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Double Track System for Child Convictions for Sexual Violence In North Sumatera: Perspective of Restorative Justice

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Abstract: Such rapid advances in technology are the cause of criminal acts of sexual violence committed by children. So far, sanctions against perpetrators of criminal acts of violence against children have been carried out by children under 12 years of age by returning them to their parents, guardians and adoptive parents. This research was conducted with the aim of knowing the forms of criminal acts of sexual violence and their handling, sanctions and criminal action (Double Track System) for the Development and Education of Criminal Sexual Violence (COSV) against Children in North Sumatra. This research uses empirical legal methods analyzed with the theory of restorative justice. Data was collected by means of in-depth interviews and documentation. The informants interviewed were academics, legal activists and community leaders. Documents refer to relevant journal articles, books and references. The results of the research show that the application of punishment to minors, especially children under 12 years of age who commit criminal acts of sexual violence, receives very serious attention considering that sexual violence has a psychological impact on the victims. Criminal sanctions and providing action in the form of guidance and education for perpetrators of sexual violence, implementing regulations are very necessary as guidelines for judges in handing down decisions as regulated in Law Number 11 of 2012. According to the theory of restorative justice, children who commit sexual violence must be resolved in a dignified manner with guidance and education, so that children's rights are not neglected.

Keywords: Sexual violence, criminal sanctions, convicted children, guidance and education, restorative justice

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Abstrak: Kemajuan teknologi yang sedemikian pesat menjadi penyebab terjadinya tindak pidana kekerasan seksual yang dilakukan oleh anak. Selama ini sanksi terhadap pelaku tindak pidana kekerasan terhadap anak dilakukan oleh anak yang berusia di bawah 12 tahun dengan mengembalikannya kepada orang tua, wali, dan orang tua angkatnya. Penelitian ini dilakukan bertujuan untuk mengetahui bentuk-bentuk tindak pidana kekerasan seksual dan penanganannya, sanksi dan penindakan pidana (Double Track System) untuk Pembinaan dan Edukasi Pelaku Pidana Kekerasan Seksual (COSV) pada Anak di Sumatera Utara. Penelitian tersebut menggunakan adalah metode hukum empiris dianalisis dengan teori restoratif justice. Data dikumpulkan dengan cara wawancara mendalam dan dokumentasi. Informan yang diwawancarai adalah, akademisi, aktivis hukum dan tokoh masyarakat. Dokumen merujuk pada artikel jurnal, buku dan referensi yang relevan. Hasil penelitian menunjukkan bahwa penerapan pemidanaan terhadap anak di bawah umur, khususnya anak di bawah 12 tahun yang melakukan tindak pidana kekerasan seksual, mendapat perhatian yang sangat serius mengingat kekerasan seksual memberikan dampak psikologis bagi korbannya. Sanksi pidana dan memberikan tindakan berupa pembinaan dan pendidikan bagi pelaku kekerasan seksual, peraturan pelaksanaannya sangat diperlukan sebagai pedoman bagi hakim dalam menjatuhkan putusan sebagaimana diatur dalam Undang-Undang Nomor 11 Tahun 2012. Menurut teori restoratif justice bahwa anak-anak yang melakukan kekerasan seksual harus diselesaikan secara bermartabat dengan pembinaan dan pendidikan, sehingga hak-hak anak tidak terabaikan.

Kata Kunci: Kekerasan seksual, sanksi pidana, anak terpidana, pembinaan dan pendidikan, restorative justice

Intruduction

Violence against children is a quite worrying problem currently in Indonesia. Various efforts have been made to take legal steps in an effort to protect the rights and provide justice for children, both by the government and by the community.¹ So far, children who commit criminal offenses are processed legally like perpetrators of other criminal offenses, for example given sanctions and imprisoned. Then based on Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (*Undang-Undang Sistem Peradilan Pidadna Anak/UUSPPA* 2012), children who commit criminal offenses undergo a

¹ Wikan Sinartio Aji, "The Implementation of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia," *JILS (Journal of Indonesian Legal Studies)* 4, No. 1 (2019), p. 73-88. Ida Bruheim Jensen, et.al., "Child Protection Social Workers' Constructions of Children and Childhood: An integrative Review," *Child & Family Social Work* 25, No. 1 (2019). Sriwiyanti Sriwiyanti, et.al., "Restorative Justice for Juvenile Offenders in Indonesia: A Study of Psychological Perspective and Islamic Law," *Journal of Islamic Law* 2, No. 1 (2021).

guidance process using restorative justice, and are not processed legally or imprisoned as they have been up to now.²

Several factors that cause children to become delinquent so they face the law include a lack of attention from parents, circumstances that require children to meet life's needs, and children who are searching for their identity.³ Cases involving children as perpetrators of criminal acts certainly have different motives from adult criminals, the child's behavior is influenced by unstable emotions in mental and physical development. Children as convicts are sentenced to punishment not to be punished but to be fostered in correctional institutions, but children who are sentenced to punishment need to receive special treatment while serving their sentence.⁴

Philosophically, there is a difference between the juvenile criminal justice system and the adult criminal justice system in accordance with Pasal 28 B in the 1945 Constitution. In ayat (2) of pasal 28 B it is stated that every child has the right to survival, growth and development and has the right to for protection from violence and discrimination. The existence of Juvenile criminal justice system law is one embodiment of the legal ideals of the Indonesian nation to protect children from violence and discrimination that is vulnerable to them if children face court. This is proven by the prioritization of case resolution through a Restorative Justice approach. In the juvenile criminal justice system, the methods that are often attempted are methods that are included in efforts to enforce the restorative justice approach in Indonesia. In the Juvenile criminal justice system Law, it is stated that restorative justice is the resolution of criminal acts by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a just solution by emphasizing restoration back to the original condition and not retaliation. What needs to be seen in restorative justice is prioritizing restoration or restoration to its original state, with the hope of maintaining security and order in the long term. The emphasis on the use of restorative justice in the juvenile criminal justice system is clearly visible in

