

Analysis of Criminal Liability In Cases of Sexual Violence Against Children on The Grounds of Consent

Lizzyana Yusron¹, Erny Herlin Setyorini^{2*}

Law Science, Faculty of Law, Universitas of 17 Agustus 1945 Surabaya.

*Corresponding Author e-mail: lizyanayusrons@gmail.com

Abstract: *Sexual violence against children is a serious crime that threatens the fundamental rights of children to grow and develop optimally. One of the critical issues in such cases is the claim of "consent" from the victim, which perpetrators often use to avoid criminal liability. However, legally, children are considered incapable of giving valid consent to sexual activities. This article aims to analyze the criminal liability of perpetrators of sexual violence against children when invoking the defense of consent, as well as to examine the legal framework protecting children from sexual exploitation. This research employs normative legal methods with a statutory and conceptual approach. Data sources include national regulations, international legal instruments, and academic literature. The analysis is conducted deductively to produce systematic legal arguments. The results of the study indicate that consent given by a child in the context of sexual activity is legally invalid due to cognitive and emotional immaturity. Regulations such as the Child Protection Act and the Law on the Crime of Sexual Violence (UU TPKS) affirm that sexual violence against children remains a criminal offense, regardless of claims of consent. Perpetrators may be subject to severe criminal sanctions, including chemical castration and the installation of electronic monitoring devices.*

Article History

Received: June 15, 2025

Revised: June 22, 2025

Published: June 28, 2025

Keywords :

Sexual Violence; Children; Consent



<https://doi.org/10.5281/zenodo.15882527>

This is an open-access article under the [CC-BY-SA License](#).



INTRODUCTION

As the next generation of the nation, children are entitled to the protection of their fundamental rights to support their optimal growth and development, both physically, mentally, and socially. Therefore, the state must ensure that children are free from all forms of violence, including sexual crimes. This statement is not made without a clear legal basis. Referring to the provisions of Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it is affirmed that every child is guaranteed the right to grow and develop without experiencing violence or discrimination. This norm emphasizes that children hold a significant position as legal subjects who must be respected, protected, and treated with care and affection. Moreover, the article underscores that the state bears the primary responsibility to ensure the protection of children.

Cases of sexual violence are a form of crime that has a serious impact not only on human rights but also causes psychological, social, and legal harm to the victims. In general, sexual violence is defined as any form of sexual activity carried out without the explicit consent of the victim (Amrullah, 2020). This definition is reinforced by Diana E.H. Russel's opinion, which explains that sexual violence includes all sexual acts or attempts to engage in sexual activity, including unwanted sexual comments or advances, or any form of sexual exploitation, committed through coercion, threats, or physical violence, regardless of the relationship between the perpetrator and the victim, and can occur in any environment (Russell, 1984).

The affirmation of this definition shows that sexual violence not only involves physical contact without consent but also includes verbal or non-physical acts, as well as sexual exploitation, including human trafficking. In general, the groups most targeted by sexual violence are marginalized groups whose positions are considered vulnerable in society. One of these vulnerable groups is children. Children are often categorized as a marginalized group due to their physical, emotional, and social

powerlessness. The marginalization of children illustrates a condition in which children are in a weak position within both social and cultural structures, making them more vulnerable to being identified as victims of sexual crimes.

A crucial issue in cases of sexual violence against children is the claim or excuse of "consent" from the victim. Perpetrators often argue that the victim had given consent to engage in sexual activity, leading them to believe that their actions do not constitute a criminal offense. However, in the legal context, the essence of sexual violence lies in the absence of valid consent. Consent refers to an agreement given consciously, voluntarily, and without any coercion, threats, or manipulation. If valid consent is absent, the sexual act is legally classified as sexual violence (Er Tanjung et al., 2023).

