

## SENTENCING OF CHILD OFFENDERS UNDER 14 YEARS OLD IN CASES OF SEXUAL VIOLENCE AGAINST CHILDREN BASED ON THE PRINCIPLE OF THE BEST INTERESTS OF THE VICTIM

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### Abstract

The imposition of sanctions on child offenders under 14 years old in cases of sexual violence against children presents a legal dilemma between protecting the child offender and upholding the rights of the victim. Law No. 11 of 2012 on the Juvenile Justice System (Law on Juvenile Justice System) stipulates that children under 14 years old may only be subjected to measures, while Law No. 12 of 2022 on Sexual Violence Crimes (Law on Sexual Violence Crimes) emphasizes victim protection and recovery. This article examines the imbalance between these two regulations and analyzes the most appropriate sanctions based on the principle of the best interests of the victim. Using a normative juridical approach and case studies, it is found that while the Law on Juvenile Justice System aims to protect child offenders from the adverse effects of criminal sanctions, in cases of sexual violence against children, this approach risks neglecting victims' rights. Therefore, a more flexible legal interpretation is needed to ensure that sanctions not only focus on the offender but also consider justice for the victim.

**Keywords:** *children in conflict with the law, sexual violence, best interests of the victim, juvenile justice system.*

### Introduction

Children are a vital element in the continuity of humanity and the future of a nation. As the younger generation, children generally exhibit a high level of concern for social issues, often characterized by idealistic attitudes and aspirations for perfection during their developmental years.<sup>1</sup>

Every child possesses inherent dignity and rights that must be respected from birth without needing to demand them. This aligns with the Convention on the Rights of the Child, ratified by the Indonesian government through Presidential Decree No. 36 of 1990. The convention establishes fundamental principles of child protection, including non-discrimination, the best interests of the child, guarantees for survival and development, and respect for child participation.<sup>2</sup>

Indonesia has enacted various regulations concerning child protection, such as Law No. 4 of 1979 on Child Welfare, Law No. 3 of 1997 on Juvenile Courts (later replaced by the Law on Juvenile Justice System), and Law No. 35 of 2014, amending Law No. 23 of 2002 on Child Protection. However, these regulations are still deemed insufficient in optimally addressing issues involving children in conflict with the law.

The Juvenile Justice System, refers to a coordinated mechanism involving various institutions in the judicial process, such as the police, prosecutors, legal advisors, supervisory bodies, and specialized rehabilitation facilities for children.<sup>3</sup> According to Article 1(1) of the Law on Juvenile Justice System, the Juvenile Justice System encompasses the handling of cases involving children in conflict with the law, from investigation to post-sentence guidance. The

<sup>1</sup> Wagianti Soetodjo, *Hukum Pidana Anak*, (Bandung: PT. Refika Aditama, 2006), hlm. 63-65.

<sup>2</sup> Rika Saraswati, *Hukum Perlindungan Anak Di Indonesia*, (Bandung: Citra Aditya Bakti, 2009), hlm. 1.

<sup>3</sup> Setya Wahyudi, 2011, *Implementasi Ide Diversi dalam Pembaharuan Sistem Peradilan Pidana Anak di Indonesia*, Genta Publishing, Yogyakarta, hlm. 35.

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establishment of the Law on Juvenile Justice System is grounded in the recognition of children's inherent dignity and human value, entitling them to special legal protections within the criminal justice system. As a signatory to the Convention on the Rights of the Child, Indonesia is obligated to ensure special legal protections for children in conflict with the law, in accordance with the convention's principles.<sup>4</sup>

Referring to Article 1(3) of the Law on Juvenile Justice System, a child in conflict with the law is defined as an individual aged at least 12 but not yet 18 years old, suspected of committing a criminal act, as cited:

*"A child in conflict with the law, hereinafter referred to as a child, is a child who is at least 12 (twelve) years old but not yet 18 (eighteen) years old and is suspected of committing a criminal act."*

Sanctions are determined based on age distinctions. Pursuant to Article 69(2) of the Law on Juvenile Justice System, children under 14 years old may only be subjected to measures, while children aged 12 to 18 may face criminal sanctions. Additionally, under Article 70, judges may consider the severity of the act, the child's personal circumstances, and conditions at the time of or after the act when making decisions.

