

Non-Institutional Punishment Model in Child Sexual Violence Cases: An Analysis of The Progressiveness of Restorative Justice Towards Repetition of Criminal Acts

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Abstract

This study examines the legal issues in the criminalization of sexual violence crimes involving children as perpetrators and victims. The main objective of the study is to analyze the legal considerations of the panel of judges in Decision Number 2/Pid.Sus-Anak/2024/PN Skt and to identify the criminalization model for child perpetrators of sexual violence in the Indonesian criminal justice system. The research method used is normative juridical with a descriptive analytical approach through the study of legal documents. The results show that the Surakarta District Court Judge applied the doctrine of statutory rape by affirming that the child victim's consent was legally invalid due to legal incompetence and psychological manipulation, the panel of judges sentenced him to 10 months in prison with a one-year probation period and three months of job training. This decision represents a paradigm shift from retributive justice (imprisonment) to restorative justice, which prioritizes the principle of last resort. The research conclusion confirms that the non-institutional punishment model aims to prevent stigmatization and recidivism among child perpetrators, although on the other hand, it triggers challenges related to disparities in sentencing and fulfilling a sense of justice for victims.

Keywords: *Sexual Violence; Child Offenders; Criminalization; Restorative Justice.*

INTRODUCTION

Children are a gift and a mandate from God Almighty who have dignity, honor, and basic rights that must be upheld. Based on the mandate of Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, every child has the right to survival, growth, development, and protection from violence and discrimination. (1) This protection is a constitutional obligation that binds the state, society, and all components of the nation through various legal instruments, such as Law Number 23 of 2002 concerning Child Protection which has been amended by Law Number 35 of 2014, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, and Law Number 12 of 2022 concerning Crimes of Sexual Violence. This regulatory framework emphasizes the paradigm that children require special treatment in the justice system by always prioritizing the principle of the best interests of the child.

Current sociological realities demonstrate a sharp disparity between ideal legal norms and empirical facts on the ground, as reflected in the high prevalence of sexual violence against women and children in Central Java. Legally, protection of bodily integrity and human dignity divides legal subjects into two categories: for children, Indonesian law applies the doctrine of statutory rape which negates the relevance of the agreement (consent) due to legal incompetence and cognitive limitations, so that the claim of "mutual consent" has no legal force. Meanwhile, in adult female subjects, although there is recognition of sexual autonomy and the capacity to give consent, the validity of consent can be declared void if there is an imbalance in subordinate power relations or structural domination that limits the victim's free will. (2)

This phenomenon becomes increasingly complex when transformed into the dynamics of adolescent relationships, such as friendships or dating that involve emotional manipulation, where perpetrators often use this closeness as an instrument to create a false consensus that still substantially contains exploitation of children's psychological vulnerability. To address the debate regarding the boundaries between sexual exploration and criminal acts, the regulatory framework through the Child Protection Law and the TPKS Law is present as a vital instrument that positions the protection of children's sexual integrity as an absolute priority that is non-negotiable. Thus, the law firmly closes the loophole for defense based on subjective (mutual) consent, considering that children are legally considered not to have the cognitive maturity to understand long-term consequences, so that state protection must be total in order to guarantee legal certainty that is just. (3)

The phenomenon of sexual violence becomes increasingly complex when it occurs within the context of friendships or dating relationships involving emotional manipulation, thus triggering heated legal debates regarding the boundaries between adolescent sexual exploration and criminal offenses. This often surfaces, especially when there are claims of "mutual consent" from the parties involved as the basis for defense arguments. However, legally, Article 76D of Law Number 35 of 2014 and Article 81 paragraph (2) of Law Number 17 of 2016 have expressly sealed the debate by stating that the consent of minors has absolutely no legal force. (4)

Based on these normative provisions, sexual acts against children remain categorized as purely criminal acts due to the attribution of legal incompetence to the child. The state, through regulatory instruments, positions children as subjects who lack the maturity to independently reach valid sexual consent. Therefore, aspects of manipulation, deception, or persuasion are considered to fulfill the elements of a crime due to the child's cognitive and psychological limitations in understanding the long-term consequences of such acts.

This legal construction aims to provide absolute protection for children's sexual integrity without any room for subjective interpretation by the perpetrator. Disregarding the child's consent, the law consistently stipulates that legal responsibility rests entirely with the adult or the party with greater maturity. This reinforces the justice system's commitment to prioritizing the best interests of children and preventing the normalization of sexual exploitation in adolescent relationships, disguised as a narrative of affection. (5)

This normative rigidity ultimately creates significant paradigmatic tension in the Indonesian criminal justice system, namely between the doctrine of retributive justice, which emphasizes severe criminal sanctions for the sake of commensurate retribution, and restorative justice, which prioritizes recovery and social reintegration through the Juvenile Justice System Law. This contradiction requires judges to make progressive legal discoveries so that law enforcement does not become trapped in rigid legalistic formalities, but is able to provide substantive justice that balances punishment and development. This phenomenon is clearly reflected in Decision Number 2/Pid.Sus-Anak/2024/PN Skt, in which the judge prioritizes the principle of the best interests of the child by imposing a conditional sentence and job training instead of deprivation of physical liberty. This step emphasizes that the ultimate goal of juvenile justice is to create a harmonious social order, where room for improvement for perpetrators remains available without negating recognition of the legal rights of victims. (6)

The urgency of this research focuses on an in-depth analysis of the Surakarta District Court Decision Number 2/Pid.Sus-Anak/2024/PN Skt, a crucial case involving complex legal interactions between a 17-year-old child perpetrator and a 13-year-old victim. This case presents a significant legal challenge because the perpetrator was proven to have committed a repeat crime even while the legal process was ongoing, which theoretically demonstrates resistance to legal norms and tests the limits of legal certainty in the juvenile justice system. This dynamic places the judge in a dilemmatic position in determining the appropriate sanction amidst a situation where the perpetrator's actions substantially negate the ongoing trial process.