² Rizanizarli Rizanizarli, et. al., "The Application of Restorative Justice for Children as Criminal Offenders in the Perspective of National Law and Qanun Jināyat," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, No. 1 (2023). Mahfud Jufri, et.al., "Restorative Justice: An Alternative Process for Solving Juvenile Crimes in Indonesia," *Brawijaya Law Journal: Journal of Legal Studies* 6, No. 2 (2019). Ariefulloh Ariefulloh, et.al., "Restorative Justice-Based Criminal Case Resolution in Salatiga, Indonesia: Islamic Law Perspective and Legal Objectives," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 23, No. 1 (2023). Sumardi, D., Mansari, M., & Albaba, M. F. Restoratif Justice, Diversi dan Peradilan Anak Pasca Putusan Mahkamah Konstitusi Nomor 110/Puu-X/2012. *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum*, Vol. 11 No.2 (2022). <https://doi.org/10.22373/legitimasi.v11i2.16010>

³ A A Ngurah Bagus Pradhana Ningrat, "Proses Hukum Terhadap Anak Yang Melakukan Tindak Pidana Kekerasan," *Jurnal Kertha Negara* 9 No. 7 (2021), p. 511-519

⁴ Dearma Agustina, et.al., "Pidana Penjara Dan Pelatihan Kerja Terhadap Anak Yang Melakukan Tindak Pidana Kekerasan Dalam Persetubuhan (Studi Putusan Nomor 78/Pid.Sus-Anak/2019/Pn LBP)," *Jurnal Ilmiah Metadata* 4 No.2 (2022), p. 125-144.

Article 5 of the juvenile criminal justice system (JCJS) Law.⁵ Meanwhile, the actions of child perpetrators who commit criminal acts of sexual violence have a negative impact on the victim. Therefore, services and treatment for victims and punishment and action against perpetrators need to be carried out.⁶

The application of punishment to minors, especially those under 12 years of age who commit criminal acts of sexual violence, receives very serious attention considering that sexual violence has serious impacts on victims which cause various negative impacts, including: physiological disorders in the form of suffering from physical injuries, contracting diseases. sexual, sleeping and eating disorders, causing unwanted pregnancies, etc., emotional disorders in the form of self-blame, feelings of shame, denial, etc. and psychological disorders in the form of depression which can lead to suicide by victims of sexual violence.⁷ Law enforcers in processing and making decisions must be absolutely sure that the decision taken will be a strong basis for returning and managing children towards a good future to develop themselves as citizens who are responsible for the life of the nation by providing punishment and mental rehabilitation for children who suffer. committing sexual violence. Remembering that providing rehabilitation and punishment to children is one of the efforts made by the government to make them better human beings in the future.⁸

Bearing in mind that up to now the sanctions against perpetrators of criminal acts of violence against children have been committed by children under the age of 12 by returning them to their parents, guardians and foster parents. For this reason, in the future this will not be the case as regulated in Law Number 3 of 2007 regarding juvenile justice, it can be implemented by handing it over to

⁵ Donna Exsanti Charinda, "Penerapan Double Track System Pada Pemidanaan Anak Pelaku Tindak Pidana. Studi Di Pengadilan Negeri Tanjung Karang Kelas IA), Tesis. Program Studi Magister Ilmu Hukum Fakultas Hukum Universitas Lampung Bandar Lampung, 2022.

⁶ Luciana C Assini-Meytin, et. al., "Child Sexual Abuse: The Need for a Perpetration Prevention Focus. *J Child Sex Abus*, 29, No. 1 (2020), p. 22-40. Tone Hee Åker and Miriam S. Johnson, "Sexual Abuse and Violence Against People With Intellectual Disability and Physical Impairments: Characteristics of Police-Investigated Cases In A Norwegian National Sample," *Journal of Applied Research in Intellectual Disabilities* 33, No. 2 (2019).

⁷ Dania Saferina Ifada, "Problematika Penanganan Kasus Kekerasan Seksual Terhadap Perempuan Perspektif Maqasid Asy-Syariah di Kepolisian Resor Demak," *Yudisia: Jurnal Pemikiran Hukum Dan Hukum Islam* 14, No. 1, (2023). Danial Danial, "Sexual Violence in the Islamic Law Perspective: Aceh Islamic Law and Local Wisdom Approach," *Ulumuna: Journal of Islamic Studies* 27, No. 1 (2023). Nasution, R. P. The Pattern of Legal Aid Institutions Towards Protection for Victims of Sexual Violence in Medan City. *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum*, Vol. 12 No. 2, (2023). <https://doi.org/10.22373/legitimasi.v12i2.20010>.

⁸ Titiek Nuryati, Kebijakan Hukum Pidana Terhadap Tindakan Rehabilitasi Anak Sebagai Pelaku Tindak Pidana Kekerasan Seksual (Studi Kasus Perkara Nomor: 04/Pid.Sus-anak/2021/PN. CLP). Program Magister Ilmu Hukum Fakultas Hukum Universitas Islam Sultan Agung Semarang, 2023. Zulfikri Zulfikri, Dahlan Ali, Syarifuddin Hasyim, Penyelesaian Tindak Pidana Persetubuhan yang Dilakukan oleh Anak Terhadap Anak: Studi di Pengadilan Negeri Takengon, *Media Syari'ah: Wahana Kajian Hukum Islam dan Pranata Sosial*, Vol 21 No 1 (2019), p. 107.

the Ministry of Social Affairs, or social organizations that are engaged in education, coaching and work training in the rehabilitation of the character of children and their education.

