



THE URGENCY OF FORMING SPECIAL CRIMINAL LAWS FOR CRIMINALS COMMITTED BY CHILDREN IN CASES OF SEXUAL VIOLENCE AGAINST CHILDREN REVIEWED FROM THEORY OF LEGAL CERTAINTY

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Abstract

Sexual violence against children committed by child perpetrators is a serious issue in the criminal justice system in Indonesia. Currently, Indonesian criminal law does not specifically regulate a comprehensive handling mechanism for this case, thus causing problems in the application of fair law and providing optimal protection for children as victims and perpetrators. This study aims to analyze the urgency of establishing a special criminal law that handles criminal acts of sexual violence by children against other children. A normative legal approach with a conceptual approach, a legislative approach and a comparative approach and the theory of legal certainty are used in this study to explore the need for clearer and more responsive regulations. The results of the study indicate that the establishment of a special criminal law can provide better legal certainty, including appropriate protection and rehabilitation mechanisms for children as perpetrators and victims. This is important to ensure that the criminal justice system not only prioritizes punishment, but also protection and rehabilitation in accordance with the principle of the best interests of the child. The establishment of this special regulation can also strengthen the justice system to be more adaptive and responsive to the special characteristics of cases of child sexual violence.

Keywords: *Child Sexual Violence, Special Criminal Law, Legal Certainty*

1. INTRODUCTION

Sexual violence against children is a form of crime that has profound and complex impacts on victims, families, and society at large. This crime not only violates human rights, but also has an impact on the psychological, social, and physical development of children as victims. The phenomenon of sexual violence against children in Indonesia is increasingly worrying with the emergence of cases committed by perpetrators who are also still children. This crime presents its own problems, especially related to how the legal system can balance efforts to restore victims and a rehabilitative approach for perpetrators who are still children. Until now, the criminal law system in Indonesia has not specifically responded to the complexity of cases of sexual violence committed by children against other children.

This creates a dilemma for law enforcement, because the principle of child protection must be applied not only to victims, but also to perpetrators who are still children. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) and Law No. 23 of 2002 concerning Child Protection provide an important legal basis for handling children as perpetrators, but are not specific enough in regulating cases of sexual violence between children. This regulatory ambiguity often results in uncertainty in the application of the law, and potential injustice faced by both parties.

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The principle of the best interests of the child, adopted from the Convention on the Rights of the Child (CRC), emphasizes the importance of a comprehensive legal approach based on the protection of children's rights. However, in practice, handling sexual violence committed by children often focuses more on the aspect of punishment than rehabilitation and recovery. In fact, the formation of a child's character and psychology is greatly influenced by the approach taken by the legal system to crimes committed by children. In addition, the absence of special regulations that can provide comprehensive protection for child victims and perpetrators has the potential to cause further trauma, both for victims who do not receive proper justice, and for perpetrators who do not get adequate rehabilitation opportunities. In line with the development of international criminal law, the urgency of establishing special criminal law that handles crimes of sexual violence between children is increasingly pressing.

The implementation of regulations that are responsive to sexual violence between children is expected to improve the quality of child criminal justice in Indonesia, so that it can create a justice system that is not only fair, but also rehabilitative and preventive. Issues Raised This study raises the main issue related to the unclear and legal vacuum in handling criminal acts of sexual violence between children in the criminal justice system in Indonesia. Currently, the approach applied in cases of sexual violence by children tends to prioritize the general approach that applies to child crimes, without considering the specifics of the type of crime. As a result, there are difficulties in determining the right handling strategy, especially in ensuring that the rights of children as perpetrators and victims remain optimally protected. This issue is important to discuss because the unclear law and the absence of specific regulations have the potential to violate the principle of legality, which is one of the basic principles in the criminal law system. This principle requires clarity in the formulation of criminal acts and applicable sanctions, as well as handling methods that are in accordance with the characteristics of the perpetrators and victims.