This concept of consent reflects respect for a person's human right to determine his or her will over his or her own body. Every individual has the right to make decisions about his or her body, and this right must be respected in every sexual interaction. In line with that, Susan Brownmiller's thoughts in her work *Against Our Will: Men, Women, and Rape* state that sexual violence is a violation of the victim's bodily autonomy. Brownmiller asserts that consent is an absolute requirement in sexual activity, and the absence of consent makes the act an unlawful act of violence (Brownmiller, 1975). Therefore, this raises a crucial question about how the criminalisation of perpetrators of sexual violence against children on the grounds of consent can be legally accounted for.

In the study of the concept of child marginalisation, the marginalised condition of children is often influenced by one of the main factors, namely, the immaturity of their cognitive and emotional aspects. This makes them generally incapable of fully understanding the consequences of sexual activity. Children cannot make truly independent and rational decisions, especially regarding complex issues such as sexual activity. This immaturity makes children lack the legal capacity to give valid consent, making them vulnerable to being manipulated or coerced by sexual offenders (Apriyansa, 2019). In addition, children's limited knowledge of their rights and skills to protect themselves from sexual violence further increases their vulnerability to these crimes. The concept of consent in a sexual context cannot be simply interpreted as a person's agreement to an act committed against them. Traci Lordan, in her research entitled *Sexual Consent Perceptions of Child Sex Offenders Who Experienced Childhood Sexual Abuse*, asserts that: (Lordan, 2020)

"Sexual consent is not assumptive because open communication and understanding of the purpose of sexual intercourse are absolute. Consent can be conveyed through words or actions, and the right to revoke at any time during sexual intercourse. It is also important for the party giving consent to fully understand the sexual activity to be performed."

From this statement, it can be understood that sexual consent cannot be simply assumed, as consent requires clear communication and full understanding of the intent of the sexual act to be performed. Sexual consent can be conveyed through verbal communication as well as nonverbal cues and can be revoked at any time during the process. In addition, the individual giving consent must have a thorough understanding of the act to be performed. Thus, if there is no full understanding from the party giving consent, then the consent cannot be considered legally valid (Lordan, 2020).

Traci Lordan's statement "...understood by the person giving consent" explicitly negates the possibility of valid consent from children in the practice of sexual activity. This is based on the assumption that children do not have the mental and cognitive maturity to fully understand the meaning, impact, and risks of sexual activity. In other words, children's consent does not fulfil the legality of valid consent, as they are unable to realise the long-term impact and risks that may arise from the activity. Therefore, in cases of child sexual abuse, the existence of an agreement from the outset is considered legally non-existent.

Regulations regarding sexual violence are regulated in Article 285 of the old Criminal Code (KUHP) as regulated in Law Number 1 Year 1946, which states: (Topo, 1997)

"A person who uses force or intimidation to force another person to have sexual intercourse outside of marriage shall be guilty of rape and shall be liable to imprisonment for up to twelve years."

Referring to the regulation, the element of violence or threat of violence is the central point in determining the criminal offence of rape.

However, the development of regulations shows the strengthening of protection for children through the National Criminal Code as stipulated in Law Number 1 Year 2023, specifically Article 416, which states:

“Any individual who by force, threat, coercion, trickery, deceit, or inducement forces a child to commit or allow himself to be involved in a sexual act shall be punished with imprisonment of up to 15 years.”

This article expands the definition of sexual violence against children, including elements of deception, persuasion, and lies as part of immoral crimes targeting children.

In addition, a more specific regulation is also found in Law Number 12 of 2022 on Criminal Acts of Sexual Violence (UU TPKS), which explicitly regulates that all forms of sexual intercourse, obscene acts, and sexual exploitation of children are included in the category of sexual violence without requiring proof of coercion. This reinforces that sexual acts against children, regardless of the pretext of agreement, are still classified as criminal acts of sexual violence because children are not considered to have the legal capacity to give consent. Although the TPKS Law has generally adopted the principle that children cannot give consent, juridically, the concept has not been regulated in detail in national legal arrangements. For example, Law No. 35/2014 on Child Protection in Articles 76D and 76E regulates the prohibition of coercion, inducement, and deceit against children, but does not confirm the limitations of whether a child's consent is valid. As a result, there is a legal loophole where perpetrators can still use the pretext of "mutual consent" to avoid criminal charges.

