

***PUNISHMENT FOR INDIVIDUALS COMMITTING SEXUAL CRIMES  
AGAINST CHILDREN: A COMPARATIVE ANALYSIS OF POSITIVE AND  
TRADITIONAL CRIMINAL LAW IN INDONESIA***

Fitri Wahyuni<sup>1</sup>, Aris Irawan<sup>2</sup>, Riana Kesuma Ayu<sup>3</sup>

<sup>1</sup> Faculty of Law, Master of Laws, Islamic University of Indragiri Riau

<sup>2</sup> Faculty of Law, Master of Laws, University of Borneo Tarakan, North Kalimantan.

<sup>3</sup> Master of Laws, Sultan Adam of Law School, Banjarmasin

✉ corresponding email: fw160586@gmail.com

Submitted: 27/04/2023; Accepted: 12/12/2023; Revision: 15/12/2023;  
Approved: 30/04/2024

DOI: <https://doi.org/10.24815/kanun.v26i1.20906>

**ABSTRACT**

The current punishment for sexual crimes against children, limited to imprisonment, is deemed ineffective in deterring perpetrators. This article delves into this issue through the lens of positive and customary criminal law. Employing a doctrinal method and drawing from various legal sources, the article reveals that the existing punishment under the Indonesian Criminal Code and Child Protection Laws fails to significantly reduce the incidence of such crimes. As a potential solution, traditional law could serve as supplementary punishment, involving corporal punishment or fines payable to the state treasury. This suggests that customary law could complement judicial sanctions. However, the implementation of such additional measures warrants evaluation to address other environmental factors that may contribute to these crimes.

**Keyword:** Criminal Sanctions; Sexual Violence; Criminal Law; Customary Law

**INTRODUCTION**

A child is essentially a trust and a gift of the One God, who must always be guarded because in him are inherent the dignity, dignity and human rights to be exalted. Children are born independent, they must not be removed or destroyed, the freedom of the child must be protected and extended in terms of the right to life and the protection of both parents, families, communities, nations and states. Therefore, no human being or other

person may be deprived of such rights because the rights of the child are part of human rights that are guaranteed and protected by international or national law.<sup>1</sup>

Cases of crimes and sexual abuse of children have come to the surface lately. Sexual violence is a criminal offence or moral offences and sexual harassment is two forms of violation of sexual abuse that is not only a matter of national law of a country but is already a legal issue of all countries in the world or is a global issue.<sup>2</sup> The perpetrators of sexual abuse and sexual harassment are not the dominance of those who belong to the middle or lower economic class, let alone those who are under-educated or not educated at all, but they have penetrated all social strata from the lowest to the highest, and they are adults and their victims are children under the age of 18.<sup>3</sup>

According to the Ministry of Women's Empowerment and Child Protection (Ministry of Women and Children), there were 11,952 cases of violence against Ministry of Women and Children and children in 2021. The most frequent form of child violence is sexual violence, with 7,004 cases. According to the Child and Adolescent Life Experience Survey, four out of 100 13-17-year-olds and eight out of every 100 women 13-17 years old in urban areas have experienced sexual violence.<sup>4</sup>

Crimes of decency and sexual violence are so complex, they not only occur in big cities, but also occur in rural areas where customary laws are still strong, making them unsettling and worrying to the community, so they cannot be viewed from a micro perspective. If you want to find out the root of the problem, you must have the courage to enter various aspects of life that have an influence on human behaviour, including crimes of morality and sexual violence against children<sup>5</sup>. Human behavior does not appear

---

<sup>1</sup> Subekti, Hartiwiningsih, and I Gusti Ayu Ketut Rachmi Handayani, "The Urgency of Recovery for Child Performers of Crime of Sexual Violence," *Baltic Journal of Laws and Politic* 15, no. 3 (2022): 147–60, <https://versita.com/menuscript/index.php/Versita/article/view/648/748>.

<sup>2</sup> Jon R Conte, Steven Wolf, and Tim Smith, "What Sexual Offenders Tell Us About Prevention Strategies," *Child Abuse & Neglect* 13, no. 2 (January 1989): 293–301, [https://doi.org/10.1016/0145-2134\(89\)90016-1](https://doi.org/10.1016/0145-2134(89)90016-1).

<sup>3</sup> Marika Guggisberg, "Sexually Explicit Video Games and Online Pornography – The Promotion of Sexual Violence: A Critical Commentary," *Aggression and Violent Behavior* 53 (July 2020): 101432, <https://doi.org/10.1016/j.avb.2020.101432>.

