

Artikel 3

by Bahasa INGGRIS

Submission date: 11-Oct-2023 02:15PM (UTC+0700)

Submission ID: 2192279104

File name: Artikel_Jurnal_Children_2022_1.pdf (597.45K)

Word count: 8199

Character count: 42753



Form Of Legal Protection For Children Of Sexual Harassments In The Namlea State Court, Maluku

Fauzia Rahawarin¹, Husin Wattimena²

^{1,2}Islamic criminal law, Ambon State Islamic Religious Institute, Indonesia

ARTICLE INFO

Article history:

Received Jun 30, 2022
Revised Jul 15, 2022
Accepted Jul 30, 2022

Keywords:

Anak;
Hukum;
Pelecehan;
Seksual;
Pengadilan;

ABSTRACT

This article aims to examine forms of legal protection for child sexual abuse perpetrators in the Namlea District Court in Maluku. This type of research is normative-empirical research. The data collection techniques of this research are literature study, documentation study, and interviews. There are two research data, namely primary data and secondary data. Primary data is the text of the law related to the criminal law system and child protection. Secondary data is data supporting primary data such as books and expert opinions. The data analysis process includes stages (1) word grouping, (2) data reduction, (3) data transcription, and (4) data interpretation. The results of this study indicate that the form of protection for child perpetrators of sexual abuse is resolved through a restorative justice approach in accordance with Law No. 11 of 2012 concerning the juvenile criminal justice system. In addition, diversion efforts must be carried out starting from the stage of investigation, prosecution, to trial in order to provide protection for children holistically.

ABSTRAK

Artikel ini bertujuan untuk mengkaji bentuk perlindungan hukum bagi anak pelaku pelecehan seksual dalam Pengadilan Sidang Negeri Namlea di Maluku. Jenis penelitian ini ialah penelitian normatif-empiris. Teknik pengumpulan data penelitian ini, yaitu studi kepustakaan, studi dokumentasi, dan wawancara. Data penelitian ini ada dua yakni data primer dan data sekunder. Data primer merupakan teks undang-undang terkait system hukum pidana dan perlindungan anak. Data sekunder merupakan data pendukung data primer seperti buku dan pendapat para ahli. Proses analisis data meliputi tahap (1) pengelompokan kata, (2) reduksi data, (3) transkripsi data, dan (4) interpretasi data. Hasil penelitian ini menunjukkan bahwa bentuk perlindungan bagi anak pelaku pelecehan seksual diselesaikan melalui pendekatan keadilan restoratif sesuai Undang-Undang No 11 tahun 2012 tentang sistem peradilan pidana anak. Selain itu, upaya diversifikasi wajib dilakukan mulai dari tahap penyidikan, penuntutan, hingga sampai persidangan demi memberikan perlindungan kepada anak secara holistik

7

This is an open access article under the [CC BY-NC](https://creativecommons.org/licenses/by-nc/4.0/) license.



Corresponding Author:

Fauzia Rahawarin
Department of Islamic criminal law,
Ambon State Islamic Religious Institute,
Alamat. Jl. Dr. H. Tarmizi Taher, Kota Ambon, Maluku. Tipe. NEGERI, Indonesia
Email: fauziarahawarin9@gmail.com

I. Introduction

Currently, many children are involved in criminal acts of sexual harassment, both as victims and as perpetrators of sexual harassment (Suprihatin & Azis, 2020). According to data from the

World Health Organization (WHO), in 2010 around 20% of women and 5-10% of men in the world had experienced sexual violence during childhood (Septiani, 2021). One of the causes of this action is the lack of parental supervision to control the media used by children to play such as the internet (facebook, whatsapp, Instagram, tik-tok, tiwiter). In addition, the influence of the community environment and the association of children with their peers (Surjanti, 2019). In addition, children entering the teenage phase are familiar with the term dating as the root of sexual harassment, so it is very difficult for children to face the law (Nellyda et al., 2020). However, it cannot be equated between criminal acts committed by adults and those committed by children or adolescents, because it must be distinguished between the nature and form of acts committed by children and those committed by adults.

The case of a child who committed a criminal act of sexual harassment recently in early 2020, to be precise, the case was tried at the Namlea District Court in Buru Regency, this is very unfortunate because children who are supposed to study at school must face the law. Children who are still in the process of developing rudimentary thinking skills, everything is done for reasons of curiosity, so of course the consequences cannot be criminally accounted for. As stated by Elliot and Quinn, if the maker commits an actus reus (criminal act) which is covered by mens rea (error), but it cannot be accounted for or the maker cannot be punished (Huda, 2015).