From this description, there are three main reasons why this issue is relevant to study. First, children are vulnerable legal subjects and legally require special protection from the state, including against claims of agreement in sexual acts. Second, in judicial practice, there is often a defence from the perpetrator in the name of mutual consent as a pretext to avoid criminal responsibility. Third, there are differences in the substance of the regulations between the Criminal Code, the Child Protection Law, and the TPKS Law, especially in terms of the regulation of consent and the vulnerability of children. This gap is also evident in the aspect of protecting victims who "agree", both in evidentiary procedures such as post-mortem, psychological assistance, and determining sanctions against the perpetrator. These problems indicate a legal vacuum that is important to examine, especially in the context of law enforcement against perpetrators of sexual violence against children under the pretext of consent..

RESEARCH METHOD

Based on a desk study of written legal norms and principles, normative legal research methods are used in this article. The methods include a statutory approach to study formal regulations and a conceptual approach to study legal theories and principles. Primary materials, namely national regulations and international legal instruments, and secondary materials, namely academic literature, are the legal sources used. To produce a systematic and justifiable legal argumentation, data collected from authoritative and reliable sources were evaluated deductively once collected (Marzuki, 2019).

RESULT AND DISCUSSION

Legal Arrangements for the Crime of Sexual Violence against Children under the Pretext of Agreement

The discussion on the regulation of sexual violence crimes in the normative framework has been analysed in various scientific studies. Sexual violence not only causes damage to the dignity and physical integrity of the victim, but also leaves prolonged psychological trauma. In several cases, perpetrators have attempted to avoid criminal responsibility by arguing that the act was committed with the victim's consent or mutual consent. This kind of reasoning often misleads the law enforcement process, especially when the victim is in a vulnerable position or there is an element of manipulation and abuse of power by the perpetrator (Ratih et al., 2023).

Sexual violence often targets groups that are considered socially vulnerable, such as women and children. Acts of sexual violence against children are serious offences that hurt the development of children, both in their physical, mental, and moral aspects, as well as the nation's future. Although

various legal instruments have explicitly regulated the prohibition and punishment of perpetrators of sexual violence, in judicial practice, it is not uncommon to find various pretexts of justification used by perpetrators to avoid legal accountability (Baharudin, 2023). One pretext that often arises is the claim that the act was carried out based on an "agreement" with the child as a victim.

This raises the fundamental issue of whether the consent given by the child in the context of sexual intercourse is legally justifiable under criminal law. Child victims do not have full legal capacity to give legal consent to sexual relations. (Suryandi et al., 2020) This is affirmed in Child Protection Laws, as well as the TPKS Law. Thus, the argument that the child has consented to or even initiated sexual intercourse lacks legal legitimacy, as the consent is considered invalid because it does not meet the standards of awareness and maturity as required by the criminal legal system.

This fact shows the urgency to examine more deeply the understanding of the concept of "consent" in the sexual exploitation of children. The use of the pretext of consent is not only morally misleading but also contradicts legal principles because it has the potential to legitimise hidden forms of sexual violence. (Savitri, 2020) Therefore, law enforcement officials, educators, and the general public need to understand that all forms of sexual relations involving children, regardless of the consent or initiative of the child, are still categorised as criminal offences and must be dealt with strictly by applicable laws and regulations.

In the perspective of criminal law, the notion of consent refers to an agreement given knowingly, voluntarily, and without coercion for a certain action, including in the context of sexual relations. Consent has a crucial function as a determinant of whether a sexual relationship is carried out voluntarily or is classified as a criminal offence, such as rape or sexual harassment. However, not all forms of consent can be categorised as lawful. The assessment of whether or not consent is valid is not only seen from the presence of verbal statements or physical behaviour of the victim, but also pays attention to psychological aspects, age level, social position, and how the consent was obtained.