<sup>4</sup> Fitri Wahyuni, Aris Irawan, and Siti Rahmah, "The Legal Protection For Children Of Sexual Violence Victims In Indragiriii Hilir Regency," *International Journal of Educational Research & Social Sciences* 2, no. 2 (April 30, 2021): 322–27, <https://doi.org/10.51601/ijersc.v2i2.46>.

<sup>5</sup> Lisa Featherstone, *Sexual Violence in Australia, 1970s–1980s*, World Histories of Crime, Culture and Violence (Cham: Springer International Publishing, 2021), <https://doi.org/10.1007/978-3-030-73310-0>.

by itself, but develops through a process, due to environmental influences, such as the natural environment, sociological, political, economic and cultural aspects.<sup>6</sup>

Efforts to eradicate sexual crimes have long been carried out using imprisonment, but this has not had a deterrent effect on the perpetrators. This is proven by the increasing number of cases of sexual violence against children which continue to recur.

The success of criminal prisons as a means of reform is very small, although it is very difficult to determine accurately. It is not known whether the decrease in residues is due to prison houses that have developed individual construction methods. Current construction methods and rehabilitation programmes have very little impact on residues. Research on the influence of various sanctions shows that the length of criminal prison length or penalty does not make a difference to the success rate. That the educational efforts of the prison prosecutors have a very weak influence compared to the mutual influence of the inmates, hence the more prisons provided for the residents, the closer prison society becomes full of evil attitudes. S.R.Brody stated that the length of time spent in prison did not appear to have any effect on re-condemnation.<sup>7</sup>

The punishment of a guilty person is an instruction for him to repent and to return to the right path. On the contrary, even a person's fault may not be serious, but if the perpetrator is difficult to repair his character, then against him if needed to be removed, thrown out of customs, expelled from relatives and homelands forever, or even killed. In customary criminal law, customary sanctions have a function as stabilizers to restore the balance between the birth world and the mysterious world. About the kinds of customary sanctions that a judge can impose. The Pandecten van het adatrecht in section X, which collects materials on customary law published in 1936, lists the names of customary crimes and mentions the various kinds of ordinary reactions to delinquency in the various circles of the ordinary law in Indonesia. Actions as customary reactions in various circles of customary law. The customary law is a living law, because it explains the manifest legal feelings of its people. The customary criminal law is the law which indicates an event or

---

<sup>6</sup> Sharne Bellia et al., "Registered Nurses' Understanding, Knowledge and Perceptions of The Association Between Sexually Transmitted Infections and Domestic Violence," *Collegian* 27, no. 5 (October 2020): 561–66, <https://doi.org/10.1016/j.colegn.2020.01.003>.

<sup>7</sup> Sitti Dahlia, Sartiah Yusran, and Ramadhan Tosepu, "Analisis Faktor Penyebab Perilaku Pelecehan Seksual Terhadap Anak Di Bawah Umur Di Kecamatan Angata Kabupaten Konawe Selata," *Jurnal Nursing Update* 13, no. 3 (2022): 169–79, <https://stikes-nhm.e-journal.id/NU/article/download/840/819>.

act to be punished, because the event or action has disrupted the balance of society. Aboriginal debris is a violation of the law. But not all violations of the law are criminal. The only offence punishable is a violation of the law which is threatened with a criminal offence by the Law.<sup>8</sup> The implementation of customary sanctions in sexual violence against children should be compared and analyzed according to positive criminal law and customary criminal law as well as how the position of conventional criminal law in the sanctioning of perpetrators of sexual abuse against children in positive penal law.

## RESEARCH METHOD

The type and nature of the research This research uses normative law research, i.e. data research that has the object of the study of the law or rule of law. Normative research is carried out with the intention to give legal argumentation as the basis of determining whether an event is right or wrong and how good the event is according to the law. While this research is descriptive analytical in the sense of providing a picture accompanied by an explanation systematically, factual and accurate.<sup>9</sup>

## RESEARCH OUTCOME AND DISCUSSION

### 1. Purpose of punishment

Mediation as an act of a criminal can normally be justified not because it has positive consequences for the victim, victim and society. If a person is guilty of a criminal offence, he or she may be guiltless in the past and/ or in the future. If he/she is guilty in the last time, the purpose of the penalty is to repay him or her, but the purpose is to repair his or her conduct. According to H.L. Packer, there are two conceptual views that each have different moral implications for each other: the retributive and the utilitarian.<sup>10</sup>

The retributive view assumes remuneration as a negative reward for deviant behaviour so that this view sees remunerating only as a redress for the mistakes committed on the basis of their respective moral responsibilities. This view is said to be looking

---

<sup>8</sup> Agus Rai Mahardika, Anak Agung Sagung Laksmi Dewi, and I Made Minggu Widyantara, "Sanksi Pidana Bagi Pelaku Tindak Pidana Pedofilia Terhadap Anak," *Jurnal Konstruksi Hukum* 1, no. 1 (August 27, 2020): 19–25, <https://doi.org/10.22225/jkh.1.1.2124.19-25>.