This research uses empirical legal methods analyzed with the theory of restorative justice.⁹ Data was collected by means of in-depth interviews and documentation. The informants interviewed were academics, legal activists and community leaders. The data collection technique is documentation in the form of laws, legal regulations, journal articles and books related to the discussion. After the data is collected, it is then analyzed using restorative justice theory. Restorative justice is the process of resolving legal violations that have occurred by bringing the victim and perpetrator (suspect) together to sit in one meeting to talk together.¹⁰

Forms of Criminal Acts of Sexual Violence and Their Handling in North Sumatera

Based on data, North Sumatera Province is said to be the third largest province in Indonesia. Data from the Indonesian Heritage Foundation (IHF) recorded that 193 children in North Sumatera (North Sumatera) were victims of violence throughout 2014. Most of this number were victims of sexual violence, namely molestation and rape. IHF Children's and Women's Division Coordinator, Mitra Lubis, explained that of the 193 children who were victims, 93 of them were victims of sexual abuse. Then, 48 children were victims of abuse, 14 children raped, 15 children murdered, and three children neglected.¹¹ "On average, every month around 16 children become victims of violence. In 2019 there were 216 cases of sexual violence, in 2020 this rose to 1,013 cases. and in 2021 until December the number was 953. Individuals who are victims of sexual harassment will experience sensitive things and negative reactions such as shame, anger, hatred, offense towards the perpetrator of the crime. Conditions like this are called sexual violence harassment.¹² Be it women in North Sumatera vary, such as: pedophilia, sexual abuse, rape and sexual violence

Obscene acts are acts in the sexual field, with the aim of obtaining pleasure that is contrary to public opinion. According to The National Center on Child

⁹ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, 2014), p. 133-136.

¹⁰ Marlina, *Peradilan Pidana Anak di Indonesia: Pengembangan Konsep Diversi dan Restorative Justice*, (Bandung: Refika Aditama, 2009), p. 37 Rinaldy Amrullah, et.al., "Restorative Justice as an Effort to Resolve Excise Crimes Against Cigarettes," *al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 22, No. 2 (2022).

¹¹ Interview with Mitra Lubis, Children's and Women's Division Coordinator, Medan, Juny, 2023.

¹² Ulfa Fajarini and Nurul Handayani, "Human Geografi dan Pelecehan Seksual Terhadap Perempuan di Perguruan Tinggi Keagamaan Islam Negeri," *Jurnal Harkat: Media Komunikasi Gender*, 17, No. 1 (2021).

Abuse and Neglect United State, obscene acts are "contact between a child and an adult in which the child is used for sexual stimulation by the perpetrator who is in a position to have power or control over the victim". This includes inappropriate physical contact, exposing a child to sexual acts or pornography, using a child to produce pornography or exposing an adult's genitals to a child. According to the definition in the book *Sex Crimes and Medicolegal Aspects of Psychosexual Disorders*, sexual immorality is all activities carried out to obtain sexual pleasure while disturbing the honor of morality adults, teenagers, or children, they can be perpetrators of sexual harassment. Various social media such as cellphones, laptops, television, and the internet, etc., which extend to all corners of the country and are easily accessed by anyone, can be used as sources. information from this immoral activity. The negative information obtained from social media provides encouragement and curiosity to learn and even practice it without considering the risks.¹³ Several forms of sexual crimes that befall girls in North Sumatra vary, such as: pedophilia, obscenity, rape and sexual violence.

Rape can be said to be an immoral crime, very heinous, despicable and violates norms, the victims of which are generally women, both adults and minors.¹⁴ This impact is detrimental for women so that their self-esteem and honor become tarnished.¹⁵ Fear, anxiety and insecurity arise in women due to the crime of rape which often occurs in the reality of everyday life. This is reinforced by the position of victims who are often helpless in the criminal justice process, because the victim does not receive strong defense by law enforcement. The presence of victims is an indication that the existing social order has been disturbed. It is not only adult women who are victims of the crime of rape, but the crime of rape itself can now happen to young girls, who still do not know what sexual relations are. Even regardless of age or place, the crime of rape can be committed. Thus, even public places can now also be dangerous for women who are always victims of rape. Rape is not only seen as a crime that is only a private matter, but also as a public problem because it is clearly an immoral and heinous activity. Apart from being a human rights violation, it also causes physical, social and psychological suffering for women.¹⁶ Rape activities and their handling so far have been an

¹³ Sri Kurnianingsih, "Pelecehan Seksual Terhadap Perempuan di Tempat Kerja," *Buletin Psikologi* XI, No. 2. (2003). Citra Dewi Keumala, et.al., "Testimonium De Auditu in The Case Rape of Childrens," *Syariah: Jurnal Hukum dan Pemikiran* 22, No. 2 (2022).

¹⁴ P. A. F Lamintang, *Dasar-dasar Hukum Pidana Indonesia*, Bandung: Citra Aditya, 1997.

¹⁵ Zuleha, "Perlindungan Hukum Terhadap Anak Korban Pemerkosaan Dalam Perspektif Viktimologi," *Jurnal Hukum Samudra Keadilan* 10, No. 1 (2015).

¹⁶ Zainal Muttaqin, "Formalization of Islamic Law in Indonesia in the Framework of Social Engineering Theory by Roscoe Pound," *El-Mashlahah* 11, No. 2 (2021). Muhamad Harun, et.al., "The Ideal Legal Protection of The Child Labor Rights In Indonesia: The Dimensions of Maqāsid Al-Sharī'ah and The Welfare State," *Juris (Jurnal Ilmiah Syari'ah)* 23, No. 1 (2024).

indication and evidence of weak protection of human rights, especially women from acts of sexual violence which are classified as the heaviest violence.