Criminal responsibility for children is governed by provisions in the Indonesian Penal Code (KUHP) and other regulations. The KUHP, under Article 10, specifies various types of penalties, divided into principal and additional penalties.<sup>5</sup> Principal penalties include the death penalty, imprisonment (including life imprisonment and fixed-term imprisonment), detention, and fines. Additional penalties may involve the revocation of certain rights, confiscation of specific assets, or public announcement of judicial decisions. However, the Law on Juvenile Justice System's provisions on sanctions, outlined in Articles 71 to 81, diverge from the KUHP, as they are tailored specifically for children.

The criminal responsibility of children reflects their legal accountability for their actions. The Law on Juvenile Justice System distinguishes between children who can be held criminally responsible and those who cannot. The principle of child protection emphasizes non-violent approaches, prioritizing the best interests of the child and ensuring their rights to survival, welfare, and comprehensive development, including protections for children involved in criminal acts.<sup>6</sup>

Article 71 of the Law on Juvenile Justice System regulates principal penalties applicable to children, such as job training, institutional rehabilitation, and imprisonment. Article 72 addresses cautionary penalties, considered lighter sanctions. Conditions for imposing penalties are detailed in Articles 73 to 77 of the Law on Juvenile Justice System.

This issue becomes complex when a child under 14 years old in conflict with the law perpetrates sexual violence against a child victim. Sexual violence encompasses acts or threats related to sexual activity or intimate relationships, perpetrated forcibly, resulting in physical suffering, material loss, mental distress, or psychological trauma for the victim.<sup>7</sup>

Article 1(1) of the Law on Sexual Violence Crimes defines sexual violence crimes as "any act fulfilling the elements of a crime as regulated in this law and other acts of sexual violence as regulated in other laws, as specified in this law."

Types of sexual violence crimes are outlined in Chapter II, Article 4(1) of the Law on Sexual Violence Crimes. Additionally, Article 17(1) allows for rehabilitation measures to be imposed on perpetrators alongside penalties. This provision introduces a measure applicable to child perpetrators of sexual violence crimes not covered by the Law on Juvenile Justice System.

Specific provisions in the Law on Sexual Violence Crimes, under Article 16(1), mandate that in cases with a minimum imprisonment of four years or more, judges must impose not only imprisonment, fines, or other sanctions but also restitution payments to victims. This provision indirectly underscores that the Law on Sexual Violence Crimes prioritizes victims' interests.

The Law on Sexual Violence Crimes's general explanation highlights significant reforms, recognizing victims' rights to handling, protection, and recovery from the onset of the crime. These rights are a state responsibility, implemented based on victims' conditions and needs. Victim support is also reflected through restitution mechanisms,

<sup>4</sup> Konsiderans Huruf C Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak

<sup>5</sup> M. Hamdan, Politik Hukum Pidana (Jakarta: PT. Raja Grafindo Persada, 1997).

<sup>6</sup> Michael Freeman, A Commentary on The United Nations Convention on The Rights of The Child Article 3: The Best Interest of The Child (Leiden: Martinus Nijhoff Publishers, 2007).

<sup>7</sup> Suharsil, Perlindungan Hukum Terhadap Anak dan Perempuan, PT. Rajagrafindo Persada, Depok, 2017, hlm. 94.

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where perpetrators compensate victims for losses. If the offender's seized assets are insufficient, the state is responsible for providing compensation as determined by the court.<sup>8</sup>

In Indonesian legal developments, cases involving child perpetrators of sexual violence against children have emerged. For instance, case number 1/Pid.Sus-Anak/2024/PN Bit involved three child perpetrators under 14 years old, studying at a pesantren in Bitung City, who committed sexual violence against a 12-year-old victim. Notably, the prosecutor demanded a six-month imprisonment for each child perpetrator. However, the judicial panel imposed only the measure of returning the children to their parents or guardians, as stipulated by the Law on Juvenile Justice System.