Despite the fact that the offense was repeated, the panel of judges consistently sentenced the child to 10 months' imprisonment with a one-year probation period and job training, a move that reflects judicial courage in implementing a progressive, non-institutional sentencing model. The decision to avoid physical imprisonment in LPKA aims to mitigate the destructive impact of stigmatization and social alienation that risk worsening psychological conditions and triggering more severe recidivism in the future. Thus, this study is very relevant to dissect how the judge's discretion in the decision attempts to balance formal legal demands with the need for rehabilitation in order to realize restorative justice that still has value for the child's future. (7)

This ruling is a crucial point for evaluating how judges balance victim protection with the mandate to provide guidance to child offenders in Indonesia's criminal justice system. For comparison, this study highlights disparities in judicial approaches across other rulings, such as the Samarinda District Court Decision No. 26/Pid.Sus-Anak/2023/PN Smr, which applied Article 6 letter b in conjunction with Article 15 letter g of the TPKS Law to emphasize the deterrent effect. Conversely, the Jambi High Court Decision No. 7/PID.SUS-ANAK/2021/PT JMB demonstrates a more rigid, juridical-dogmatic tendency. This comparison is crucial for examining how the evolution of national legal instruments, particularly the integration of the Child Protection Law and the TPKS Law, is implemented by judges to address the complexity of sexual violence cases involving children as dual legal subjects.

Through a critical examination of the judges' considerations and child criminalization theory, this research is expected to make a real contribution to realizing balanced justice, both for the sake of victim recovery and the future of children in conflict with the law. This analysis in-depth explores the paradigm shift from retributive justice, which focuses on physical punishment, to restorative justice, which prioritizes the principle of last resort. This shift confirms

that the justice system is no longer merely an instrument of retribution, but rather a corrective tool that places children's rights as a primary consideration at every stage of the legal process.

By dissecting legal construction based on the double track system and community-based rehabilitation, this study aims to identify the most effective punishment model to ensure comprehensive behavioral recovery for offenders. The simultaneous use of sanctions and measures is seen as a compromise solution that can provide educational impact without stripping children of their social identity. This research focuses on how the integration of skills development and social supervision can serve as a primary defense against future recidivism.

This research also seeks to provide fair legal recognition for victims by ensuring that the perpetrator's rehabilitation process does not negate the suffering experienced by the victim. Through a synthesis between the protection of sexual integrity and the sustainability of the child's future, this research is expected to serve as a reference for legal practitioners in implementing more humane and functional criminal policies. Ultimately, this effort is undertaken to create legal certainty that is not only written in regulatory texts, but also in line with the socio-psychological realities of the dynamics of child protection in Indonesia. (8)

Based on the background description that has been explained previously, this study specifically formulates the main problem to be solved, namely to identify, understand, and comprehensively analyze how the construction of legal considerations of the panel of judges in imposing criminal sanctions for sexual violence crimes involving children both in their capacity as perpetrators and victims as stated in Decision Number 2/Pid.Sus-Anak/2024/PN Skt. In addition, the urgency of this research is also directed to conduct a more in-depth study of the criminal punishment model for sexual violence crimes with child subjects based on case studies in the decision to be placed in the perspective of the criminal justice system in Indonesia which is currently undergoing a paradigm transformation. The analytical focus extends beyond purely juridical-dogmatic aspects, touching upon sociological and psychological dimensions to evaluate the effectiveness of non-institutional sanctions in achieving the goals of restorative justice, victim recovery, and the prevention of recidivism for children in conflict with the law in statutory rape cases.

Therefore, a multidisciplinary approach is a crucial methodological requirement in this research to holistically dissect the complexity of the case. Integration between the juridical-normative perspective with the sociopsychological dimension is necessary to test whether the

construction of the judge's considerations is aligned with the principle of the best interests of the child, especially when faced with anomalous facts in the form of repeated acts by the perpetrator during the legal process. The use of this multidisciplinary lens allows for a sharper analysis of the cognitive imbalance and power relations between the perpetrator and the victim, so that the effectiveness of the non-institutional punishment model is not only assessed from the aspect of the certainty of the legal text, but also from its ability to achieve social reconciliation, recovery from victim trauma, and breaking the cycle of recidivism in the juvenile criminal justice system in Indonesia.

METHOD

This study uses a normative juridical approach method with a descriptive research type that aims to systematically describe the criminalization of sexual violence crimes with child perpetrators and victims based on the study of the Surakarta District Court Decision Number 2/Pid.Sus-Anak/2024/PN Skt.(9) The main data source used is secondary data with primary legal materials consisting of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Law Number 11 of 2012 concerning the Child Criminal Justice System, and Law Number 12 of 2022 concerning Sexual Violence Crimes.(10) Data was collected through literature study techniques on existing legal documents, then analyzed using qualitative analysis methods with deductive and inductive thinking processes to draw factual and argumentative conclusions regarding the legal phenomena studied.(11)

RESULTS AND DISCUSSION

A. Legal Considerations in Crimes of Sexual Violence by Child Perpetrators and Child Victims

The sexual violence case examined and decided in the Surakarta District Court Decision Number 2/Pid.Sus-Anak/2024/PN Skt represents a legal manifestation that directly brings together the material offense and the complex reality of personal relationships between children. This case escalated from the dynamics of a dating relationship that then culminated in repeated acts of sexual intercourse. During the trial, despite the child victim's admission of "mutual consent," the panel of judges consistently applied the doctrine of statutory rape to assess the act.