Without specific regulations governing the crime of sexual violence between children, the application of the law becomes inconsistent, unfocused, and even has the potential to harm one party. Moreover, the legal vacuum also has an impact on the effectiveness of the implementation of rehabilitation for child perpetrators. As perpetrators who are still in the psychological development phase, children should receive treatment that focuses on improving attitudes and behavior, not just punishment. The ambiguity of regulations can trigger social stigma that is difficult to remove, which can ultimately cause perpetrators to fall back into criminal acts in the future. Therefore, the formation of special criminal law is very urgent to ensure that the criminal justice system can run fairly, effectively, and responsively to the needs of child victims and perpetrators. This study aims to examine the urgency and appropriate approach in the formation of special criminal law to handle cases of sexual violence between children using the framework of the theory of legal certainty. This study is expected to contribute to formulating fairer and more humane regulations, as well as ensuring that the principle of the best interests of children can be optimally applied at every stage of the legal process. This is also expected to improve the quality of the juvenile criminal justice system in Indonesia, so that it can prevent the recurrence of criminal acts and create a safer and more protected society.

2. IMPLEMENTATION METHOD

This research is a normative legal research, namely legal research conducted by examining library materials or secondary data as basic materials for research by conducting searches for



regulations and literature related to the problems studied or can be known as the library approach. The approaches used are using the Statute Approach, the conceptual approach, and the Comparative Approach. The technique of collecting this research with the materials used in the research is by library research with primary, secondary and tertiary legal materials.

3. RESULTS AND DISCUSSION

3.1. Urgency of Establishing Special Criminal Law to Handle Sexual Violence Between Children from the Perspective of Legal Protection in Indonesia

Sexual violence committed by children against other children is a worrying phenomenon in Indonesia. Although specific data on such cases is still limited, various reports and studies show that sexual violence against children, including that perpetrated by children, continues to increase. According to the report of the National Commission for Child Protection (Komnas PA) in 2023, there were 3,547 cases of violence against children in Indonesia, which showed an increase of 30% from the previous year. Of that number, 859 cases were sexual violence. The Ministry of Women's Empowerment and Child Protection (KemenPPPA) noted that in 2023, there were 251 children aged 6-12 years who were victims of violence in schools. This shows that the educational environment is not yet completely safe for children. In addition, data from UNICEF reveals that up to 56% of incidents of sexual exploitation and abuse of children in cyberspace go unreported, UNICEF shows low levels of reporting and awareness of the importance of child protection in the digital environment. The lack of education and understanding of the forms of sexual violence and their impact on children also contributes to the high number of cases. BBC Many cases go unreported due to a variety of factors, including shame, ignorance, and fear of social consequences. Therefore, more intensive efforts are needed in preventing and handling sexual violence against children, including through education, raising awareness, and establishing special regulations that protect children from sexual violence.

In handling cases of sexual violence between children, Indonesia has implemented various regulations, including Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 23 of 2002 concerning Child Protection. The following is an evaluation of these regulations, including their weaknesses and limitations in ensuring justice and protection for victims and perpetrators who are still minors. Evaluation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System This law aims to realize a more restorative and educative juvenile criminal justice system. One of the approaches proposed is restorative justice, which emphasizes the restoration of relationships between perpetrators, victims, and the community. The definition of "Child" which is limited to Article 1 number 3 defines a child as someone who has reached the age of 12 but has not reached the age of 18 and is suspected of committing a crime. This definition does not include children under 12 who may be perpetrators or victims of sexual violence. Focus on the Perpetrator, less attention to the victim although this law regulates the protection of children as perpetrators, but attention to victims who are also children is still lacking. This results in minimal protection and recovery for victims. Suboptimal Implementation: Lack of facilities and human resources trained in handling juvenile criminal justice cases hampers the effectiveness of the implementation of this law.

Evaluation of Law Number 23 of 2002 concerning Child Protection This law is designed to provide comprehensive protection for children's rights, including from violence and discrimination. Inconsistency with the Convention on the Rights of the Child, several provisions in this law are not fully in line with the principles of the Convention on the Rights of the Child, especially in terms of

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non-discrimination and the best interests of the child. Lack of Effective Sanctions This law does not provide sufficiently severe sanctions for perpetrators of sexual violence against children, so it does not provide a significant deterrent effect. The lack of complaint and recovery mechanisms due to the absence of a clear mechanism for complaints and recovery for victims of sexual violence between children means that many cases go unreported and victims do not receive the assistance they need. The limitations of the applicable law in handling cases of sexual violence between children are the absence of specific regulations at this time, there is no specific law that regulates sexual violence between children, so that handling these cases often uses general regulations that are less specific.