This case highlights interconnections between the Law on Juvenile Justice System and Law on Sexual Violence Crimes. Questions arise regarding whether measures under the Law on Juvenile Justice System are applicable to child perpetrators in sexual violence cases, whether the Law on Juvenile Justice System's sentencing restrictions for children under 14 can be overridden by the Law on Sexual Violence Crimes, what legal protections are available to child victims when child perpetrators cannot be criminally sanctioned, and whose interests should take precedence (the child perpetrator or the child victim).

The Law on Juvenile Justice System and Law on Sexual Violence Crimes reflect divergent approaches within the criminal justice system. The Law on Juvenile Justice System focuses on protecting and rehabilitating child perpetrators, while the Law on Sexual Violence Crimes prioritizes victim protection and recovery. Tension arises when a child under 14 commits sexual violence as defined by the Law on Sexual Violence Crimes, which normatively demands justice for victims. Article 21(1) of the Law on Juvenile Justice System explicitly states that children under 14 may only face measures, not penalties, such as being returned to parents, placed in social institutions, or assigned job training. Conversely, the Law on Sexual Violence Crimes emphasizes justice for victims, including perpetrator sanctions to deter and protect society. Judges are thus tasked with balancing the protection of child perpetrators with victims' rights, considering rehabilitative measures that accommodate justice for victims without violating the principle that children under 14 cannot be criminally penalized. This imbalance between the two regulations poses challenges in judicial practice, particularly in sexual violence cases involving child perpetrators.

### Discussion

#### A. Research Questions

Positive law provides specific provisions distinguishing the treatment of child offenders from adults. One key aspect is the imposition of sanctions on child perpetrators, particularly in sexual violence cases.

A deeper analysis is needed to determine the most appropriate sanctions for child perpetrators, while prioritizing the principle of child protection for both victims and perpetrators. Based on this, the study addresses two main research questions:

##### 1. Research Questions

- a. Are the measures imposed on child perpetrators under 14 years old in sexual violence cases with child victims appropriate based on the principle of the best interests of the victim?
- b. What is the appropriate sentencing for child perpetrators under 14 years old in sexual violence cases with child victims based on the principle of the best interests of the victim?

##### 2. Research Objectives

- a. To analyze the appropriateness of applying measures to child perpetrators under 14 years old in sexual violence cases with child victims based on the principle of the best interests of the victim.
- b. To analyze the appropriate sentencing for child perpetrators under 14 years old in sexual violence cases with child victims based on the principle of the best interests of the victim.

#### B. Application of Measures to Child Perpetrators Under 14 Years Old in Sexual Violence Cases with Child Victims Based on the Principle of the Best Interests of the Victim

Violence against children does not only originate from external environments but often occurs within families. Data indicates that approximately 68 percent of child abuse cases are perpetrated by individuals known to the child, with 34

<sup>8</sup> Penjelasan Umum UU TPKS

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percent committed by biological parents. This highlights the vulnerability of girls to sexual violence. Perpetrators' motives vary widely, while victims' ages typically range from 2 to 15 years, with some as young as 1 year and 3 months. In many cases, sexual violence is accompanied by physical violence, threats, deception, and a series of lies before or after the incident.<sup>9</sup>

Contributing factors, including the victim's presence, which may unwittingly encourage perpetrators, and other elements, can trigger sexual violence. Experts from various disciplines have attempted to explain the causes of such crimes, but no consensus exists on a primary cause. Crime causation involves multiple factors, where one factor may lead to a specific crime, while another causes a different offense. This phenomenon, known as "multiple factors," underscores the complex and interrelated nature of crime causation.<sup>10</sup> Edwin H. Sutherland noted that "crime results from various factors, and this complexity makes it difficult to classify universally without exceptions. In other words, no single scientific theory can fully explain criminal behavior."<sup>11</sup>

Primary perpetrators of sexual violence against children are often influenced by external factors. Generally, crime causation can be categorized into internal factors (from the perpetrator) and external factors (from the environment).<sup>12</sup>

In the context of sexual violence crimes by children against children, internal factors play a significant role in understanding why such crimes occur. These factors relate to individual conditions involving psychological aspects, mental disorders, or unstable personal circumstances that may trigger deviant behavior, including sexual violence.