Protection of children in relation to children who violate the law, as well as in ensuring protection as the quality of human life and quality. In line with the increasing urgency of child protection in Indonesia, the Indonesian government has expressed its commitment to the AWorld Fit for Children (WFC) declaration at the 27 th United Nations General Assembly Special Session on Children in 2001(Sari et al., 2015). In accordance with Law No. 23 of 2002 concerning child protection, the establishment of this law has a goal to ensure the fulfillment of children's rights so that they can live, grow, develop and participate optimally in accordance with human dignity and protection. and discrimination for the realization of quality Indonesian children with noble and prosperous character (Djatikumoro, 2011)

In order to solve the problems of children in conflict with the law, the concept of restorative justice is discussed, as outlined in (Law on the Juvenile Criminal Justice System, Law No. 11 of 2012 Article 1 Number 6) which states that "restorative justice is the settlement of cases of criminal acts. crime by involving the perpetrator, victim, family/victim, and other related parties to jointly seek a just settlement by emphasizing restoration to its original state, not retaliation. Law enforcers must provide legal certainty for perpetrators or victims (Paradias & Sopyonyono, 2022). The concept of punishment that prioritizes recovery of losses suffered by victims and perpetrators rather than imposing imprisonment for perpetrators. Children who violate norms in community life and commit criminal acts are called naughty children. For these naughty children, punishments or sanctions in the form of actions or crimes can be imposed if they are proven to have violated the laws and regulations of criminal law, but it is broader than that that children are the potential for human destiny in the future because children have a role in determining the history of a nation at the same time. reflection of the attitude of the nation's life in the future. In dealing with and overcoming various actions and behaviors of children, it is necessary to consider the position of children with all their characteristics and characteristics. Although children have been able to determine their own actions based on their thoughts, feelings and will, the surrounding circumstances can influence their behavior. So that the role of parents and the surrounding community greatly influences the development and behavior of the child in order to get legal protection from the actions taken. In addition, the provisions of applicable laws and regulations protect the dignity of children and avoid confinement for children who commit criminal acts.

In the criminal law code (KUHP) the term sexual harassment is not known. The Criminal Code, only recognizes the term obscene act, which is regulated in Article 289 to Article 296 of the Criminal Code (Pramesti, 2019). As explained in the article entitled "Legal Snare and Evidence of Sexual Harassment", Ratna Batara Munti in the article entitled "Sexual Violence: Myth and Reality"

19 states that among other things in the Criminal Code ("KUHP") the term harassment is not known. sexual. The Criminal Code, according to him, only recognizes the term obscene act, which is regulated in Articles 289 to 296 of the Criminal Code. So that in committing a criminal act, harassment is charged with Article 289 to Article 296 which regulates obscene acts for committing acts that attack the honor of decency. Meanwhile, what is meant by the form of legal protection for child criminal acts is a crime committed by children as stipulated in the provisions of Article 45 of the Criminal Code (KUHP). In the special protection that regulates child protection, it is regulated in the child protection law, where the law places more emphasis on the form of child protection contained in the considerations. that every child has the right to survival, growth and development and the right to protection from violence and discrimination as mandated in the 1945 Constitution of the Republic of Indonesia. Child protection is all efforts made to create conditions so that every child can get his rights and obligations for the development and growth of physical, mental and social aspects of being influenced by the family and the environment (Al haq et al., 2015). Child protection is the embodiment of justice in a society, thus child protection is sought in various fields of state and social life. Child protection activities have unwritten legal consequences. The law is a guarantee for child protection activities. Arif Gosista argues that legal certainty needs to be sought for the continuity of child protection activities and prevent abuse that brings unwanted negative consequences in the implementation of child protection (Gultom, 2010).

Legal protection for children is regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in Article 59 paragraph (1) stating "The Government, Regional Government, and other State institutions are obliged and responsible to provide special protection for children (Kurniawati, 2014). In terms of special protection for children in conflict with the law, Article 64 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning child protection can be carried out through: (1) Humane treatment by taking into account the needs according to their age, (2) Separation from adults, (3) Effective provision of legal and other assistance, (4) Enforcement of recreational activities, (5) Exemption from torture, punishment, or other cruel, inhuman or degrading treatment, (6) Avoidance of the death penalty and or life imprisonment, (7) Avoidance of arrest, detention or imprisonment, except as a last resort and in the shortest time, (8) Giving justice before a juvenile court that is objective, impartial, and in a closed session to the public, (9) Avoidance of publication of their identity, (10) Providing assistance to parents or guardians and other people who are trusted by children, (11) Providing social advocacy, (12) Providing personal life, (13) Providing education, (14) Providing health services and (15) Providing other rights in accordance with the provisions of the legislation. Research related to legal protection for perpetrators of sexual harassment has generally been carried out, firstly by Mahayanti and Landra with the title Legal Protection of Children as Perpetrators of Criminal Acts of Sexual Harassment. The results of this study conclude that the inherent rights of children in conflict with the law are the right to obtain legal assistance and if the case is sexual harassment, the child's identity has the right to be kept secret. In cases of sexual abuse where the child is the perpetrator, it has not been specifically regulated in the Act. Law 35 of 2014 Article 76E is used to avoid a legal vacuum, so that children who commit sexual harassment are subject to a 15-year sentence. Second, Yusyanti (2020) Legal Protection for Child Victims from Perpetrators of Sexual Violence. The results of this study are that in handling cases of sexual violence against children, law enforcers often use the Criminal Code (KUHP), even though the Child Protection Act can provide better protection for children as victims compared to the Criminal Code, because in The Criminal Code has not regulated the rights of children as victims in obtaining legal guarantees that can reduce losses due to sexual violence and the sanctions for perpetrators are very light as regulated in the Child Protection Act. Third (Yustiningsih, 2020) Legal Protection of Children Victims of Sexual Violence from Revictimization in the Criminal Justice System. The results of this study are that this study concludes that in order to prevent the revictimization of child victims of sexual violence in the criminal justice system, legal policies are needed by making

changes to the criminal procedure law. The provisions contained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System Article 58 paragraph (3) letter (a) can be used as the basis for examining child victims from the beginning of the judicial process, where at the investigation stage, electronic recording, swearing in and preparation of BAP, and can be used as legal evidence in the evidentiary process, so that it is sufficient for the victim to provide information at the investigation stage.