An agreement is invalid in criminal law if it is obtained by the following means: (Dania, 2020)

- a) Through coercion, for example, when the victim feels compelled to consent due to fear of physical violence, social intimidation, or mental pressure. An agreement arising from fear or pressure cannot be considered as free will, because the main principle in criminal law requires awareness and freedom in every legal action.
- b) As a result of manipulation or deception, such as by inducement in the form of false promises of marriage, gifts, or other favours used to obtain consent.
- c) Due to the victim's ignorance or confusion, e.g., the victim does not fully understand the risks and impacts of the sexual act.
- d) Because they have not reached the age of legal capacity, given that the law expressly prohibits sexual relations with children. Children are legally deemed not to have the capacity to give valid consent, found in Articles 81 and 82 of the Child Protection Law. Legal capacity refers to age and mental ability; in criminal law, individuals under 18 years old do not have the legal authority to consent to sexual activity. As such, consent expressed by a child is not legally valid.
- e) There is an imbalance of power in relationships, for example, between teachers and students, superiors and subordinates, or adults and children. Power imbalances mean that consent is not freely and equally given.

This explanation reinforces the opinion of Traci Lordan in her research entitled *Sexual Consent Perceptions of Child Sex Offenders Who Experienced Childhood Sexual Abuse*. Lordan asserts that sexual consent cannot be assumed automatically because it requires communication and a clear understanding of the intention to engage in sexual activity. Communication of consent can be both verbal and nonverbal, and can be withdrawn at any time during sexual activity. (Lordan, 2020) In addition, the person giving consent must correctly understand the nature of the sexual act being performed.

Traci Lordan argues that consent in sexual activity cannot be understood simply or statically. Consent is not simply defined as the absence of refusal, but must be seen from explicit communication, a full understanding of the actions taken, and the freedom to withdraw consent at any time. As a concrete example, the victim's silence cannot be interpreted as consent. Even if the victim appears to consent at

the beginning, she still has the right to stop the sexual activity midway through the process. If the perpetrator ignores the withdrawal of consent, the perpetrator's actions still fall under the category of sexual violence.

Lordan added that the validity of the agreement is tied to the full understanding of the party giving consent. This is especially crucial for vulnerable groups such as children, individuals with intellectual disabilities, or people under psychological stress. If the individual does not have sufficient understanding of the sexual act being performed, then the consent given is legally and morally flawed.

The question of the position of dating relationships in the context of sexual violence offences, especially those involving child victims, is often debated in the community. It is not uncommon for both perpetrators and the general public to assume that the existence of a dating relationship can justify sexual relations with child victims. However, from the perspective of Indonesian criminal law, dating cannot be used as a valid basis to legitimise sexual acts with child victims.

Juridically, child victims under the age of 18 are deemed not to have the legal capacity to give legal consent to sexual acts. Consequently, any consent given by the child, including in a dating relationship, does not have the force of legal justification and does not remove the criminal element in the act. In the context of national criminal law, children are seen as individuals who must receive special protection by the state, as stipulated in Article 1, point 1 of the Child Protection Law, which defines children as every individual who has not reached the age of 18 years, including foetuses still in the womb.(Saefudin et al., 2023)

This legal framework is based on the assumption that children do not have the psychological and mental maturity to make important decisions in their lives, including regarding sexual activity. This view is in line with the cognitive development theory of Jean Piaget, a Swiss psychologist who divides the stages of children's cognitive development into four phases, namely:

- a) Sensorimotor stage (0-2 years), children understand the world through their five senses and physical movements, not yet able to think abstractly;
- b) Preoperational Stage (2-7 years), children begin to use symbols but do not yet understand logic and are still very egocentric;
- c) Concrete Operational Stage (7-11 years), children begin to think logically about real situations but are not yet able to think abstractly;
- d) Formal Operational Stage (11 years and above), children have begun to be able to think abstractly, but social and moral decision-making abilities are not yet fully stable, even until late adolescence.

Thus, although teenagers understand the basic concept of consent, they do not yet have the maturity to fully understand the psychological and emotional impact and risks of sexual intercourse. This makes children's consent in the context of sexual relations legally invalid.