For children, these factors are more complex. Unstable psychological or emotional conditions, such as past trauma, lack of understanding of sexual boundaries, or negative experiences in family or social environments, can influence behavioral development. From an early age, humans possess sexual drives as part of natural biological development, influenced by sex hormones. However, if these drives are not understood or controlled properly, particularly at younger ages, they can lead to behavior that violates social norms, potentially resulting in criminal acts. Unmet sexual needs in healthy or appropriate ways increase the likelihood of deviant behavior, such as rape.<sup>13</sup>

In children, internal factors are often compounded by inadequate supervision and understanding of social and legal norms governing healthy sexual behavior. When sexual drives are not channeled appropriately or are triggered by external factors like negative environmental influences, violence, or lack of parental attention, children may engage in deviant behavior. Early education on human rights, sexual boundaries, and managing sexual drives is essential to prevent crimes like sexual violence by children.

Sexual abuse is a deplorable act, measurable by its deviation from norms rooted in social and cultural values. These norms, encompassing religious, moral, and legal standards, serve as behavioral guidelines in society.<sup>14</sup> Sexual crimes include various forms, such as rape, sexual slavery, forced pregnancy, sexual violence, exploitation, abuse, and abortion. In the KUHP, these are termed "crimes against decency" rather than "sexual crimes". This terminology often leads society, including law enforcement, to perceive such violations as merely breaches of cultural, religious, or politeness norms rather than crimes targeting a person's body and psyche.

Sexual violence involves sexual acts performed without the victim's consent, manifesting in forms like physical contact or sexually suggestive remarks.<sup>15</sup> Patriarchal culture contributes to the prevalence of sexual violence crimes. These crimes are often underreported due to societal stigma against victims, discouraging them from reporting incidents. Assertiveness training is crucial to empower victims to resist and express their feelings. Additionally, fostering mutual respect between genders is essential for prevention and addressing this issue.<sup>16</sup>

<sup>9</sup> Lukam Hakim Nainggolan, "Bentuk-Bentuk Kekerasan Seksual Terhadap Anak di Bawah Umur", *Jurnal Equality*, Volume 13, Issue 1, 2008, hlm. 73.

<sup>10</sup> Ibid, hlm.75

<sup>11</sup> Edwin H. Sutherland dan Donald R. Cressey, "Azas-Azas Kriminologi: Principle of Criminology", Bandung: Alumni, 1977, hlm. 28.

<sup>12</sup> Hari Saherodji, "Pokok-Pokok Kriminologi", Jakarta: Aksara Baru, 1980, hlm. 38-45.

<sup>13</sup> Kartini Kartono, "Psikologi Wanita, gadis remaja, dan Wanita Dewasa", Bandung: Alumni, hlm. 41.

<sup>14</sup> Rosania Paradiarz, Eko Soponyono, "Perlindungan Hukum Terhadap Korban Pelecehan Seksual," *Jurnal Pembangunan Hukum Indonesia*, Volume 4, Nomor 1, Tahun 2022, hal. 65.

<sup>15</sup> Ibid, hlm. 62

<sup>16</sup> Noviani P et al., *Mengatasi Dan Mencegah Tindak Kekerasan Seksual Pada Perempuan Dengan Pelatihan Asertif*, (Jawa Barat: Universitas Padjadjaran, 2018) hlm. 31



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Despite the enactment of the Law on Sexual Violence Crimes on May 9, 2022, sexual violence crimes persist with evolving *modus operandi*. A notable emerging trend is “web grooming,” where perpetrators deceive victims via social media for sexual abuse and exploitation. Sexual violence is also increasingly prevalent in educational settings, including religious institutions. Ironically, educators and role models in these settings sometimes become sexual predators. The Law on Sexual Violence Crimes covers nine categories of sexual violence, including physical and non-physical harassment, forced contraception, sterilization, forced marriage, torture, exploitation, slavery, and electronic-based sexual violence. Such acts often occur in contexts of unequal power dynamics, found in universities, religious institutions, pesantrens, and families.<sup>17</sup>

The enactment of the Law on Sexual Violence Crimes represents a concrete response to growing public concern over sexual violence cases across Indonesia. The Academic Paper of the Law on Sexual Violence Crimes Bill explicitly states that the law aims to reform legal frameworks to address contemporary challenges. Key objectives include systematic prevention of sexual violence, comprehensive approaches to prevention, case handling, protection, and victim recovery with community involvement, ensuring justice through rehabilitation services and proportionate law enforcement, and holding the state, families, communities, and corporations accountable for creating safe environments.