<sup>9</sup> Sutrisno Hadi, *Metodologi Research* (Yogyakarta: Penerbit Fakultas Psikologi UGM, 1982).

<sup>10</sup> Yani Brilyani Tavipah, "The Punishment of Violence against Children Is Reviewed from the Perspective of the Purpose of Punishment," *LEGAL BRIEF* 13, no. 1 (2024): 70–78, <https://doi.org/https://doi.org/10.35335/legal.v13i1.924>.

backwards. The utilitarian view sees the mediation in terms of its benefit or utility where what is seen is a situation or a situation that is desired to be produced by the fall of the criminal. On the one hand, mediation is meant to correct the attitude or behavior of the oppressor and the opponent. It is also intended to prevent others from committing similar acts. This view is said to be forward and at the same time has a precautionary character.<sup>11</sup>

Roeslan Saleh asserts that the primary goal of law is to strengthen the resolve of the populace. Its population's deterioration is compared to other natural phenomena. Subsequently, the goal of the mediation described by Andi Hamzah is penjeranaan (deterrent), which can be directed at both the individual law-abiding citizen and the general public affected by the breach; reformed criminal.<sup>12</sup> According to Sholehuddin, the objectives of punishment are:

First, it provides a deterrent and deterrence effect. Deterrence means preventing the convict from repeating the same crime, while the purpose of deterrence means that punishment serves as a warning and frightening example for potential criminals in society. Second, punishment as rehabilitation. Goal theory considers punishment as a way to achieve reform or rehabilitation for the convict. The characteristic of this view is that punishment is a process of social and moral treatment for a convict to reintegrate into society properly. Third, punishment as a vehicle for moral education, or a reform process. Therefore, in the criminalization process, the convict is helped to realize and admit the mistake of which he is accused.<sup>13</sup>

In criminal law relating to the purpose of punishment according to S.R Sianturi it can be classified into three main groups, namely as including the retaliation theory group, the goal theory group, and then added to the combined theory group. According to the absolute theory or theory of retaliation, retaliation is the legitimacy of punishment. The state has the right to impose criminal penalties because criminals have committed attacks and rape on protected legal rights and interests. The imposition of a crime which basically causes suffering to criminals is justified because criminals have caused suffering to other

---

<sup>11</sup> Yanuar Farida Wismayanti et al., "Child Sexual Abuse in Indonesia: A Systematic Review of Literature, Law and Policy," *Child Abuse & Neglect* 95 (September 2019): 104034, <https://doi.org/10.1016/j.chiabu.2019.104034>.

<sup>12</sup> Cheryl Regehr, Kaitlyn Regehr, and Arija Birze, "Traumatic Residue, Mediated Remembering and Video Evidence of Sexual Violence: A Case Study," *International Journal of Law and Psychiatry* 81 (March 2022): 101778, <https://doi.org/10.1016/j.ijlp.2022.101778>.

<sup>13</sup> Michele Elliott, Kevin Browne, and Jennifer Kilcoyne, "Child Sexual Abuse Prevention: What Offenders Tell Us," *Child Abuse & Neglect* 19, no. 5 (May 1995): 579–94, [https://doi.org/10.1016/0145-2134\(95\)00017-3](https://doi.org/10.1016/0145-2134(95)00017-3).

people. Every crime must not be followed by punishment for the perpetrator, regardless of the consequences that may arise from the imposition of the crime, regardless of the future, good for oneself. Criminals and society. Imposing a crime is not intended to achieve anything practical, but the sole intention is to suffer the criminal. Kant argued that:

The punishment received by a person who commits a crime is an inseparable part of the crime he committed; not a logical consequence of some form of social contract. Even further, Kant rejects that the punishment imposed is intended for the good of the perpetrator of the crime or the good of society, the only acceptable reason is that the punishment imposed is solely because the perpetrator in question has committed a crime.<sup>14</sup>

Relative theory or goal theory, the purpose of punishment is to prevent crime. Relative theory or goal theory, also called utilitarian theory, was born as a reaction to absolute theory. In general, the aim of crime according to relative theory is not just revenge, but to create order in society. So the purpose of crime according to relative theory is to prevent order in society from being disturbed. In other words, the punishment imposed on the perpetrator of a crime is not to avenge his crime, but to maintain public order.<sup>15</sup>