Social stigma and lack of education due to low public awareness and stigma against victims of sexual violence cause many cases to go unreported, and victims do not receive the protection they deserve. Inconsistency between national and international laws Several provisions in national laws are not yet in line with international standards regarding child protection, especially in terms of handling sexual violence. Inconsistency of existing regulations in guaranteeing justice and protection for victims and perpetrators who are minors Although there are regulations governing child protection and the juvenile criminal justice system, the existing regulations are not yet fully effective in guaranteeing justice and protection for victims and perpetrators who are still minors. This is due to the lack of an integrated approach, the absence of effective coordination between various related agencies in handling cases of sexual violence between children resulting in less than optimal handling. The lack of resources and facilities due to limited facilities and experts who specifically handle juvenile criminal justice cases is an obstacle in providing the protection and recovery needed for victims and perpetrators. Inconsistency with international standards because several aspects of national regulations do not meet international standards, especially in terms of protection against sexual violence and child exploitation. Therefore, it is necessary to update and harmonize existing regulations and increase the capacity of related institutions to ensure more effective justice and protection for victims and perpetrators of sexual violence between children.

Sexual violence between children is a serious problem that requires special attention in the context of criminal law. Special regulations are needed to handle such cases for several reasons: special protection for victims and perpetrators who are still children. Children, both as victims and perpetrators, have different physical and psychological conditions than adults. Therefore, a legal approach is needed that takes these aspects into account to ensure appropriate protection and handling. prevention of stigma and revictimization Without special regulations, the existing criminal justice process may not be sensitive enough to the needs of children, thus risking stigmatization or revictimization of victims. A special approach can help minimize this risk. Focus on rehabilitation of child perpetrators Special regulations allow for the application of more appropriate sanctions and appropriate rehabilitation programs for perpetrators who are still children, with the aim of preventing recurrence of criminal acts and helping their reintegration into society. Inconsistencies in existing laws General criminal law is often insufficient to deal with the complexity of cases of sexual violence between children. For example, in the context of Indonesia, although there is Law Number 12 of 2022 concerning the Crime of Sexual Violence, its implementation has not been fully effective in handling cases involving children as perpetrators. The long-term impact on victims of sexual violence can cause significant physical, psychological and social impacts on child victims. Specific regulations can ensure that victims receive the protection and support necessary for their recovery. Considering the above factors, the



implementation of a special criminal law for sexual violence between children is a must. This is not only to ensure justice for victims, but also to provide appropriate rehabilitation opportunities for child perpetrators, as well as to prevent similar cases from occurring in the future. Legal protection for children, both as victims and perpetrators, is a crucial aspect of the justice system. This principle aims to ensure that children's rights are protected and fulfilled in every legal process. The application of the principle of legal protection for children in the context of juvenile criminal justice, the application of the principle of legal protection covers various aspects, including non-discrimination, every child has the same rights without discrimination.

The best interests of the child, all legal actions and decisions must consider the best interests of the child. The right to life, survival, and development guarantees the child's right to live and develop optimally. Respect for children's opinions respects and considers the views of children in the legal process involving them. The application of these principles is expected to provide comprehensive protection for children in the context of criminal justice. Implications of the absence of special regulations on the legal protection of children The absence of special regulations governing legal protection for children can cause various problems, including the inconsistency of case handling that without special regulations, the handling of cases involving children may not be in accordance with their needs and conditions, so that it can be detrimental to the child. The lack of special protection for children who are victims or perpetrators of criminal acts may not receive the special protection needed, such as adequate psychological assistance or rehabilitation facilities. Difficulty in recovery, without special regulations, the recovery process for child victims of sexual violence may not be effective, considering that their needs are different from adult victims. These implications indicate the importance of special regulations governing the legal protection of children in the context of criminal justice.

The role of special criminal law in strengthening legal protection and recovery for child victims of sexual violence Special criminal law has an important role in strengthening legal protection and recovery for child victims of sexual violence through the application of more severe sanctions by imposing more severe criminal sanctions for perpetrators of sexual violence against children can provide a deterrent effect and prevent the recurrence of similar crimes. Provision of special recovery services by regulating special recovery services for child victims, such as psychological counseling, therapy, and rehabilitation facilities. Protection of victim identity by ensuring the confidentiality of the identity of child victims of sexual violence to avoid stigma and social pressure. With the existence of special criminal law that regulates child protection, it is hoped that it can provide more effective and comprehensive protection for children who are victims of sexual violence.