Previous research is different from this research because it uses a normative approach, while this study uses an empirical approach so that it is able to uncover legal facts and forms of legal protection for child sexual abuse perpetrators that occurred in Maluku. This is what underlies the research in this article so it is important to do it.

II. RESEARCH METHOD

This type of research is normative-empirical research. This research was conducted to formulate existing problems and symptoms. Therefore, this research is more descriptive (Ishaq, 2017). The types of research data are primary data and secondary data. Primary data is legislation related to this research including (1) Law No. 1 of 1946 concerning Criminal Law Regulations, (2) Law No. 8 of 1981 concerning Criminal Procedure Law, (3) Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, (4) Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection. Secondary data is data that provides an explanation of primary data and is also obtained from library studies, namely by collecting data, scientific books, and expert opinions. Data collection methods include interview techniques, literature studies, and documentation studies. The analytical methods of this research include (1) grouping data or displaying data, where data is collected into several materials that are interrelated with the research problem being studied. (2) Data reduction, by analyzing the data as a whole and then providing an assessment according to the theme, to find parts -parts of data that are not needed are separated from data that are related to the problem being studied, (3) the process of data transcription is made first every time the field returns, and only data relevant to the researcher's questions is collected, empirical contextual causal explanations provide guidelines for researchers can try to make an explanation to answer the problems that have been formulated, and (4) Interpret the data in this study, interpreted and grouped all data so that there is no overlapping confusion due to differences in data collection.

III. RESULTS AND DISCUSSION

The form of legal protection for children as perpetrators of abuse in the trial process at the Namlea District Court is described below.

1. Applying a Restorative Justice Approach

Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and protection from violence and discrimination (Article 1 paragraph 2 of the Child Protection Law). Children need to pay attention to their freedom of speech so it is very important to get legal protection because their actions must have an influence from adults (Nellyda et al., 2020). In Law No. 11 of 2012 concerning the juvenile criminal justice system, restorative justice is prioritized, namely the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing recovery. return to its original state, and not retaliation, so as to avoid punishment for children. This restorative justice aims to go hand in hand with the principles contained in the juvenile criminal justice law, namely:

Principles of Juvenile Criminal Justice

- a. Basic Urgenc

Realizing a role that upholds children's human rights, Helping officials understand the philosophy of child protection, Become a guide in determining policies/decisions.

Conclusion: Restorative Justice of the Juvenile Criminal Justice Process that emphasizes restoration of the original condition and not retaliation (Namlea District Court Administration Document, Namlea City, 2020)

- b. Principles:
 - Protection, Children have the right to obtain protection and must receive guarantees by law, in the form of facilities and infrastructure so that physically, mentally, morally, spiritually and socially they can develop in a healthy and natural manner in a state of freedom and dignity. Legal protection must be carried out both preventively and repressively (Yustiningsih, 2020). Justice, every child has the right to get the fairest justice given by him to protect his dignity so that he can grow and develop and also not be deprived of his independence.
- c. Non-Discrimination

All children without exception are in any way entitled to rights, regardless of ethnicity, skin color, sex, language, religion, political views and other opinions, national origin or social level, rich or poor descent or status, whether seen in terms of himself and in terms of his family (Soetodjo, 2006).
- d. Child's Best Interest

All actions must consider the best interests of the child, this principle is to consider the future of the child so that it can grow and develop as it should.
- e. Child Opinion Award

"Everyone has the right in full equality to have his voice heard in public and fairly by an 'independent' and 'impartial' court in terms of establishing rights and obligations and in any criminal charges brought against him" (Sudirman, 2007). Every child has the right to respect the rights of the child to participate and express his opinion in making decisions about himself, especially regarding matters that will affect his life in the future.
- f. Continuity of HDP and/or Child Development

Every child has the right to survival, and they must be brought up in a spirit of understanding, growing up according to what they want. and receive guarantees, they must grow and develop healthily, receive adequate nutrition, recreation and health services.
- g. Child Guidance and Guidance

Every child gets coaching and guidance, is given education so that they have good religious knowledge, according to their respective beliefs, draw closer to God, repent for all sins and mistakes that have been made, besides that, children's skills are also honed according to their talents and expertise.
- h. Child Proportional

All treatment of children must take into account the limits of the child's needs, age and condition, in order to take into account the best interests of the child.
- i. Avoidance of Retaliation

The principle of avoiding retaliation is to keep retaliation away in the criminal justice process.
- j. Deprivation of Independence

The principle that deprivation of liberty is a last resort is all forms of action to settle cases, except in forced circumstances, because basically children cannot be deprived of their liberty. However, in the Juvenile Justice System Act, the principle of restorative justice has not been fully implemented as an effort to save children in conflict with the law, this is because, the victim wants the child perpetrator to be punished as a deterrent effect, so that the child case continues until the decision stage, which is definitely in confinement. However, imposing a criminal sentence on a child as a last resort is not the right solution

considering that imprisonment is tantamount to depriving a child of independence, especially since this is somewhat out of the way of the basic purpose of the Juvenile Criminal Justice Act, so it must prioritize the best interests of the child so that the child is not deprived of liberty.