This is done as a form of absolute legal protection, where the state takes a role in affirming that consent cannot be used as an excuse when it involves a minor.

Academically, the application of this doctrine in this decision affirms the principle that the consent of a minor has no legal significance whatsoever. The invalidity of this consent is rooted in the attribution of legal incompetence inherent in children, considering their cognitive and emotional capacities are considered immature to understand the long-term consequences of such sexual acts. Thus, the law views that any form of sexual penetration against children remains categorized as violence or a crime, regardless of whether or not there is an element of physical coercion, because children are positioned as subjects whose bodily integrity must be fully protected.

The legal dimension of this case became increasingly complex when the facts were revealed in court that the sexual intercourse continued even while the legal process was underway. This phenomenon is a crucial point indicating a failure to internalize legal norms and deep morality in the child perpetrator. This condition shows that the mere threat of normative punishment is not enough to change the perpetrator's behavior, thus triggering an urgent need for legal intervention that is not only corrective, but also rehabilitative. The judge is required to formulate sanctions that are capable of breaking the chain of deviant behavior without having to ignore the principle of the best interests of the child's future. (12) The judge's considerations contained in the decision being compared are based on:

- a. Article 81 Paragraph (2) of Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the second amendment to Law No. 23 of 2002 concerning Child Protection in conjunction with Article 76D of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection (UU PA).
- b. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) stipulates that fines are replaced with job training.
- c. Article 14 (a) and (b) of the Criminal Code relate to the probationary period because the SPPA Law does not regulate the probationary period.
- d. Article 6 letter b in conjunction with Article 15 letter g of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS Law) in conjunction with Law No. 11 of 2012.

In the construction of the legal reasoning in Decision Number 2/Pid.Sus-Anak/2024/PN Skt, the panel of judges explicitly established Article 81 paragraph (2) of the Child Protection

Law in conjunction with Law Number 17 of 2016 as the primary *basis legalis* to declare the guilt of the juvenile offender. The application of this article is based on the fact that the act involves sexual intercourse carried out by persuading the child to commit the act. The judge interpreted the element of "persuading" broadly, where the perpetrator's actions are not only seen as ordinary verbal communication, but also include systematic psychological manipulation in the form of promises of future marriage and cognitive deception regarding the biological risks of pregnancy. Thus, the judge emphasized that even though there is no explicit physical violence, manipulation that damages the victim's reasoning ability is sufficient to fulfill the elements of the criminal offense in the law.

Furthermore, the panel of judges placed particular emphasis on the unequal power relations between the perpetrator and the victim as a sociopsychological basis for their decision. The 17-year-old perpetrator was seen as having greater cognitive dominance and experience than the 13-year-old victim, creating a subordinate position that weakened the victim's resistance. From this perspective, the victim's desire to engage in sexual intercourse was seen as neither free nor legally valid because it arose from emotional pressure and psychological dependence on the perpetrator. This is in line with the doctrine of statutory rape which asserts that a child's consent has no legal significance due to the legal incompetence inherent in that age.

An in-depth examination of this aspect of power relations becomes even more crucial when viewed from a developmental psychology perspective, which highlights the significant age difference between the perpetrator and the victim. In criminological discourse, this four-year age difference creates a distinct "cognitive gap," where the levels of emotional maturity and decision-making capacity of both are on different spectrums. A 13-year-old is biologically and psychologically still in the early stages of puberty, characterized by high vulnerability to external stimulation, while the 17-year-old perpetrator is already on the verge of adulthood with much more stable and dominant situational control.

This cognitive imbalance allows perpetrators to exploit the victim's limited experience through various forms of structured emotional manipulation. At the age of 13, a child tends to have a strong psychological dependence on figures perceived as more mature or experienced, so their perception of sexual consent is often distorted by narratives of affection or loyalty. In contrast, perpetrators who are already 17 years old psychologically have a sharper understanding

of consequences and how to navigate the situation, which in this context is used to subdue the victim's critical thinking, thus creating subordination. (13)

This socio-psychological reality emphasizes why the doctrine of statutory rape and child protection regulations position sexual integrity as a non-negotiable right. A 13-year-old's inability to process the long-term risks of sexual acts renders any consent legally flawed. Therefore, the panel of judges' emphasis on this unequal power relationship is not merely an administrative complement, but rather a legal recognition that differences in cognitive maturity among adolescents can be a vehicle for systematic criminal activity, necessitating the presence of the state through absolute and protective legal protection.

