



## Punishment Arrangement on the Action of Sexual Violence against Children in Legal Regulations of Indonesia

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### **Abstract**

The research problems are “How is the punishment arrangement of sexual violence against children in legal regulations of Indonesia? How is the punishment arrangement of sexual violence against children in the Draft of the 2015 Criminal Code and in the Draft of the 2018 Criminal Code?” This research is normative juridical research. This study uses a legal approach to the Child Protection Law, the Law on the Elimination of Domestic Violence and the Draft of the Criminal Code in 2015 and 2018 concerning sexual violence against children. The results of the study indicate that various types of laws have provided detailed regulation of the criminal actions of sexual violence against children. Giving punishment for the perpetrators has been strictly regulated. Law No. 17 of 2016 concerning the Second Amendment to Law No.23 of 2002 concerning Child Protection contains a threat of castration for perpetrators of sexual violence against children. This punishment is expected to reduce the crime rate against the perpetrators and no more pedophiles in Indonesia. However, in the Draft of Criminal Procedure Code, the criminal actions of sexual violence against children is combined into the chapter on decency, not regulated separately and the threats given are also not as severe as the criminal threats in the child protection law. It is highly expected that there is a change in the Draft of Criminal Code to separate between cases of decency and child protection. The threat of punishment given is also aggravated.

**Keywords:** Punishment; Sexual Violence; Child; Legal Regulations

### **Introduction**

Children are the mandate and gift of God that must be safeguarded because they have dignity, dignity, and human rights that need to be upheld. The protection of children's rights is written in the 1945 Constitution of the Republic of Indonesia and several laws and regulations. Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that, "Every child has the right to live, grow and develop and has the right to be protected from violence and discrimination". It is then strengthened by the ratification of the Convention on the Rights of the Child through Presidential Decree No.36 of 1990 concerning Ratification of the Convention on The Right of the Child.

In an attempt to support children's rights and obligations, there has been child protection. Children who obtain rights and can maintain their rights to grow and develop in a balanced and positive

manner means getting treatment fairly and avoiding harmful threats.<sup>1</sup> Child protection is an effort to fulfill the rights and obligations of children as a manifestation of justice in society. Thus, child protection must be sought in various fields of state life, community and family based on the law in order to treat children properly, fairly, and prosperously.<sup>2</sup>

Pedophilia is a Greek word which means behavioral abnormalities in a person, namely sexual deviation behavior. A person suffering from pedophiles usually likes children. Pedophilia is the sexual attraction of adults to children. It is a form of mental illness in the form of abnormalities in sexual attraction. To vent his lust, a pedophile will look for pre-puberty children.<sup>3</sup>

Regulations governing the punishment of perpetrators of sexual violence on children are provisions of criminal law that are different from civil matters which are included in the realm of private law. However, in this case, the criminal law is strict. The law must be enforced and the offender must be punished.<sup>4</sup>

The Criminal Code is the basis for knowing or seeing criminal provisions governing sexual violence. This rule explains various restrictions on sexual violence against children. In addition to the Criminal Code, there is a special law that regulates sexual violence against children, namely Law No.23 of 2002 concerning the Protection of Children who has undergone various changes. The last Child Protection Law is Law No.17 of 2016 concerning the Second Amendment of Law No.23 Year 2002 concerning child protection.

Law enforcement is closely related to criminal law policy (penal policy) as criminal politics carried out by the government along with law enforcement officers in order to realize justice.<sup>5</sup> Criminal law policies include anything that can be criminalized in criminal law to avoid strong opposition from society.

Through criminal law, there are three stages in the "penal policy" (criminal law policy): firstly, **formulation policy stage** is the policy stage by the legislators; secondly, the stage of applying criminal law by law enforcement officers from the police to the court that is called as **judicial policy**, as the legal application stage; thirdly, the stage of criminal conduct in the form of imprisonment by criminal executing officers called **executive policy** as the administrative stage of legal execution.<sup>6</sup>

Likewise, penalties for sexual violence are also included in a new draft of the Criminal Code. The enactment of the New Criminal Code in the context of law enforcement is a benchmark of how far the law has a special meaning that has a distinctive Indonesian character in changing national behavior in accordance with the law.<sup>7</sup> Regarding the sexual violence against children, in the 2015 Criminal Code Draft, the penalties for criminal acts of sexual violence against children are contained in Article 486, Article 487, Article 491, and several other articles. While in the 2018 Criminal Code Draft, the provisions

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<sup>1</sup> Moch. Faisal Salam, *Procedure for Juvenile Justice in Indonesia*, 1<sup>st</sup> Edition Mandar Maju, Bandung, 2005, page 1.

