



BALTIC JOURNAL OF LAW & POLITICS

A Journal of Vytautas Magnus University
VOLUME 15, NUMBER 2 (2022)
ISSN 2029-0454



Cite: *Baltic Journal of Law & Politics* 15:2 (2022): 1808-1826
DOI: 10.2478/bjlp-2022-001115

Legal Protection against Children Rape and Fornication

Satino

Study Program of Law Faculty of Law, UPN Veterans Jakarta, RS.
Fatmawati Pondok Labu Street, South Jakarta 12450, Indonesia

Yuliana Yuli W

Study Program of Law Faculty of Law, UPN Veterans Jakarta, RS.
Fatmawati Pondok Labu Street, South Jakarta 12450, Indonesia

Kayus Kayowuan Lewoleba

Study Program of Law Faculty of Law, UPN Veterans Jakarta, RS.
Fatmawati Pondok Labu Street, South Jakarta 12450, Indonesia

Mulyadi

Study Program of Law Faculty of Law, UPN Veterans Jakarta, RS.
Fatmawati Pondok Labu Street, South Jakarta 12450, Indonesia

Dwi Desi Yayi Tarina

Study Program of Law Faculty of Law, UPN Veterans Jakarta, RS.
Fatmawati Pondok Labu Street, South Jakarta 12450, Indonesia

Received: July 1, 2022; reviews: 2; accepted: October 1, 2022.

Abstract

Court Decision Number 23/Pid.Sus-Anak/2018/PN.CBi the defendant was sentenced to 3 years in prison, with a training period of 3 (three) months. Meanwhile, in the Semarang District Court Decision Number 10/Pid.SUs-Anak/2016/PN.Smg, the child of the perpetrator was sentenced to 2 years. The juvenile criminal justice system is implemented based on the following principles: Protection: Justice: Non-discrimination: Best interests of children: Respect for children's opinions: Proportion: Deprivation of liberty and punishment as a last resort, and Avoiding retaliation. This is also regulated in Law no. 11 of 2012 concerning the juvenile justice system. Where the perpetrator's child who is still under age in accordance with the theory of restorative justice should be returned to his parents, or if there are things that are burdensome and it is not possible to be returned to his parents, the judge's decision will reconsider the protection of children who have the right to have a future. So that

in making decisions prioritizing coaching and training rather than confinement.

Keywords

Child, justice, restorative justice.

1. Introduction

Children are part of the younger generation as one of the human resources who are the potential and successors of the ideals of the nation's struggle in the future, which have a strategic role and have special characteristics and characteristics, requiring guidance and protection in order to ensure physical growth and development. , mentally, and socially in balance. Children are part of the younger generation, as one of the human resources who are the potential and successor to the ideals of the nation's struggle, which have a strategic role and have special characteristics and characteristics, require guidance and protection in order to ensure complete physical, mental and social growth. , harmonious and balanced

The position of children is a major part in the joints of family life, religion, nation, and state, both in developing children's intelligence and mental spirituality, this is based on the characteristics of the personality of the Indonesian nation itself which has a legal system originating from the joints of customary law and race. In this level of reality, the Indonesian people have placed children other than as future assets and continuation of the development relay, but also placing children in a place that should be able to carry out their development tasks.

A child in living the process of life will definitely go through many phases or stages of life. One of the phases that children will go through is the adolescent and adolescent phase, what is meant by this phase is a transition process or periods of transition from the childhood phase to the adult phase, where they will show potential anti-social behavior and be accompanied by a lot of upheaval or chaos in the heart that makes teenagers/adolescents lose control and in the end if they can't control their emotions, those emotions will explode and backfire on them. If left without proper, fast and integrated guidance and supervision by all parties, then the symptoms of this child delinquency will become actions that lead to criminal acts.

Deviations in behavior or unlawful acts committed by the child can be caused by various factors, including the negative impact of rapid development, globalization in the field of communication and information, advances in science and technology as well as changes in lifestyle and way of life, Some parents have brought about fundamental social changes in people's lives that greatly affect the values and behavior of children. In addition, children who lack or do not receive love, care, guidance, and guidance in developing attitudes, behavior, self-adjustment, and supervision from parents, guardians, or foster parents will be easily dragged into the flow of social interactions in the community and their

environment that are less healthy and detrimental to personal development.

Nowadays, the phenomenon of children in conflict with the law (ABH) has become the subject of public discussion and news headlines in various media. They are seen by the community as having committed crimes that disrupt social order so that they are deemed worthy of being legally processed to account for their actions. The existence of economic and social problems that hit Indonesia has an impact on increasing the scale and complexity faced by Indonesian children. This is indicated by the increasing number of children experiencing abuse, exploitation, violence, child trafficking and others. The fact shows that various violations of children's rights in Indonesia continue to occur, even to the form of violations that cannot be tolerated by common sense.

Crimes where the perpetrators are children or adolescents are a significant problem. Given the nature of the law in force in Indonesia, whoever commits a crime against him will definitely be held accountable without exception, as well as against children/adolescents when they commit a crime must also be punished, it's just that the punishment given is not the same as the punishment for adults. exceptions are made for children. As regulated in Articles 45, 46, 47 of the Criminal Code which was updated with the provisions of Law no. 23 of 2002 concerning Juvenile Justice.

Rape according to the juridical construction of laws and regulations in Indonesia (KUHP) is the act of forcing a woman who is not his wife to have intercourse with him with violence or threats of violence. The words "force" and "by force or threat of violence" here already show how terrible an act of rape is. Forcing sexual intercourse on a woman who does not want it will cause great pain to the victim, especially if the act is accompanied by physical violence. Severe pain can occur not only physically, but also psychologically.

