

## THE PRINCIPLE OF THE BEST INTERESTS OF THE CHILD IN LAW ENFORCEMENT AGAINST CHILDREN WHO COMMIT RAPE

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### Abstract

Handling rape cases involving children as perpetrators has become a complicated issue within the juvenile justice system in Indonesia. This crime not only causes deep psychological wounds to the victims, who are also still children, but also presents complex legal issues in the law enforcement process against the perpetrators who are legally minors. The principle of "the best interests of the child," as stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) and "the Convention on the Rights of the Child", emphasizes that the approach to children in conflict with the law should focus more on rehabilitation and protection rather than mere punishment. This research aims to deeply explore the underlying considerations of judges in adjudicating cases of rape committed by children, using a case study from the Pasir Pengaraian District Court's verdicts. Through normative legal research methods with a case study approach, it was found that the Judge in adjudicating the case had prioritized the principle of "the best interests of the child." Disparities in court rulings result from the juvenile justice system's uneven practical implementation, notwithstanding its normative orientation toward a restorative justice paradigm that prioritizes rehabilitation. To guarantee a more uniform, equitable, and really child-centered justice system, this study emphasizes the necessity of harmonizing and standardizing the application of the "best interests of the child" principle across the entire legal procedure.

**Keywords:** *Judge's concerns, the juvenile justice system, the best interests of the child principle, rape crime, and minor offenders.*

### INTRODUCTION

The crime of rape is one form of moral offense that has multidimensional impacts, both for the victim, the family, and society at large.<sup>4</sup> The psychological, social, and legal impacts caused by this crime not only affect the victim but also influence the perpetrator. The problem becomes even more complex when the perpetrator of the rape crime is a child. This contradicts "the 1945 Constitution of the Republic of Indonesia (UUD RI 1945)", which in Article 28, paragraph (2) explains that "Every child has the right to survival, growth, and development and has the right to protection from violence and discrimination."<sup>5</sup>

The application of criminal law in Indonesia to children facing legal issues must adhere to child protection principles, as regulated by "Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA)." This is in line with Indonesia's commitment to the Convention on the Rights of the Child of 1989, which was ratified through "Presidential Decree No. 36 of 1996", and especially Article 3, which emphasizes the importance of child protection, stating that "every action and decision concerning the child shall be based on the principle of the best interests of the child." This shows that every action taken by the government and law enforcement must consider various important factors in making good decisions for children, especially for those facing legal issues.

Rape committed by a child creates a legal dilemma. On one hand, this crime violates the dignity of the victim and has long-term effects, leading many to demand a commensurate punishment for deterrent effect. On the other hand, the perpetrator should be treated as an individual still in the developmental stage, needing guidance and

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<sup>4</sup> Fiska Ananda, "Penerapan Diversi Sebagai Upaya Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana", Jurnal Daulat Hukum Vol.1. No.1 Maret 2018, hal.78.

<sup>5</sup> Indonesia, Undang-Undang Dasar Negara Republik Indonesia 1945, Pasal 28 ayat (2).

mentoring to reintegrate into society without stigma. Law enforcement for children must be based on the principle of the best interests of the child, with a focus on education and rehabilitation, not just punishment. However, the application of this principle by judges in Indonesia still varies. Sometimes, the child of a rapist receives a light sentence, such as being returned to their parents under supervision, but in other cases, the perpetrator is given a heavier punishment with imprisonment. These variances demonstrate the inconsistent use of the best interests of the child premise. This study aims to assess the basis of judges' sentencing decisions for child rape offenders and the extent to which these decisions are consistent with the best interests of the child concept in order to advance a more uniform and equitable juvenile criminal justice system. With reference to the previously provided background, this study examines the rationale behind the factors judges take into account when determining the appropriate punishment for rape of minors and the degree to which these rulings adhere to the best interests of the child principle.