<sup>2</sup> Lilik Mulyadi, *Juvenile Court in Indonesia (Theory, Practice and Problems)*, Cetakan I, Mandar Maju, Bandung, page 2.

<sup>3</sup> Ismantoro Dwi Yuwono, 2015, *Application of the Law in the Case of Sexual Violence against Children*, Buku Seru, Jakarta, page 44.

<sup>4</sup> E.Utrecht, *Criminal Law I, 1968*, Bandung University, page 60.

<sup>5</sup> Teguh Sulistia, Aria Zurnetti, 2011, *New Post-Reformation Horizon Criminal Law*, Rajagrafindo Persada, Jakarta, page 19.

<sup>6</sup> Barda Nawawi Arief, 1996, *Bunga Rampai: Criminal Law Policy*, Citra Aditya Bakti, Bandung, page 30.

<sup>7</sup> *Ibid*, page 28.

regarding sexual violence against children are mentioned in several articles including Article 448, Article 450, and Article 452.

Based on the statements above, we know that the government has made various efforts in legal policies to prevent criminal acts of violence against children. Since 1999, there have been many laws and regulations that comprehensively regulate prevention and enforcement of sexual violence against children. Unfortunately, even though various rules have been made, the cases of violence against children in Indonesia are increasing. This study will analyze the problem of arranging the punishment of sexual violence against children in the applicable laws and regulations in Indonesia and the regulation of punishment for sexual violence against children in the Criminal Code Draft.

### **Research Method**

#### a. Research Approach

To conduct this research of law, the form of research used is normative legal research with a statute approach. This research was conducted by examining laws and regulations related to the legal issue that is being discussed. It is about criminal policies against perpetrators of sexual violence against children.<sup>8</sup>

#### b. Research Characteristic

This research is a descriptive research, which describes the findings of the research based on the cases of criminal acts of sexual violence against children.

### **Types and Sources of Legal Materials**

This research uses secondary data sources from:<sup>9</sup>

- a. Primary Legal Materials. These are the technique of collecting legal materials in the form of legislations related to violence against children, including:
  1. The Criminal Code
  2. Law No. 35 of 2014 concerning Amendments of Republic of Indonesia's Law No.23 of 2002 concerning Child Protection.
  3. Law No. 17 of 2016 concerning the Stipulation of Government Regulations in lieu of Law No.1 of 2016 concerning the Second Amendment to Law No.23 of 2002 concerning Child Protection becomes Law.
  4. Law No.23 of 2004 concerning the Elimination of Domestic Violence.
  5. etc.
- b. Secondary Legal Materials. These are all writings or all research results that have been published or which have not been published such as: legal journals published in various courts, journals published in ADIL.

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<sup>8</sup> Peter Mahmud Marzuki, *Legal Research*, Kencana Prenada Media Group, Jakarta, 2008.

<sup>9</sup> Soerjono Soekanto dan Sri Mamudji, 1990, *Normative Legal Research: A Brief Review*, Jakarata, Rajawali Pers, page 29.

- c. Tertiary Legal Materials. These are supporting legal materials, including:
  1. Legal materials that provide instructions and explanations for secondary legal materials. Examples: dictionaries, encyclopedias, and so on.
  2. Primary, secondary and tertiary materials (supporting materials) other than legal materials, for example: Sociology, Philosophy, Ecology, Engineering and others, which are used to supplement or support research data.<sup>10</sup>

### ***Legal Material Processing and Analysis***

#### a. Legal Material Processing

After legal material is collected completely, the next stage is to process and analyze the legal material, which basically consists of the following steps:<sup>11</sup>

##### 1. Editing

The legal material that has been obtained is examined again so that it is clearly known which legal material is truly relevant to the research.

##### 2. Coding

It is providing certain codes or signs of legal material that has been previously edited.