The lack of specific regulations addressing sexual violence between children in Indonesia has significant social impacts. Without an adequate legal framework, cases of sexual violence involving children are often not handled effectively, resulting in perpetrators not receiving appropriate sanctions and victims not receiving the necessary protection. This results in public distrust of the justice system and law enforcement. The absence of specific regulations also contributes to low public awareness of the importance of protecting children from sexual violence. Without clear laws, efforts to prevent and handle cases are hampered, and often rely on the initiative of individuals or non-governmental organizations. As a result, many cases go unreported or are not handled properly, worsening the condition of victims and allowing perpetrators to repeat their actions. The social stigma against victims of sexual violence is also exacerbated without adequate regulations. Victims often feel ashamed or afraid to report their cases for fear of being

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stigmatized by society. This results in victims not getting the support or protection they need, and in the long term can cause deep psychological trauma. In addition, without specific regulations, it is difficult to monitor and evaluate efforts to prevent and handle sexual violence between children. Data and statistics on these cases may be inaccurate or incomplete, making it difficult for authorities to formulate effective policies. This also hampers further research needed to fully understand and address the issue. Therefore, it is necessary to establish a specific criminal law that addresses the crime of sexual violence by children against children. Such a regulation would provide a clear legal framework for law enforcement, victim protection, and prevention of cases of sexual violence between children in Indonesia. With a specific law, it is hoped that public awareness will increase, social stigma against victims will decrease, and prevention and case handling efforts will be more effective.

3.2. Application of Legal Certainty Theory in Formulating Special Criminal Regulations for Sexual Violence Between Children and Its Implications for the Juvenile Criminal Justice System in Indonesia

The theory of legal certainty is a fundamental concept in the legal system that emphasizes the need for clear, consistent, and evenly applicable laws. Legal certainty aims to create a predictable system, so that society can understand the limits of permitted and prohibited behavior. There are several basic principles contained in the theory of legal certainty, namely the principle of legality, which states that an action can only be declared a crime if it has been expressly regulated in law. In the context of juvenile criminal justice, the principle of legality ensures that all criminal acts involving children, either as perpetrators or victims, must have a clear legal basis. Clarity of norms refers to the importance of legal regulations that are easy to understand and do not give rise to multiple interpretations. In juvenile criminal cases, clarity of norms is very important to ensure that children as perpetrators understand the consequences of their actions, and children as victims can access the protection rights that have been regulated. Access to Legal Protection, the theory of legal certainty also emphasizes the need for access to fair legal protection for every individual, including children. This access includes the right to legal assistance, a fair trial process, and rehabilitation efforts in accordance with the principle of the best interests of the child.

Cases of sexual violence committed by children against other children have special characteristics that are different from other crimes. This creates its own challenges for the application of the theory of legal certainty, because a legal approach is needed that not only guarantees legal certainty, but is also responsive to the need to protect the rights of children as perpetrators and victims. In this context, the application of the theory of legal certainty becomes important because of the need for clear and specific regulations, cases of sexual violence between children require clearer and more specific regulations so that they can be applied consistently. Without strict rules, the legal process against child perpetrators is often ineffective, and victims do not receive adequate protection. Specific regulations are also needed to provide clear direction for law enforcement, so that the decisions taken can reflect substantive justice and rehabilitation for child perpetrators. Comprehensive legal protection, the application of the theory of legal certainty in this case also ensures comprehensive protection for children as perpetrators and victims. For example, children as perpetrators must receive appropriate legal assistance, as well as handling that focuses more on rehabilitation than punishment. On the other hand, children as victims also have



the right to access a transparent, fair legal process, as well as adequate psychological and social recovery mechanisms.

Aspects of Legal Certainty That Must Be Present in the Juvenile Criminal Justice Process
Aspects of legal certainty that must be present in the juvenile criminal justice process are ensuring a strong legal basis and fair protection for all parties involved, including perpetrators and victims who are still children. Several important aspects that must be considered are a consistent and transparent judicial process in cases of sexual violence between children, legal certainty must be reflected in consistent and transparent legal procedures, so that decisions taken by law enforcement officers can be accounted for and understood by all parties involved, including families and the community. Fulfillment of children's rights, legal certainty also includes the fulfillment of children's rights at every stage of the judicial process. Child perpetrators, for example, must be treated by considering their age and psychological condition, while child victims must be guaranteed that the ongoing legal process will not cause new trauma.