The United State Convention has stated that the protection of women extends to domestic affairs, not limited to women's rights outside the home or the public sector. This is used as a benchmark for increasing concern for human rights, especially women, even though our Criminal Law Code (*Kitab Hukum Undang-Undang Pidana/KUHP*) does not yet regulate rape by husbands against wives. Rape is placed as an example of a criminal act that violates women's human rights because it positions superiority discrimination against women. From year to year, rape crimes are increasing sharply. Thus, criminal acts are not something new but are conventional criminal acts that often occur in society. There is an impression that the perpetrator of the crime of rape is not deterred or is not at all afraid of the sanctions that will be received as stated in pasal 285 of KUHP: "Whoever, by force and threat of violence, forces a woman to have sexual intercourse with him outside of marriage, he will be threatened for doing so. rape with a maximum prison sentence of twelve years."¹⁷

Sexual violence is a form of sexual threats and coercion. Thus, sexual violence is sexual contact that is unwanted by one of the parties. Threats (verbal) and "coercion" (actions) are at the core of sexual violence. In the KUHP the definition of sexual violence can be found in articles 285 and 289. In article 285 it is stated that "whoever, by force or threat of violence, forces a woman who is not his wife to have sexual intercourse (sexual intercourse), punished, for raping, with a prison sentence of 12 years." Meanwhile, pasal 289 (KUHP) states "whoever, by force or threat of violence, forces someone to commit or allows him to commit an obscene act, shall be punished for destroying modesty with a maximum prison sentence. long-term damage to modesty with a maximum prison sentence of nine years."¹⁸ Sexual violence that occurs results in suffering for the victim so that it has serious consequences and requires attention.¹⁹

Sexual violence against children is the involvement of children in sexual activities, where the children themselves do not fully understand, or are unable to give consent. These activities are intended to provide satisfaction for the person. Sexual exploitation in prostitution or pornography, forcing children to watch sexual activities, exposing children's genitals for the purpose of other people's

¹⁷ Iwan Setiawan. Tindak Pidana Perkosaan Dalam Tinjauan Hukum Pidana Indonesia," *Jurnal Ilmiah: Galuh Justisi* 6 No. 2 (2018). Muzakkir Muzakkir, "Dawn of Justice: Evaluating the Alignment of Women and Children in Aceh's Qanun Jinayat," *Ahkam* 32, No. 2 (2022). Ismail Rumadan and Ummu Salamah, "Settlement of Divorce Dispute Through The Forum of Mediation In Judicial Institutions As An Effort of Legal Protection For The Rights And Interests of The Child of Post-Divorce," *Syariah: Jurnal Hukum dan Pemikiran* 21, No. 1 (2021).

¹⁸ Ismantoro Dwi Yuwono, *Kekerasan Seksual terhadap Anak*, (Yogyakarta: Pustaka Yustisia, 2020), p. 1

¹⁹ Wahid and Muhammad Irfan, *Perlindungan Terhadap Korban Kekerasan Seksual: Advokasi Atas Hak Asasi Perempuan*, Bandung: Refika Aditama, 2007, p. 4.

genitals, sexual relations, rape, sexual relations carried out by people who are related by blood (incest) and sodomy are forms of sexual violence.²⁰ Sexual violence against children does not only involve sexual relations, but also the actions below also includes sexual violence against children: “(a). Touching a child's body sexually, either whether the child is wearing clothes or not; (b). All forms of sexual penetration, including penetration of a child's mouth using objects or body parts; (c). Making/forcing children to engage in sexual activities in front of children, or not protecting and preventing children from witnessing sexual activities carried out by other people; and D). Creating, distributing and displaying images or films containing scenes of children in indecent poses or acts.” Based on Article 4 paragraph (1), Law no. 12 of 2022 concerning Crime of sexual violence, the crime of sexual violence consists of: (a). non-physical sexual harassment; (b). physical sexual harassment; (c) forced contraception; (d). forced sterilization; (e). forced marriage; (f). sexual torture; (g). sexual exploitation; (h). sexual slavery; and (i). electronic-based sexual violence. Furthermore, paragraph (2) states that Crime of sexual violence also includes: (a). rape; (b). obscene acts; (c). sexual intercourse with children, obscene acts against children, and/or sexual exploitation of children; (d). acts which violate morality. which is against the will of the victim; (e). pornography involving children or pornography which explicitly contains violence and sexual exploitation; (f). forced prostitution; (g). criminal act of trafficking in persons aimed at sexual exploitation; (h). sexual violence within the domestic sphere; (i). the crime of money laundering, the original crime of which is a Crime of Sexual Violence; and (j). other crimes which are expressly stated as Crimes of Sexual Violence as regulated in the provisions of the laws and regulations.

The current situation is that sexual violence against children is still common and must be stopped immediately, and children who are victims of sexual violence must also be protected. Most families whose children are victims of sexual violence hide this problem because they consider that this is a family disgrace, so that no further action is taken to deal with the child's sexual problems, which results in the child becoming worse off.²¹ Therefore, children who violate the law by committing criminal acts of violence in this case are handled based on Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, the judicial

²⁰ Depkes RI, *Pedoman Rujukan Kasus Kekerasan terhadap Anak Bagi Petugas Kesehatan*, (Jakarta: Departemen Kesehatan Republik Indonesia, 2007) , p. 78. Satria Juanda, et.al., “The P2TP2A’s Effort to Cope with the Intensification of Sexual Abuse of Children in Perspective of the Islamic Family Law (A Case Study at the City of Banda Aceh),” *El-Usrah: Jurnal Hukum Keluarga* 6, No. 1 (2023).

²¹ Arini Fauziah Al Haq, et.al., “Kekerasan Seksual Pada Anak di Indonesia,” *Jurnal Hukum* 2 No.1 (2015), p. 32-33. Tateki Yoga Tursilarini, et. al., “Examining Child Victims of Incest in Indonesia: Between the Legal System and Family Dysfunction,” *Juris (Jurnal Ilmiah Syari’ah)* 23, No. 1 (2024).

procedure begins with an investigation procedure and the child receives protection when handled.²²

Child protection is all efforts made to create conditions so that everyone.²³ Children can carry out their rights and obligations for the sake of the child's development and growth naturally, both physically, mentally and socially. Child protection is an embodiment of justice in a society. In this way, child protection is sought in various areas of state and social life. Child protection activities have legal consequences, both in relation to written and unwritten laws. The law is a guarantee for child protection. Child protection is "an effort that creates conditions where every child can carry out their rights and obligations. "Child protection is an embodiment of justice in a society." Thus, child protection must be pursued in various areas of state and social life. "Therefore, child protection is more focused on various aspects, namely aspects of child protection law, the scope of child.²⁴ Advocacy and child protection law where children's rights are regulated in law and not obligations, considering that legal (juridical) provisions for children are not yet burdened with obligations."

