

Legal Protection for Children Victims of Sexual Violence Against The Recurrence Of Sexual Violence

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Abstract

Law No. 12 of 2022 on Sexual Violence Crimes states that prevention includes actions to eliminate the factors causing and recurring sexual violence. However, the lack of detail in this provision has led to confusion in society. This study is a normative research aimed at analyzing the elements of recurring sexual violence against minors and the available legal protections. The results indicate that the methods used by perpetrators include approaches to victims, intimidation, and manipulation, revealing dangerous behavioral patterns that serve as aggravating factors in sentencing. The threats of violence leave victims feeling pressured and hindered from reporting. Legal protection for child victims in Indonesia requires the implementation of preventive and curative protections in accordance with existing regulations, through state efforts to safeguard the rights and interests of citizens. Rehabilitative, repressive, and compensatory approaches are essential in providing support and justice for victims while preventing the recurrence of violence. Recommendations include enhancing coordination among laws, developing community education programs, imposing harsher penalties on repeat offenders, and improving case documentation systems to support prosecution efforts..

Keywords: Repetition, sexual violence, legal protection, children

Abstrak

Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual menyatakan bahwa pencegahan mencakup tindakan untuk menghilangkan faktor penyebab dan pengulangan kekerasan seksual. Namun, kurangnya perincian dalam ketentuan tersebut telah menimbulkan kebingungan di masyarakat. Penelitian ini merupakan penelitian normatif yang bertujuan untuk menganalisis unsur-unsur kekerasan seksual berulang terhadap anak di bawah umur serta perlindungan hukum yang tersedia. Hasil penelitian menunjukkan bahwa metode yang digunakan oleh pelaku mencakup pendekatan kepada korban, intimidasi, dan manipulasi, yang mengungkap pola perilaku berbahaya dan menjadi faktor pemberat dalam penjatuhan hukuman. Ancaman kekerasan membuat korban merasa tertekan dan terhambat untuk melapor. Perlindungan hukum bagi anak korban di Indonesia memerlukan penerapan perlindungan preventif dan kuratif sesuai dengan ketentuan yang berlaku, melalui upaya negara dalam menjamin hak dan kepentingan warga negara. Pendekatan rehabilitatif, represif, dan kompensatoris sangat penting dalam memberikan dukungan dan keadilan bagi korban serta mencegah terulangnya kekerasan. Rekomendasi mencakup peningkatan koordinasi antaraturan hukum, pengembangan program edukasi masyarakat, pemberian sanksi yang lebih berat bagi pelaku berulang, dan perbaikan sistem dokumentasi kasus untuk mendukung proses penuntutan.

Kata Kunci: Pengulangan, kekerasan seksual, perlindungan hukum, anak-anak



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Introduction

The State of the Republic of Indonesia has the goal of protecting the entire Indonesia nation and all of Indonesia's bloodshed, advancing general welfare, educating the nation's life, and participating in world peace efforts based on independence, lasting peace, and social justice, which is clearly stated in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia). Therefore, Indonesia citizens should be protected in all aspects of their lives. One form of protection for citizens is the protection of the right to be free from threats and violence. However, even though the 1945 Constitution of the Republic of Indonesia has emphasized this right as one of the constitutional rights, not every citizen is free from violence.¹

In terminology, violence is defined as a situation and trait that damages human life. Man, as a sentient and dignified being, can fall into animal traits. Actions such as destroying, pressing, extorting, raping, terrorizing, stealing, killing, and destroying defile and destroy the glory of man as a creature of God.² Sexual violence has increased significantly, with various forms such as rape, sexual harassment, sexual exploitation, forced prostitution, and other acts of violence. Along with the development of modernity and technological advances in society, these incidents of sexual violence are becoming more and more frequent. Sexual violence can happen to anyone, including children, women, and the same sex.

Law Number 12 of 2022 concerning the Crime of Sexual Violence comprehensively regulates various forms of sexual violence in Indonesia. The law includes clear definitions of sexual violence, including rape, sexual harassment, sexual exploitation, and sexual slavery. In addition, the law emphasizes the protection and recovery of victims through health services, psychological counseling, legal aid, and social rehabilitation. Measures to prevent sexual violence are also regulated, involving the role of the government, educational institutions, workplaces, and the wider

¹ Wahyudi Sulaiman, "Perlindungan Hukum Terhadap Anak Yang Menjadi Korban Tindak Pidana Pelecehan Seksual (Studi Kasus Di Wilayah Hukum Polrestabes Makassar Tahun 2015 s/d Tahun 2016)" (Universitas Hasanuddin Makassar, 2019).

² Rosania Paradiaz and Eko Soponyono, "Perlindungan Hukum Terhadap Korban Pelecehan Seksual," Jurnal Pembangunan Hukum Indonesia 4, no. 1 (2022): h.61–72.

community. Case handling procedures by law enforcement officials are regulated to ensure fair investigation, prosecution, and justice, as well as appropriate punishment for perpetrators. The law also mandates education and awareness campaigns about sexual violence, to increase understanding and prevention in the community.

In the context of Law Number 12 of 2022 concerning the Crime of Sexual Violence, one of the important aspects in preventing the recurrence of the crime of sexual violence is the act that is recognized as a factor that aggravates the punishment for the perpetrator.³ Sexual violence has increased significantly, with various forms such as rape, sexual harassment, sexual exploitation, forced prostitution, and other acts of violence. Along with the development of modernity and technological advances in society, these incidents of sexual violence are becoming more and more frequent. Sexual violence can happen to anyone, including children, women, and the same sex.