2. Efforts to Avoid Arrest and Detention of Children

Regarding the act of arresting is not regulated in the juvenile justice system law, so that the provisions of the Criminal Procedure Code apply, in carrying out an arrest, the principle of presumption of innocence must be respected and upheld in accordance with the dignity of the child. After the arrest, detention can be carried out. Detention is the placement of a suspect or defendant in a certain place by a child investigator or child public prosecutor or child judge with a determination, in terms of and according to the method regulated by law. UU no. 3 of 1997 and the Criminal Procedure Code, determine that the suspect or defendant can be detained. Because there is the term "can" be detained, it means that detention of children does not always have to be carried out, so that in this case investigators are expected to really consider when detaining children. according to article 21 paragraph (1) of the Criminal Procedure Code, the reason for detention is because there is a fear of escaping, so as not to damage or eliminate evidence, so as not to repeat the crime. According to the criminal procedure law, eliminating a person's independence is not a must, but to seek the truth that someone violates the law, a person's freedom is limited by making arrests and detentions (Gultom, 2010).

In the case with No. Case: 3/pid.sus-Anak/2020/PN Nla involving two perpetrators who committed a criminal act of harassment, before the trial the two perpetrators were detained in remand custody, in article 21 of the Criminal Procedure Code. "An order for further detention or detention is carried out against a suspect or defendant who is strongly suspected of committing a crime based on sufficient evidence, in the event that there are circumstances that raise concerns that the suspect or defendant will escape, destroy or destroy evidence and or repeat the crime so that the detention is against a suspect or defendant is very urgent to do. Referring to the principle of presumption of innocence, a child who is suspected of committing a crime is not suspected of being guilty until a court decision declares guilty and has a permanent law. According to the judge who handled the juvenile trial at the Namlea District Court explained that:

Detention carried out must also have provisions, namely fulfilling the subjective and objective conditions in Article 21 paragraph 1 of the Criminal Procedure Code "An order for detention or further detention is carried out against a defendant or suspect who is strongly suspected of committing a crime based on sufficient evidence, in the event that there are circumstances that give rise to concerns that the suspect or defendant will escape, damage or eliminate evidence and or repeat the crime" while the subjective element, which cannot be measured and Article 21 paragraph 3 of the Criminal Procedure Code "the detention can only be imposed on a suspect or defendant who commits a crime and or the attempt or provision of assistance in the said crime in the case of. the crime is punishable by a sentence of five years or more. So that this is done in accordance with what is ordered or in the law. However, it is different from the case with the case number: 1/Pid.Sus-Anak/2020/PN Nla. Children who commit crimes of sexual harassment are not detained, even though the article violated is the same as in case No. 3/Pid.Sus-Child/2020/PN Nla above, but child perpetrators are not arrested.

If you trace the two cases, it shows that there are fundamental differences in understanding the concept of detention contained in the law. So this shows that detention for children should not be carried out, because detention will disturb or affect the child's psychology. Efforts to avoid detention for perpetrators are a form of legal protection for children as perpetrators, because detention of children must pay attention to the best interests of children, preventive actions are only in the form of the best actions for children, so that children feel safe and not pressured. . Detention for children in the event that the child is suspected of committing a crime that carries a

criminal penalty of more than five years, there are also those who are not detained with the consideration of the best interests of the child.

Efforts are made to diversify, Diversion is the transfer of the settlement of children's cases from the court process to the process outside the criminal court, as stated in article 1 number 7 of Law number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). Diversion efforts in juvenile criminal justice are an obligation that must be carried out, because one of the goals of juvenile criminal justice is restorative justice. Which intends to avoid and keep children away from the judicial process so as to avoid stigmatization of children in conflict with the law and it is hoped that children can return to the social environment naturally. Diversion is explicitly stated in Article 5 paragraph 3 of the SPPA Law that in the juvenile criminal justice system, diversion must be sought. So that this obligation is a must carried out by law enforcers. The purpose of the diversion as regulated in Article 6 of the SPPA Law is to:

- a. Achieving peace between victims and children;
- b. Resolving child cases outside the judicial process;
- c. Preventing children from deprivation of liberty;
- d. Encouraging communities to participate; and
- e. Instill a sense of responsibility in children.

The mechanism that regulates the procedure for implementing diversion, in this case there are several divisions carried out, namely in terms of the age of the child, the difference between the age of children under 12 years and over 12 years of age but has not yet reached the age of 18 years who is suspected of committing a crime is regulated by law. which is for the benefit of the child.