Criminal Sanctions and Actions Guidance and Education for Perpetrators of Criminal Sexual Violence on Children

Currently, cases of sexual violence against children are increasing from time to time, threatening the future of the nation. Therefore, the state needs to increase the severity of criminal sanctions by taking firm action against child perpetrators who commit acts of sexual violence against children, so that criminal sanctions and providing additional punishment in the form of action for child perpetrators who commit crimes of sexual violence will be effective in providing a deterrent effect. and preventing crimes in the future, namely by providing measures in the form of rehabilitation^{25, 26}. Referring to the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which were adopted by the United States General Assembly, it is stated that the form of handling recovery and handling of

²² Arief Gosita, *Masalah Korban Kejahatan*, Jakarta: Akademika Pressindo, 2013.

²³ Shanty Dellyana. *Wanita dan Anak Di Mata Hukum*, Yogyakarta: Liberty, 1988, p. 18-19. Rofdah Alifiyah and Isa Anshori, "Legal Protection for Children in Cases of Domestic Violence in the Indonesian Households," *El-Usrah: Jurnal Hukum Keluarga* 6, No. 2 (2023).

²⁴ Maulana Hassan Madong, *Pengantar Advokasi dan Hukum Perlindungan Anak*, Jakarta: Gramedia Widiasarana 2020, p. 41. Ibnu Elmi AS Pelu, et.al., "Polygamy Law Reform Through the Development of the Aceh Qanun: A New Approach to Protecting the Rights of Women and Children in Indonesia," *El-Mashlahah* 14, No. 1 (2024).

²⁵ Henny Yuningsih, et.al. "Ratio Legis of Chemical Castration to the Perpetrators of Sexual Violence against Children," *Sriwijaya Law Review* 4 No. 2, (2020).

²⁶ Afandi and Umar Ma'ruf, "The Criminal Sanctions Implementation of Personnel Sexual Violence on Under Age's Children (Minors)," *Jurnal Daulat Hukum* 4, No. 1 (2021).

sexual violence. including (1) Restitution, re-establishing as far as possible the situation that existed for the victim before the violation of human rights occurred and requiring restoration (2). Compensation will be provided for any damage whose economic value can be estimated arising from violations of human rights, such as: physical and mental damage, pain, suffering and mental stress, lost opportunities including education, medical costs and rehabilitation costs; (3). Rehabilitation, providing legal services, psychology, medical care, and other services or treatment as well as actions to restore the victim's dignity and reputation and (4). Guarantee of satisfaction and non-recurrence of violations that befell him ".²⁷

With regard to children who commit criminal acts, the sanctions provided in Law no. 3 of 1997 concerning "Children's Courts are in the form of Strafssoort, strafmaat, strafmodus". With regard to strafshoort (types of sanctions), it has been explicitly regulated in ayat 22 which is then elaborated in ayat 23 (concerning Criminal Sanctions) and pasal 24 (concerning Action Sanctions) of Law No. 3 of 1997 concerning Juvenile Courts. Furthermore, related to sanctions for naughty children in the form of criminal sanctions, consisting of basic penalties and additional penalties. For basic crimes, there are 4 (four) types as stipulated in pasal 23 ayat (2), namely: (1). imprisonment, (2). imprisonment, (3). criminal fines and (4). criminal supervision. Meanwhile, regarding additional penalties based on pasal 23 ayat (2) there are two types, namely: (1). confiscation of certain items and (2). compensation payment. Temporary sanctions Action. which is formulated in pasal 24 ayat (1) of the Juvenile Court Law, namely: (1). return to parents, guardians, or foster parents; (2). hand over to the state to participate in education, coaching and job training; (3). hand it over to the Department of Social Affairs or Community Social Organizations which operate in the fields of education, development and job training. Based on Law no. 11 of 2012, the resolution of criminal cases involving children who commit violence can be done in 2 (two) ways, namely through litigation or trial and also through diversion or mediation. which is useful for providing opportunities for children to develop themselves.²⁸

Furthermore, in Law no. 11 of 2012 has also formulated the threat of sanctions for children who are in conflict with the law, as formulated in Chapter V concerning Crimes (pasal 71) and Actions (pasal 82). In detail, it is formulated

²⁷ Utami Zahirah, et.al., "Dampak Dan Penanganan Kekerasan Seksual Anak Di Keluarga," *Prosiding Penelitian & Pengabdian Kepada Masyarakat* 6, No. 1 (2019). Firdaus Firdaus, et. al., "Post-Divorce Child's Nafaqah Mādiyah: An Analysis of the Shifting from Fulfilment to the Assertion of Ownership Rights," *Ahkam* 33, 1 (2023). Alfian Qodri Azizi, et. al., "Fulfillment of Civil Rights of Extramarital Children and Its Effect on Social Dimensions," *Al-Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, No. 2 (2020).