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In the context of Law Number 12 of 2022 concerning the Crime of Sexual Violence, one of the important aspects in preventing the recurrence of the crime of sexual violence is the act that is recognized as a factor that aggravates the punishment for the perpetrator.⁴ In article 1 number 15, which states that prevention is any action or effort to eliminate various factors that cause the crime of sexual violence and the

³ Rosania Paradiaz and Eko Soponyono, "Perlindungan Hukum Terhadap Korban Pelecehan Seksual," Jurnal Pembangunan Hukum Indonesia 4, no. 1 (2022): h.92-95

⁴ *Ibid.* h.120-123

recurrence of the crime of sexual violence. However, the provision does not explain in detail what elements can cause sexual violence, especially in children, so as to cause confusion among the public.

The author observes the importance of the existence of effective legal instruments in Indonesia to prevent and handle cases of recurrence of sexual violence against minors. Currently, the ambiguity in regulations that explain the elements that can trigger the recurrence of sexual violence is a serious problem that indicates a lack of coordination and completeness in handling it. The absence of a more specific explanation of the elements of the act of repeated sexual violence to prevent the perpetrator from committing similar acts again, is a major concern. This indicates the need for revisions and improvements in the existing legal framework to ensure more effective protection for victims and stronger prevention of future acts of sexual violence.

Against this background, the author is encouraged to conduct an in-depth analysis of legal protection for children victims of repeated sexual violence. The phenomenon of sexual violence that can occur repeatedly by the same perpetrator against different victims, or even the same victim, is the main reason why the author chose the title "**Legal Protection for Children of Victims of Sexual Violence Against the Recurrence of Sexual Violence**". This research will explore the extent to which existing regulations are able to prevent the recurrence of this crime, as well as highlight the importance of clarity and firmness in the law that protects victims. Thus, it is hoped that the results of this analysis can contribute to improving the protection system for children victims of sexual violence in Indonesia.

Method

The type of research that will be carried out is normative research. Normative research is a process to find legal rules, principles, and doctrines to answer existing legal problems.

In this study, the normative research approach is as follows:

1) Statute Approach

Legal analysis and practical application of the law are carried out by examining legal texts. Legal scientists call this method a juridical approach, which is the study of legal products. The statute approach is carried out by analyzing the laws and regulations related to the regulation of criminal liability.⁵ In this study, the focus will be on the approach of Law Number 12 of 2022 concerning the Crime of Sexual Violence (UU TPKS) which is a regulation specifically designed to overcome the crime of sexual violence in Indonesia.

2) Conceptual Approach

The approach in this study provides an analytical perspective on solving problems in legal research seen from the aspect of the legal concept behind it or from the value in the regulations related to the concept used. This approach can understand the concept of protecting children victims of sexual violence against the recurrence of sexual violence against minors.⁶

Using these approaches, it will provide a comprehensive and in-depth picture of how the legal protection of child victims of sexual violence against the recurrence of sexual violence.

Elements Of Recurrence Of Sexual Violence

Based on the Great Dictionary of the Indonesian Language, children are descendants and are also interpreted as young human beings. In addition, in essence, a child is a person who is at a certain stage of development and has the potential to become an adult.⁷ Children have different characteristics and traits than adults. They are the shoots and the next generation of the nation's ideals that have a strategic role in maintaining the existence of the state and nation in the future. Children are also one of the vulnerable groups whose rights are often neglected. Therefore, children's rights must be prioritized.⁸ According to Law Number 12 of 2022 concerning the Crime of Sexual Violence, the definition of a child is someone who is not yet 18 (eighteen) years

⁵ Jonaedi Efendi & Johnny Ibrahim, Metode Penelitian Hukum: Normatif Dan Empiris (Depok: Prenadamedia Group, 2018).

⁶ Kadarudin, Penelitian di Bidang Hukum (Pemahaman Pendahuluan) (Semarang: Formaci, 2021).

⁷ Anton M. Moeliono, Kamus Besar Bahasa Indonesia (Jakarta: Balai Pustaka, 1988).

⁸ Peraturan Menteri Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia Nomor 15 Tahun 2010 tentang Pedoman Umum Penanganan Anak yang Menghadapi Hukum.

old, including a child who is still in the womb. Children are individuals who are still weak and are more at risk of physical and sexual violence than adults. The greatest risk for children today is sexual violence, which is taking advantage of a person (including children) for sexual purposes with physical or psychological pressure.⁹

The term violence, in the Great Dictionary of Indonesian Language (KBBI) means something that has a violent nature, coercion, or the actions of a person or a group of people that causes injury or death to another person or causes physical damage to another person's or property.¹⁰ Sexual violence has a meaning, namely an act of real (actual) or intimidation (semi-actual) related to intimacy or sexual relations carried out by the perpetrator to the victim by force, which results in the victim suffering physically, mentally and psychologically.¹¹

According to Law Number 12 of 2022 concerning the Crime of Sexual Violence, the terminology of sexual violence includes various forms of actions that violate a person's sexual rights, including:

Obscenity: Committing sexual acts by coercion or using tricks (Articles 7, 8, and 9).

Intercourse: Having intercourse with a person who is not his wife/husband without consent (Articles 11, 12, 13, 14, and 15).

Sexual harassment: Committing sexual acts against the will of the victim, including by using force, threats, or coercion (Articles 16 and 17).

Sexual exploitation: Sexual exploitation, including in the form of human trafficking (Articles 18-21).

Broadcasting pornographic images/videos: Disseminating pornographic images or videos involving children (Article 27).

Other acts that cause fear, threat, or insecurity: Any act that causes psychological or physical trauma, including sexual violence.