In addition to Piaget's theory, Erik Erikson's psychosocial theory is also relevant to explain children's psychological immaturity in this context. Erikson proposed two main stages of development for children and adolescents, namely:(Kifli & Ismail, 2022)

- a) Industry vs Inferiority Stage (6-12 years old), where children can seek recognition from the social environment and tend to rely on authority figures;
- b) Identity vs Role Confusion Stage (12-18 years), a period of self-discovery that is vulnerable to external influences, including peers and the surrounding environment.

According to Erikson, children's identity formation process is still unstable, so children are at risk of being manipulated in interpersonal relationships, including sexual relationships. Therefore, a child's consent in a sexual context is not considered to qualify as valid consent.

From the aspect of criminal law, the main principle is the principle of *nullum crimen sine lege*, *nulla poena sine lege*, which means that no act can be punished unless it is regulated by law. Regulations such as the Child Protection Law, the Criminal Code, and the TPKS Law explicitly classify sexual acts against children as formal offences, meaning that the criminal act is declared complete only by proving the existence of the act, without the need to prove the impact or consequences.(Zulfiko, 2022)

With this formal offence provision:

- a) No evidence of physical violence or injury is required,

- b) It is not required that there be a tangible psychological impact,
- c) It is sufficient to prove that the sexual offence was committed against the child, then the criminal element has been fulfilled.

Article 81 paragraph (2) of the Child Protection Law explicitly states that even if it is done with the consent of the child, the perpetrator will still be punished.⁷² This indicates an absolute rejection of the validity of the child's consent, even in the context of emotional relationships such as dating.

The position of the child victim is as a subject that must be protected, following the principle of the best interest of the child. With the various provisions that have been regulated, criminal law confirms that there is no tolerance for the pretext of child consent in cases of sexual violence. This principle also closes the gap of legal defence by the perpetrator who argues that the action was carried out without coercion or based on an agreement. The state, through the legislative system, ensures that children are protected from all forms of sexual criminality in any condition.

Criminal Law Liability of Perpetrators of Child Sexual Abuse on the Ground of Consent

Before discussing the urgency of criminal liability in cases of sexual violence against children not only lies in the provision of punishment, but also in efforts to restore the condition of victims, it is important to first examine the normative framework that has been formulated by the state as a form of protection for children. The protection of children is not only an ethical or moral obligation, but has become a juridical responsibility of the state as enshrined in the Child Protection Law. This regulation is the legal foundation in ensuring the fulfillment of children's rights to be free from violence, discrimination, exploitation, and other inhumane treatment..

In addition, specific regulations governing the protection of children from sexual violence, especially in the realm of education, are also outlined through the Minister of Education, Culture, Research and Technology Regulation (Permendikbudristek) Number 30 of 2021. One of the key provisions in this regulation is found in Article 12, which states that:

“ The victim's consent cannot be used as a justification and/or excuse for perpetrators of sexual violence as referred to in this Ministerial Regulation.”

These provisions explicitly emphasise that consent cannot be used as a pretext to justify acts of sexual violence, especially in relationship situations where there is an imbalance of power, such as relationships between teachers and students or lecturers and students. Therefore, even if there is a recognition of mutual consent in the relationship, the law still considers the act as sexual violence that can be subject to criminal sanctions. This regulation emphasises that the element of consent does not remove the unlawful nature of the act, especially in the context of education, which is vulnerable to unequal power relations.

These two laws simultaneously establish a comprehensive child protection system, covering aspects from prevention to enforcement, including provisions on the obligations of the state, community participation, family involvement, and the imposition of sanctions on offenders. Therefore, before examining the concept of criminal liability for sexual crimes against children, it is important to first understand the legal framework that has been established, making it an obligation for the state to provide comprehensive protection guarantees for children as a legally vulnerable group.