The use of Article 81 paragraph (2) of the Child Protection Law as special law in this case demonstrates the state's commitment to prioritizing absolute protection of children's sexual integrity above general criminal law norms. Through this choice of legal instrument, the judge provides certainty that child protection no longer requires elements of physical violence or real threats as regulated in the Criminal Code, but rather sufficient proof of persuasion or manipulation of the child. This step also confirms the position of the Child Protection Law as an instrument that has sharper specific elements of crime and the threat of heavier sanctions than the TPKS Law for cases of child intercourse, in order to ensure that the physical integrity and dignity of children are fully protected from all forms of sexual exploitation. (14)

The primary legal basis used by the judges to determine the guilt of the juvenile offender is Article 81 paragraph (2) of Law Number 35 of 2014 in conjunction with Law Number 17 of 2016 on Child Protection. This provision explicitly prohibits any form of trickery, a series of lies, or inducement to engage in sexual intercourse with a child, carrying a minimum penalty of 5 years and a maximum of 15 years imprisonment. The judge positioned this article as special law which provides absolute protection for the sexual integrity of children without having to require physical violence or real threats as regulated in general criminal law. In examining the element of "every person", the judge referred to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) to determine the age limit for criminal responsibility, where the perpetrator's status as a child does not eliminate the unlawful nature of his actions, but fundamentally changes the way the state responds through different criminal mechanisms than adult perpetrators.

The focus of the evidence in this case was directed at the act of "persuading" which was deemed psychologically to have influenced the free will of the child victim. The interpretation of this element was crucial because the judge did not view the persuasion as mere verbal seduction, but rather as a series of systematic manipulations, including promises of marriage and cognitive deception regarding the biological risks of pregnancy which instilled false confidence in the victim. The judge firmly rejected the argument that equated the capacity for consent of children with that of adults, considering that children were seen as not yet possessing sufficient emotional and intellectual maturity. Therefore, the victim's consent in this personal relationship was deemed legally invalid because it arose from psychological manipulation and an imbalance in power relations, where the element of "intentionally" on the part of the perpetrator was proven through full awareness when carrying out the prohibited act. (15)

This legal consideration is also firmly rooted in the principle of the best interests of the child as stipulated in Article 3 of the SPPA Law, which justifies judges prioritizing development over retribution. Despite the serious nature of the crime, judges use progressive discretion through a synergy between Article 71 of the SPPA Law and Articles 14a and 14b of the Criminal Code to impose a conditional prison sentence. Through the application of the *double-track system* under this law, institutional prison sentences do not need to be served physically within a correctional facility, provided that the juvenile offender complies with both general and specific conditions, such as participating in three months of job training. This measure aims to mitigate the negative impacts of labeling theory, or the stigmatization of imprisonment that can damage a child's future, while ensuring that the rehabilitation process continues under measured social supervision. (16)

Sociologically, the panel of judges makes legal discoveries (*legal reasoning*) by integrating the recommendations of the Surakarta Bapas Community Research Report into its verdict. This consideration is crucial because the judge not only looks at the normative side of the crime but also considers the perpetrator's background as an active student and the strong social support from a cooperative family. By understanding this social ecosystem, the judge strives to ensure that the legal intervention provided is able to maintain the child's social function so that they can continue to access education. This step demonstrates that the law does not operate in a vacuum, but rather responds to the reality that the success of a child's rehabilitation is highly

dependent on acceptance and guidance from their immediate environment as informal social control.

The judge was of the view that imposing a prison sentence in a Special Child Development Institution actually risks causing destructive impacts, especially permanent stigmatization (*labeling theory*) and social alienation that can trigger recidivism. Therefore, through Decision Number 2/Pid.Sus-Anak/2024/PN Skt, the judge applied a restorative justice paradigm that is oriented towards the child's future by imposing non-institutional sanctions. This legal belief is based on the principle that behavioral improvement and internalization of norms will be much more effective if carried out through supervision outside of correctional institutions. This sentencing model aims to reintegrate children into society, providing space to correct mistakes without having to destroy their future through the harshness of prison life. (17)

When an in-depth comparative analysis is conducted, the approach taken by the Surakarta District Court shows a very sharp differentiation when compared with the Samarinda District Court Decision Number 26/Pid.Sus-Anak/2023/PN Smr and the Jambi High Court Decision Number 7/PID.SUS-ANAK/2021/PT JMB. The significant differences regarding the legal basis and paradigm of criminalization can be seen briefly in the following table:

Table 1. Comparison of Legal Basis and Decision Paradigm

Comparative Aspects	Decision of the Surakarta District Court (No. 2/Pid.Sus-Anak/2024/PN Skt)	Samarinda District Court Decision (No. 26/Pid.Sus-Anak/2023/PN Smr)	Jambi High Court Decision (No. 7/PID.SUS-ANAK/2021/PT JMB)
Main Legal Basis	Article 81 paragraph (2) of the Child Protection Law in conjunction with Law No. 17/2016.	Article 6 letter b in conjunction with Article 15 letter g of the TPKS Law.	Child Protection Law (Does not accommodate the TPKS Law due to <i>tempus delicti</i>).
Types of Sanctions	Non-Institutional: 10 months imprisonment with 1 year probation + 3 months job training.	Institutional: Imprisonment in a Special Child Development Institution (LPKA).	Institutional: Severe sentences with a focus on the intensity of the act.
Legal Paradigm	Restorative Justice: Prioritizing rehabilitation and the	Retributive Justice: Emphasizes the deterrence effect.	Juridical-Dogmatic: A rigid approach to

	principle of <i>ultimum remedium</i> .		the certainty of statutory texts.
Response to Facts	Progressive: Even though there is a repeat of the offense, the judge still chooses the rehabilitation path outside of prison to protect the child's future.	Conventional: Prison is considered the main instrument for restoring social balance.	Normative: Focus on proving legalistic formalities
Purpose of Criminalization	Social reintegration, prevention of stigmatization (labeling theory), and continuity of education.	Physical punishment as a form of appropriate retribution.	Legal certainty through punitive punishment.