Acts of sexual violence include physical and non-physical acts of a sexual nature:

⁹ Nita Candra dan Dian Ibung, Dari Balik Tembok (Bernama) Luka (Depok: Lingkar Pena Kreativa, 2008).

¹⁰ Pusat Bahasa Kementerian Pendidikan Nasional, Kamus Besar Bahasa Indonesia (Jakarta: Balai Pustaka, 2008).

¹¹ Abdul Rachman, Berbagai Permasalahan dalam Praktik Penegakan Hukum di Indonesia (Bandung: Alumni, 1980).

1. Physical and Non-Physical Acts : Sexual violence can be in the form of physical acts such as rape, sexual harassment, or forced sexual intercourse. In addition, non-physical acts such as sexual threats, psychological coercion, or sexually degrading acts are also included in this definition.

2. Sexual Threats and Coercion : whoever by violence or threat of violence compels a person to commit or allows himself to commit an obscene act, is punished for immorality with imprisonment forever and immorality with imprisonment for up to 9 years.¹²

According to Balck's Law Dictionary, what is meant by Child Sexual Abuse or sexual violence is illegal sexual activity committed against a minor committed by a parent, guardian/caregiver, relative or acquaintance.¹³ This act is carried out using coercion threats, bribes, deception and even pressure. These activities of violence against children do not have to involve physical contact between the perpetrator and the child as the victim. Forms of sexual violence themselves can be in acts of rape or molestation.¹⁴ Sexual violence against children is violence committed by a person, either the nearest or distant person who is the victim is a child who is targeted by the perpetrator, namely the area of child sexuality by using violence in the form of coercion and threats, all of which include rape. By threatening, there are few people who control others. Threats are considered a form of violence, an important element of power, the ability to realize a person's desires even in the face of opposing desires.

The repetition of sexual violence behavior is often called recidivism or recidivism. Recidivism itself is a broad term that refers to the repetition or repetition of criminal behavior, while recidivism is interpreted as a tendency to repeat a reprehensible act even though it has been convicted of that act.¹⁵ A recidivist is a person who repeats the same or similar criminal act after serving a sentence for a previous criminal act. Moreover, because what is studied in this study is about sexuality that has a cycle, sexual violence behavior is more likely to recur. In the

¹² Yuwono, penerapan hukum dalam kasus kekerasan seksual terhadap anak.

¹³ Bryan A Garner., Kamus Hukum Orang Kulit Hitam (Grup Barat ST: Paul, 1999).

¹⁴ Sri Wisnu Hertinjung, "Dinamyc Penyebab Pelecehan Seksual Anak Berdasarkan Ketersediaan Ruang Pribadi dan Privasi," Kasus Fakultas Psikologi Universitas Muhammadiyah Surakarta (2012): h.1–10

¹⁵ Aprilia Wigard K, "Pengaruh Distorsi Kognitif Mengenai Seks dengan Anak, Fantasi Seksual, dan Pengalaman Trauma Seksual Aprilia Wigard K, Pengaruh Distorsi Kognitif Mengenai Seks dengan Anak, Fantasi Seksual, dan Pengalaman Trauma Seksual terhadap Risiko Kekambuhan Perilaku" (Universitas Airlangga, 2019).

Criminal Code (KUHP) of Indonesia, the provisions regarding recidivists are regulated in Articles 486, 487, and 488. Article 486 states that a person who has been convicted of a particular criminal act and then repeats the same criminal act within a period of five years after serving his sentence, may be subject to additional punishment.

Concursus is a term in criminal law that refers to a situation where a person commits several criminal acts, and among these criminal acts there is no judge's decision that has obtained permanent legal force (in kracht). So, concursus is not a term for people who commit crimes that have not been convicted, but to describe a situation where several criminal acts are committed by one person and there is no legal decision separating the criminal acts.

Types of Concursus:

Concursus Idealis (Eendaadsche Samenloop):

Occurs when one act violates several provisions of criminal law at once.

Example : An obscene act that violates the article on child protection and abuse of power.

Concursus Realis (Meerdaadsche Samenloop):

It occurs when a person commits several different criminal acts, and each of these acts stands alone as a criminal act.

Example : The perpetrator who raped the several different victims at different times.

Continued Deeds (Voortgezette Handeling):

It occurs when a person performs the same act several times, and between these actions there is a close relationship so that it is considered a series of actions.

Example : Perpetrators who repeatedly commit sexual violence against the same victim within a certain period of time.

Meaning of Concursus, Concursus aims to regulate how some criminal acts committed by a single person are treated in the legal process. This is important to determine how the punishment is handed down and ensure that the perpetrator gets a punishment commensurate with his actions. In cases of sexual violence against

children, understanding the concursus helps in providing maximum protection for the victim and ensuring the perpetrator does not escape the punishment he deserves.

The element of repetition in sexual violence refers to the repeated occurrence of the crime against the same or different victims. This recurrence reflects a pattern of harmful and serious behavior in the context of sexual crimes.¹⁶ In this context, a deeper understanding of the recurrence of sexual violence is essential to strengthen existing legal frameworks, improve protection for victims, and prevent similar cases in the future. This involves not only stricter law enforcement, but also increased public awareness of the signs and risks of sexual violence, as well as the importance of support for victims in their recovery process. To achieve this goal, it is important to identify and analyze elements that can prove recurrence in cases of sexual violence. These elements prove that recurrence in cases of sexual violence is very important to support the legal process and justice for the victim. Elements that can prove repetition in cases of sexual violence are essential to support the legal process and justice for victims. One of the key elements in this recurrence is the threat that often accompanies acts of violence.¹⁷

Elements that can prove repetition in cases of sexual violence are essential to support the legal process and justice for victims. First, threats that often accompany acts of violence are one of the key elements, because they not only serve as a tool to scare victims, but also create patterns of behavior that make victims feel trapped. If victims feel threatened, they will experience severe psychological distress, which prevents them from reporting the incident.