Normatively, for children who become victims of sexual violence, several regulations specifically govern the provisions for imposing sanctions on perpetrators, including:(Hermawan et al., 2021)

- a) Article 76D of the Child Protection Law, in conjunction with Article 81 paragraph (7) of Law Number 17 of 2016, regulates the imposition of additional sanctions on perpetrators of sexual violence, which may include chemical castration accompanied by the installation of electronic monitoring devices.
- b) Article 76E of the Child Protection Law, in conjunction with Article 82 paragraph (6) of Law Number 17 of 2016, stipulates that perpetrators of sexual crimes against children may be subjected to recovery measures through rehabilitation and the installation of electronic monitoring devices as part of their punishment.

Furthermore, Article 59A of Law Number 17 of 2016 provides regulations regarding special protection for children through various measures, such as:(Hermawan et al., 2021)

- a) Immediate response measures, including access to medical treatment, medical rehabilitation, psychological and social recovery, as well as efforts to prevent further health complications.
- b) Psychosocial assistance must be provided throughout the treatment period until optimal recovery is achieved.
- c) Provision of social assistance rights for children from underprivileged families as a form of state protection.
- d) Protection and assistance throughout the legal process.

In addition, child victims of pornography are guaranteed protection through guidance, assistance, as well as social and mental health recovery by the applicable regulations. The provisions of Article 69A further strengthen this protection through measures such as education on reproductive health, social rehabilitation, psychosocial assistance, and legal assistance from the investigation stage through to the court proceedings.

Moreover, Article 54 of the Child Protection Law emphasizes the obligation to protect children within educational environments from various forms of physical violence, psychological abuse, and sexual crimes committed by teachers, educational staff, fellow students, or other parties. This responsibility of protection is not only imposed on educators but also involves educational personnel, the government, and the active participation of the community.

In terms of criminal liability, the fundamental principle refers to the culpability principle, which requires a connection between the offender's fault and the principle of legal certainty as the basis for imposing punishment. In assessing the perpetrator's liability, law enforcement must consider a balance between the principle of equality before the law and the principle of legality, which demands clarity in the law. Although the dominant system of criminal liability is based on the principle of fault, other forms of liability, such as vicarious liability and strict liability, are also applied.

The function of criminal liability is to serve as a legal mechanism for assessing the eligibility of individuals, whether suspects or defendants, to be held accountable for actions that violate the law. The imposition of punishment is only legally valid if all elements of the criminal offense have been fully satisfied by the provisions of the applicable laws and regulations.

The determination of a person's capacity for criminal responsibility is measured by two fundamental aspects, namely:

- a) Rationality or sound mind, which refers to an individual's ability to understand and distinguish between actions that are permitted or prohibited by law;
- b) Will or volition, which refers to a person's capacity to control their behavior by legal awareness of the applicable prohibitions and obligations.

Criminal provisions against perpetrators of sexual harassment of children are regulated in the Criminal Code (KUHP), including:

- a) Article 285 of the Criminal Code (KUHP) stipulates a maximum penalty of 12 years imprisonment for anyone who uses violence or threats of violence to force a woman who is not his wife to engage in sexual intercourse;
- b) Article 286 of the Criminal Code (KUHP) imposes a penalty of up to 9 years imprisonment for perpetrators who engage in sexual intercourse with a woman who is unconscious or unable to give consent;
- c) Article 287 paragraph (1) of the Criminal Code (KUHP) stipulates a maximum penalty of 9 years imprisonment for perpetrators who engage in sexual intercourse with a girl under the age of 15 or who, under reasonable circumstances, should have known that the victim was underage.

Meanwhile, the Criminal Code (KUHP) also regulates criminal liability for child offenders through Articles 45, 46, and 47. Article 47, paragraph (1) stipulates that the sentence imposed on a child may be reduced by up to one-third of the maximum penalty. In cases of crimes punishable by the death

penalty or life imprisonment, Article 47, paragraph (2) sets the maximum sentence for children at 15 years of imprisonment.

Special provisions for perpetrators of sexual abuse against children are regulated under Article 82 of the Child Protection Law, namely:

- a) A minimum prison sentence of 5 years and a maximum of 15 years, along with a fine of up to Rp5,000,000,000.00, for perpetrators who violate Article 76E;
- b) If the perpetrator is a parent, guardian, educator, educational staff, child protection officer, or if the offense is committed collectively, the sentence shall be increased by one-third of the principal punishment;
- c) For repeat offenders who have previously been convicted of similar crimes, the sentence imposed shall also be increased by one-third.