Diversion for children under the age of 12 who commit a crime, One form of protection for children is carried out through a diversion process and through a decision-making process for children who are not yet 12 (twelve) years old who commit or are suspected of committing a crime. The implementation of the diversion process as well as the decision-making process for children under 12 (twelve) years of age who commit or are suspected of committing a criminal act shall continue to take into account the best interests of the child. Diversion and decision-making against children under the age of 12 (twelve) years who commit or are suspected of committing criminal acts are intended to avoid the general judicial process and stigmatization of children and so that children can return to the social environment naturally. The Diversion Process is a new mechanism in the criminal justice system in Indonesia, especially for children. In the Diversion process, the settlement of child cases is transferred from the criminal justice process to a process outside of criminal justice. The diversion process must be pursued at every stage of criminal justice, starting at the stage of investigation, prosecution, or examination in court. The diversion process can only be carried out against children who are threatened with imprisonment for under 7 (seven) years, and not against children who have repeated crimes of the same kind or not. Children who are not yet 12 (twelve) years old cannot be brought to court, because based on sociological, psychological, and pedagogical considerations, the child is considered unable to account for his actions. Therefore, for children who are not yet 12 (twelve) years old who commit or are suspected of committing a crime, a decision can be made to carry out education, guidance, and mentoring by parents/guardians or institutions/agencies and LPKS (Government Regulation No. 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 12 (Twelve) Years Old). In handling the diversion process for child perpetrators who are suspected or suspected of committing a criminal act of sexual harassment, a decision-making deliberation step is carried out outside the court. This is a step to protect the child, so that the child can return to normal activities as usual. Consideration of decision making must prioritize the best interests of the child, especially with the age of the child who is still under the age of 12 years. This is an action that is sought to save children and protect children from acts that deprive children of their independence.

3
Diversion for children over the age of 12 years but not yet 18 years old who commit a crime, in addition to the diversion process for children aged 12 years, there is also a diversion process that is regulated for child perpetrators aged over 12 years but not yet 18 years old who are suspected or suspected of committing a crime. This is in accordance with international law, children in conflict with the law are children who are suspected or accused of committing a crime and must deal with the criminal justice system where the child is under 18 years of age (Mahayanti & Landra, 2019).

19
15
18
Diversion efforts in juvenile criminal justice are an obligation that must be carried out, because one of the objectives of juvenile criminal justice is restorative justice, the implementation of diversion is regulated in PERMA No. 04 of 2014 concerning guidelines for implementing diversion in the juvenile criminal justice system. Diversion is carried out at the investigation stage, prosecution to the examination stage, diversion is attempted for children who are 12 years old but not yet 18 years old with the condition that the criminal threat is under 7 years, but the average sexual harassment crime is threatened with a criminal threat of 15 years so that the diversion process fails. However, the effort that must be taken is to restore this as the goal of restorative justice so that the alternative to the punishment of children is reduced, but on the other hand this is like reducing the partiality of justice to children, because diversion efforts for children should not sort out the types of crimes that are committed. carried out by children, even though on the other hand it will reduce the value of justice for victims who are the aggrieved parties, if one of the diversion efforts is a form of the realization of restorative justice, namely returning the rights of children to their original state which does not consider the action as a legal act that must be in accordance with the law, then there is no need to go to the trial stage considering that this diversion effort is carried out at the level of investigation, prosecution and examination. The stages of the process are not only a provision in the law, but if further reviewed, these stages are in the best interests of the child in order to avoid physical legal threats. In handling criminal acts committed by children, they must also prioritize diversion, namely the transfer of settlement of children's cases from the criminal justice process to processes outside of criminal justice. This is in accordance with the explanation of the Judge at the Namlea District Court below.

Settlement of cases out of court, or commonly known as diversion in the juvenile criminal justice law includes conditions if the threat is above 7 years, diversion cannot be sought, this is because it is in accordance with the mandate of the law, while even though the threat is under 7 years, the victim is not willing then diversion efforts also cannot be carried out. So that it continues to the judicial process.

Legal protection for children who commit criminal acts is a must given to children to protect children from various kinds of threats that affect children, so that this matter needs to be considered in order to ensure that children's rights are still fulfilled because not everyone wants to do this (Safaruddin Harahap, 2016). Legal protection for children is a form of protection that is expected to provide legal certainty to children. In addition, it is also a recovery for children so that children are not depressed, can carry out activities as before in the community. Even though children's human rights have been recognized and protected since they were still in the womb (Sommaliagustina & Sari, 2018). Thus, all matters relating to the freedom and human rights of children and various interests of child welfare which are the objectives of legal protection of children can be fulfilled properly.

11
The child's efforts are not subject to criminal penalties, In the SPPA Law, imprisonment is a last resort or ultimum remedium which is a legal term commonly used and is defined as the application of criminal sanctions which are the ultimate sanction. last) in law enforcement (Pramesti, 2019). For the handling of children who commit criminal acts, the imposition of criminal sanctions in confinement is the last act in prosecuting children, so that in the settlement process other legal protections are sought that can resolve children's cases. other alternatives such as being returned to parents or guardians or being included in training, participating in activities programmed by the correctional center engaged in education, this is an effort to restore the child so that he does not

repeat his actions in the future. However, in practice most court decisions are in the form of imprisonment, such as cases with Case Number: 1/Pid.Sus-Child/2020/PN Nla and Cases with Case Number: 3/Pid.Sus-Anak/2020/PN Nla, which the decision imposed a prison sentence. Even if the perpetrator is under the age of 18 (eighteen) years; Due to the weakness of the fine criminal system, judges prefer to impose short prison sentences rather than impose fines in dealing with criminal cases that are threatened with imprisonment cumulatively, alternatively with fines, in fact judges prefer the alternative system (prison or fines) and alternatives that chosen mostly imprisonment.