#### b. Legal Material Analysis

Legal materials that have been obtained from the results of editing and processing, are described and analyzed with concepts and theories that exist in the theoretical framework and then correlate them to the problems that have been formulated. This way is done to get answers to the problems that have been formulated, so that the results of the analysis can be interpreted and formulated into findings of this research. The results are expected to be beneficial for the development of legal science.

### ***Findings and Discussion***

#### ***A. The Punishment Arrangement of the Action of Sexual Violence against Children in the Criminal Code***

The punishment related to sexual violence against children in the Criminal Code is formulated in two forms, namely a single formulation system and an alternative formulation system. In the alternative formulation system, the offender can be the subject to criminal fine or imprisonment. The perpetrators of criminal acts of sexual violence against children can be charged with imprisonment or criminal fine. Some of the Articles that cover sexual violence against children are as follows: Article 287 of the Criminal Code, Article 289 of the Criminal Code, Article 290 of the Criminal Code, Article 291 of the Criminal Code, etc.

#### ***B. The Punishment Arrangement of Actions of Sexual Violence against Children other than the Criminal Code***

1. The Punishment Arrangement of the Sexual Violence against Children in Law No.23 of 2004 Concerning the elimination of Domestic Violence

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<sup>10</sup> *Ibid*, page 41.

<sup>11</sup> Bambang Sunggono, 2011, *Legal Research Methodology*, 12<sup>th</sup> Edition, Rajawali Pers, Jakarta, page 125.

Based on Law No.23 of 2004 concerning the Elimination of Domestic Violence, the provisions of penalties that can be imposed on perpetrators of sexual violence in households are regulated in Article 46 and Article 47 of this law. The punishment in this law is formulated alternatively, namely criminal fines or imprisonment. The perpetrators of criminal acts of sexual violence in the household can be punished by imprisonment or criminal fines. Article 46 and Article 47 have different minimum and maximum rules.

Article 46 does not regulate the special minimum threat but only regulates the maximum threat, that is a maximum imprisonment of 12 (twelve) years or a fine of at most IDR 36,000,000.00 (thirty-six million rupiahs). Article 47 regulates the minimum and maximum threats, both for imprisonment and fines. The minimum threat in the article against perpetrators of sexual violence is a minimum sentence of 4 (four) years imprisonment and a minimum fine of IDR 12,000,000.00 (twelve million rupiahs), while the maximum threat is a maximum of 15 (fifteen) years in prison and a maximum fine of IDR 300,000,000.00 (three hundred million rupiah).

### 2. The Punishment Arrangement of Sexual Violence against Children in Law No.23 of 2002 concerning Children Protection

The punishment in this law is formulated cumulatively with imprisonment and criminal fines. Perpetrators of sexual violence against children are punished by imprisonment and fines. Article 81 and Article 82 have the same minimum and maximum rules.

Article 81 and Article 82 regulate the threat of minimum and maximum prison sentences and fines for perpetrators of sexual violence against children. The maximum prison threat for both of these Articles is a maximum of 15 (fifteen) years imprisonment, while the maximum threat of a fine is IDR 300,000,000.00 (three hundred million rupiahs). The minimum prison threat of Article 81 and Article 82 is a minimum of 3 (three) years and a fine of at least IDR 60,000,000.00 (sixty million rupiahs).

### 3. The Punishment Arrangement of Sexual Violence against Children in Law No. 35 of 2014 concerning Amendments to Law No.23 of 2002 Concerning Child Protection

Article 81 and Article 82 regulate the minimum and maximum threats of prison sentences. Criminal fines for perpetrators of sexual violence against children in this law do not contain minimal threats, but only contain maximum threats. The maximum threat of imprisonment for these two Articles is a maximum of 15 (fifteen) years, while the maximum threat of fines is IDR 5,000,000,000.00 (five billion rupiahs). The minimum threat of imprisonment in Article 81 and Article 82 is a minimum of 5 (five) years.

The difference between Law No.23 of 2002 and Law No. 35 of 2014 is the difference in the threat of minimum criminal and threat of fines. As previously explained, Law No.23 of 2002 provides a minimum criminal threat with a minimum of 3 (three) years imprisonment, while Law No. 35 of 2014 provides a minimum sentence of 5 (five) years. For criminal fines, Law No.23 of 2002 has a minimum threat of fines, while Law No. 35 of 2014 does not have a minimum threat, but the maximum threat of fines is much higher, IDR 5,000,000,000. (five billion rupiah).