Rape or sexual crimes are generally experienced by women, especially young children (teenagers). This incident occurs in society regardless of the social stratification of the perpetrator and the victim. These crimes can arise because of environmental influences and psychological backgrounds that affect the behavior of the perpetrators in the past or because of spontaneous psychological shocks due to sexual stimulation. It is this uncontrolled sexual stimulation which in turn gives birth to criminal acts of decency, especially the crime of rape. Previously, this crime was only committed by other parties against women who were not family members by using threats and coercion or violence.

In relation to the criteria for a naughty child who commits a crime, the child has reached the age of 8 (eight) years, has not yet reached the age of 18 (eighteen) years and is not married. In addition, Article 45 of the Criminal Code states that those who are not yet adults are children. under the age of 16 (sixteen) years. Regarding children who are victims of crime, the Criminal Code regulates that the age of the child is not even 15 (fifteen) years old. Against a child who has committed a criminal act, there will be legal action or a law enforcement process, where in the law enforcement process, the handling of the child defendant

prioritizes the aspect of protecting the rights of the child at each level of the examination.

In de jure (legally) there are many laws and regulations that mention the rights of children in general or children who are in conflict with the law in particular, as well as several provisions for handling them. Among them are Law Number 39 of 1999 concerning Human Rights, Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, Law Number 3 of 1997 concerning Juvenile Court, which was later amended and updated with Law Number 11 of 2012 on the Juvenile Criminal Justice System. The current phenomenon of ABH (Children in Conflict with the Law), the government is trying to give special attention to children in conflict with the law, through several laws and regulations that have been made in an effort to provide treatment tailored to the child's condition. Apart from that, there are also Government Regulations, Presidential Regulations/Kepres/Inpres, Ministerial Regulations/Decrees, and several Circulars from the Supreme Court.

Child perpetrators of rape or sexual abuse are victims of a lack of love from parents and also digitalization of technology such as Youtube which is easily accessed by children to open pornographic film sites, because the curiosity of teenagers is high so that children or teenagers want to do and feel as they do in the movies they watch. Children are an inseparable part of the survival of human life and the sustainability of a nation and state. This important role of children, children's rights have been expressly stated in the constitution, that the State guarantees every child has the right to survival, growth and development and the right to protection from violence and discrimination. The best interests of children should be lived, as the best interests of the survival of mankind. Therefore, everyone always tries so that children do not become victims of violence, or children fall into evil deeds or other inappropriate actions.

In this study the authors took two cases of child rape, namely court decisions Number 23/Pid.Sus-Anak/2018/PN.Cbi and Semarang District Court decisions Number 10/Pid.Sus-Anak/2016/PN.Smg as a comparison of decisions judge in deciding the criminal case.

Rape cases involving children occurred in the court decision case Number 23/Pid.Sus-Anak/2018/PN.Cbi with a child with the initials ISH Bin FH, the defendant ARR bin AD at the Cibinong District Court who decided to declare the child as the perpetrator of SHB bin FH, the defendant ARR bin AD was proven legally and convincingly guilty of committing a criminal act by deliberately tricking, a series of lies or persuading a child to have intercourse with him and imposing a sentence on the child perpetrator for 3 (three) years and job training for 3 (three) months.

Furthermore, in the case of sexual intercourse with a minor in the decision of the Semarang District Court Number 10/Pid.Sus-Anak/2016/PN.Smg which was carried out by Alias Ambon Bin AR Hospital together with witnesses WAW Alias Ompong Bin HS, JGD Alias Tompel Bin HN (separate case file), IAR Alias Sempuk

Bin HH (separate case file), and MAA Alias Afi Alias Piyot Bin M. Sholehan (separate case file) on a day and date that cannot be determined with certainty, namely in April 2016 or on sometime in 2016, located in a hut in the rice field area before GOR Manunggal Jati, Kec. Pedurungan, Semarang City, at least somewhere within the jurisdiction of the Semarang District Court. Because of his actions, the perpetrators were threatened with violating Article 81 paragraph (2) of the Republic of Indonesia Law no. 23 of 2002 concerning Child Protection Jo Article 81 paragraph (2) of the Republic of Indonesia Law no. 35 of 2014 concerning Amendments to the Law of the Republic of Indonesia No. 23 of 2002 concerning Child Protection Jo Article 55 paragraph (1) of the 1st Criminal Code with a prison sentence of 2 years.

The number of cases of child violence that occurred in Indonesia is considered one of the indicators of the poor quality of child protection. The existence of children who have not been able to live independently of course really need people as a shelter. The low quality of child protection in Indonesia has drawn criticism from various elements of society. The question that is often asked is the extent to which the government has tried to provide (legal) protection to children, so that children can get guarantees for their survival and livelihood as part of human rights. In fact, based on Article 1 20 of Law no. 23 of 2002 concerning Child Protection, those who are obliged and responsible for the implementation of child protection are the state, government, community, family, and parents. Recently, there has been a frequent occurrence of criminal acts concerning sexual violence against children and the most severe crime of sexual violence is currently not only perpetrated by adults but also by children.