²⁸ Made Sukereni, "Settlement of Criminal Cases of Children as Perpetrators of Sexual Harassment Based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System," *Law Doctoral Community Service Journal* 1, No. 1 (2022), p. 28-35.

that the punishment imposed on children is in the form of: (1). Basic punishment for children, (2). Additional penalties, (3). If in material law a cumulative penalty is threatened in the form of imprisonment and a fine, the fine is replaced with job training, (4). Criminal penalties imposed on children are prohibited from violating the child's honor and dignity, (5). Further provisions regarding the form and procedures for carrying out criminal penalties as referred to in ayat (1), paragraph (2) and paragraph (3) are regulated by Government Regulations. Meanwhile, the sanctions that can be imposed are: (1). Actions that can be imposed on children, (2). The actions as intended in paragraph (1) letters d, e and f are subject to a maximum period of 1 (one) year. (3) The actions as intended in paragraph (1) can be submitted by the Public Prosecutor in his prosecution, unless the criminal act is threatened with imprisonment for a minimum of 7 (seven) years. (4). Further provisions regarding the actions as intended in paragraph (1) are regulated by Government Regulations." Meanwhile, in pasal 9 of the Law of the Republic of Indonesia Number 11 of 2012, it is also stated that in efforts to legally protect children who commit violence, diversion mediation can be carried out, although it must obtain the consent of the victim and/or the victim's child's family as well as the willingness of the child and his family. Furthermore, pasal 13 also explains that the juvenile criminal justice process will continue if the diversion process does not produce an agreement or the diversion agreement is not implemented. Thus, it can be said that diversion mediation does not support or prioritize the interests of victims and provides a deterrent effect on children as perpetrators. It is said that diversion efforts will be carried out if the sentence is under 7 years, even though there is an article that provides for a sentence of under 7 years.²⁹

The matters described above show that positive law concerns Juvenile Criminal Law which has adopted the Double Track System idea. Double track system is a term that indicates that in criminal law, the sanction system does not only include punishment (straf/punishment) which is of a suffering nature, but also actions (maatregel/treatment) which are relatively more educational in nature. In other words, there is a tendency to use a "double track system" in the sanctions system. The double track system regarding sanctions systems means that there is a strict separation between criminal sanctions and action sanctions, both of which have equal status³⁰. However, in reality, in the implementation of crimes against perpetrators of sexual violence, it is more directed towards the

²⁹ Andre Prakoso and Adianto Mardijono, "Legal Analysis of Diversion Efforts on Criminal Acts of Sexual Violence by Children as Perpetrators," *Journal of Social Science* 4, No. 5 (2023). Zulfia Hanum Alfi Syahr, "The Role of Indigenous Peoples, Social Workers, and the Syar'iyah Court in Diversion of Children Perpetrators of Jinayah," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, No. 1, (2023), p. 113–124.

³⁰ Nashriana, "Penganutan Asas Sistem Dua Jalur (Double Track System) Dalam Melindungi Anak Yang Berkonflik Dengan Hukum: Tinjauan Formulasi Dan Aplikasinya," *Nurani: Jurnal Kajian Syari'ah dan Masyarakat* 15, No. 1 (2015), p. 51-72

juvenile criminal justice system, the methods that are often attempted are methods that are included in efforts to enforce the restorative justice approach in Indonesia. In the UU-SPPA, it is stated that restorative justice is the resolution of criminal acts by involving the perpetrator, victim, perpetrator/victim's family by optimizing the restorative justice process, because this method provides a safe solution in realizing this.³¹

Providing adequate punishment to children who commit crimes of sexual violence has so far not followed as formulated in pasal 24 ayat (1) of the Juvenile Justice Law, namely: "(1) returning them to their parents, guardians or foster parents; (2) hand over to the state to participate in education, coaching and job training; and (3) hand it over to the Ministry of Social Affairs or Community Social Organizations which are active in the field of education, coaching and work training, which should provide confirmation of coaching and education and work training, even parents who are responsible for this child also need to be educated considering that people Parents play a role as educators in the informal education given to children." Through this informal education, children begin to receive education at home, so the role of parents in educating children is very important, because parents are the main responsible for children's education³². The role of parents in providing care and education to children has four principles, namely as follows: "(1). Modeling, parents are the first models or examples for children. Children will imitate every action of their parents and create a pattern for their lives. (2). Mentoring, parents become mentors and children become mentees. So parents will mentor their children with the aim of passing on their knowledge and skills to the children. (3). Organizing, a process for organizing activities systematically and aims to divide, build good relationships, coordinate various tasks, and establish limits of authority. (4). "Teaching, which means teaching, is an activity to guide children to gain and improve their knowledge, skills, attitudes and ideals."³³

However, in reality, because these principles are not implemented by parents to fight sexual violence against young children and collaborate between mothers and fathers and related parties, children are vulnerable to committing criminal acts of sexual violence. Thus, rehabilitation needs to be carried out not only for children who commit crimes of sexual violence, but also for their parents as the parties responsible, considering that the parents of these perpetrators are

³¹ Courtney Julia Burns and Laura Sinko, "Restorative Justice for Survivors of Sexual Violence Experienced in Adulthood: A Scoping Review," *Sage Journal* 24, No. 2 (2021).

³² Hanita and Ayu Memelina, "Peran Orang Tua Dalam Memanfaatkan Bahan Alam Sebagai Media Pembelajaran Di Rumah Pada Anak Usia Dini," *JECIE (Journal of Early Childhood and Inclusive Education)* 4, No. 2 (2021). p. 43-50.

³³ Hayani Wulandari and Nurwaci, "Peran Orang Tua Dalam Melawan Tindak Kekerasan Seksual Terhadap AUD ECIE," (*Journal of Early Childhood and Inclusive Education*) 6, No. 2 (2023), p. 181-196

sometimes separated or divorced or have a low level of education³⁴. Some of the educational matters given to parents whose children are perpetrators of crimes include: “(1). Increasing warm and close family relationships (2). Teaching religious principles and applicable social norms (3). Providing knowledge and understanding about early childhood sex education (4). Increase knowledge and understanding regarding the digital world and reproductive health (5). Knowing and recognizing the child's friends (in the community, school, etc.) Making time and spending time together doing activities (7). Involving a child in making decisions, solving problems and planning family activities (8). Helping and accompanying children when they are experiencing difficulties (9). Discuss and communicating with family members intensely (10). Educate and advise children to always be aware of sexual violence when they are alone, and (11). Increasing intense supervision at all times.”³⁵