## **LITERATURE REVIEW**

This study emphasizes a critical issue within Indonesia's juvenile justice system: the handling of rape cases committed by minors. It consistently underscores the complexities of legal and psychological challenges that arise in such cases, which have also been a key focus of numerous prior studies. The primary focus of this study is the implementation of the "best interests of the child" principle, a core concept outlined in the Convention on the Rights of the Child and the Child Protection System Law (UU SPPA). This is in line with other earlier studies that highlight the significance of this concept as a foundation for judgments in legal issues involving adolescents. This research identified inequalities or contradictions in the use of the "best interests of the child" criterion by judges in child rape cases. These findings reinforce arguments raised in previous research, which highlight variations in the interpretation and implementation of this principle, potentially leading to injustices in court rulings. Furthermore, this journal highlights the legal dilemmas that arise in child rape cases, namely how to balance the need to deliver justice to the victim with the obligation to protect and rehabilitate the child offender. This dilemma has become a continuous topic of discussion in the literature on juvenile criminal law, with various previous studies exploring different approaches to achieve the right balance. Specifically, this research highlights the relevance of restorative justice approaches in child rape cases.

This is in line with previous research that emphasizes the potential of restorative justice to repair the harm caused by crime, promote recovery for victims, and encourage accountability for offenders, especially in the context of juvenile justice. Additionally, this research also underscores the importance of considering external factors that can influence children's behavior, such as peer influence, social environment, and lack of parental supervision. This aligns with criminological theories that highlight the significance of the social context in comprehending and tackling juvenile delinquency and youth crime. In summary, this research makes important contributions to enhancing the understanding of the complexities involved in managing child rape cases within Indonesia's juvenile justice system. By linking empirical findings with relevant legal frameworks and theories, this research not only reinforces previous studies' findings but also provides new insights that can be used to improve juvenile criminal justice policies and practices in the future.

## **METHOD**

Legal research is a process aimed at resolving emerging legal issues. Therefore, the ability to identify legal issues, analyze them, and formulate appropriate solutions is highly necessary. In this study, the normative legal research method is used. This research is prescriptive in nature, and a case study approach is applied to deepen the analysis.

## **RESULTS AND DISCUSSION**

### **The Concept of Criminal Responsibility of Minors in the Child Criminal Justice System Law**

The concepts of protection, restorative justice, and diversion—which place an emphasis on guidance and rehabilitation—form the foundation of juvenile criminal responsibility under the Child Criminal Justice System Law (UU SPPA). *“Children aged 12 to 18 can be held legally accountable, while children under 12 are not subject to criminal sanctions but are given rehabilitative actions such as rehabilitation or guidance in social institutions.”* The SPPA Law distinguishes two types of punishments: primary punishments, such as warnings, rehabilitation outside institutions, vocational training, and supervision; and additional punishments, such as confiscation of goods, compensation, and restoration of initial conditions. The goal of this system is the rehabilitation and social reintegration of children, giving them a second chance to grow into better individuals, without stigma or punishment that hinders their future. This approach aligns with the view that children are the future of the nation and have the potential to grow into responsible individuals.

### **Criminal Sanctions and Measures in the Juvenile Criminal Justice System**

In considering the verdict, the judge will look at whether the child is under the influence of a bad environment, whether the crime was committed intentionally or due to coercion, and how the child behaves after committing the act, including whether the child shows remorse and has the will to change. In addition, the judge also considers the child's family conditions, available social support, and the possibility of diversion efforts as a more humane alternative solution compared to conventional punishment.