In addition to the imposition of criminal sanctions, child victims of sexual abuse are entitled to recovery in the form of compensation or restitution. Based on the concept outlined in the book *The Victim and His Criminal*, there are five systems of compensation for victims of crime, namely:

- 1) Restitution is a mixed system combining both criminal and civil elements, but it is settled within the criminal proceedings.
- 2) A special compensation system is applied on the condition that it upholds the principle of justice;
- 3) Civil compensation can be provided through criminal proceedings with the assistance of public funds;
- 4) The criminal process serves as a channel for distributing compensation to the victim;
- 5) Compensation for civil damages can be enforced through criminal proceedings.

Criminal liability refers to two fundamental principles: the culpability principle and the principle of legality. The culpability principle emphasizes that punishment can only be imposed if the perpetrator commits an act with full awareness and responsibility. Meanwhile, the principle of legality guarantees that no punishment shall be imposed without clear provisions in the laws and regulations, serving as a safeguard for legal certainty and a means to prevent arbitrary actions.

Specifically, Article 81 paragraph (1) of the Child Protection Law stipulates that any person who violates the prohibition against sexual violence against children as referred to in Article 76D may be sentenced to a minimum of 5 years and a maximum of 15 years imprisonment, along with a maximum fine of Rp5,000,000,000.00. The enforcement of strict criminal sanctions reflects the state's commitment to protecting children from sexual crimes while also serving as a deterrent for perpetrators. Through the application of the culpability principle and the principle of legality, law enforcement against perpetrators of sexual violence against children is carried out fairly and proportionally, while ensuring optimal protection for children as a vulnerable group..

CONCLUSION

This study concludes that, from a legal perspective, children are not deemed capable of giving valid consent in the context of sexual activities due to their cognitive and emotional immaturity. Therefore, the excuse of "consent" from child victims cannot be used as justification by perpetrators of sexual violence. The Indonesian legal system, through the Child Protection Law and the Law on Sexual Violence Crimes (UU TPKS), has firmly established that sexual acts against children are considered formal offenses, punishable without the need to prove coercion or psychological impact. The criminal liability of perpetrators includes severe penalties such as imprisonment, fines, and additional measures like chemical castration. Victims' protection is also guaranteed through physical and psychosocial rehabilitation. To strengthen law enforcement, more intensive public awareness campaigns and clear affirmations to both society and law enforcement officers are needed regarding the invalidity of a child's consent in cases of sexual violence. In addition, regulatory harmonization and enhanced victim support services are crucial steps to ensure maximum protection for children as a vulnerable group.

RECOMMENDATION

1. Strengthen Law Enforcement Training: Mandate specialized training for judges, prosecutors, and police to consistently reject the "consent" defense in child sexual violence cases, ensuring strict application of laws like the TPKS Law and Child Protection Law.
2. Launch Nationwide Awareness Campaigns: Partner with schools, media, and religious institutions to educate the public that a child's "consent" is legally void, emphasizing reporting mechanisms and penalties for offenders.

ACKNOWLEDGMENT

The authors would like to express their gratitude to University of 17 Agustus 1945 Surabaya for their support in this research. We also extend our appreciation to Dr. Erny Herlin Setyorini, S.H., M.H., CMC for their valuable insights.