In the general criminal justice system, the judicial process is determined in the Criminal Procedure Code which is regulated by Law Number 8 of 1981, while the juvenile justice process is stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UUSPPA). Based on the a quo regulations, law enforcement authority is exercised by the police, prosecutors and courts at all levels. These legal institutions are authorized to administer the criminal justice process, from the investigation stage to the decision stage in court. However, recently, along with the times, we can find a criminal justice process that is different from the Criminal Procedure Code. In other words, there are laws and regulations that regulate themselves (*lex specialis*) the provisions of the proceedings, including the organizers of criminal justice. According to article 1 point 1 of the Juvenile Criminal Justice System, the juvenile criminal justice system is the entire process of resolving cases of children in conflict with the law, starting from the investigation stage to the stage of mentoring after serving a crime. In the second point of this article it is also explained that children who are in conflict with the law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts.

The juvenile criminal justice system is implemented based on the following principles: Protection; Justice; Non-discrimination; the best interests of the child; Respect for children's opinions; Survival and development of children; Guidance

and guidance of children; Proportional; Deprivation of liberty and punishment as a last resort; and Avoidance of retaliation. these are forms of protection given to children in conflict with the law based on Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, which provides protection to children in the stages of arrest and detention, investigation, prosecution, trial and coaching, and through the application of diversion. Children as perpetrators of crimes of rape, obscenity and abuse must be treated humanely, accompanied, provided with special facilities and infrastructure as well as sanctions given to children in accordance with the principle of the best interests of the child.

In practice in court, prosecutors or judges to prosecute or decide cases of children, perpetrators always give corporal punishment or imprisonment for children. It should be for children who are victims of rape and according to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UUSPPA). It must be based on restorative justice, which provides sanctions for accountability, coaching is carried out to children's training centers in order to get proper education in accordance with the 4th paragraph of the 1945 Constitution, it is expressly stated that the state is obliged to educate the nation's life.

One of the interesting regulations to observe and discuss is Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UUSPPA). The a quo regulation is unique when compared to the Criminal Procedure Code, it can even be said to introduce new legal institutions in criminal justice, namely diversion and restorative justice. A developing concept that involves victims in it is called restorative justice. Child criminals who are waiting for the judicial process get additional problems in terms of moral and psychological. However, what is an important issue to study is how the criminal justice process must be faced and how the application of legal protection is carried out in the process of examining criminal cases for children who are still vulnerable to their physical and mental abilities.

Various factors make it possible for children to commit delinquency and criminal activities that can force them to face the law and the criminal justice system. Therefore, the laws and regulations in Indonesia regarding children as victims of criminal acts are regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

Protection of children as perpetrators of criminal acts is now regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UUSPPA). to serve a sentence. The Juvenile Criminal Justice System must prioritize a Restorative Justice approach. The Juvenile Criminal Justice System includes:

- a. Criminal investigations and prosecutions of children are carried out in accordance with the provisions of laws and regulations, unless otherwise stipulated in this Law;
- b. Child trial conducted by the court in the general court environment; and
- c. Guidance, guidance, supervision, and/or assistance during the process of carrying out a crime or action and after undergoing a crime or action.

In Article 1 number 6 of the Juvenile Criminal Justice System Law (UUSPPA)

states, Restorative justice is the settlement of criminal acts by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing recovery. Return to its original state, and not retaliation. The handling process which in this case is related to dealing with children's problems with the law, there are problems that law enforcers do not necessarily blame and give a negative stamp or stigma on children who commit criminal acts. Indonesia already has regulations regarding investigation, prosecution, and judicial procedures in dealing with the problems of crimes committed by children.

Restorative justice is the settlement of cases of criminal acts by involving the perpetrator, victim, family of the victim/perpetrator, and other related parties to jointly seek a fair solution by emphasizing restoration back to its original state, and not retaliation. Meanwhile, diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside of criminal justice.

Likewise, in its development related to restorative justice, it has also been regulated in the Attorney General's Regulation Number 5 of 2020 which is basically the settlement of criminal cases by prioritizing restorative justice which emphasizes restoration back to its original state and the balance of protection and interests of victims and perpetrators of crimes who are not oriented towards Retaliation is a legal necessity of society and a mechanism that must be built in the implementation of prosecution authority and reform of the criminal justice system. That the settlement of criminal cases by prioritizing restorative justice which emphasizes recovery back to its original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented to retaliation is a legal necessity for society and a mechanism that must be built in the implementation of prosecution authority and reform of the justice system. Criminal;

Based on Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, diversion aims to achieve peace between victims and children, resolve children's cases outside the judicial process, prevent children from deprivation of independence, encourage the community to participate, and instill a sense of responsibility in children. . Based on the descriptions above, the authors are interested in raising the issue of legal protection in the judicial process of children who commit criminal acts, fulfilling children's rights to get protection in court, giving children rights to be independent and getting opportunities and their rights in education in the form of a thesis. With the title: "Legal Protection against Children Perpetrators of Rape and Child Abuse.

Formulation of the problem

Based on the above background, research problems can be formulated, namely:

1. What is the form of the verdict against child perpetrators of rape and obscenity in court decisions?
2. What is the form of protection for children who are perpetrators of rape and

sexual abuse?

2. LITERATURE REVIEW

Referring to the Big Indonesian Dictionary (KBBI), child means the second descendant. Meanwhile, according to the Indonesian General Dictionary, etymologically, the definition of children means humans who are still small or humans who are not yet mature.

