for the Elimination and Prevention of Sexual Violence According to the Criminal Code and the Bill on the Elimination of Sexual Violence" *Islamic Journal: Journal of Islamic Sciences, Vol. 19, No. 1, July 2019*.

Indriyani, Asit Defi. "RESTORATIVE JUSTICE APPROACH IN PROTECTING VICTIMS OF SEXUAL VIOLENCE". *IJouGS: Indonesian Journal of Gender Studies, Vol 2, No 2 (2021)*.

Safitri, Siti Shalima., Ardiansah, Mohammad Didi., Prasetyo, Andrian. "Quo Vadis Restorative Justice in the Case of Sexual Violence Crimes After Law Number 12 of 2022 concerning Sexual Violence Crimes". *Journal of Law and Human Rights Wara Sains Vol. 2, No. 01, January*.

Nuralifia, Nadia., Azahra, Dwini Pradifta., Pramana, Abie., Syifa, Salsabila Nurul. "Legal protection of victims of sexual violence is linked to the settlement of restorative justice". *Cross-border, Vol. 5, No. 2, July-December 2022*.

Risal, M. Chaerul. "Legal Protection for Victims of Sexual Violence After the Ratification of the Law on Sexual Violence: Implementation and Effectiveness". *Al Daulah Journal of Criminal Law and Constitutional Law Vol 11 no. 1 (2022)*.

Kupipedia. 2021. "The Legal System Related to Sexual Violence in Indonesia and the Legal Reform Needed"
https://kupipedia.id/index.php/Sistem_Hukum_Terkait_Kekerasan_Seksual_Di_Indonesia_Dan_Reformasi_Hukum_Yang_Dibutuhkan

Info-Hukum.Com. 2019. Criminal Liability Theory"
<https://info-hukum.com/2019/04/20/teori-pertanggungjawaban-pidana/>

Central Statistics Agency. 2017. "One in Three Women Aged 15–64 Years Have Experienced Physical and/or Sexual Violence During Their Lifetime"
<https://www.bps.go.id/pressrelease/2017/03/30/1375/satu-dari-tiga-perempuan-usia-15---64-tahun-pernah-mengalami-kekerasan-fisik-dan-atau-seksual-selama-hidupnya.html>.

Media Indonesia. 2022. "Deputy Minister of Law and Human Rights: Sexual Violence Must Not Use Restorative Justice"
<https://mediaindonesia.com/politik-dan-hukum/473183/wamenkumham-kekerasan-seksual-tidak-boleh-gunakan-restorative-justice>

Vice Media Group. 2022. "Wrong Interpretation of Restorative Justice Makes Victims of Sexual Violence Married to Perpetrators"
<https://www.vice.com/id/article/m7gkdp/polisi-indonesia-sering-nikahkan-korban-kekerasan-seksual-dengan-pelaku-akibat-salah-tafsir-keadilan-restoratif>