Law No. 35 of 2014 also gives addition to the criminal threat for perpetrators of criminal acts of sexual violence against children if the perpetrators are parents, guardians, caregivers, educators, or education personnel. If this happens, the criminal provisions are added to 1/3 (one-third) of the existing criminal threats.

### 3. The Punishment Arrangement of Sexual Violence against Children in Law No. 17 of 2016 Concerning the Second Amendment of Law No.23 of 2002 Concerning Child Protection

To respond to the phenomenon of sexual violence against children, to give a deterrent effect to the perpetrators, and to prevent sexual violence against children, the President has stipulated a Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No.23 of 2002 concerning Protection Child. Furthermore, the Government Regulation in lieu of Law No. 1 of 2016 has been approved by the House of Representatives to then be passed into a Law on the Establishment of Substitute Government Regulations Law 17 of 2016 concerning the second amendment to Law No. 23 of 2002 concerning Child Protection becomes Law.

In Law No.17 of 2016, there are several provisions for the types of punishment:

- a. Main Punishment: in the form of imprisonment and criminal fines.
- b. Additional punishment: in the form of announcing the identity of the perpetrator.
- c. Actions including:
  1. Chemical castration, and
  2. Installation of electronic detection devices

Every punishment is decided together with the main punishment along with the term of the sentence. The sentence is imposed at the latest 2 (two) years and is carried out after the convict has served the main punishment.

The punishment in the Child Protection Law not only provides severe penalties, but also adds penalties in the form of installing electronic detectors and announcing the identity of the perpetrators. Article 81 which contains criminal acts of intercourse has a sentence that is aggravated by a sentence of chemical castration, to actors who fulfill the provisions of article 81.

### ***C. The Punishment Arrangement of Sexual Violence against Children in the Draft of the 2015 Criminal Code and in the Draft of the 2018 Criminal Code***

In the Draft of the 2015 Criminal Code and in the Draft of the 2018 Criminal Code, the punishment arrangements towards sexual violence against children are divided into two types of punishment formulations. The first one is that the arrangement is formulated cumulatively: imprisonment and criminal fines, and the second one is formulated alternatively.

The draft of the 2015 and 2018 Criminal Code has the same formulation of sentences regarding the imprisonment. The imprisonment can be given for lifetime or for a certain period of time. For the certain period of time is a maximum of 15 (fifteen) years or a minimum of 1 (one) day, unless a specific minimum is specified. In addition, the criminal fines in the draft of the 2015 Criminal Code, specifically Article 82, regulates criminal fines of at least IDR 100,000 (one hundred thousand rupiahs) and most are determined according to the following categories:

1. Category I IDR 10,000,000 (ten million rupiah);
2. Category II IDR 50,000,000 (fifty million rupiah);
3. Category III IDR 150,000,000 (one hundred and fifty million rupiah);
4. Category IV IDR 500,000,000 (five hundred million);
5. Category V IDR 2,000,000,000 (two billion rupiah);
6. Category VI IDR 15,000,000,000 (fifteen billion rupiah);

The draft 2018 Criminal Code also regulates the criminal fines, that is Article 88 Paragraph (3), which is a minimum fine determined by a specific minimum. The criminal fines are set at least IDR

50,000 (fifty thousand rupiahs). The threat of specific maximum fines is regulated in Article 89 which divides the criminal by fine category into several categories:

1. Category I IDR 1,000,000 (one million rupiah);
2. Category II IDR 10,000,000 (ten million rupiah);
3. Category III IDR 50,000,000 (fifty million rupiah);
4. Category IV IDR 150,000,000 (one hundred and fifty million rupiah);
5. Category V IDR 500,000,000 (five hundred million);
6. Category VI IDR 2,000,000,000 (two billion rupiah);
7. Category VII IDR 15,000,000,000 (fifteen billion rupiah); and
8. Category VIII IDR 50,000,000,000 (fifty billion rupiah).

The author will compare the 2018 Criminal Code Draft with the 2015 Criminal Code Draft. In the Draft of Criminal Code submitted by the President of the Republic of Indonesia to the Chairperson of the Republic of Indonesia dated June 5, 2015, there are several articles governing the criminal acts of sexual violence against children. Some of them are contained in articles, which are: Article 486, Article 487, Article 491, Article 493, Article 494, Article 495, Article 496, Article 497.