R.A. Kosnan stated that "Children are young people at a young age in their soul and journey of life because they are easily influenced by their surroundings". Based on that, children need to get serious attention. However, in reality, as the most vulnerable and weak social beings, ironically, children often occupy the most disadvantaged positions, do not have the right to voice, and even become victims of violence and violations of their rights. In this case, another source explains that children are normal human conditions who are still young and are determining their identity and are very unstable in spirit, so they are very easily influenced by their environment. Meanwhile Romli Atmasasmita is of the opinion that a child is a person who is underage and not yet an adult, and has not yet married. Furthermore, it is said that children are buds, potentials, and the younger generation to succeed the ideals of the nation's struggle, has a strategic role and has special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future. Therefore, so that every child will be able to take on these responsibilities, he needs to have the widest opportunity to grow and develop optimally, both physically, mentally and socially, and has a noble character. provide guarantees for the fulfillment of their rights and treatment without discrimination (Sengodan & Appusamy, 2020).

Children are the most important part of the whole process of human growth, because it is during childhood that a person's basic character is actually formed, both originating from brain function and emotional. The quality or not of a person in adulthood is greatly influenced by the process of parenting and education received in childhood. In other words, a person's condition in adulthood is the result of the growth process received in childhood. The dominant factors that influence the formation and growth of children are parents, schools and the environment. These three factors are an inseparable unit (Sowndarya et al., 2021).

Judging from the juridical aspect, the definition of a child according to positive law in Indonesia is commonly interpreted as a person who is not yet an adult (minderjaring or person under age), underage or underage (minderjaringheid or inferiority) or often also referred to as a child under the supervision of a guardian. (minderjarige onvervoodij).

In terms of discussing children, it is necessary to formulate what is meant by children, including the age limit. Until now, it turns out that there are still many, there are differences and opinions regarding the meaning of children. In Indonesia itself, there are several different understandings of children based on laws and regulations, as well as according to experts. Among several definitions, there is no

similarity regarding the definition of a child due to the background of the aims and objectives of each law and the experts. The definition of children based on laws and regulations can be seen as follows:

1) According to Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection, the definition of a child based on Article 1 paragraph (1) of Law No. 23 of 2002 concerning Child Protection is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.

2) According to the Convention on the Rights of the Child

Children are limited to the age before 18 years, as stated in article 1 below: "Everyone who is under 18 years old unless based on the law that applies to children it is determined that adulthood is reached earlier". Likewise, according to the Child Protection Law (UUPA) Article 1. Based on this limitation, it is the obligation of parents to care for and educate their children until they are 18 years old. After that age, it is assumed that children have become adults, so they are no longer dependents of their parents, although economically and psychologically they are often still dependent on their parents because their maturity is immature (Srinowati et al., 2021).

3) According to the Shrimp Book – Civil Law

As explained in Article 330 of the Civil Code, it is stated that minors are those who have not reached the age of 21 years and have not been married before. So a child is everyone who is not yet 21 years old and not yet married. If a child is married before the age of 21 and then divorced or left by her husband before the age of 21, then she is still considered an adult, not a child.

From the statement above, it can be concluded that a child according to the Civil Code is someone who has not reached the age of 21 years or has never been married before reaching the age of 21 years. From the next statement in Article 330 of the Civil Code, it can be concluded that a person who has married before the age of 21 years and then the marriage is dissolved before he reaches the age of 21 years, then he cannot return to the status of "child".

4) According to the Criminal Code

A child in Article 45 of the Criminal Code is a child whose age has not yet reached 16 (sixteen) years. In Article 45 of the Criminal Code it is stated that "in prosecuting a child who is not old enough (minderjaring) for committing an act before the age of sixteen years, the judge may decide: to order that the guilty be returned to his parents, guardians or guardians, without any punishment; or order that the guilty be handed over to the government, without any punishment."

Provide age limits for children in Article 45, Article 283 paragraph (1), Article 287 paragraph (1) and Article 290 paragraph (2) of the Criminal Code, the contents of which are as follows:

- a. Orders that the guilty be returned to their parents, guardians or guardians, without any punishment.
- b. Ordered that the perpetrators of crimes be handed over to the government.

c. Punish the criminal

Meanwhile, in other articles it is explained as follows:

a. Article 283 number 1 of the Criminal Code

Threatened with a maximum imprisonment of nine months or a maximum fine of six hundred rupiahs, whoever offers, gives continuously or temporarily, submits or shows writings, pictures or objects that violate decency, as well as tools to prevent or abort pregnancy, to a person who has not of sufficient age, and what he knows or should reasonably suspect, is that he is not yet seventeen years old, if he knows the contents of the writing, description, or instrument.

b. Article 287 number 1 of the Criminal Code

Whoever has sexual intercourse with a woman outside of marriage, even though it is known or proper, it must be suspected that she is not yet fifteen years old, or if it is not proven that her age is not yet capable of being married, is threatened with a maximum imprisonment of nine years.

c. Article 290 number 2 of the Criminal Code

Whoever commits an obscene act with a person, even though it is known or proper, it must be presumed that he is not yet fifteen years of age or if his age is not proven, that he is not yet capable of being married.

Referring to the explanation above, it can be concluded that a person who commits a crime can be said to be a "child" if he is not yet sixteen years old, or a person is said to have committed a child crime if when he committed a crime he was not yet sixteen years old.

d. According to Law No. 4 of 1979 concerning Child Welfare

What is called a child is someone who has not reached the age of 21 (twenty one) years and has never been married (Article 1 point 2).

5) According to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

As described in (Article 1 Paragraph (3)) a child is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime.

6) According to Law no. 1 of 1974 (Marriage Act)

Law No. 1 of 1974 concerning Marriage does not provide a firm definition of children. There are at least two articles that we can analyze to find limits regarding children, namely Article 6 paragraph (2) and Article 7 paragraph (1).

Article 6 paragraph (2) of Law no. 1 of 1974 states: "To carry out a marriage, a person who has not reached the age of 21 (twenty one) years must obtain the permission of both parents".