3. Examination Process for Children Committing the Crime of Sexual Harassment in the Trial Stage

In general, the process of examining a child who commits a criminal act of sexual harassment is the same as any other crime regulated in the provisions of the law. What is different is that the legal aid efforts contained in the law use conditions so that children who commit crimes of sexual harassment cannot feel, nor get these efforts because the provisions cannot be obtained, such as not being detained, which is a minimum requirement for children. not detained is suspected of committing a crime under 7 years imprisonment, if it refers to the provisions of the child protection law article 82 paragraph 1 which has a sentence of 15 years and a fine of 5 billion and also diversion efforts that include conditions that are threatened with imprisonment under 7 years so it is very unlikely or relevant for the child to get this right. The process of examining a child who commits a criminal act as referred to as follows:

Child procedural law is special (lex specialis derogat lex generalis), The procedural law used in the handling of children is indeed carried out specifically, considering the psychological conditions and some things that of course require special treatment and special protection, especially for actions that can essentially harm the child's mental and physical body. One of the specialties is that starting from examinations that are separated from adults, judges and trial participants are not allowed to swear at attributes that indicate their identity. (such as the use of Toga judges), this shows that all series of proceedings in a court provide a family atmosphere, and children are not afraid to face judges, public prosecutors, investigators who are in the courtroom.

Required to use a restorative justice approach (Article 5 paragraph (1) of the SPPA Law), Every process of examining criminal acts of children must use a restorative justice approach, an effort to suppress recovery without retaliation. By using this approach in solving children's cases, it can eliminate negative stigma for children, because they think that the child's actions can be resolved without having to be imprisoned.

It is mandatory to use a diversion institution at every stage of the process (Article 7 paragraph 1 of the SPPA Law), The diversion process is carried out starting from the investigation stage of the prosecution until the trial of each institution in this case the police, prosecutors and the judiciary must use diversion efforts. This obligation is a form of protecting children from retaliation and preventing children from physical punishment for children.

Handled by Judges who have participated in SPPA Technical Training. (Article 43 (2) item c.), In the examination process in court, case handlers for children, in this case acting as judges, are child judges who have attended SPPA technical training, so that judges in deciding cases are professional and prioritize the interests of children.

Examination with a single judge, except for the threat of 7 years imprisonment/difficulty in proving (Art. 44 paragraphs 1 & 2), Judges in adjudicating child cases, only use a single judge because this gives judges flexibility in considering all types of children's decisions, exceptions to the type of crime with a threat of 7 years when deciding cases.

Mandatory priority handling of other cases. (Article 53 paragraph 3 of the Law), in scheduling a child's trial, if on that day at the same time another court case is also scheduled, then the child's trial will take precedence.

The perpetrator's child must be accompanied by a Legal Aid Provider, Fathers Community Counselor, other assistants. (Article 23 paragraph 1), In the trial the defendant's parents, guardians, or foster parents, legal advisors, and community advisors and legal advisers. In assisting the defendant, the role of parents, guardians, or foster parents is different from that of legal couns², because their positions are different from each other. faced by the defendant. Meanwhile, parents, guardians, or foster parents and community counselors are more passive, only paying attention to the course of the trial. They do not have the right to defend the interests of the accused¹ such as filing objections to the indictment, asking witnesses or the accused.

² The trial is closed to the public except when the verdict is read (Art. 54), Before the trial begins, the judge knocks the trial hammer and the trial is closed to the public, after which the defendant is summoned into the courtroom with his parents, guardians or foster parents, legal advisors, and community ad¹⁹ors. and for the trial of the decision, the judge opens the trial open to the public. Because after the judge's decision or the decision of the panel of judges is pronounced in a trial that is open to the public, such a decision has been transformed into a court decision and has become public property.

Officials in session do not wear official attributes. (Art. 22), during the examination of the trial in court, the officials, namely judges, public prosecutors, and legal advisers did not wear gowns, nor did the clerks in charge of assisting judges wear suits. This is done as a way to create a family atmosphere so that the trial runs smoothly.

Child witnesses or victims must be accompanied by a parent/person trusted by the child or Social Workers. (Article 23 paragraph 2), At the level of examination, the Child Victim or Child Witness must be accompanied by a parent and/or person trusted by the Child Victim and/or Child Witness, or Social Worker. In order for the victim to feel safe and also this is to make it easier for the victim's child not to be depressed or afraid to take part in every level of examination. Synergy of SPPA organizers (Law Enforcers, Fathers, etc.). Every law enforcement officer is expected to work together in carrying out good law enforcement, by continuing to synergize in order to make the law the highest justice provider for justice seekers. It is hoped that every law enforcement officer has the same perspective in handling child crimes by using a restorative justice approach for the best interests of children.