The Law on Sexual Violence Crimes introduces a progressive system for victim protection, both in law enforcement and recovery efforts. It urges the state to take greater responsibility in preventing sexual violence and ensuring sustained victim recovery. Through a holistic approach, the Law on Sexual Violence Crimes aims to provide adequate protection and support for victims and establish more effective prevention systems.

The juvenile justice system requires a distinct approach to handling children in conflict with the law, particularly in sexual violence cases. The core principle recognizes that children are not fully developed mentally and emotionally, necessitating specific protections to ensure optimal physical, mental, and social development. In handling sexual violence cases involving children, special attention to rehabilitation and guidance is needed, prioritizing child protection to enable positive societal reintegration without jeopardizing their future.

The Law on Juvenile Justice System provides distinct provisions for handling child offenders, particularly those under 14 years old. Article 69(2) stipulates that children under 14 cannot be sentenced to imprisonment but may only face rehabilitative measures, such as returning to parents or guardians, placement in social welfare institutions, medical treatment, or social rehabilitation. This approach aims to provide constructive guidance for behavioral improvement and positive societal reintegration, aligning with restorative justice principles prioritizing child recovery.

While the Law on Juvenile Justice System focuses on rehabilitating child perpetrators, the principle of the best interests of the victim, as mandated by the Law on Sexual Violence Crimes, must also be considered. In sexual violence cases, child victims require special protection due to the psychological and physical impacts. Thus, sanctions on child perpetrators must balance rehabilitation with victim protection and recovery.

The Law on Juvenile Justice System stipulates that children under 14 are not subject to criminal penalties but only to specific measures. This provision emphasizes rehabilitation and guidance to prevent adverse effects from harsh legal processes, ensuring children’s rights to optimal growth and development. Measures include returning children to parents or guardians, placement in social institutions, or medical treatment.

However, in sexual violence cases, this approach poses a significant legal dilemma. The Law on Juvenile Justice System’s focus on child perpetrators risks neglecting the best interests of victims, as emphasized by the Law on Sexual Violence Crimes. Sexual violence is not an ordinary offense; it causes prolonged traumatic impacts. Imposing only measures without stricter sanctions may result in injustice for victims and weaken prevention efforts.

Judges play a critical role in interpreting laws progressively to balance protections for child perpetrators with justice for victims. They can go beyond Law on Juvenile Justice System provisions by considering legal certainty and victims’ best interests, aligning decisions with modern criminal law developments. This may involve imposing penalties beyond Law on Juvenile Justice System measures, such as freedom restrictions, strict state supervision, or proportionate sanctions.

<sup>17</sup> Fitha Ayun Lutvia Nitha, Ali Masyhar, Achmad Cholidin, M. Ridho Ilahi, Amalina Zukhrufatul Bahriyah, “Optimalisasi Implementasi UU TPKS: Tantangan Dan Solusi Dalam Upaya Penghapusan Kekerasan Seksual Di Indonesia,” *Jurnal Masalah-Masalah Hukum*, Volume 53, Nomor 1, Maret 2024: hlm. 97

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This approach ensures justice for both perpetrators and victims. Rigid adherence to Law on Juvenile Justice System measures may leave victims, especially minors, feeling unjustly treated, undermining the legal system's deterrent function. Flexible and bold legal interpretations are essential for fair judicial decisions.

Sanctions for children in sexual violence cases require a holistic and balanced approach, considering not only punishment but also recovery and rehabilitation. Supporting the Law on Juvenile Justice System's avoidance of imprisonment for children under 14 is warranted, as it prioritizes guidance and protection. However, in sexual violence cases, balancing victims' interests with perpetrators' rights is crucial.