Article 7 paragraph (1) of Law no. 1 of 1974 states: "Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years".

From the two provisions of the article above, it can be concluded that in general someone who has not reached the age of twenty-one years is still said to

be a child because he still needs parental permission when he is going to carry out a marriage (Article 6 paragraph 2). More specifically, there is a difference between the limits of children between men and women, namely for men the limitation of children is someone who is less than nineteen years old. As for women, the limit for children is someone who is not less than sixteen years old (Article 7 paragraph (1)).

From the description above it can be concluded that according to Law no. 1 of 1974 concerning Marriage, there are different restrictions regarding children for men and women. The definition of "child" for men is someone who is less than nineteen years of age. While the "child" limit for women is someone who is less than sixteen years old.

7) According to Article 1 point 5 of Law Number 39 of 1999 concerning Human Rights are as follows:

"Child is every human being who is under 18 (eighteen) years old and unmarried, including children who are still in the womb if this is in his interest."

The age limit for children is very important in juvenile criminal cases, because it is used to determine whether someone suspected of committing a crime is a child or not. Knowing the age limit of children, there is also diversity in various countries that regulate the age of children who can be punished. Some countries also provide a definition of a person being said to be a child or an adult in terms of age and activity or ability to think. The definition of a child is also contained in Article 1 of the convention on the rights of the child, a child is defined as any person under the age of 18 years, except under the law that applies to children, maturity has been obtained previously.

While talking about the age limit for a person can be said to be classified as a child, according to several experts, the limitations on the understanding of children according to some experts are as follows:

Bisma Siregar states in his book that: in a society that already has a written law, an age limit is applied, namely 16 years or 18 years or a certain age which according to calculations at that age the child is no longer included or classified as a child but is an adult.

According to Sugiri as contained in the book by Maida Gultom, he argues that: "as long as the growth and development process is still going on in the body, the child is still a child and will only become an adult when the development and growth process is complete, so the age limit for children is the same as the beginning of becoming an adult, which is 18 (eighteen) years for women and 21 (twenty) years for men.

Meanwhile, Hilman Hadikusuma in the same book formulates it as "Drawing the boundary between being an adult and a minor, there is no need to worry about it because in fact, even though a person is not yet an adult, he or she has been able to take legal actions, for example, a child who is not yet an adult has bought and sold, traded, and so on, even though he hasn't swam to mate."

From the several definitions and age limits of children as mentioned above,

which are quite varied, it would be necessary to determine and agree on the age limits of children clearly and straightforwardly so that later there will be no problems regarding the age limits of the children themselves. Within the scope of the Law on Human Rights and the Law on Child Protection itself it is stipulated that a child is someone who has not reached the age of 18 years, including children who are still in the womb, and have never been married.

3. RESEARCH METHODS

This research is a normative juridical research conducted by examining legal materials, theories, concepts, legal principles and legislation related to this research. Peter Mahmud Marzuki argues that normative juridical research is a step to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. In other words, this research is looking for laws relating to cases of legal protection against child perpetrators of rape and obscenity.

In normative juridical research that fully uses secondary data, the preparation of a tentative theoretical framework can be abandoned, but the preparation of a conceptual framework is absolutely necessary, so in compiling a conceptual framework it is necessary to formulate those contained in laws and regulations, Normative research (Soekanto and Mamudji, 2013: 62-88), was conducted

to the following matters:

- a. The research draws on legal principles, which are carried out on written and unwritten positive laws.
- b. Legal systematic research, which is carried out on the basic understanding of legal systematics which includes legal subjects, rights and obligations, legal events, legal relationships, and legal objects.
- c. Research on the level of synchronization of laws and regulations is carried out in two ways, namely: first Vertically, what is analyzed are laws and regulations with different degrees governing the same field. Second Horizontally, what are analyzed are laws and regulations that are of the same degree and regulate the same fields.
- d. Comparative law research, which is carried out on various legal systems that apply in society.
- e. Legal history research, which is carried out by analyzing legal events chronologically and looking at their relationship with existing social phenomena.

In this research, the research used is a case study approach that is based on a court decision No. 234/Pid.Sus-anak/2018/PN.Cbi with a child defendant named AL RivAL Ramdan bin Adang, ISH Bin FH at the District Court Cibinong and the decision of the Semarang District Court No. 10/Pid.Sus/2016/PN.Smg. to analyze the legal materials that have been collected in this study using the normative juridical data analysis method for the synchronization of juvenile justice decisions with child protection law.

4. RESULTS AND DISCUSSION

Legal Protection against Child Rape And Law

The Semarang District Court, which examines and hears criminal cases at the first instance court, with an ordinary examination, has rendered a decision in the Child case as follows, that a child named RS Alias Ambon Bin AR, place of birth: Semarang, age/ date of birth: 17 years/03 November 1998, gender: Male, nationality: Indonesia, place of residence: Jl. Plamongansari Rt/Rt 002/012, Kel. Plamongansari, Kec. Pedurungan, Semarang City, religion: Islam, occupation: not working, education: elementary school.