¹¹ Sentencing is ultimum remedium (Art. 81 paragraph 5), Ultimum remedium is a legal term that is commonly used and is defined as the application of criminal sanctions which are the final (last) sanctions in law enforcement. For the handling of children who commit criminal acts, the imposition of criminal sanctions in confinement is the last act in prosecuting children, so that in the settlement process other legal protections are sought that can resolve children's cases. Layout of the juvenile court courtroom. The children's co⁸rtroom arrangement has not been regulated in the SPPA law so that it still uses the provisions of the criminal procedure law code, precisely in arti⁴c 230 paragraph 3 as follows:

- a. The place where the judge's table and chairs are located is higher than the place for the public prosecutor, defendant, legal advisor and visitors;
- b. The registrar's place is located behind the right side of the seat of the presiding judge;
- c. The public prosecutor's place is located on the right side of the judge's place;
- d. The place for the defendant and the legal ad⁴visor is located on the left side of the front of the place for the judge and the place for the defendant is on the right side of the place for the legal advisor;
- e. The seat for the examination of the defendant and the witness is located in front of the place of the judge;
- f. The place for witnesses or experts who have been heard is located behind the examination chair;
- g. The visitor's place is located behind the place where the witness has been heard;

- h. The National Flag is placed on the right side of the judge's table and the pennant for protection is placed on the left side of the judge's table, while the State symbol is placed on the upper wall behind the judge's desk;
- i. The clerk's place is located to the left of the clerk's place,
- j. Places as referred to in letters a to I shall be marked with identification;
- k. Place security officers inside the main entrance of the courtroom and in other places deemed necessary.

All layouts in juvenile courts are the same as those in other general courts, the only difference being from some of the descriptions described above. So that there is no body in the basic layout of the juvenile court system in terms of layout, while the examination in court of children in the first instance is carried out by a single judge, but the chairman of the court in examining children's cases with the judges of the panel in this case is a criminal offense punishable by a criminal offense. 7 years in prison, such as a crime of sexual harassment. In several cases that have been tried at the Namlea District Court using a single judge, the judge in examining a child's case in a trial when is declared closed to the public except for the reading of the decision, then in the trial process the judge is obliged to order the parent/guardian or companion or other legal aid provider. In the event that the parent, guardian or guardian is not present, the trial is continued accompanied by an advocate or other legal aid provider and/or community advisor. That when examining the child of the victim or the child of a witness, the judge may order that the child be taken out (Article 58 of the SPPA Law). In the event that the child of the victim or child of a witness is unable to provide information before a court session, the judge may order that the child of the victim or child of a witness have their testimony heard outside the trial through electronic recording conducted by the community advisor in the presence of an investigator or public prosecutor and an advocate or legal aid provider, through remote checking or teleconference. The judge before making a decision provides an opportunity for the parent/guardian/companion to state things that are beneficial to the child, then when the court decision is read in a trial open to the public and may not be attended by the child, the child in legal conflict is not yet 14 years old. can only be subject to non-criminal actions, which include returning to parents, surrender to someone, treatment in a mental hospital, and treatment at a social welfare organization (LPKS), the obligation to attend formal education or training held by the government or private bodies and revocation driving license. Detention of children in conflict with the law are placed in temporary child placement institutions (LPAS), while those where children are serving their criminal period are placed in special child development institutions (LPKA). Then the place where children get social services is at the social welfare organization (LPKS).

4. CONCLUSION

The results and discussion of this study indicate that legal protection for children who are sexually harassed at the Namlea District Court uses a restorative justice approach. This is evidenced by the case with No. Case: 1/Pid.Sus-Child/2020/PN Nla was not arrested. This process is in accordance with Law No. 11 of 2012 concerning the juvenile criminal justice system. The law puts forward a restorative settlement of cases by involving the perpetrators, victims, families of the perpetrators/victims, and other related parties to jointly seek a just settlement by emphasizing the restoration to its original state, and not retaliation, thus avoiding punishment for child. In addition, the judicial process for children sexually abused must go through a diversion process at every stage of the process (Article 7 paragraph 1 of the SPPA Law), starting from the investigation stage of the prosecution to the trial of each institution, in this case the police, prosecutors and the judiciary, must use diversion efforts. This obligation is a form of protecting children from retaliation and preventing children from physical punishment for children.