This is in line with the principle of the best interests of the child which has been recognized internationally and adopted in national laws. Rehabilitative and preventive approaches, legal certainty in juvenile criminal justice must prioritize an approach that focuses more on rehabilitation and prevention, not just punishment. This means that the legal system must create a mechanism that is able to restore the psychological and social conditions of child perpetrators so that they do not repeat similar crimes in the future. On the other hand, child victims must also receive adequate rehabilitation services to restore their physical and mental conditions after experiencing sexual violence. Overall, the application of the theory of legal certainty in the context of juvenile criminal justice is very important to create a fair, effective, and humane legal system, and is able to provide maximum legal protection for all parties involved.

Evaluation of the Inadequacy of Existing Regulations in Handling Crimes of Sexual Violence Between Children Currently, the legal system in Indonesia has several regulations related to sexual violence and child protection, such as: Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), which regulates the handling of children as perpetrators of criminal acts, and Law No. 12 of 2022 concerning Crimes of Sexual Violence (UU TPKS), which emphasizes protection for victims of sexual violence in general. However, these two laws have limitations in terms of specific regulations for sexual violence between children in the SPPA Law and the TPKS Law do not have a special clause that specifically regulates crimes of sexual violence committed by children against other children.

This causes the handling procedures to be incompatible with the characteristics of the crime, which should consider the age and psychological factors of the perpetrator and victim. Rehabilitative approach, existing regulations tend to focus more on the general criminal aspect, without considering a more comprehensive rehabilitative approach for child perpetrators. As a result, rehabilitation efforts for child perpetrators are not optimal. The lack of clarity in case handling procedures, the absence of clear guidelines on the investigation process, trials, and post-sentencing handling of cases of sexual violence between children creates uncertainty for law enforcers in implementing existing regulations consistently.

The inadequacy and vacuum of laws related to sexual violence between children have direct implications for legal uncertainty, both in terms of law enforcement and protection of the rights of child victims and perpetrators. Here are some implications caused by this vacuum of law, difficulties in consistent law enforcement that without clear and specific regulations, law enforcers often face difficulties in determining the right legal steps, including in terms of collecting evidence,

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assessing children's psychology, and imposing balanced sanctions. This can lead to inconsistencies in handling similar cases in various regions, which ultimately hinders legal certainty. Protection of victims' rights that is not optimal due to unclear regulations also has an impact on the protection of the rights of child victims. For example, procedures for handling victims that are still ambiguous can result in further trauma for child victims, especially if the legal process that is running is not child-friendly. In addition, the lack of a clear recovery mechanism for victims has the potential to create a sense of injustice and reduce public trust in the legal system. Social stigma against child perpetrators due to unclear regulations in handling child perpetrators can also exacerbate the social stigma attached to child perpetrators. Child offenders who do not receive adequate rehabilitation are at risk of re-involvement in criminal acts, so an unclear legal approach can actually be counterproductive to the goal of rehabilitation and social reintegration of child offenders.

Sexual violence between children is a very complex case, both in terms of psychology, social, and law. The perpetrator and victim are both children, which requires a special approach that is different from ordinary criminal cases. Currently, criminal regulations in Indonesia do not explicitly regulate a special mechanism to handle cases of sexual violence between children. Existing regulations, such as Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) and Law Number 23 of 2002 concerning Child Protection, are still general in nature and do not provide specific treatment for cases of sexual violence between children. As a result, law enforcers are often faced with a dilemma in determining appropriate and fair handling steps for both perpetrators and victims. In this context, the need for special criminal regulations is urgent, with the aim of responding to the dynamics and characteristics of this case comprehensively. These special criminal regulations need to include more detailed guidelines regarding handling procedures, from investigation, inquiry, trial, to rehabilitation decisions. With more focused guidelines, law enforcement can better ensure justice for both parties, without violating the principles of international law on child protection.

Special criminal regulations are not only needed to provide legal certainty, but also to ensure that the rehabilitation process for child perpetrators runs optimally. Child perpetrators in cases of sexual violence cannot be treated the same as adult perpetrators, considering their immature psychological, social, and personality development factors. The rehabilitation process in question must focus on efforts to improve the attitudes and behavior of the perpetrators, including the provision of counseling services, education, and skills training aimed at reducing the potential for repeat criminal acts in the future.