Then the child is detained based on a letter of detention by:

- a. Investigator dated May 31, 2016, Number SP.Han.94/V/2016/Reskrim. From: 31 May 2016 to 06 JUNE 2016;
- b. Extension of the Public Prosecutor dated JUNE 03 2016 , No : TAR-293/ 0.3.10/Euh.1/VI/2016 ; Since the date: 07 June 2016 to 14 June 2016 ;
- c. Public Prosecutor : June 14 2016 , No. PRINT.1948/0.3.10./Euh.2/06/2016, From 14 June 2016 to 18 June 2016;
- d. Judge PN.Smg, dated June 16, 2016, Number. 66/06/Pen.Pid./H/2016/PN.Smg jo. Number 10/Pid/Sus.anak/2016/PN.Smg.Since June 16, 2016 to June 25, 2016.
- e. Extension of the Chairman of the Semarang District Court, Number: 66/06/ Pen.Pid/ K/2016/ PN.Smg, jo. Number : 10/Pid/Sus-Anak/2016/PN.Smg. From 26 June 2016 to 10 July 2016;

At the trial the Child was accompanied by Legal Counsel KUKUH RIDWAN, S.Ag, SH, Advocates for Internships based at PBH PERADI, Semarang city, having the address Jl. Muradi Raya Number: 40 Semarang based on a Special Power of Attorney dated June 14, 2016. At the next trial led by a Sole Judge based on the Decree of the Head of the Semarang District Court, Number: 10/Pen.Pid/Sus-Anak/2016/PN.Smg, dated 16-06-2016.

That the child was brought to trial by the public prosecutor was indicted based on the indictment no. Reg. Perks. PDM- 02 / Semar/ Euh.2/ 06/2016, dated 15 June 2016, has been indicted as follows: ARS as known as Ambon Bin AR together with witnesses WAW as known as Ompong Bin HS, JGD as known as Tompel Bin HA, IAR as known as Sempuk Bin HH, and MAA as known as Afi as known as Piyot Bin MS on a day and date that cannot be determined with certainty, namely in April 2016 or at some point in 2016, located in a hut in the rice fields before GOR Manunggal Jati, Kec. Pedurungan, Semarang City has had intercourse with PL (11 years) by:

On a day and date that cannot be remembered with certainty, namely in April 2016 at around 20.00 WIB, LAP witness Alias Upik Alias Tuyul Bin NB sent an SMS to the OT witness to inquire about the PL witness' whereabouts and asked the PLT witness to leave the boarding room because the witness Upik had already was in front of the boarding room, then the witness PL came out and went together with

witness Upik and Anak (RS) on a motorbike to the Rica Rica Mencawak shop where witness Upik worked. Before arriving at the shop, witness PL together with witness Upik and Anak (RS) took shelter because it was raining and witness Upik sent a text message to witness OT to invite witness PL to look for money but witness PL refused witness Upik's invitation because witness OT was still in pain PL witness' genitals;

Arriving at the shop where witness Upik worked, witness Upik gave the witness OT the yellow pill Koplo as much as 4 (four) pills and witness Upik ordered the witness OT to drink it then witness Upik again ordered the witness OT to go along with the child (RS) and Afi then witnessed the OT who was sitting in the middle of the ride with Anak (RS) and Afi left the place to go to a hut in the rice field area before the Manunggal Jati Sports Center, Kec. Pedurungan, Semarang City. Arriving at the hut initially there were only OT witnesses, Rifki, Upik and Afi, but not long after, the OT witnesses saw a group of motorbikes coming to the place and sat together with OT witnesses, Rifki, Upik and Afi. Whereas the motorcycle group that came to witness PL, Rifki and Afi, namely Tompel, Ompong, Johan, Sempuk (Iqbal), Niam and Agung;

Next, Ompong pulled the OT witness's hand to enter the hut then Ompong took down the OT witness's pants and asked the OT witness to lie down on a long bench made of bamboo then Ompong squeezed the OT witness' breast and put his finger into the OT witness's vagina after that Ompong tried to insert his penis But because at that time, Toothless's penis was not tense (standing) so Ompong's penis could not enter the vagina of the witness OT then Ompong put his finger into the vagina of the witness OT while shaking his penis (his penis) but because his penis did not get tensed (standing) the witness OT Ompong refuses to have sex with Ompong by saying to Ompong, "Wes kono metu kowe rak iso ngaceng og, I'm wegah" (Come out, you can't get an erection, I don't want to) then Ompong comes out of the hut and the OT witness follows Ompong.

After the OT witness came out of the hut then Tompel pulled the OT witness's hand to go back into the hut then Tompel lowered the OT witness's underwear and Tompel also took off his pants then Tompel laid the OT witness and put his penis into the OT witness's vagina then Tompel moved his penis up and down until it felt like Tompel was about to release his semen then Tompel took out his penis and took out his sperm in the OT witness's underwear after that Tompel put his clothes back on and came out of the hut while the OT witness was still in the hut;

Furthermore, when the OT witness was still wearing his pants, suddenly Afi entered the hut and lowered his pants and then lowered the OT witness's underwear then laid down the OT witness and put his penis into the OT witness's vagina and then Afi moved his penis up and down until it felt like Afi was about to ooze water his semen then Afi took out his penis and released his sperm on the ground then Afi came out of the hut while the witness OT was still in the hut;

Then the OT witness went back to wearing his own underwear and Johan entered the hut while lowering his pants then Johan lowered the OT witness's underwear and laid down the OT witness then put his penis into the OT witness's vagina and Johan moved his penis up and down until it felt like he was going to bleed his semen then man -the man took out his penis and released his sperm on the ground while the witness OT was still in the hut;

After Johan came out of the hut the witness OT put on his own underwear then Anak (RS) entered the hut and lowered his pants as well as the underwear of the witness OT then Anak (RS) laid the witness OT and put his penis into the vagina of witness OT while moving his penis up and down until the child (RS) feels like he is about to release his semen, then the child takes out his penis and releases his sperm on the ground. After that, the Child (RS) came out of the hut and the OT witness followed him and it turned out that Witness Upik was still outside the hut then the OT witness asked Upik to take the OT witness back to his boarding house.