Forms Of Legal Protection For The Recurrence Of Sexual Violence Against Minors

Legal protection is an essential concept in the legal system of a country, including Indonesia. This concept includes various forms of efforts made by the state through a

¹⁶ Adi Lazuardi dan Muhammad Akbar Pribadi, "Konsep Retractable Consent dalam Peraturan Menteri Pendidikan Mengenai Kekerasan Seksual di Kampus Konsep Retractable Consent dalam Permendikbud tentang Pencegahan dan Penanganan Kekerasan Seksual di Kampus," JCH (Jurnal Cendekia Hukum) 7, no. 2 (2022): 209–227, <http://e-jurnal.stih- pm.ac.id/index.php/cendekeahukum/index>.

¹⁷ Prianter Jaya Hairi, "Masalah Kekerasan Seksual: Menelaah Arah Kebijakan Pemerintah dalam Menghadapinya," State of Law 6, no. 1 (2016): 1–15, <http://www.komnasperempuan.or.id/wp-content/>.

set of laws and regulations, legal institutions, and law enforcement officials to protect the rights and interests of citizens from threats, violations, and unfair actions. In the context of legal protection for children, especially children victims of repeated sexual violence, we can see in the regulation of Law No. 12 of 2022 Article 15 number 1 letter E which provides a legal basis related to criminal punishment will be added by 1/3 if it is committed more than 1 (one) time or committed against more than 1 (one) person, this terminology includes several important aspects that are interrelated.

A. Preventive Protection

Preventive protection is a set of actions or policies taken with the primary purpose of preventing violations of the law or actions that may harm certain individuals or groups.¹⁸ In Indonesia, preventive protection against the recurrence of sexual violence is regulated in several laws and regulations. Law Number 12 of 2022 concerning the Crime of Sexual Violence emphasizes the importance of prevention and protection efforts for victims and witnesses, including preventive protection explained in articles 79 to 84 of Law Number 12 of 2022. Meanwhile, Law Number 35 of 2014 concerning Child Protection and Government Regulation Number 43 of 2017 also regulate measures to prevent violence against women and children. To better understand these efforts, it is important to explain some aspects of preventive protection that can be applied as follows

Education and Public Awareness

There are two things in education and public Awareness, namely awareness campaigns and formal education. Awareness campaigns are strategic efforts made to increase public understanding and awareness of individual rights and the dangers of violence and lawlessness.¹⁹ These campaign programs often involve various media and methods to reach a wider audience, such as through mass media, social media, seminars, and workshops. A common example is the anti-sexual violence campaign held in schools and supported by the mass media. The campaign aims to provide comprehensive information on what sexual violence is,

¹⁸ Beby Suryani Fithri, "Pendekatan Preventif dalam Upaya Perlindungan Korban Tindak Pidana Narkotika," Universitas Hukum Wilayah Medan, 2020, <https://repository.uma.ac.id/handle/123456789/13555>.

¹⁹ Wahyudi, Lhatifah Berliani, dan Amelia, "Perlindungan Hukum Anak Korban Kekerasan di Sekolah," Jurnal Hukum Das Sollen 9, no. 2 (2023): 825–840

how to recognize it, and how to protect yourself. In addition, the campaign also encourages the public to actively participate in reporting and preventing incidents of sexual violence, as well as supporting victims to get the necessary assistance.²⁰

Formal education is one of the most effective ways to provide an in-depth understanding of children's rights and the dangers of sexual violence. The integration of materials on children's rights, sexual violence, and ways to protect oneself in the school curriculum is an important step to empower children with the knowledge they need. With this knowledge, children can be more alert and ready to face dangerous situations. In addition, formal education also helps to build a culture of respect for individual rights and legal awareness from an early age, ultimately contributing to the creation of a safer and fairer society.²¹

1. Regulation and Legislation

Regulation and legislation are an important foundation in legal protection that serves to prohibit sexual violence and establish strict sanctions for perpetrators.²² Comprehensive legislation is needed to protect the rights of individuals, especially children, from the threat of sexual violence. The law should include provisions on prevention, law enforcement, and victim rehabilitation, and provide a clear legal framework for handling cases of sexual violence. In addition to the law, the establishment of Standard Operating Procedures (SOP) in various institutions such as schools, orphanages, and workplaces is also very important. This SOP serves as a practical guide to prevent violence or violations of the law by regulating prevention, handling, and reporting measures that must be followed by all relevant parties.

2. Supervision and Law Enforcement

²⁰ Yayan Agus Siswanto, Fajar Rachmad Dwi Miarsa, dan Sudjiono, "Upaya Pencegahan sebagai Bentuk Perlindungan Hukum dari Tindak Pidana Kekerasan Seksual terhadap Anak," *Jurnal Kolaborasi Sains* 7, no. 5 (2024): 1651–1667, <https://jurnal.unismuhpalu.ac.id/index.php/JKS>.

²¹ Bayu Septian Anuraga, Arri Handayani, dan Dini Rakhmawati, "Upaya Peningkatan Pemahaman Pencegahan Penanganan Kekerasan Seksual di SD Negeri 2 Sumur melalui Tim Pencegahan dan Penanganan Kekerasan (TPPK)," *Jurnal Ilmiah* 09, no. 05 (2023): 3998–4014.

²² Haerudin Soyan Pratama, "Urgensi Pengesahan dan Penegakan Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual (UU TPKS) di Indonesia" (Universitas Muhammadiyah Surakarta, 2023).