Without an adequate rehabilitative approach, child perpetrators are at risk of being trapped in a cycle of ongoing violence, which can ultimately harm the perpetrators themselves and their social environment. On the other hand, special criminal regulations must also emphasize maximum protection and recovery for child victims. Victims in these cases tend to experience deep trauma, both physically and psychologically, so ongoing intervention is needed, including trauma counseling, medical support, and comprehensive legal assistance. With more specific criminal regulations, law enforcers can focus more on providing protection for victims, ensuring their rights are guaranteed, and supporting their recovery optimally.

Several countries have implemented specific criminal laws that regulate in detail sexual violence between children, including mechanisms for the rehabilitation of perpetrators and protection of victims. In the Netherlands, for example, the juvenile criminal law system includes specific regulations that deal with cases of sexual violence between children with an approach that



emphasizes rehabilitation and psychological recovery, in accordance with the principles of restorative justice. The judicial process in the Netherlands prioritizes the restoration of social relationships and the return of child perpetrators to the right track through therapy and social programs. In Sweden, cases of sexual violence involving child perpetrators are handled using a juvenile justice system approach that is integrated with the social welfare system. Child perpetrators are placed in a rehabilitation program managed by the government, with the main goal of restoring the child's attitudes and behavior holistically. This approach combines proportional punishment with psychological support and education for perpetrators, as well as intensive recovery for victims. Canada has also developed a juvenile criminal law that specifically addresses cases of sexual violence between children. The legal system in Canada emphasizes the importance of early intervention, with an emphasis on rehabilitation programs that focus on behavioral therapy, family counseling, and education designed to prevent re-offending. These regulations not only provide clarity in law enforcement, but also minimize the potential negative impacts that can arise from a justice system that is too repressive towards child perpetrators. Here is a comparison table:

Table 1
Implementation of Special Criminal Law for Sexual Violence Between Children in the Netherlands, Sweden, and Canada

No.	Country	Name of Regulation	Main Approach	Rehabilitation Mechanism for Offenders	Victim Protection
1	Dutch	Juvenile Criminal Law (Jeugdstrafrecht)	Restorative Justice	Therapy, social programs, and social restoration	Intensive psychological support and recovery
2	Sweden	The Swedish Penal Code (Brottsbalken) - Chapter on Youth Offenders	Proportionality and Holistic	Government-run rehabilitation programs include psychological support and education.	Intensive recovery with the help of psychologists and counselors
3	Canada	Youth Criminal Justice Act (YCJA)	Behavioral Therapy and Family Counseling	Behavioral therapy programs, family counseling, and special education	Focus on victim recovery through counseling and support

Source: secondary legal materials, processed 2024.

The application of the theory of legal certainty in these countries shows how clear, specific, and child protection-based regulations can create a more responsive and adaptive criminal justice system. The application of this specific regulation also provides lessons for Indonesia to design a better legal system, where the theory of legal certainty can be realized through an approach that considers children's rights and needs comprehensively. This not only ensures adequate legal protection, but also creates a legal environment that supports the rehabilitation of perpetrators and the holistic recovery of victims. The establishment of a special criminal law that specifically regulates sexual violence between children is expected to strengthen the juvenile criminal justice system in Indonesia in several ways. First, this special criminal law will provide a clearer and more focused legal framework for law enforcers in handling cases of sexual violence between children,

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thereby reducing different interpretations and inconsistent application of the law. Second, with comprehensive regulations, the rights of children as perpetrators and victims can be better guaranteed, in line with the principle of the best interests of the child adopted in the Convention on the Rights of the Child (CRC) and Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). Third, this special criminal law can also improve legal procedures that are more child-friendly, ensuring a more humane approach and not only focusing on punishment, but also on effective rehabilitation efforts.

The implementation of this special criminal law can significantly affect efforts to prevent and rehabilitate child offenders. With more specific regulations, law enforcers can prioritize rehabilitation programs based on education, psychological counseling, and social reintegration for child offenders. These programs are expected to help perpetrators understand their mistakes, improve their behavior, and prevent recurrence of crimes in the future. In addition, this special criminal law will ensure better protection for victims, including physical and psychological recovery, access to legal assistance, and justice that is appropriate to the characteristics of child victims. More comprehensive protection for victims will include victim assistance services involving child psychologists, social workers, and child protection agencies, so that the trauma experienced can be minimized.