In particular, the criminal actions of sexual violence against children are contained in Article 479, Article 487, Article 491, and Article 492. Beside these articles, there is no other explanation regarding the threat of violence or sexual violence against children. There are some differences between the 2018 Criminal Code Draft with the 2015 Criminal Code Draft. Several articles which cover sexual violence against children in the 2018 Criminal Code Draft are: Article 448, Article 450, Article 452.

As an example of the comparison of the threat of punishment in the 2018 Criminal Code Draft with the threat of punishment in the 2015 Criminal Code Draft, the author presents the differences in the formulation of punishments of sexual violence against children in criminal acts of sexual abuse contained in the 2015 and 2018 Criminal Procedure draft, as follows:

No.	Subject	Violation	The threat of punishment in the 2018 Criminal Code Draft	The threat of punishment in the 2015 Criminal Code Draft
1	each person	committing violence or the threat of violence, forcing children to have intercourse	imprisonment of a minimum of 5 (five) years and a maximum of 15 (fifteen) years	maximum imprisonment of 15 (fifteen) years
2	each person	committing obscene acts with someone who is known or reasonably suspected of being a child	imprisonment for a maximum of 9 (nine) years	imprisonment for a maximum of 9 (nine) years

Based on the two examples of above-mentioned criminal acts, the formulation of criminal acts of intercourse has undergone a change. In the 2015 Criminal Code Draft does not yet contain the minimum threat, while in the 2018 Criminal Code Draft contains formulations with minimum threats. In this case, it means that at the formulation concept stage, the lawmakers have thought ahead. One of them is that if there is no specific minimum threat, there will be an opportunity for individuals to work professionally at the law enforcement stage.

## **Conclusion**

Based on the description above, there are several conclusions from the problems discussed in this discussion, including:

The punishment arrangement of the actions of sexual violation against children is mentioned in various laws and regulations. Those arrangements are contained in the Criminal Code and several laws including Law No.23 of 2002 concerning Child Protection with several amendments and Law No.23 of 2004 concerning the Elimination of Domestic Violence. They discussed the punishment for criminal acts *of sexual violence against children. The law on child protection and criminal threats always changes. The* last change was made in Law No. 17 of 2016 concerning the second Amendment to Law No.23 of 2002 concerning Child Protection. In this law there has been a legal renewal in which there is a threat of castration against the perpetrators. Castration punishment is a system of criminal reform in Indonesia.

After analyzing the formulation of the Criminal Code Draft in 2015 and 2018, there is a formulation of the regulation of punishment in the Draft Criminal Code which always changes from time to time. Those changes are carried out in accordance with the development of circumstances and changes in the situation of the community. The lawmakers are still trying to make improvements to produce the National Criminal Code that can accommodate all community needs.

## **Suggestion**

At the end of this paper, the author will provide the following suggestions:

To the government, as the legislator who cooperates with the House of Representatives as the legislature that examines and ratifies legislation, it is expected that the articles which concern on the Criminal Actions of sexual violence in the Criminal Code draft have a more severe criminal threat. It is as stated in Law No.17 of 2016 concerning the second amendment to Law No.23 of 2002 concerning Child Protection which has included a threat of castration for perpetrators of sexual violence against children.

To the law enforcement officials, as the sub-systems of an integrated Criminal Justice System, are expected to carry out their duties well in enforcing the law as an effort to fight against sexual violence. They are expected to run the wheel of a criminal justice system that is firm in prosecuting and imposing penalties or penalties on perpetrators as minimum and maximum penalties stated in the provisions of the law in accordance with the actions of the perpetrators.

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### ***Legal Regulations***

The Criminal Code

Law Number 8 of 1981 concerning Criminal Procedure Law

Law Number 39 of 1999 concerning Human Rights

Law Number 23 of 2002 concerning Child Protection

Law Number 23 of 2004 concerning the Elimination of Domestic Violence

Law Number 35 of 2014 concerning Amendment to Law Number 23 of 2002 on Child Protection

Number 17 of 2016 concerning Stipulation of Government Regulation in lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 Year 2002 concerning Child Protection becomes Law

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Draft of the 2018 Criminal Code

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