### C. Appropriate Sentencing for Child Perpetrators Under 14 Years Old in Sexual Violence Cases with Child Victims Based on the Principle of the Best Interests of the Victim

Indonesia's legal approach to children involved in serious criminal offenses is designed to ensure the protection of children's rights, provide opportunities for rehabilitation, and promote optimal social recovery. The legal accountability of children is determined based on their age at the time of committing the offense, as regulated by national legislation on child protection and ratified international conventions. Furthermore, Indonesia's juvenile justice system prioritizes restorative and rehabilitative approaches, focusing on guidance and behavioral improvement through principles of welfare and respect for children's rights.<sup>18</sup>

Law No. 11 of 2012 on the Juvenile Justice System (UU SPPA) stipulates that children under 14 years old may only be subjected to measures, not criminal penalties. This provision underscores that the juvenile justice system emphasizes rehabilitation and guidance rather than repressive sanctions. Applicable measures include returning the child to their parents or guardians, placement in social welfare institutions, and medical or social rehabilitation. This approach aims to provide child offenders with opportunities for self-improvement while preventing the adverse effects of detention or imprisonment.

However, in cases of sexual violence crimes (TPKS) committed by child perpetrators, the application of UU SPPA provisions raises significant challenges. The principle of the best interests of the victim, as emphasized in Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS), obligates the state to provide maximum protection for victims, who often face prolonged physical, psychological, and social trauma. If child perpetrators under 14 years old are only subjected to rehabilitative measures without stricter sanctions, justice for victims may be neglected.

To address the limitations of existing regulations, judges play a critical role in determining more appropriate sanctions by balancing protections for child perpetrators with justice for victims. Judges can apply the principle of the best interests of the victim by progressively interpreting the law, moving beyond the measures outlined in the UU SPPA. Implementing more proportionate sanctions, such as restrictions on freedom, strict state supervision, or other penalties aligned with justice principles, can address victims' legal needs through a transformative justice approach.

The transformative justice-based juvenile justice system refers to a legal approach aimed at reforming and improving existing regulations, focusing on creating better legal frameworks (*ius constituendum*) compared to prior rules. This ensures profound changes in how the judiciary handles children in conflict with criminal provisions. In practice, this reform encompasses comprehensive regulation drafting, more humane law enforcement, and reinforcement of institutional roles and training for authorities handling child cases. Additionally, transformative justice adopts a holistic approach, engaging various stakeholders and prioritizing the recovery and sustainable, healthy development of children.<sup>19</sup>

Moreover, imposing stricter sanctions serves as a preventive measure to deter the recurrence of similar crimes. By applying sanctions that consider the impact on victims alongside the rehabilitation of perpetrators, the juvenile justice system can achieve more effective deterrence without disregarding child protection principles. Thus, a more flexible interpretation of legal regulations is essential to ensure justice for victims while maintaining protections for child perpetrators in line with human rights principles.

In sexual violence cases involving child victims, sentencing child perpetrators under 14 years old cannot rigidly adhere to UU SPPA provisions. Judges must consider the context and impact of the offense and align their rulings with

<sup>18</sup> Hayani Wulandari, "Pertanggungjawaban Hukum Anak Dalam Pelaku Tindak Pidana Berat: Pendekatan, Dampak, Dan Implikasi Dalam Sistem Peradilan Anak," *Jurnal Ilmu Hukum Dan Tata Negara*, Vol.1, No.2 Juni 2023: hlm. 163

<sup>19</sup> Lukman Hakim; Didik Endro Purwoleksono, "Urgensi Transformative Justice Dalam Penanganan Perkara Anak Sebagai Upaya Pembaharuan Hukum Indonesia," *Jurnal Supremasi: Jurnal Ilmiah Ilmu Hukum*, Volume 14 Nomor 2 Tahun (2024): hlm. 96

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the principle of the best interests of the victim. Through progressive legal interpretation, imposed sanctions can reflect justice for all parties, particularly victims entitled to maximum state protection.