Based on the case of sexual intercourse above, the defendant has been charged by the public prosecutor with three charges, namely: First, having committed, ordered to do or participated in committing acts of violence or threats of violence forcing the child to have sexual intercourse with him or with other people as regulated and threatened with criminal in accordance with Article 76 D in conjunction with Article 81 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in conjunction with Article 55 paragraph (1) of the 1st Criminal Code. Second, having committed, ordered to do or participated in committing acts of violence or threats of violence, forcing, committing deceit, committing a series of lies, or persuading children to commit or allowing obscene acts to be carried out as regulated and subject to criminal sanctions in accordance with Article 76 E Jo Article 82 of the Law. -Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in conjunction with Article 55 paragraph (1) of the 1st Criminal Code. Then the third, intentionally has committed, ordered to do an act or participated in deceitful acts, a series of lies, or persuaded a child to have intercourse with him or with another person as regulated and threatened with a criminal offense in accordance with Article 81 paragraph (2) of Law Number 23 2002 concerning Child Protection Jo Article 81 paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection Jo Article 55 paragraph (1) of the 1st Criminal Code.

Because the Child (RS) has been indicted by the Public Prosecutor with an alternative form of indictment, therefore based on the legal facts above, the judge immediately proves the third charge, which is as regulated and is subject to criminal sanctions in Article 81 paragraph (2) of Law Number 23 of 2002 regarding Child Protection Jo Article 81 paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection Jo Article 55

paragraph (1) of the 1st Criminal Code. With the following elements:

- a. Each person;
- b. Deliberately committing a ruse, a series of lies or persuading a child to have sexual intercourse with him or with another person;
- c. Has done, ordered to do or participated in doing an action.

5. CONCLUSION

In resolving child criminal cases to be carried out by restorative justice law enforcement officers, this is the first step in resolving the case. The existence of a juvenile justice system law emphasizes this to be applied at all stages in child cases. Settlement of criminal cases committed by children by involving perpetrators, victims, communities, mediators, law enforcement officials together to provide appropriate sanctions and compensation for victims. The application of the principles of Restorative Justice by the Panel of Judges can be seen in the decision handed down against the defendant in the decision of the Semarang District Court Number: 10/Pid.Sus-Anak/2016/PN.Smg. the defendant was sentenced to 2 years, in accordance with the concept of Restorative Justice which relieves the defendant is still a minor, so that in the trial process the demands put forward and focus on social development and rehabilitation which, if it refers to the law of immoral acts, the defendant can be sentenced to 15 years in prison.

In the case of the decision of the Cibinong District Court Number 23/Pid.Sus-Anak/2018/PN.Cbi, the perpetrator was charged with criminal threats contained in Article 81 paragraph (2) of Law No. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection in conjunction with Article 56 paragraph (2) of the Criminal Code, in which the principal is threatened with a maximum sentence of 15 (fifteen) years in prison and a minimum of 5 (five) years. Then the Public Prosecutor in charge of demanding a prison sentence of 6 (six) years and job training for 3 (three) months at the Marsudi Putra Rehabilitation Center, Cileungsi, Bogor Regency. With the consideration that the perpetrator is still under age, the judge sentenced him to a criminal sentence of 3 (three) years and job training for 3 (three) months.

Both are still being sentenced to criminal charges considering that no mitigating factors were found. The concept of restorative justice has been sought in the form of leniency for the defendant in both cases by considering the things that have been caused by the defendant's actions.

6. SUGGESTION

1. With the enactment of the Law on the Juvenile Justice System Number 11 of 2012 the ranks of law enforcement such as investigators, public prosecutors, judges, and related institutions shall adjust the facilities and infrastructure or facilities as stated in the law on the juvenile justice system.

2. Sentencing a child which is a deprivation of liberty is a last resort (ultimum remedium) for the good and welfare of the child with all considerations,

but this cannot be said as a form of education or learning for children, because crime and education are two different substances.

3. In accordance with the Law on the Juvenile Justice System Number 11 of 2012, it is recommended that in the judicial process, the identities of the perpetrators, witnesses, and families are not published, in order to fulfill their rights as stated in Article 2 of the Law on the Juvenile Justice System Number 11 of 2012