In delivering a verdict, the judge can choose between criminal punishment and non-criminal actions, in accordance with the provisions of the SPPA Law. The penalties that can be imposed on children are lighter compared to adults and include various forms such as warnings, conditional penalties (supervision, vocational training, or rehabilitation in social institutions), rehabilitation in special children's institutions, fines, and supervision penalties. In addition to criminal penalties, judges also have the authority to impose non-criminal measures, which are more focused on the rehabilitation and education of the child. The forms of these actions can include *"returning to parents or guardians under supervision, handing over to social institutions or competent individuals for guidance, mandatory participation in education or vocational training, as well as medical or psychosocial rehabilitation for children with mental disorders or drug dependence."*<sup>6</sup>

Judges in juvenile criminal justice, in addition to determining the appropriate type of punishment or action, are prioritized to apply the principle of restorative justice. This strategy seeks to foster a more positive and productive relationship between the victim, the child offender, and the community.<sup>7</sup> Judges consider rehabilitation, protection, and the child's recovery as an individual with the potential to change and grow in a positive way in addition to punishment when making decisions about children. This approach aligns with the main objectives of the SPPA Law, which are *"to create a more child-friendly justice system, to protect them from the negative impacts of the conventional justice system, and to give them a second chance to improve themselves and reintegrate into society in a healthy and productive manner."*

### **Principle of the Best Interests of the Child in the Juvenile Justice System**

The purpose of the Juvenile Justice System according to *"The Beijing Rules in Rule 5.1"* is that *"the juvenile justice system will prioritize the welfare of the child and will ensure that any response to a child who breaks the law will always be proportionate to the circumstances of both the offender and the offense."*<sup>8</sup> The juvenile criminal justice system aims to safeguard children's welfare, with criminal punishment as a last choice. Children's rights are also protected under the Convention on the Rights of the Child, which contains important principles like equality and the child's best interests.

The primary goal of the legal system should be to safeguard children's best interests, making sure that the legal system does not negatively impact their future. This right must be recognized and respected as a fundamental component of human rights. Judges should therefore view incarceration as a last resort, using it only in the absence of all other options. To uphold the best interests of the kid premise, their rights must be safeguarded throughout the whole judicial process, including the completion of the sentence.

The SPPA Law has significantly altered Indonesia's juvenile justice system. The use of the best interests of the child concept in cases involving minors who are in legal difficulties is a significant development, as stated in Article 2 letter d of the SPPA Law. This viewpoint states that *"criminal punishment is considered only as a last resort (ultimum remedium)."* Prior to imposing criminal sanctions, diversionary measures must be implemented. The SPPA Law seeks to avoid the negative perception of the juvenile justice system by prioritizing a restorative rather than a punitive approach. Therefore, it is expected that decisions would follow the child protection principle and give humanitarian considerations more weight.

### **The Judge's Considerations in Imposing Measures on the Child Perpetrator of Rape in the Pasir Pengaraian District Court Decision**

To understand more deeply how judges apply the principle of the best interest of the child in their considerations in the decisions of the Pasir Pengaraian District Court, it is necessary to outline the following case positions:

<sup>6</sup> Sri Sutatiek, *Rekonstruksi Sistem Sanksi Dalam Hukum Pidana Anak Di Indonesia*, (Yogyakarta: Aswaja Pressindo, 2013), hal.42.

<sup>7</sup> Andik Prasetyo, "Perlindungan Hukum Bagi Anak Pelaku Tindak Pidana", *Jurnal Ilmu Hukum*, Vol.9 No.1 Bulan Juli, hal.57.

<sup>8</sup> Rahma Difa Sherfany, "Reformulasi Diversi dalam Undang-Undang Sistem Peradilan Pidana Anak yang Mencerminkan Prinsip Perlindungan Anak", *Jurnal Hukum, Magister Ilmu Hukum Universitas Brawijaya*, 2016, hal.8.

In June 2023, the Child and the Victim, who had previously been in a relationship, had sexual intercourse four times. They were no longer romantically involved at the time of the incident. There was no violence involved when the child picked up the victim child one evening and invited her to have sex at his home. According to social worker Rika Ariska, S.Sos.'s social report, the act caused the victim child to become pregnant and suffer from postnatal emotional difficulties, including depression, irritability, and food and sleep disorders.