Criminal Acts of Child Sexual Violence: Restorative Justice Perspective

Restorative justice provides protection for children who are in conflict with the law, because it will avoid the formal justice process which could result in neglect of children's rights and cause trauma for children. Restorative justice can provide a sense of social responsibility to perpetrators and prevent stigmatization of perpetrators in the future. Likewise, resolving cases like this can reduce the occurrence of cases in court and can be used as a solution in preventing crime.³⁶

There is a role for parents in dealing with children who have experienced sexual violence, including:³⁷ “(1). Provide a sense of security to children (2). Give encouragement and motivate them to be able to build the future (3). Embrace and accompany them when they face difficulties (4). Pay attention to children's needs for healthy food and provide attention and affection (5). Increasing children's self-esteem by appreciating good (positive) changes (6). Identifying signs of children experiencing sexual violence (7). Determining and terminating the relationship

³⁴ Monteza Danaefar and Maliheh Arsi, “Child Sexual Abuse In Iran: A Systematic Review Of The Prevalence, Risk Factors, Consequences, Interventions And Laws,” *Journal of Injury and Violence Research* 14, No. 3 (2022).

³⁵ Sukiman, *Seri Pendidikan Orang Tua: Melindungi Anak dari Kekerasan Seksual*. Kementerian Pendidikan dan Kebudayaan, (2017).

³⁶ Mishbahul Ummah Al-Ghony, et.al., “Restorative Justice Dalam Penanganan Anak Yang Berhadapan Dengan Hukum,” *Gorontalo Law Review* 7, No. 1 (2024), p. 85. Yusrizal, et.al., “Penerapan Restorative Justice Terhadap Anak Yang Berhadapan Dengan Hukum,” *Jurnal Hukum Samudra Keadilan* 16, No. 2 (2021), p. 320-332. Siti Urbayatun, et.al., “Sexual Harassment in Boys: An Overview of Child Victims and Child Perpetrators in Indonesia,” *Jurnal Ilmiah Peuradeun* 11, No. 1 (2023).

³⁷ Putri Ulul Azmi dan Pratiwi Uly Romadhoni “Pendidikan Seksual Perspektif Hukum Keluarga: Pengertian (Kekerasan Seksual dan Pendidikan Seksual), Peran Orang Tua, Kasus Beserta Analisisnya, *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 6 No. 1 (2024).

between the child and the perpetrator of sexual violence (8). Find and contact institutions or experts who handle sexual violence against children (9). Shifting the child's focus to activities they like according to their interests and talents and (10). Working together with schools to solve children's problems." If education for parents is carried out, carried out by the state, of course sexual violence in early childhood is one of the acts of violence committed by someone against young children which leads to sexual activity, of course it will not happen. This violence is the responsibility of all parties, especially parents. The role of parents in fighting sexual violence against children is very important, because the family is the first and main person in providing informal education at home. Apart from parents who receive education from the state, children who commit criminal acts of sexual violence clearly need to undergo rehabilitation measures in the form of guidance and education organized by the state.

However, to impose sanctions for rehabilitation measures for perpetrators of sexual violence, judges can consider not only looking at the criminal act that a person has committed, but also looking at the individual aspect of the perpetrator of the criminal act of sexual violence. Because basically, a criminal act of sexual violence committed by a person can also be based on the presence of a sexual disorder within the perpetrator so that the perpetrator needs rehabilitation in order to provide a balance between punishment and the opportunity to improve themselves. Furthermore, the mechanism has not yet been regulated. providing and implementing rehabilitation for perpetrators of sexual violence in pasal 17 of the Crime of Sexual Violence Law. Seeing that the provision of rehabilitation measures in pasal 17 of the Crime of Sexual Violence Law is in the form of sanctions, according to what is stated in the KUHP, if the judge imposes basic criminal sanctions along with the action, the judge is obliged to determine the type, place, time period and how the action must be carried out and carried out. Pasal 17 ayat (2) of the Crime of Sexual Violence Law states that rehabilitation measures that can be given to perpetrators of criminal acts of sexual violence are in the form of medical rehabilitation and social rehabilitation. When discussing the two types of rehabilitation, of course there are differences in terms of meaning, objectives and functions.

- a. Medical rehabilitation for perpetrators of sexual violence is an intervention effort for perpetrators of sexual violence where the government intervenes to improve the perpetrator's self and soul to prevent recidivism, namely the repetition of similar criminal acts. Medical rehabilitation functions as treatment for perpetrators of sexual violence. So the government must be able to determine medical programs that are appropriate for perpetrators of sexual violence.
- b. Social rehabilitation is a process of integrated recovery activities, both physical, mental and social, so that criminals can carry out their social functions again in community life. So that this activity can ultimately be

used as a means to improve the social abilities of perpetrators of criminal acts and prevent their social abilities from decreasing or becoming worse than previous social conditions.

Pasal 17 ayat 3 of the Crime of Sexual Violence Law states that implementation of rehabilitation is carried out under the coordination of a prosecutor and periodically supervised by the minister who handles government affairs in the social sector and the minister who handles affairs in the health sector. So, as a consequence, the relevant institutions need to create a procedure for how someone will be given rehabilitation measures as an effort to provide healing for deviant behavior suffered by perpetrators of criminal acts of sexual violence.³⁸ One proposed face-to-face sexual treatment model outlines a five-stage process: 1) victim selection, 2) gaining access and isolating the child, 3) development of trust, 4) desensitization to sexual content and physical contact, and 5) maintenance of follow-up.³⁹ Apart from that, it also fosters behavior of shame as a social process for perpetrators of criminal acts of sexual violence⁴⁰. If you see that there are currently no further references for the provision and implementation of rehabilitation measures for perpetrators of sexual violence committed by children, then implementing regulations are really needed as a guide for judges to make decisions in the form of providing rehabilitation measures for perpetrators of sexual violence and education for parents, then Therefore, providing rehabilitation measures for perpetrators of sexual violence cannot be implemented optimally.