Supervision and law enforcement are crucial aspects in ensuring the effectiveness of legal protection regulations and policies.²³ The implementation of regular monitoring and evaluation by governments and non-governmental organizations is essential to ensure that laws and policies are properly implemented and achieve their objectives. Law enforcement officials such as the police must be proactive in conducting patrols, inspections, and other preventive measures to identify and counteract potential violations of the law before they occur. This proactive attitude not only serves to enforce the law but also to provide a sense of security and protection for the community, as well as demonstrating the state's commitment to protecting individual rights from all forms of threats and violations.²⁴

3. Training and Skills

Training and skills are an important step in building the capacity of individuals and groups to deal with violence and violations of the law. For officers such as police, teachers, social workers, and other officers, thorough training on how to recognize signs of violence and lawlessness, as well as effective response strategies, is essential.

On the other hand, training is also important for children and parents when it comes to preventive education. Children need to be trained on ways to protect themselves from the dangers of violence, recognize signs of potential danger, and steps to take if they experience or witness violence. With the right training, children can be better able to protect themselves, while parents can provide better support and be responsive to their children's protection needs.²⁵

4. Facilities and Infrastructure

Adequate facilities and infrastructure are key elements in supporting effective protection against violence and violations of the law. The provision of counselling and support services is an important step in helping individuals who are at risk or have experienced violence to get the help they need. These service centers should be designed to be accessible and child-friendly, so that victims feel safe and secure when

²³ Dini Mulia Mutmainah dkk., "Implementasi Penegakan Hukum Lingkungan Hidup dalam Meningkatkan Efektivitas Perlindungan dan Pengelolaan Lingkungan Hidup," Deposisi: Jurnal Publikasi Hukum 2, no. 2 (2024): 376–388.

²⁴ Luthfia Nareswari Rasendriya, "Pemenuhan Hak-Hak Korban Kekerasan Seksual (Studi Banding Indonesia dan Malaysia)" (Universitas Muhammadiyah Surakarta, 2024).

²⁵ Sri Warjiyati, "Pemberdayaan Paralegal Aisyiyah Ranting Sukodono dalam Membantu Korban Kekerasan terhadap Perempuan dan Anak," Dimas 17, no. 2 (2018): 175–192.

seeking help.²⁶ In addition, a safe environment also plays an important role in preventing violence. In schools, homes, and public places, adequate lighting, CCTV surveillance, and layouts that minimize the risk of violence are concrete efforts to create an environment that is not only comfortable but also safe for all individuals. By providing appropriate facilities and infrastructure, communities can be better prepared to face the challenges of violence and better protect individual rights.

The implementation of preventive protection shows a variety of strategies that can be applied in different sectors to prevent violence and violations of the law. The benefits of preventive protection are significant, including in reducing incidents of violence and lawlessness by addressing the root causes and increasing overall public awareness. These preventive measures also increase a sense of security in the community, provide better protection for individuals, and reduce the social and economic costs associated with law enforcement and rehabilitation. In addition, preventive protection helps to build a culture that respects the law and human rights, creating a more just, harmonious, and responsive environment to the needs of society as a whole.²⁷

B. Repressive Protection

Repressive protection in the context of the legal system refers to strategies that focus on strong law enforcement against perpetrators of sexual violence. This approach emphasizes the importance of taking decisive action and implementing appropriate sanctions against individuals involved in sexual violence. The main goal is to ensure justice by prosecuting the perpetrators through a fair legal process and imposing punishments that are appropriate to the seriousness of the actions committed.²⁸

In Indonesia, repressive protection against the recurrence of sexual violence is regulated through various laws and regulations. Law Number 12 of 2022 Article 15

²⁶ Susiana Kifli dan Atika Ismail, "Analisis Hak-Hak Korban Kekerasan Seksual dalam Rancangan Undang-Undang Penghapusan Kekerasan Seksual dalam Perspektif Hukum Positif dan Hukum Islam," *Wajah UU* 6, no. 2 (2022): 462–470.

²⁷ Muhammad Dzar Imran dan Yovita Arie Mangesti, "Tindakan Pencegahan dan Represif sebagai Upaya Melindungi Hukum Pemerkosaan Anak," *Tinjauan Hukum Iblam* 4, no. 1 (2024): 257–266.

²⁸ Ahmad Habib Al Fikry, "Penguatan Sistem Hukum untuk Menghentikan Kekerasan Berbasis Gender Online di Indonesia," *Jurnal Yustika: Media Hukum dan Keadilan* 25, no. 01 (2022): 11–24.

letter E concerning the Crime of Sexual Violence stipulates the types of criminal acts and severe sanctions for perpetrators who repeat their actions, namely plus 1/3 of the criminal rules in general and the need for additional crimes mentioned in article 16 of Law Number 12 of 2022, including the revocation of child custody, the announcement of the identity of the perpetrator, and the deprivation of profits or property obtained from the proceeds of violent crimes. The Criminal Code (KUHP) also regulates punishment for perpetrators of rape and other acts of violence. In addition, Law Number 35 of 2014 concerning the Protection of

Children provide strict criminal sanctions against perpetrators of sexual violence against children, while Law Number 23 of 2004 concerning the Elimination of Domestic Violence stipulates punishment for perpetrators of violence in the domestic context. Although it emphasizes more protection, Government Regulation Number 43 of 2018 also strengthens law enforcement against perpetrators of sexual violence. By doing this, the public is given confidence that cases of sexual violence will not be ignored or left without adequate legal action. This approach is also designed to provide a deterrent effect to perpetrators, so that the potential for the recurrence of similar crimes can be minimized or prevented in the future. In addition, repressive protection also plays an important role in providing protection to society in general by enforcing legal rules that stipulate that acts of sexual violence are unacceptable and must be held legally accountable.²⁹

Punishment for perpetrators of sexual violence in Indonesia is regulated in several laws, including:

a. Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law)

Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law) is the latest and comprehensive regulation in handling cases of sexual violence in Indonesia. This law regulates various types of sexual violence crimes, along with punishments for the perpetrators. Among other things, it is stated in article 15 paragraph 1 letter E that the punishment can be increased by 1/3 if it is done more

²⁹ Ahmad Ali, "Analisis Yuridis Perlindungan Hukum bagi Anak Korban Kekerasan," JIHAD: Jurnal Hukum dan Administrasi (Universitas Muslim Indonesia, 2022).

than once or more than one person, in other words, there is a recurrence of the sexual violence case.