REFERENCES

- Amrullah. (2020). Perlindungan Hukum Terhadap Korban Tindak Pidana Pemerkosaan. *Jurnal Hukum AdiJena*, 3(1). <https://doi.org/https://doi.org/10.35914/jad.v3i1.338>
- Apriyansa, D. (2019). Penegakan Hukum Terhadap Tindak Pidana Pemerkosaan Terhadap Anak Dibawah Umur Dan Sanksi Yang Diterapkan. *Jurnal Panorama Hukum*, 4(2), 135–145. <https://doi.org/10.21067/jph.v4i2.3967>
- Baharudin. (2023). Kekerasan Seksual Pada Anak Di Tinjau Dari Perspektif Hukum Positif dan Hukum Syariah Islam. *Jurnal Dunia Ilmu Hukum (JURDIKUM)*, 1(1), 01–07. <https://doi.org/10.59435/jurdikum.v1i1.84>
- Brommiller, S. (1975). *Against Our Will: Men, Women, and Rape*. Simon & Schuster.
- Dania, I. A. (2020). KEKERASAN SEKSUAL PADA ANAK CHILD SEXUAL ABUSE. *Ibnu Sina : Jurnal Kedokteran Dan Kesehatan-Fakultas Kedokteran Universitas Islam Sumatera Utara*, 19(1), 46–52. <http://bit.ly/OJSIbnuSina>
- Er Tanjung, Sulastris, L., & Rabiah Al Adawiah. (2023). Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Pemerkosaan. *Jurnal Hukum Sasana*, 9(1), 169–186. <https://doi.org/10.31599/sasana.v9i1.2117>
- Hermawan, D., Sahari, A., & Fauzi, A. (2021). Pertanggungjawaban Pidana Anak Sebagai Pelaku Tindak Pidana Kekerasan Seksual. *Legalitas: Jurnal Hukum*, 13(2), 98. <https://doi.org/10.33087/legalitas.v13i2.265>
- Kifli, S., & Ismail, A. (2022). Analisis Hak Korban Korban Kekerasan Seksual dalam Rancangan Undang-Undang Penghapusan Kekerasan Seksual dalam Perspektif Hukum Positif dan Hukum Islam. *Wajah Hukum*, 6(2), 462. <https://doi.org/10.33087/wjh.v6i2.1093>
- Lordan, T. (2020). *Sexual Consent Perceptions of Child Sex Offenders Who Experienced Childhood Sexual Abuse* [Welden University]. <https://scholarworks.waldenu.edu/dissertations>
- Marzuki, P. M. (2019). *Penelitian Hukum*. Kencana Prenada Media Grup.
- Ratih, N., Sutisna, S., & Hambari, H. (2023). Sexual Consent in the Elimination of Sexual Violence Perspectives of Feminist Legal Theory and Islamic Law: A Comparative Study. *Mizan: Journal of Islamic Law*, 7(1), 69. <https://doi.org/10.32507/mizan.v7i1.1854>
- Russell, D. E. H. (1984). *Sexual Exploitation: Rape, Child Sexual Abuse, and Workplace Harassment*. Beverly Hills.
- Saefudin, Y., Wahidah, F. R. N., Susanti, R., Adi, L. K., & Putri, P. M. (2023). Tindak Pidana Kekerasan Seksual dan Perlindungan Hukum bagi Korban Kekerasan Seksual di Indonesia. *Kosmik Hukum*, 23(1), 24. <https://doi.org/10.30595/kosmikhukum.v23i1.17320>
- Savitri, N. (2020). PEMBUKTIAN DALAM TINDAK PIDANA KEKERASAN SEKSUAL TERHADAP ANAK KAJIAN PUTUSAN NOMOR 159/Pid.Sus/2014/PN.Kpg. *Jurnal Bina Mulia Hukum*, 4(2), 276. <https://doi.org/10.23920/jbmh.v4i2.323>
- Suryandi, D., Hutabarat, N., & Pamungkas, H. (2020). PENERAPAN SANKSI PIDANA TERHADAP PELAKU TINDAK PIDANA KEKERASAN SEKSUAL TERHADAP ANAK. *Jurnal Darma Agung*, 28(1), 84–91.
- Topo, S. (1997). *Seksualitas dan Pidana*. In Hill.



Zulfiko, R. (2022). Paradigma Seksual Consent Dalam Pembaharuan Tindak Pidana Kekerasan Seksual. *Pagaruyuang Law Journal*, 5(2), 104–102.
<https://jurnal.umsb.ac.id/index.php/pagaruyuang>