Based on the data, it is clear that in Samarinda, the panel of judges appeared to place greater emphasis on the deterrence effect through the imposition of imprisonment in a Special Child Development Institution (LPKA) as the primary instrument to restore the social balance deemed disturbed by the perpetrator's actions. Meanwhile, the Jambi High Court's decision represents a fairly rigid legal-dogmatic tendency, in which heavy sentences are imposed by prioritizing the intensity of the act and the certainty of the legal text as the primary benchmarks of justice, without further exploring the psychosocial background of the child perpetrator in a case-by-case manner.

In this context, the fact that the perpetrator repeated his actions during the legal process triggered a critical discourse centered on deterrence theory. The failure of initial sanctions to stop deviant behavior indicates that the existing criminal threats have not been able to achieve an effective level of individual deterrence. Criminologically, this indicates that the perpetrator's internal control mechanisms have not yet fully developed, resulting in external legal pressure losing its coercive and deterrent power. This repetition is an important indicator that the ongoing legal process is not perceived as a serious warning, but rather as a mere formality that has not yet touched the roots of the perpetrator's moral consciousness.

Furthermore, the failure of this deterrent function cannot be separated from the effectiveness of supervision by the family and the perpetrator's immediate social environment.

In the juvenile criminal justice system, the microenvironment, especially the family, should play a vanguard role in providing close supervision to ensure children do not re-offend. Repeated offending reflects dysfunctional domestic oversight, where parental or guardian authority fails to mitigate the risk of recurrence. This creates loopholes that allow perpetrators to continue engaging in similar behavior, despite being under the threat of criminal sanctions from the state.

This sociopsychological tension ultimately presents a significant challenge to the non-institutional sentencing model chosen by the Surakarta District Court. If the instruments of job training and conditional sentences are not accompanied by strengthened, comprehensive environmental supervision, it is feared that the desired rehabilitative goals will be difficult to realize. Synchronization is needed between legal supervision by the Correctional Center and sociological supervision by the family so that the deterrent function can run alongside the rehabilitative process. Without such synergy, even the most progressive legal policies risk being viewed as permissive sanctions, potentially reducing the authority of the law in the eyes of society and victims.

In contrast, the Surakarta District Court in its decision chose a more socio-psychological and progressive approach in viewing the trial facts. The most striking thing was when the judge found that the perpetrator repeated his actions during the legal process; instead of using this fact as the sole legitimacy for increasing the retributive sentence, the judge instead read it as a signal of the urgency of the failure to internalize norms that require intensive support. This approach shifts the focus from mere punishment to rescue efforts, where the judge strives to ensure that state intervention does not kill the child's educational path. By imposing a conditional sentence and job training, the Surakarta District Court proves that justice for victims can go hand in hand with providing a second chance for the perpetrator's future through rehabilitation mechanisms outside of correctional institutions. (18)

In Decision Number 2/Pid.Sus-Anak/2024/PN Skt, the panel of judges sentenced the defendant to 10 months' imprisonment with a one-year probationary period through a conditional sentence, and an additional three months of job training. Academically, this decision represents a concrete application of the principle of subsidiarity, where criminal law is positioned as a *ultimum remedium* or a last resort that prioritizes behavioral reform over physical suffering. By synergizing Articles 14a and 14b of the Criminal Code with the provisions of the Juvenile Criminal Justice System Law (UU SPPA), judges create space for measurable rehabilitation. This

step demonstrates that prison sentences do not have to be served in correctional institutions as long as the perpetrator meets the established development requirements, thus ensuring the child's educational process and psychosocial development.

The decision affirms the paradigm that justice in the juvenile criminal justice system is no longer measured by the severity of physical suffering inflicted on the perpetrator, but rather by the appropriateness of sanctions in reintegrating the child into the social order as a responsible individual. By imposing conditional sentences combined with job training, judges attempt to balance the deterrent effect with the rehabilitative needs of child perpetrators who still have a long future. This approach is carried out without ignoring the victim's rights to legal recognition and justice, because the perpetrator's guilt status remains determined legally. Ultimately, this sentencing model represents the state's efforts to realize comprehensive restorative justice, namely restoring the victim's condition while preventing recidivism through community-based development.(19)

B. Criminalization in Crimes of Sexual Violence by Child Perpetrators and Child Victims

The Surakarta District Court's decision No. 2/Pid.Sus-Anak/2024/PN Skt represents a highly progressive model of criminal policy, in which the panel of judges consciously places the value of rehabilitation far above retribution or revenge. In constructing this decision, the primary focus of sanctions is fundamentally shifted from inflicting physical suffering through imprisonment to controlling and improving behavior through a measured and systematic legal oversight mechanism. This demonstrates a paradigm shift in the juvenile criminal justice system in Indonesia, which is moving away from a rigid punitive approach and moving toward restorative justice that prioritizes restoring the integrity of the child perpetrator without ignoring the facts of the wrongdoing.