The TPKS Law defines 19 types of sexual violence crimes, which are categorized into 4 groups:

- 1) Sexual Harassment: Includes actions aimed at degrading the dignity and dignity of the victim through sexual acts, both physically and non-physically.
- 2) Rape: Includes sexual intercourse carried out by violence, threat of violence, coercion, or by seduction accompanied by deception.
- 3) Acts Against Morality: Includes acts committed with sexual intent and violating morality, such as fornication and child molestation.
- 4) Exploitation and Crime of Trafficking in Persons for Sex: Includes the act of deceiving people, exploiting, or trafficking people for sexual purposes.

The punishment for perpetrators of sexual violence in the TPKS Law varies, depending on the type of crime, the condition of the victim, and the punishment committed. Here are some important points:

- 1) Prison: The minimum sentence in prison is 4 years, and the maximum can be up to life.
- 2) Fines: The penalty for fines varies, ranging from IDR 10 million to IDR 1 billion.
- 3) Additional Punishments: The TPKS Law also regulates various additional punishments, such as castration, psychologist rehabilitation, restoration justice, and the installation of electronic detection devices.³⁰

b. Criminal Code (KUHP)

The Criminal Code (KUHP) regulates several articles related to the crime of sexual violence, but its scope is not as complete and modern as Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law). Articles 285 to 294 of the Criminal Code regulate criminal sanctions for perpetrators of sexual violence, including imprisonment and fines. Here are some articles of the Criminal Code that are relevant to sexual violence:

³⁰ Siti Fatimah dan Mustiqowati Ummul Fitriyyah, "Implementasi Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual (TPKS) di Kota Pekanbaru," *Jurnal JDKP Desentralisasi dan Kebijakan Publik* 4, no. 2 (2023): h.100–107.

- 1) Article 281 of the Criminal Code: Regulates fornication, which is an obscene act with a person who is not her husband or wife, with a maximum prison sentence of 9 months.
- 2) Article 285 of the Criminal Code: Regulates sexual intercourse with minors, namely persons under the age of 12, with the threat of imprisonment for a maximum of 7 years.
- 3) Article 286 of the Criminal Code: Regulates sexual intercourse with a person who is in an unconscious state, with a maximum prison sentence of 12 years.
- 4) Article 289 of the Criminal Code: Regulates rape, which is sexual intercourse carried out by violence, threat of violence, or coercion, with a maximum prison sentence of 9 years.
- 5) Article 290 of the Criminal Code: Regulates sexual intercourse carried out by parents or guardians, with a maximum prison sentence of 7 years.
- 6) Article 297 of the Criminal Code: Regulates the obscenity with minors, namely persons who are not yet 15 years old, with a maximum prison sentence of 7 years.
- 7) Article 303 of the Criminal Code: Regulates violent obscenity or threats of violence, with a maximum prison sentence of 8 years.
- 8) Article 304 of the Criminal Code: Regulates intercourse with a person who is in a state of helplessness, with a maximum prison sentence of 9 years.
- 9) Article 305 of the Criminal Code:

Regulating intercourse with minors by parents or guardians, with a maximum prison sentence of 12 years.³¹

The application of punishment that is educational and provocative must be carried out by considering various factors to ensure justice and effectiveness. The severity of the crime is one of the main factors; The more severe the crime committed, the heavier the punishment that must be imposed to reflect the seriousness of the violation and provide a deterrent effect. In addition, the circumstances of the perpetrator, including age, background, and mental state, must also be considered to ensure that the punishment given is appropriate to the individual's abilities and needs.

³¹ Yuni Kartika dan Andi Najemi, "Kebijakan Hukum Pelecehan Seksual (Catcalling) dalam Perspektif Hukum Pidana," PAMPAS: Jurnal Hukum Pidana 1, no. 2 (2020): h.1-21.

The possibility of rehabilitation is also important; Offenders who show potential for rehabilitation should be given the opportunity to participate in rehabilitation programs, so that they can return to society as better and more productive individuals. This holistic approach not only educates and ensnares perpetrators, but also supports the long-term goal of social recovery and reintegration.

Punishment that is educational and punishable has several important advantages for the justice system and society as a whole. First, effective punishment can prevent the recurrence of crimes, so that perpetrators do not repeat their actions and the community becomes safer. Second, educational punishment plays a role in improving the behavior of the perpetrator, giving them the opportunity to learn from their mistakes and become better individuals. Third, a fair punishment can help recovering the victim from the trauma and losses he suffered, providing a sense of justice and closure. Finally, an effective and fair criminal justice system can increase public confidence in the law, reinforcing the belief that justice will be upheld and that the rights of each individual are respected.³²

C. Curative Protection

Curative protection refers to efforts made after violations or violence to restore and protect the rights of victims as stated in articles 66 to 71 of Law no. 12 of 2022, especially in the context of children victims of sexual violence. One of the important aspects of curative protection is the provision of rehabilitation and rehabilitation services. This includes medical services for the physical care of victims, psychological services to help them cope with the psychological trauma they have experienced, as well as social services to support their reintegration into society in a safe and supportive way.³³ In Indonesia, curative protection against the recurrence of sexual violence is regulated in several laws and regulations. Law Number 12 of 2022 concerning the Crime of Sexual Violence, specifically Article 15, emphasizes the importance of recovery for victims, including access to health services and psychological rehabilitation to help them recover from trauma. In addition, Law

³² Fitri Yani, "Analisis Hukuman Kebiri bagi Pelaku Kekerasan Seksual dalam Studi Hak Asasi Manusia," Universitas Lampung, 2017.