References

- Al haq, A. F., Raharjo, S. T., & Wibowo, H. (2015). Kekerasan Seksual Pada Anak Di Indonesia. *Prosiding Penelitian dan Pengabdian kepada Masyarakat*, 2(1). <https://doi.org/10.24198/jppm.v2i1.13233>
- Djatikumoro, L. (2011). *Hukum Pengangkatan Anak di Indonesia*. PT Citra aditya bakti.
- Dokumen Administrasi Pengadilan Negeri Namlea, Kota Namlea. (2020).
- Gultom, M. (2010). *Perlindungan Hukum Terhadap Anak*. PT Refika Aditama.
- Huda, C. (2015). *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*. Kencana Prenadamedia Grup.
- Ishaq, H. (2017). *Metode Penelitian Hukum*. Alfabeta.
- Kurniawati, A. (2014). *(Studi Kasus Pelayanan Tepadu Perempuan dan Anak Surakarta)*. 3(2), 9.
- Mahayanti, N. M. A. D., & Landra, P. T. C. (2019). Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana Pelecehan Seksual. *Kerhta Wicara*, 8(2), 1–16.
- Nellyda, D., Sujana, I. N., & Suryani, L. P. (2020). Perlindungan Hukum terhadap Anak sebagai Pelaku Pelecehan Seksual Menurut UU No. 35 Tahun 2014. *Jurnal Preferensi Hukum*, 1(2), 62–66. <https://doi.org/10.22225/jph.1.2.2392.62-66>
- Paradiar, R., & Soponyono, E. (2022). *Perlindungan Hukum Terhadap Korban Pelecehan Seksual*. 4, 12.
- Peraturan Pemerintah No 65 tahun 2015 tentang Pedoman Pelaksanaan Diversi dan Penanganan Anak yang Belum Berumur 12 (Dua Belas) Tahun. (n.d.).
- Pramesti, T. J. A. (2019). *Dapatkah Menjerat Pidana Anak yang Lakukan Pencabulan?* <https://www.hukumonline.com/klinik/a/dapatkah-menjerat-pidana-anak-yang-lakukan-pencabulan-lt5125d3aaf3911>
- Safaruddin Harahap, I. (2016). Perlindungan Hukum Terhadap Anak Korban Kejahatan Seksual dalam Perspektif Hukum Progresif. *Jurnal Media Hukum*, 23(1), 37–47. <https://doi.org/10.18196/jmh.2015.0066.37-47>
- Sari, R., Nulhaqim, S. A., & Irfan, M. (2015). Pelecehan Seksual Terhadap Anak. *Prosiding Penelitian dan Pengabdian kepada Masyarakat*, 2(1). <https://doi.org/10.24198/jppm.v2i1.13230>
- Septiani, R. D. (2021). Pentingnya Komunikasi Keluarga dalam Pencegahan Kasus Kekerasan Seks pada Anak Usia Dini. *Jurnal Pendidikan Anak*, 10(1), 50–58. <https://doi.org/10.21831/jpa.v10i1.40031>
- Soetodjo, W. (2006). *Hukum Pidana Anak*. Refika Aditama.
- Sommaliagustina, D., & Sari, D. C. (2018). Kekerasan Seksual Pada Anak Dalam Perspektif Hak Asasi Manusia. *Jurnal Psikologi*, 1(2), 10.
- Sudirman, A. (2007). *Hati Nurani Hakim dan Putusannya*. PT Citra Aditya Bakti.
- Suprihatin, S., & Azis, A. M. (2020). Pelecehan Seksual Pada Jurnalis Perempuan di Indonesia. *PALASTREN Jurnal Studi Gender*, 13(2), 413. <https://doi.org/10.21043/palastren.v13i2.8709>
- Surjanti. (2019). Bentuk Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual Ditinjau Dari Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak Dalam Pemeriksaan Peradilan Di Pengadilan Negeri Tulungagung. *Yustitiabelen*, 5(1). <https://doi.org/10.36563/yustitiabelen.v5i1.211>
- Undang-undang tentang Sistem peradilan pidana anak, UU No. 11 Tahun 2012 Pasal 1 angka 6. (n.d.).
- Yustiningsih, I. (2020). Perlindungan Hukum Anak Korban Kekerasan Seksual dari Reviktimisasi dalam Sistem Peradilan Pidana. *Jurnal Lex Renaissance*, 5(2). <https://doi.org/10.20885/JLR.vol5.iss2.art3>

Artikel 3

ORIGINALITY REPORT

21 %
SIMILARITY INDEX

22 %
INTERNET SOURCES

20 %
PUBLICATIONS

10 %
STUDENT PAPERS

PRIMARY SOURCES

1	saudijournals.com Internet Source	4 %
2	scholarsmepub.com Internet Source	2 %
3	ijbel.com Internet Source	2 %
4	Submitted to Swinburne University of Technology Student Paper	1 %
5	eudl.eu Internet Source	1 %
6	osc.fhisip.ut.ac.id Internet Source	1 %
7	eprints.umg.ac.id Internet Source	1 %
8	jurnal.unissula.ac.id Internet Source	1 %
9	jurnal.uii.ac.id Internet Source	1 %

10	ejournal.balitbangham.go.id Internet Source	1 %
11	www.atlantis-press.com Internet Source	1 %
12	www.lawjournals.org Internet Source	1 %
13	www.ijsrp.org Internet Source	1 %
14	Sishi Maudysari. "Efforts to Combat the Crime of Selling Abortion Products Through Social Media", <i>Ius Poenale</i> , 2022 Publication	1 %
15	download.atlantis-press.com Internet Source	1 %
16	prizrenjournal.com Internet Source	1 %
17	journal.unnes.ac.id Internet Source	1 %
18	jurnal.untagsmg.ac.id Internet Source	1 %
19	eprints.ubhara.ac.id Internet Source	1 %
20	journal.unpak.ac.id Internet Source	1 %

Exclude quotes On

Exclude matches < 1%

Exclude bibliography On