However, the progressive paradigm that emphasizes the rehabilitation of the perpetrator in Decision Number 2/Pid.Sus-Anak/2024/PN Skt must be accompanied by an equally strong commitment to restoring the rights of the victim. The focus of sanctions oriented towards improving the perpetrator's behavior must not negate the fact that the victim, who in this case was only 13 years old, experienced very deep psychological shock. Psychological rehabilitation for the victim must be seen as a central element that is inseparable from restorative justice itself. Without structured mental recovery efforts, the judge's decision will only be an instrument of

legal certainty for the perpetrator, but fail to provide substantive justice for the victim who must bear the burden of post-incident trauma. (20)

In this context, the urgent role of the Witness and Victim Protection Agency (LPSK), as mandated by Law Number 31 of 2014, is crucial in bridging the gap between court decisions and the reality of recovery on the ground. The protection provided should not be passive or merely physical protection during the trial, but must include ongoing psychosocial and medical assistance. LPSK's active involvement is necessary to ensure that victims' recovery does not end once the judge's gavel has struck. This assistance guarantees that the state is present to restore the victims' dignity and psychological well-being, in line with the spirit of the decision, which prioritizes humanity and a better future for all parties involved.

Therefore, the success of the criminal justice policy model implemented by the Surakarta District Court depends heavily on the synchronization between the supervision of perpetrators by the Bapas (Chief Justice Officer) and post-traumatic support for victims. A measurable legal oversight mechanism for perpetrators must go hand in hand with victims' accessibility to counseling and psychological rehabilitation services. By balancing the correction of perpetrators' behavior with the restoration of victims' integrity, the juvenile criminal justice system acts not merely as a punishment but truly transforms into a means of social reconciliation. This is crucial to comprehensively mitigate the destructive impact of criminal acts, prevent long-term trauma for victims, and break the chain of future violence.

Technically, the panel of judges imposed a 10-month prison sentence, but determined that the sentence need not be served physically in a correctional facility. This was achieved through the application of a conditional sentence with a one-year probationary period, reinforced by the additional measure of three months of job training for the child perpetrator. This choice of sanctions reflects the application of the law that is no longer a single or linear approach, but rather a clever combination of various complementary sanction instruments within a unified criminal construction. Thus, the state is present not only to punish, but to provide educational interventions aimed at correcting children's deviant behavior through productive and dignified activities.

The construction of this sentence is designed to ensure the effectiveness of long-term development without having to isolate children from their supportive social environment, such as family and school. Judges understand that severing social ties through institutional imprisonment often backfires and damages a child's future. By keeping children under legal

supervision outside the institution, this decision provides an opportunity for child perpetrators to organically internalize norms within society. This model not only aims to prevent recidivism, but also to ensure that children can grow back into responsible individuals while still upholding the rights of victims to legal recognition and substantive justice.(21)

Normatively, the legal basis for criminal punishment in Decision Number 2/Pid.Sus-Anak/2024/PN Skt is firmly rooted in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) which philosophically prioritizes the principle *last resort*. This principle emphasizes that deprivation of liberty or imprisonment should be positioned as a last resort after all other legal instruments are deemed inadequate to achieve the goal of justice. The judge in this case synchronized legal norms with the factual conditions of the child perpetrator, where the imposition of sanctions is no longer directed solely at retributive aspects, but rather at efforts to maintain the survival and development of children as future assets of the nation whose basic rights must still be protected even while undergoing legal proceedings.

Based on the hierarchy of sanctions explicitly regulated in Article 71 paragraph (1) of the SPPA Law, imprisonment is indeed placed as the final option in the structure of child sentencing, after warnings, conditional sentences, and job training. By choosing to impose a conditional prison sentence through a conditional sentence mechanism, the panel of judges demonstrated a high level of adherence to the principle of proportionality. This approach allows the state to still provide a statement of guilt to the perpetrator without having to completely deprive him of his physical liberty. This legal step provides more rehabilitation space for children to improve their behavior under social supervision, which is considered far more effective than isolation in a correctional facility.

This conditional sentence also serves to realize the principle of the best interests of the child, where the threat of imprisonment remains "hanging" as a preventive means of social control. The prison sentence status that does not need to be served creates measurable psychological pressure for the child perpetrator to always comply with the general and specific conditions during the probation period. Thus, the judge succeeded in creating a balanced legal construction: on the one hand, it provides a deterrent effect so that the child does not repeat his actions, and on the other hand, it provides a guarantee of security for society that the perpetrator is under strict supervision which aims to reintegrate moral values and legal norms into the child in a comprehensive manner. (6)

The implementation of Article 71 of the Juvenile Criminal Justice System Law (UU SPPA) in Decision Number 2/Pid.Sus-Anak/2024/PN Skt represents a concrete manifestation of the shifting paradigm of juvenile criminal law in Indonesia, which now prioritizes restorative justice over retributive justice. Through the use of progressive legal discretion, the panel of judges no longer places conventional punishment in the form of deprivation of physical liberty as the sole instrument in responding to criminal acts. Instead, the judges have made a breakthrough by integrating sanctions in the form of job training as a key pillar of rehabilitation efforts for children in conflict with the law. This step demonstrates that the courts are beginning to view child perpetrators not merely as objects of punishment, but as subjects requiring educational intervention to restore their character and social behavior.

The integration of non-institutional sanctions strategically aims to mitigate the negative impacts of the stigmatization of imprisonment, known in criminology as labeling theory. Judges recognize that placing children in Special Child Development Institutions (LPKA) often results in a permanent "criminal" identity, which risks pushing them into a cycle of recidivism due to post-conviction social rejection. By imposing a prison sentence conditioned on a conditional sentence plus job training, judges attempt to break this chain of stigmatization. This approach allows children to remain in a positive social environment while remaining under strict legal supervision, allowing the process of internalizing norms to proceed without compromising the child's psychological integrity.