References

Book

- Arif Gosita, *Problem Victims of Crime*, (Jakarta: PT Bhuana Ilmu Poluler, 2004)
- Arifin, *Education of Children in Conflict with the Law of the Convergence Model Between Functionalists and Religious*, (Bandung, Alfabeta, 2007)
- Asri Wijayanti, *Post-Reformation Employment Law, Fourth*, (Jakarta, Sinar Graphic, 2014)
- Barda Nawawi Arief, *Anthology of Criminal Law Policy*, (Jakarta: PT. Kencana Prenada Media Group, 2008)
- Bryan A Garner, *Blacks Law Dictionary (Eight Edition)*, (New York, West Thomson Publishing, 2004)
- RI Ministry of Social Affairs, *Children in Need of Special Protection*, (Jakarta: P3KS Press, 2002)
- Gerson W. Bawengan, *Introduction to Criminal Psychology*, (Jakarta: Pradnya Paramita, 1977)
- Hadi Setia Tunggal, *Law of the Republic of Indonesia Number 11 of 2012 concerning the Child Criminal System*, (Jakarta: Harvarindo, 2013)
- Moeljatno, *Principles of Criminal Law*, (Jakarta: Bina Aksara, 1993)
- Paul W Tapan, *Juvenile Delinquency*, (New York-London, McGraw Hill Bokk, 1994)
- Richard A. and Ohlin Cloword, Lloyd E., *Delinquency and Opportunity: Theory of Delinquen Gangs*, (New York. The Free Press Collier Macmillan Publishing, 1988)
- Rouscoe Pound, *An Introduction to the Philosophy of Law*, in Romli Atmasasmita, *Comparative Criminal Law*, (Bandung, Mandar-Maju, 2000)
- Satjipto Raharjo, *Legal Studies*, (Bandung: PT. Citra Aditya Bakti, 2000)
- , *Implementation of Justice in a Changing Society*, (Jakarta: Kompas, 1993)
- Soetedjo, Wagiaty, *Child Criminal Law*, (Bandung, Refika Aditama, 2008)
- Sri Mamudji, et. al, *Research Methods and Legal Writing*, (Jakarta, Faculty of Law, University of Indonesia, 2005)
- Suryono Ekotama, *A Bortus Provocatus for Rape Victims*, (Yogyakarta: Atmajaya University, 2001)
- Syamsul Arifin, *Introduction to Indonesian Law*, (Medan: Medan area University Press, 2012)
- Teguh Prasetyo, *Criminal Law*, (Jakarta: PT. Rajawali Pers, 2012)

The Indonesian Legal Resources Center (ILRC) Team, *Defending Children's Rights: Compilation of Regulations and Policies Related to Children in Conflict with the Law*, (Jakarta, The Indonesian Legal Resources Center (ILRC), 2012)

Journal

Ivo Aertsen, et, al, *Restorative justice and the Active victim: Exploring the Concept of Empowerment*, (Journal Temida, 2011)

Ravel Daniel Rondonuwu, *Trial Process for the Crime of Theft Perpetrated by Children*, *Lex Crimen* Vol. IV/No. 1/Jan-Mar/2015

Romli Atmasasmita, *Academic Paper on the Draft Law on Criminal Procedure Law*, *Indonesian Police Journal*, Edition XIII/Jakarta, 2010

Wagiati Sutedjo, *Child Criminal Law*, (Bandung, Refika Aditama, 2008).

Yeni Widowaty and Fadia Fitriyanti, *Building a Model of Legal Protection for the Community as Victims of Pollution and/or Environmental Destruction by Corporations with Restorative Justice Principles*, *Jurnal Media Hukum* Vol 21, No 1 (2014)

Article

Ds. Dewi, *Restorative justice, Diversionary Schemes and Special Children's Courts in Indonesia*. Unpublished article

Oktafianus Tampi, *Legal Protection of Minors in Narcotics Crime*, *Article Lex et Societatis*, Vol. III/No. 10/Nov/2015

Theresia Adelina and A.A. Ngurah Yusa Darmadi, *Legal Protection of Children as Perpetrators of the Crime of Persecution (In the Denpasar City Police Legal Area)*, *Article, Criminal Law Specialization Program, Faculty of Law, Udayana University*, 2018

Sengodan, V., & Appusamy, N. (2020). Comparative anthropometry analysis of the digital X-rays of the right and left hip joints in an Indian population. *Journal of Natural Science, Biology and Medicine*, 11(1), 3-6. https://doi.org/10.4103/jnsbm.JNSBM_177_19

Sowndarya, K., Joseph, J., Shenoy, A., & Hegde, A. (2021). Evaluation of triglyceride/high-density lipoprotein ratio as a surrogate marker for insulin resistance in healthy young males. *Journal of Natural Science, Biology and Medicine*, 12(2), 213-217. <https://doi.org/10.4103/jnsbm.JNSBM-193-20>

Srinowati, H., Widajanti, N., Firdausi, H., & Thaha, M. (2021). The Relationship between Insulin Resistance and the Degree of Sarcopenia in Elderly Patients on Maintenance Hemodialysis. *Journal of Natural Science, Biology and Medicine*, 12(3), 338-346. https://doi.org/10.4103/jnsbm.JNSBM_12_3_8

Thesis

Ediwarman, *Monograph, Legal Research Methodology*, Postgraduate Program Univ. Muhammadiyah North Sumatra, Medan, 2010

Internet

Eva Achjani Zulfa, Defining Restorative Justice, Eva Achjani Zulfa, downloaded from <http://evacentre.blogspot.com/2009/11/definisi-keadilan-restoratif.html> 19 August 2020

Sexual Violence Against Children, downloaded from <http://ragilmuhammad.blogspot.co.id/2014/06/sexual-violence-against-child.html> downloaded on 5 August 2020

Lushiana Primasari, Restorative Justice and Fulfillment of Human Rights for Children in Conflict with the Law, downloaded from <http://lushiana.staff.uns.ac.id/files/2010/07/keadilan-restoratif-bagi-anak-yang-berhadapan-with-law.pdf>, 17 November 2019

Literature of Basic Cultural Science Papers, Sexual Harassment, downloaded from <http://library-makalah.blogspot.com/2011/03/pelecehan-sexual.html> on 22 August 2020.

Laws and regulations

KUHP

Law Number 4 of 1979 concerning Child Welfare

Law Number 35 of 2014 concerning Child Protection

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Law Number 23 of 1997 concerning Juvenile Justice.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System

Attorney General Regulation Number 5 of 2020

Court Decision Number 23/Pid.Sus-Anak/2018/PN.Cbi

Semarang District Court Decision No. 10/Pid.Sus/2016/PN.Smg