The social and legal implications that may arise from the formation of this special criminal law will also give rise to various social and legal implications that must be considered carefully, the potential for policy changes with the existence of special regulations, there will be adjustments in national and local policies related to handling sexual violence between children. The government will need to develop policies that support the implementation of this special criminal law, including increasing the capacity of law enforcement agencies, rehabilitation facilities, and recovery services for victims. This special criminal regulation will require changes in procedures in the juvenile criminal justice system, including in aspects of investigation, prosecution, and trial.

Law enforcers must follow more detailed guidelines on how to handle child perpetrators in cases of sexual violence, such as the use of a non-discriminatory approach, interrogation procedures appropriate to the age of the perpetrator, and the involvement of psychologists or child experts during the legal process. Law enforcers, such as police, prosecutors, judges, and community counselors, must receive special training to handle cases of sexual violence between children. This training includes skills in handling child perpetrators professionally and ethically, as well as understanding how to provide assistance and protection for victims. Lack of understanding and skills of law enforcers can result in ineffective law enforcement and potentially harm children, both as perpetrators and victims.

Outside the justice system, the formation of this special criminal law will have an impact on society and families. The community is expected to better understand that sexual violence between children is a serious problem that requires proper legal handling and should not be underestimated or considered as ordinary mischief. Meanwhile, families also need to be given an understanding of their role in accompanying children involved in this case, both as perpetrators and victims, as well as the importance of a restorative approach to support effective recovery and rehabilitation. Specifically On the one hand, the formation of this special criminal law will face various challenges, such as resistance to legal changes, limited resources, and the need to increase the capacity of law enforcement institutions and officers. On the other hand, this special criminal law also opens up opportunities to strengthen the protection of children's rights, improve the quality of



the juvenile criminal justice system, and create a safer and more child-friendly environment in Indonesia. The formation of a special criminal law for the crime of sexual violence between children is an important step in strengthening legal certainty, improving the juvenile criminal justice system, and providing better protection for victims. This more specific regulation is expected to prevent repeated criminal acts and support the rehabilitation of child perpetrators, as well as create a legal environment that is more responsive and adaptive to the needs of child protection. The social and legal implications that arise must be managed properly through supportive policies, changes in judicial procedures, and appropriate law enforcement training.

4. CONCLUSION

The establishment of a special criminal law that specifically regulates the crime of sexual violence between children is an urgent need. This is due to the inadequacy of existing regulations in providing optimal protection for victims and rehabilitative treatment for child perpetrators. A special criminal law designed for cases of sexual violence between children can strengthen legal protection, guarantee the rights of children as victims and perpetrators, and create better legal certainty. Thus, more comprehensive and focused regulations are expected to be able to realize a juvenile criminal justice system that is more responsive, fair, and in accordance with the principle of the best interests of the child. The application of the theory of legal certainty in the establishment of special criminal regulations to handle sexual violence between children has significant implications for the juvenile criminal justice system in Indonesia. The theory of legal certainty emphasizes the importance of clear, firm, and predictable regulations in enforcing criminal law. By formulating a special criminal law that prioritizes legal certainty, it is hoped that there will be improvements in the law enforcement process that is more consistent, transparent, and non-discriminatory. In addition, the application of regulations based on legal certainty can also strengthen the effectiveness of rehabilitation for child perpetrators, as well as provide substantive justice for victims.

REFERENCES

- Aprilianda, Nurini. 2017. Perlindungan Anak Korban Kekerasan Seksual Melalui Pendekatan Keadilan Restoratif. *Arena Hukum*, 10(2): 309–332. Surabaya: Universitas Airlangga. CIC
- Asmita, A. 2014. Melindungi Anak-Anak dari Eksploitasi Seksual dan Kekerasan Seksual Situasi Bencana dan Gawat Darurat. ECPAT Indonesia.
- Atmasasmita, Romli. 1986. *Problema Kenakalan Anak-Anak Remaja*. Bandung: Armico.
- Atmasasmita, Romli. 1995. *Kapita Selekta Hukum Pidana dan Kriminologi*. Bandung: Mandar Maju.
- Atmasasmita, Romli. 2005. *Teori dan Kapita Selekta Kriminologi*. Bandung: Refika Aditama.
- Bala, N., & Anand, S. (2018). *The Youth Criminal Justice Act and the Canadian Approach to Juvenile Justice Reform*. Toronto: University of Toronto Press.
- Bonger, W. A. 1997. *Pengantar Tentang Kriminologi*. Jakarta: PT. Pembangunan.
- Doob, A. N., & Sprott, J. B. (2018). *Therapeutic Interventions and Juvenile Justice in Canada: The Role of Early Interventions*. Ottawa: Canadian Scholars Press.
- Fitriani, Rini. 2016. Peranan Penyelenggara Perlindungan Anak dalam Melindungi dan Memenuhi Hak-Hak Anak. *Jurnal Hukum Samudra Keadilan*, 2(2): 250–258.