The implementation of Article 71 of the SPPA Law is a tangible manifestation of the principle of the best interests of the child, as mandated by both international conventions and national law. The focus of sanctions is shifted to the sustainability of the child's social function and future through a more humanistic and functional development model. The three-month job training imposed by the judge not only serves as a sanction, but also as a means of providing skills so that the child has mental and managerial readiness to live in society in the future. Thus, this decision successfully synergizes two major interests, namely, providing legal recognition for the rights of victims who have been violated, while also providing guarantees for the child perpetrator to be able to transform into a productive and responsible individual. (17)

ImplementationThe vocational training sanction in this decision represents a judicial breakthrough with a fundamental educational dimension to equip children with disciplinary values and applicable practical skills. Doctrinally, this policy shifts the orientation of criminal

punishment from a retributive aspect that punishes the past, to a rehabilitative aspect that focuses on rebuilding the child's character in the future. The judge, in his consideration, considered that state intervention through vocational training was far more effective in providing a constructive deterrent effect, where the child perpetrator was directed to channel his psychosocial energy into productive activities that could foster an awareness of social ethics and personal responsibility.

From a practical - legal perspective, this job training sanction functions as a rational substitute for criminal fines which are often ineffective when applied to child legal subjects due to the lack of financial independence. By establishing this action, the burden of criminal responsibility remains personally attached to the child perpetrator without shifting the economic burden to the parents, so that the main objective of the juvenile criminal justice system can be achieved precisely. This mechanism forces children to contribute significantly to society, which simultaneously forms a responsible character without having to sacrifice the child's constitutional rights to access formal education and the social interventions needed for comprehensive sexual behavior recovery. (22)

Although based on a deeply rehabilitative intention, the sentencing policy in this decision has sparked significant critical discussion, particularly when linked to the perspective of crime prevention and fulfilling a sense of justice for victims. In criminal law doctrine, the imposition of a conditional sentence is ideally a privilege intended for first-time offenders as a form of second chance. Therefore, the fact that there are indications of repeated behavior by the child perpetrator in this case should be a significant aggravating factor for the panel of judges. Repeated actions during the legal process indicate a low deterrent effect of sanctions on the perpetrator's behavior, so the application of non-institutional punishment is feared to be unable to provide an adequate deterrent effect to break the cycle of deviant behavior.

From the perspective of public interest and societal benefit, it is feared that imposing sanctions deemed too lenient could diminish the authority of the law and undermine the victim's constitutional right to a sense of security. The freedom of movement that the perpetrator still has in the same social environment as the victim has the potential to cause secondary trauma and ongoing psychological threats for the victim. In this context, there is tension between efforts to restore the perpetrator's future and the need to protect the victim's mental integrity. If legal oversight instruments during the probationary period are not implemented strictly and

comprehensively, this sentencing policy risks being seen as a form of neglect of the victim's suffering in order to pursue unilateral rehabilitative ambitions. (23)

The ruling highlights a fundamental disparity in approaches within Indonesia's juvenile justice system, demonstrating a sharp contrast between the sociopsychological perspective adopted by the Surakarta District Court and the retributive-institutional approach adopted by other jurisdictions, such as the Samarinda District Court and the Jambi High Court. This difference reflects the varying interpretations of judges regarding the objectives of juvenile punishment, with one emphasizing safeguarding the child's future through non-prison instruments, while the other still prioritizes the deterrent effect of depriving them of their physical liberty in formal institutions. This phenomenon demonstrates that despite the same legal framework, the Child Protection Act (UU SPPA), implementation at the grassroots level remains highly dependent on the discretion and social sensitivity of the panel of judges examining the case.

The differences in sentencing patterns strongly signal the urgency of establishing more harmonized and standardized sentencing guidelines for judges handling juvenile cases. These guidelines are necessary to create a fair balance between the rehabilitation rights of child perpetrators and the substantive rights of recovery for victims of sexual violence. Legal harmonization is considered crucial to avoid legal uncertainty that could harm both parties, while also ensuring that protecting children's sexual integrity remains a top priority without negating the fundamental rights of perpetrators who are still developing.

The success of implementing this non-institutional sentencing model ultimately depends heavily on the quality of supervision and guidance provided by the Correctional Institution (Bapas). The role of Bapas is a key pillar in ensuring that the corrective objectives of conditional sentences and job training can be effectively achieved in the field. Without strict and systematic supervision, the imposition of non-prison sentences risks being seen as a weakening of the authority of the law, so synergy between the judge's decision and the social control mechanisms of Bapas is absolutely necessary to ensure the achievement of restorative justice without neglecting the aspect of legal certainty that applies. (24)

These three decisions explicitly demonstrate the shifting dynamics of juvenile criminal law in Indonesia, which is significantly influenced by the timeline of regulatory validity or the *tempus delicti*. In Decision Number 7/PID.SUS-ANAK/2021/PT JMB, the strict limitations of

the principle of legality precluded the application of the Sexual Violence Crime Law (UU TPKS) because the case was adjudicated before the regulation was ratified in April 2022. This condition legally compelled the panel of judges to rely on the *status quo* framework in effect at that time, meaning the dimensions of victim protection were not yet comprehensively accommodated as mandated by the latest legislation.