³³ Widyantoro Bibit, "Upaya Penanggulangan Kekerasan Terhadap Anak melalui Sistem Perlindungan Terpadu di Yurisdiksi Kota Bandar Lampung," Universitas Lampung (Universitas Lampung, 2019).

Number 35 of 2014 concerning Child Protection regulates the right of children victims of violence to receive recovery and rehabilitation.

Government Regulation Number 43 of 2018 also emphasizes the need for support programs and health services for victims. Furthermore, the Regulation of the Minister of Women's Empowerment and Child Protection Number 18 of 2017 provides guidelines for related institutions in providing recovery services for victims of violence. In addition, Law Number 36 of 2009 concerning Health guarantees the right of every individual, including victims of sexual violence, to receive the necessary health services. Overall, curative protection focuses on punishing perpetrators of violence, and also on the rehabilitation and reintegration of victims into society in a way that respects and supports their needs holistically. By providing adequate rehabilitation services, legal assistance, and mentoring, curative protection seeks to restore the dignity of victims and help them begin the healing process from the traumatic effects of sexual violence they experience.

In Indonesia, rehabilitative protection against the recurrence of sexual violence is regulated through several laws and regulations. Law Number 12 of 2022 article 3 letter B concerning the Crime of Sexual Violence stipulates the right of victims to recovery, including psychological and social rehabilitation. Meanwhile, Law Number 35 of 2014 concerning Child Protection affirms the right of child victims of violence to obtain rehabilitation and protection. In addition, Law Number 36 of 2009 concerning Health guarantees the right of every individual, including victims of sexual violence, to receive appropriate health services. Government Regulation Number 43 of 2018 and Regulation of the Minister of Women's Empowerment and Child Protection Number 17 of 2017 provide further guidelines on the implementation of rehabilitation services for victims.

In this context, Law Number 12 of 2022 concerning the Crime of Sexual Violence emphasizes the importance of preventing the recurrence of sexual violence crimes as one of the important aspects of law enforcement. Actions that are recognized as factors that aggravate the punishment for the perpetrator are contained in article 1 number 15, which defines prevention as any effort to eliminate the factors that cause the occurrence of sexual violence and the recurrence of the crime Sexual Violence.

However, the lack of detailed explanations related to the elements that can cause recurrent sexual violence in this provision can cause confusion among the public, thus highlighting the need for further socialization and education to increase awareness and understanding of matters related to the recurrence of sexual violence.

Conclusion

The importance of understanding the elements of recurrence of sexual violence against children is fundamental in legal arrangements in Indonesia. Law No. 12 of 2022 states that prevention is all actions to eliminate the factors that cause sexual violence, but it has not clearly explained the elements of recurrence of sexual violence. The phrase "Sexual Repetition" in article 1 paragraph 15 shows that actions related to sexuality and threats are elements of repetition. Harmonization of the definition of children and stricter law enforcement against perpetrators is needed.

Legal protection for child victims of sexual violence in Indonesia requires the implementation of preventive and repressive measures in accordance with laws and regulations. Among them are preventive protection explained in articles 79 to 84 of Law Number 12 of 2022 and repressive protection explained in articles 5 to 23 of Law number 12 of 2022. Legal protection includes curative, rehabilitative, and compensatory approaches to support victims and prevent recurrence of violence.

Bibliography

Books

One author:

Wahyudi Sulaiman, "Perlindungan Hukum bagi Anak yang Menjadi Korban Pelecehan Seksual (Studi Kasus di Yurisdiksi Kepolisian Makassar Tahun 2015 hingga 2016)" (Universitas Hasanuddin Makassar, 2019).

Kadarudin, Penelitian di Bidang Hukum (Pemahaman Pendahuluan) (Semarang: Formaci, 2021).

Anton M. Moeliono, Kamus Besar Bahasa Indonesia (Jakarta: Balai Pustaka, 1988).

Abdul Rachman, Berbagai Permasalahan dalam Praktik Penegakan Hukum di Indonesia (Bandung: Alumni, 1980).

Yuwono, penerapan hukum dalam kasus kekerasan seksual terhadap anak.

Bryan A Garner., Kamus Hukum Orang Kulit Hitam (Grup Barat ST: Paul, 1999).

Sri Wisnu Hertinjung, "Dinamyc Penyebab Pelecehan Seksual Anak Berdasarkan Ketersediaan Ruang Pribadi dan Privasi," Kasus Fakultas Psikologi Universitas Muhammadiyah Surakarta (2012):

Aprilia Wigard K, "Pengaruh Distorsi Kognitif Mengenai Seks dengan Anak, Fantasi Seksual, dan Pengalaman Trauma Seksual Aprilia Wigard K,

Haerudin Soyan Pratama, "Urgensi Pengesahan dan Penegakan Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual (UU TPKS) di Indonesia" (Universitas Muhammadiyah Surakarta, 2023).