THE URGENCY OF FORMING SPECIAL CRIMINAL LAWS FOR CRIMINALS COMMITTED BY CHILDREN IN CASES OF SEXUAL VIOLENCE AGAINST CHILDREN, REVIEWED FROM THE THEORY OF LEGAL CERTAINTY

Imera Azzahra Alivia, Prija Djatmika, Nurini Aprilianda

- Goldson, B. (2019). *Youth Justice in Scandinavia: Context, Framework, and Challenges*. Gothenburg: Scandinavian Institute Press.
- Jamaludin, Ahmad. 2021. "Perlindungan Hukum Anak Korban Kekerasan Seksual." *JCIC: Jurnal CIC Lembaga Riset dan Konsultan Sosial*, 3(2): 1–10.
- Jenawi, Belli. 2017. Kajian Hukum Terhadap Kendala dalam Perlindungan Hukum oleh Aparat Penegak Hukum Terhadap Anak Korban Pelecehan Seksual (Ditinjau dari UU No. 35 Tahun 2014). *Lex Crimen*, 6(8).
- Kartika, Yuni, dan Andi Najemi. 2020. Kebijakan Hukum Perbuatan Pelecehan Seksual (Catcalling) dalam Perspektif Hukum Pidana. *PAMPAS: Journal of Criminal Law*, 1(2).
- Löfstrand, C. (2021). *Integrated Social Welfare and Youth Justice Systems in Sweden: A Holistic Approach*. Malmö: Nordic Academic Publishing.
- Mulyadi, Lilik. 2014. Perlindungan Hukum Terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia. Bandung: Citra Aditya Bakti.
- Prahesti, Rika Nur Widya. 2024. Tindakan Rehabilitasi bagi Anak yang Melakukan Tindak Pidana Kekerasan Seksual dalam Teori Kepastian Hukum. Tesis. Universitas Lambung Mangkurat.
- Priyambudi, Teguh, dkk. 2023. Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual di Indonesia. *Jurnal Ilmu Hukum Wijaya Putra*, 1(2).
- Rovers, L., & Oppenheimer, M. (2020). *Restorative Justice in the Dutch Juvenile Justice System: Challenges and Perspectives*. Amsterdam: Springer.
- Soekanto, Soerjono. 1981. *Kriminologi: Suatu Pengantar*. Jakarta: Ghalia Indonesia.
- Soleh, M., dan Sri Endah Wahyuningsih. 2017. Analisis Penerapan Sanksi Pidana Terhadap Pelaku Tindak Pidana Kekerasan Seksual Anak di Bawah Umur di Pengadilan Negeri Demak. *Jurnal Hukum Khaira Ummah*, 12(2).
- Sudarto. 1986. *Kapita Selekta Hukum Pidana*. Bandung: Alumnus.
- Sulandjari, Rekno. 2017. Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual dalam Perspektif Hukum Pidana. *Jurnal Hukum Khaira Ummah*, 12(2).
- Taufan, M. 2021. Komnas HAM RI Dorong Mekanisme Cegah Perundungan dan Kekerasan Seksual.
- UNICEF Indonesia. 2022. Data Survei Baru: Hingga 56 Persen Insiden Eksploitasi Seksual dan Perlakuan yang Salah di Dunia Maya Tidak Dilaporkan.
- Van der Laan, P., & Loeber, R. (2019). *Juvenile Delinquency and Justice in the Netherlands: New Developments and Reform Proposals*. London: Sage Publications.
- Yuniarti, S. 2020. Perlindungan Hukum Terhadap Anak Korban Tindak Pidana Kekerasan Seksual di Indonesia. *Jurnal Ilmu Hukum*, 1(2).