In contrast, Decision Number 26/Pid.Sus-Anak/2023/PN Smr represents a paradigm shift through the progressive application of the TPKS Law as a new basis for criminal punishment. This comparison confirms the evolution of national legal instruments that now integrate the TPKS Law as a complement and new specialty alongside the Child Protection Law in addressing the complexity of sexual violence against children cases. This synchronization between regulations demonstrates that the Indonesian criminal justice system is moving towards strengthening more specific legal protections, where aspects of victim recovery and increased sanctions are constructed more sharply and contextually.(18)

CLOSING

1. Conclusion

The legal considerations in Decision Number 2/Pid.Sus-Anak/2024/PN Skt represent a profound synthesis between the legal aspects through the proof of Article 81 paragraph (2) of the Child Protection Law and the sociological aspects that prioritize the principle of the best interests of the child in order to minimize the destructive impact of imprisonment. The judge progressively shifted the retributive paradigm toward restorative justice by applying a conditional prison sentence model based on Article 14a and Article 14b of the Criminal Code, combined with job training as an implementation of the *ultimum remedium* principle in accordance with Article 71 of the Juvenile Criminal Justice System Law. Although this legal construction is based on the double-track system and this community-based rehabilitation legally aims to protect the future of the juvenile perpetrator from stigmatization, this non-institutional sentencing policy creates a sharp disparity in decisions and triggers problems related to fulfilling a sense of justice for victims due to the absence of actual physical sanctions for the perpetrators.

2. Suggestion

District Court Judges are expected to consistently place the principle of protection and the best interests of children as the main foundation in every legal consideration, including by firmly denying the pretext of child victim consent if elements of inducement or capacity imbalance are found, which then needs to be synergized with the efforts of lawmakers and law enforcement officials to optimize the implementation of non-institutional punishment accompanied by effective supervision in cases of child sexual violence in order to ensure the effectiveness of perpetrator development and comprehensive prevention of recidivism.

REFERENCE

1. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. Pasal 28B ayat (2).
2. Ananda RF, dkk. Perlindungan hukum terhadap anak sebagai korban kejahatan pelecehan seksual dalam perspektif viktimologi. *Locus Journal of Academic Literature Review*. 2023;52-65.
3. “Kasus Persetubuhan pada Anak Paling Banyak Dilaporkan Terjadi di Rumah.” Diakses 14 September 2025.
https://pusiknas.polri.go.id/detail_artikel/kasus_persetubuhan_pada_anak_paling_banyak_dilaporkan_terjadi_di_rumah
4. Sutyanto, Hardiana I, Chusairi A. Hubungan antara kekerasan emosional pada anak terhadap kecenderungan kenakalan remaja. *Jurnal Psikologi Klinis dan Kesehatan Mental*. 2012 Jun;1(1):38.
5. Undang-Undang Nomor 17 Tahun 2016 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 tentang Perubahan Kedua atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak Menjadi Undang-Undang. Pasal 81 ayat (2).
6. Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak.
7. Putusan Pengadilan Negeri Surakarta Nomor 2/Pid.Sus-Anak/2024/PN Skt.
8. Putusan Pengadilan Tinggi Jambi Nomor 7/PID.SUS-ANAK/2021/PT JMB.
9. Fajar ND M AY. *Dualisme Penelitian Hukum Normatif & Empiris*. Yogyakarta: Pustaka Pelajar; 2015.
10. Suardita IK. *Pengenalan Bahan Hukum (PBH)*. Denpasar: Fakultas Hukum Universitas Udayana; 2017.
11. Syamsuddin AR DV. *Metode Penelitian Pendidikan Bahasa*. Bandung: Rosda; 2011.
12. Moeljatno. *Asas-Asas Hukum Pidana*. Jakarta: Bina Aksara; 1987.
13. Soekito SWW. *Anak dan wanita dalam hukum*. Jakarta: LP3ES; 1983.
14. R S. *Hukum Perlindungan Anak di Indonesia*. Bandung: Citra Aditya Bakti; 2015.
15. Lamintang PAF. *Dasar-dasar hukum pidana Indonesia*. Bandung: PT. Citra Aditya Bakti; 1996.
16. Yusrial A dkk. Penerapan Sanksi Pidana Terhadap Anak Sebagai Pelaku Pada Tindak Pidana Kekerasan Seksual. *J Impresi Indones*. 2025;4:9.
17. Mubarok N. *Sistem Peradilan Pidana Anak*. Mojokerto: Insight Mediatama; 2022.
18. SR Rio. *Analisis Pertanggungjawaban Pidana Anak Pelaku Tindak Pidana*

Kekerasan Seksual Terhadap Anak (Studi Kasus Putusan Nomor: 26/Pid. Sus-Anak/2023/Pn Smr) [Disertasi]. Jakarta; 2025.

19. Arief BN. Tujuan dan Pedoman Pemidanaan. Semarang: Undip Pers; 2009.
20. Rifai A. Penemuan hukum oleh hakim dalam perspektif hukum progresif. Jakarta: Sinar Grafika; 2010.
21. Arief BN. Bunga Rampai Kebijakan Hukum Pidana. Jakarta: Kencana Prenada Media Group; 2010.
22. Raafi M, Djanggih H MM. Efektivitas Penerapan Sanksi Wajib Latihan Kerja Bagi Anak Yang Berhadapan Dengan Hukum Sebagai Pengganti Pidana Denda. Leg DIALOGICA. 2025;1(1).
23. Sholehuddin. Sistem Sanksi dalam Hukum Pidana: Ide Dasar Double Track System & Implementasinya. Jakarta: Rajawali Press; 2004.
24. S Muchtar NA. Penerapan Pidana Pembinaan Di Luar Lembaga Terhadap Anak Sebagai Bentuk Pidana Dengan Syarat. J Ilm Living Law. 2023;1(15):55–67.