This is because victims suffer significant losses. Intangible losses may include antisocial behavior, where victims tend to avoid social interactions, diminished interest in activities they enjoyed before the sexual violence, and other symptoms requiring attention. Material losses arise from psychological distress, necessitating treatment and therapy to address symptoms caused by the violence.<sup>20</sup>

Sexual violence can lead to serious psychological consequences, including post-traumatic stress disorder (PTSD), excessive anxiety, and other mental disorders such as personality disorders or dissociative identity disorders. Unaddressed psychological wounds may influence victims' long-term behavior, potentially perpetuating cycles of violence into adulthood. This underscores the importance of comprehensive handling and recovery for victims to prevent recurring violence.<sup>21</sup>

If child perpetrators under 14 years old are only subjected to rehabilitation or returned to their parents without more concrete legal consequences, victims' rights risk being inadequately fulfilled. In certain circumstances, judges can bypass UU SPPA limitations while prioritizing victims' justice by imposing restitution penalties, as regulated in Articles 10 and 31 of the UU TPKS. Restitution obligates perpetrators or their families to compensate victims for losses, covering costs such as medical treatment, psychological recovery, lost income, and social impacts resulting from the offense.

Furthermore, judicial independence, as guaranteed by Article 5(1) of Law No. 48 of 2009 on Judicial Power, grants judges the authority to decide cases based on substantive justice. In severe cases, such as sexual violence causing significant trauma, systematic sexual exploitation, or coerced sexual acts with threats, judges may consider imposing imprisonment despite the perpetrator's age. This is justified by prioritizing the best interests of the victim over protections for the perpetrator in specific cases.

This approach aligns with corrective justice principles, where the legal system focuses not only on rehabilitating perpetrators but also on restoring victims' rights. If judges deem UU SPPA measures insufficient for deterrence or inadequate for delivering justice to victims, they can adopt broader legal interpretations, invoking judicial independence to impose stricter penalties.

Beyond deterring perpetrators, applying restitution or, in certain cases, imprisonment holds educational value for society. Stricter rulings in child sexual violence cases are expected to raise legal awareness among parents, schools, and communities, emphasizing that sexual violence is intolerable in any form.

Thus, despite UU SPPA limitations on sanctions for children under 14 years old, judges have the discretion to deliver fairer rulings based on the principle of the best interests of the victim. In specific cases, restitution can ensure victims' rights are met, while in more severe cases, imprisonment may serve as a stricter form of accountability. These measures aim to balance protections for child perpetrators with the maximum fulfillment of victims' rights in sexual violence cases.

### Conclusion

Based on the analysis, the author concludes that there is an imbalance between the Law on Juvenile Justice System, which prioritizes child perpetrator protection, and the Law on Sexual Violence Crimes, which emphasizes victims' interests. The Law on Juvenile Justice System's restriction of sanctions to measures for children under 14 risks neglecting victims' rights, who often suffer significant psychological and social impacts. Judicial practices demonstrate that judges are often constrained in imposing stricter sanctions, resulting in incomplete justice for victims. Therefore, progressive legal interpretations are needed to ensure the juvenile justice system protects perpetrators while providing legal certainty for victims.

### Recommendations

<sup>20</sup> Cindy Juliana, "Analisis Perlindungan Terhadap Perempuan yang Mengalami Kekerasan Seksual di Lingkungan Masyarakat Ditinjau dari Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual," *MOTEKAR: Jurnal Multidisiplin Teknologi dan Arsitektur*, Vol. 2, No. 1 (Mei 2024): hlm. 430

<sup>21</sup> Hayani Wulandari, "Psikologis Terhadap Anak Yang Mengalami Kekerasan Seksual," *JECIE (Journal of Early Childhood and Inclusive Education)* Volume 7, Nomor 1, Desember 2023: hlm. 59

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To balance protections for child perpetrators and the best interests of victims, several steps are proposed. First, the Law on Juvenile Justice System should be revised to allow fairer sanctions for child perpetrators in sexual violence cases, such as restitution or stricter rehabilitation options. Second, judges should be granted broader interpretive authority to impose sanctions considering victims' impacts without violating child protection principles. Third, enhanced synergy among law enforcement, child protection institutions, and communities is needed to ensure victims receive optimal psychological, social, and economic recovery. These measures aim to create a more just juvenile justice system for all parties involved.

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