Luthfia Nareswari Rasendriya, "Pemenuhan Hak-Hak Korban Kekerasan Seksual (Studi Banding Indonesia dan Malaysia)" (Universitas Muhammadiyah Surakarta, 2024).

Sri Warjiyati, "Pemberdayaan Paralegal Aisyiyah Ranting Sukodono dalam Membantu Korban Kekerasan terhadap Perempuan dan Anak," Dimas 17, no. 2 (2018)

Fitri Yani, "Analisis Hukuman Kebiri bagi Pelaku Kekerasan Seksual dalam Studi Hak Asasi Manusia," Universitas Lampung, 2017.

Widyantoro Bibit, "Upaya Penanggulangan Kekerasan Terhadap Anak melalui Sistem Perlindungan Terpadu di Yurisdiksi Kota Bandar Lampung," Universitas Lampung (Universitas Lampung, 2019).

Two authors:

Rosania Paradiatz dan Eko Soponyono, "Perlindungan Hukum bagi Korban Pelecehan Seksual," Jurnal Pengembangan Hukum Indonesia 4, no. 1 (2022)

Jonaedi Efendi & Johnny Ibrahim, Metode Penelitian Hukum: Normatif dan Empiris (Depok: Prenadamedia Group, 2018).

Nita Candra dan Dian Ibung, Dari Balik Tembok (Bernama) Luka (Depok: Lingkar Pena Kreativa, 2008).

Susiana Kifli dan Atika Ismail, "Analisis Hak-Hak Korban Kekerasan Seksual dalam Rancangan Undang-Undang Penghapusan Kekerasan Seksual dalam Perspektif Hukum Positif dan Hukum Islam," Wajah UU 6, no. 2 (2022)

Muhammad Dzar Imran dan Yovita Arie Mangesti, "Tindakan Pencegahan dan Represif sebagai Upaya Melindungi Hukum Pemerkosaan Anak," Tinjauan Hukum Iblam 4, no. 1 (2024)

Three or more authors: (list each author):

Bayu Septian Anuraga, Arri Handayami, dan Dini Rakhmawati, "Upaya Peningkatan Pemahaman Pencegahan Penanganan Kekerasan Seksual di SD Negeri 2 Sumur melalui Tim Pencegahan dan Penanganan Kekerasan (TPPK)," Jurnal Ilmiah 09, no. 05 (2023): 3998–4014.

Journal Article

Rosania Paradiaz dan Eko Soponyono, "Perlindungan Hukum bagi Korban Pelecehan Seksual," Jurnal Pengembangan Hukum Indonesia 4, no. 1 (2022): 61–72.

Adi Lazuardi dan Muhammad Akbar Pribadi, "Konsep Retractable Consent dalam Peraturan Menteri Pendidikan Mengenai Kekerasan Seksual di Kampus Konsep Retractable Consent dalam Permendikbud tentang Pencegahan dan Penanganan Kekerasan Seksual di Kampus," JCH (Jurnal Cendekia Hukum) 7, no. 2 (2022): 209–227, <http://e-jurnal.stih-pm.ac.id/index.php/cendekeahukum/index>.

Wahyudi, Lhatifah Berliani, dan Amelia, "Perlindungan Hukum Anak Korban Kekerasan di Sekolah," Jurnal Hukum Das Sollen 9, no. 2 (2023): 825–840.

Yayan Agus Siswanto, Fajar Rachmad Dwi Miarsa, dan Sudjiono, "Upaya Pencegahan sebagai Bentuk Perlindungan Hukum dari Tindak Pidana Kekerasan Seksual terhadap Anak," Jurnal Kolaborasi Sains 7, no. 5 (2024): 1651–1667, <https://jurnal.unismuhpalu.ac.id/index.php/JKS>.

Bayu Septian Anuraga, Arri Handayami, dan Dini Rakhmawati, "Upaya Peningkatan Pemahaman Pencegahan Penanganan Kekerasan Seksual di SD Negeri 2 Sumur melalui Tim Pencegahan dan Penanganan Kekerasan (TPPK)," Jurnal Ilmiah 09, no. 05 (2023): 3998–4014.

Dini Mulia Mutmainah dkk., "Implementasi Penegakan Hukum Lingkungan Hidup dalam Meningkatkan Efektivitas Perlindungan dan Pengelolaan Lingkungan Hidup," *Deposisi: Jurnal Publikasi Hukum* 2, no. 2 (2024): 376–388.

JIHAD: *Jurnal Hukum dan Administrasi* (Universitas Muslim Indonesia, 2022).

Siti Fatimah dan Mustiqowati Ummul Fithriyyah, "Implementasi Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual (TPKS) di Kota Pekanbaru," *Jurnal JDKP Desentralisasi dan Kebijakan Publik* 4, no. 2 (2023): 100–107.

Yuni Kartika dan Andi Najemi, "Kebijakan Hukum Pelecehan Seksual (Catcalling) dalam Perspektif Hukum Pidana," *PAMPAS: Jurnal Hukum Pidana* 1, no. 2 (2020): 1–21.

Legal

Peraturan Menteri Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia Nomor 15 Tahun 2010 tentang Pedoman Umum Penanganan Anak yang Menghadapi Hukum

Internet

Priantar Jaya Hairi, "Masalah Kekerasan Seksual: Menelaah Arah Kebijakan Pemerintah dalam Menghadapinya," *State of Law* 6, no. 1 (2016): 1–15, <http://www.komnasperempuan.or.id/wp-content/>.

Beby Suryani Fithri, "Pendekatan Preventif dalam Upaya Perlindungan Korban Tindak Pidana Narkotika," *Universitas Hukum Wilayah Medan*, 2020, <https://repositori.uma.ac.id/handle/123456789/13555>.