According to Sahbudi, academician, Al-Washliyah University, North Sumatra, handling cases of sexual violence against children by child perpetrators is very appropriate by using restorative justice and mediation approaches. Meanwhile, restorative justice is an approach that focuses on victim recovery, perpetrator responsibility, and restoration of relationships in the community. Mediation involves a neutral third party to mediate between the victim and the perpetrator to reach a fair agreement. Because of this, special attention is needed considering that both parties, both victims and perpetrators, are children who require different protection and treatment compared to cases involving adults.⁴¹

³⁸ Rossa Abi Heriana and Ikhwanul Muslim “Analisis Pemberian Tindakan Rehabilitasi Bagi Pelaku Tindak Pidana Kekerasan Seksual,” *Unmuha Law Journal* 44 No.1 (2024). Rahmawati Rahmawati, et.al., “Criminal Law Disparities Against Perpetrators of Sexual Violence against Children Based on Islamic Law in Indonesia,” *al-Istinbath: Jurnal Hukum Islam* 8, No. 2 (2023).

³⁹ Georgia M. Winters, et.al., “Validation of the Sexual Grooming Model of Child Sexual Abusers,” *Journal of Child Sexual Abuse* 29, No. 7 (2020).

⁴⁰ Anne Marie McAlinden, “The Use of 'Shame' with Sexual Offenders,” *British Journal of Criminology* 45, No. 3 (2005).

⁴¹ Interview with Sahbudi, Academician, Al-Washliyah University, North Sumatra, April, 2024.

The restorative justice method which processes child perpetrators for criminal acts of sexual violence does not have a deterrent effect on the perpetrators. Therefore, it is appropriate for law enforcement officers to provide appropriate rewards to perpetrators of sexual violence, so that the supremacy of the law can be upheld and create order in society. Sanctions are intended to provide a deterrent effect for perpetrators of sexual violence so that they do not repeat their behavior and prevent other people from committing crimes because of the threat of severe punishment.⁴² In sentencing children who commit criminal acts, it must be carried out wisely and also provide optimal advocacy by paying attention to the best interests of the child, and imprisonment is only carried out as a last resort to prevent negative impacts and ensure their growth and development into the next generation of a nation that succeeds in realizing his ideals.⁴³

Rahmat Kartolo, academic, Al-Washliyah University, North Sumatra strengthens this view that people in Indonesia, including in North Sumatra, have local wisdom which can be used as a medium for carrying out restorative justice. These local wisdom values have been proven to be able to provide solutions to legal problems that occur in society. Because if all problems are resolved by formal justice, then brotherhood and harmony in society will probably disappear. Meanwhile, if problems are resolved using local wisdom mechanisms, including child criminal matters, then this can be resolved well and harmoniously.⁴⁴

In line with that, according to Suhariato and Sumariono, a community leader, restorative justice is essentially the involvement of the community and family in the social and psychological recovery of children who commit violence, including child victims. Therefore, cooperation from all parties is needed, not only the government, law enforcement officials, religious leaders, and community leaders to pay attention to this problem. Because we who deal directly with the community feel how a problem can be resolved if there is no cooperation, then the implementation will not run well and smoothly.⁴⁵

⁴² Widya Romasindah Aidy and Mochammad Syafruddin Rezky Sanaky, "Victims of Child Sexual Violence from a Legal Perspective," *Jurnal Hukum Sasana* 8, No. 1 (2022), p. 125-144. Nani Widya Sari, et.al., "The Enactment of Positive Law Against Perpetrators of Sexual Deviancy in Public Space in Indonesia," *Juris (Jurnal Ilmiah Syari'ah)* 22, No. 2 (2023). Ashabul Fadhli, et.al., "Out-of-Court Assistance Based on The Principle of The Best Interests of The Child: Study on Examination Process of Marriage Dispensation Cases," *Juris (Jurnal Ilmiah Syari'ah)* 23, No. 1 (2024).

⁴³Widya Romasindah Aidy and Mochammad Syafruddin Rezky Sanaky, "Victims of Child Sexual Violence, p. 125-144. Baryadi and Jawade Hafidz, "Criminal Accountability of Children as Perpetrators of the Crime of Obscenity, *Jurnal Hukum Khaira Ummah* 16, No. 4 (2021), p. 54-61

⁴⁴ Interview with Rahmat Kartolo, Academician, Al-Washliyah University, North Sumatra, April, 2024.

⁴⁵ Interview with Suhariato and Sumariono, a community leader North Sumatra, April, 2024.

Thus, it can be emphasized that perpetrators of criminal violence against children can be resolved using a restorative justice approach. The concept of restorative justice is justice for children by compensating for losses resulting from actions committed by promoting the best interests of the child. Even though children commit criminal acts, with the concept of restorative justice, children's rights can also be fulfilled, for example the right to education, the right to receive the love of their parents because they are not imprisoned.

Conclusion

The application of punishment to minors, especially those under 12 years of age who commit criminal acts of sexual violence, receives serious attention considering that sexual violence has various impacts on victims. Negative reactions such as: physiological disorders, contracting sexual diseases, sleeping and eating disorders, causing unwanted pregnancies, emotional disorders in the form of self-blame, feelings of shame, denial, psychological disorders in the form of depression which can lead to suicide by victims of sexual violence. Criminal sanctions and providing action in the form of guidance and education for perpetrators of sexual violence and education for parents, implementing regulations are very necessary as a guide for judges to pass decisions on children who commit criminal acts of sexual violence (COSV). According to restorative justice theory, children who commit sexual violence can be resolved in a dignified manner with guidance and education that can be carried out by the family and community. Local wisdom values found in society will also play a significant role in the social guidance and rehabilitation of children who commit sexual violence, so that these children do not feel ostracized and deprived of their rights.

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Interviews

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Interviews with Suhariyanto, a Community Leader, North Sumatra, April 2024.