The child realizes that premarital sexual relations are wrong, but still engages in them due to lust and environmental influence. This act was only revealed after the Victim's Child gave birth. A peace effort was attempted, including plans for marriage, but it was postponed due to the victim's dissatisfaction with the Child's attitude, which was considered irresponsible. Although there has been an apology and financial assistance from the Child's family, the Victim's family still desires legal proceedings so that the Child realizes their responsibility and becomes a better person.

### **Judge's Consideration of the Best Interests of the Child Principle in the Pasir Pengaraian District Court Ruling**

Based on legal considerations, the Judge examined the related elements, including the definition of "*intercourse*" according to Van Bemmelen and Van Hattum (penis penetration into the vagina without the need for ejaculation) and the definition of "*Child*" according to the Child Protection Law (under 18 years of age, including in the womb). The trial facts prove that the Child engaged in sexual intercourse with the victim Child (penile penetration into the vagina), although without violence. Previous romantic and sexual relationships were taken into consideration. The element of seduction is considered fulfilled through actions such as kissing, touching, and exploiting the victim child's emotional vulnerability.

The element of intent is proven because the Child is aware of their mistake but still does it due to lust and peer influence. The judge concluded that the element of "*persuading the Child to engage in sexual intercourse*" was fulfilled, in accordance with SEMA No. 5 of 2014 (the act of arousing sexual desire as persuasion). The child is considered responsible. The judge knows that both parties are children, thus the handling must prioritize the best interests of the child, rehabilitation, and protection, not only punishment. According to the Differential Association theory, this incidence is impacted by outside variables like parenting, technology, and social connections.

Evidence shows that free association and unsupervised technology, as well as parental negligence, contribute to this. The negligence of the child's parents in guiding their teenage years and the victim child's parents in supervision due to the mother's busyness because of the incomplete family is highlighted. The judge considered justice for the victimized child who suffered physically, mentally, became pregnant, gave birth, and the child's potential for development. The judge considers that the imposition of the sentence should not hinder the future and education, but should remain educational and corrective.

The judge also values the parties' attempts to reach the best agreement. In this instance, the judge disapproved of the prosecutor's request for a 3.5-year prison term. Rehabilitation activities were given priority by the judge in compliance with the juvenile justice system. The foundation of disagreement with prison sentences is "The Best Interests of the Child," a criterion required under the Convention on the Rights of the Child. The goal of enforcing "Measures" is to help kids discover who they are and grow up to be responsible adults.

According to the analysis of the element of seduction, the child's misconduct is not equivalent to serious sexual crimes because of the element of mutual consent. The Community Supervisor's suggestion to implement "Corrective Action" in an institution was accepted by the judge. The judge also took into account the mother's statement, which disclosed that the youngster still lacks a complete understanding of responsibility and prefers to play over carrying out their duties.

The appropriate punishment is rehabilitation in an institution as the main penalty and vocational training as a substitute for a fine. The judge hopes that this period of incarceration can serve as a period of rehabilitation for the child, filled with various positive activities aimed at improvement and self-development. This is expected to benefit the child's future, especially in understanding the consequences of their actions and the meaning of responsibility, considering that the child is currently a father.

### **CONCLUSION**

SPPA Law regulates the use of "the Best Interests of the Child principle" in Indonesia's juvenile criminal justice system. This is demonstrated by the analysis of the judge's considerations when deciding actions against children involved in the crime of rape. This tenet asserts that "even if a child commits a serious crime such as rape, they still have the right to protection, guidance, and the opportunity for rehabilitation without facing excessive social stigma." There are many obstacles to overcome when using the best interests of the child principle in rape cases, especially when trying to strike a balance between the victim's rights and the juvenile offender's. The lack of



successful rehabilitation programs, inconsistent court decisions, and pressure from the media and society are some of the barriers to implementing this idea. Enhancing the effectiveness of rehabilitation programs, developing more consistent guidelines for judges, and routinely reviewing court decisions to ensure that the best interests of the child principle is applied consistently are just a few of the strategic measures needed to improve the juvenile justice system.

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