The combined theory bases punishment on the principle of retaliation and the principle of defense of social order, in other words, these two reasons are the basis for criminal imposition. Groritus states that suffering is indeed something that the perpetrator of the crime should bear, but within the limits of what the perpetrator deserves to bear, social benefits will determine the severity of the suffering that is appropriate to be inflicted. This departs from the adage which reads *natura ipsa dictat, ut quialum fecit, malum ferat*<sup>16</sup>, which means that nature teaches that whoever commits evil will suffer. However, not only suffering is a matter of retribution but also social order. Thus,

---

<sup>14</sup> Andi Rachmad, Yusi Amdani, and Zaki Ulya, "Kontradiksi Pengaturan Hukuman Pelaku Pelecehan Seksual Terhadap Anak Di Aceh," *Jurnal Hukum Dan Peradilan* 10, no. 2 (July 31, 2021): 315–36, <https://doi.org/10.25216/jhp.10.2.2021.315-336>.

<sup>15</sup> Nabila Rizkiani, "Analisis Perlindungan Hukum Dalam Tindak Pidana Kekerasan Seksual Terhadap Anak Di Indonesia," *Journal Bevinging* 1, no. 4 (2023): 1–9, <https://www.journal.uniba.ac.id/index.php/JB/article/view/842>.

<sup>16</sup> Jessica Leigh Doyle, "Experiences of Intimate Partner Violence: The Role of Psychological, Economic, Physical and Sexual Violence," *Women's Studies International Forum* 80 (May 2020): 102370, <https://doi.org/10.1016/j.wsif.2020.102370>.

in essence, criminal law is the protection of society and retaliation for acts that violate the law. However, the author agrees that the purpose of punishment includes several integrative goals.<sup>17</sup>

The imposition of sanctions in customary law is an effort by the social control system of a particular society to create order in society. Customary sanctions are actions or efforts to restore balance, including a magical balance due to disturbances which constitute a violation of custom. In customary law, the highest value is a socio-cultural system that contains basic principles, under which there is a system of norms that function as legal principles. Customary law that grows and develops in society is said to be a tool of social control or control of social life. The existence of customary law as a social control on community interactions means that customary law is expected to be able to fulfill legal needs in accordance with community legal awareness.

The application of customary law in community life requires traditional leaders who are truly capable of implementing customary sanctions that must be imposed on parties who commit violations. Customary sanctions are perceived as sanctions that pay attention to justice and public order. In contrast to sanctions imposed formally, they cannot always guarantee the realization of the community's obedience. The power of sanctions also has its limits, when in the development of law it experiences an evolution that makes it no longer a local people's law but has the character of a national law that is isolated from the natural traditions of the people. Social sanctions in customary law communities function to resolve disputes mostly by relying on the negotiation process through mediation carried out by peacemakers such as traditional leaders.<sup>18</sup> The dispute will recover if the community's reaction in the form of customary sanctions has been carried out or fulfilled by the customary violator.

---

<sup>17</sup> Diaz Anugrianti Archita, Muchtar Syamsuddin, and Azisa Nur, "The Concept Of Imposing Criminal Sanctions For Perpetrators Of Child Sexual Violence: The Deterrent Effect," *European Journal of Law and Political Sciences*, no. 3 (2019): 14–19, <https://doi.org/10.29013/EJLPS-19-3-14-19>.

<sup>18</sup> Jaka Susila, "Monodualistik Penanganan Tindak Pidana Pelecehan Seksual Perspektif Pembaharuan Hukum Acara Pidana Indonesia," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 4, no. 2 (December 31, 2019): 180–93, <https://doi.org/10.22515/al-ahkam.v4i2.1795>.

## **2. Comparative of Punishment Based on Positive and Customary Law**

The source of law in determining criminal sanctions for sexual violence against children according to positive law is determined in the Criminal Code and Article 81 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, while in law The source of customary criminal law comes from customs/customs. The types of criminal sanctions in positive law provisions for perpetrators of sexual violence against children in positive law are in the form of imprisonment with increased punishment in the form of castration which applies the same throughout Indonesia, while in customary criminal law, the determination of sanctions for crimes or criminal acts of sexual violence is not the same between laws. one customary law with another customary law. For example, sexual violence in Baduy customary criminal law is subject to the sanction of being expelled from Baduy. In Bengkulu's Rejang Lebong customary law, the punishment imposed on perpetrators of sexual violence is the expulsion of the perpetrator's family from Rejang Lebong. According to customary law in Papua, the punishment given to perpetrators of sexual violence is payment of a fine. In Kalimantan, indigenous peoples have customary legal systems that apply and are often used in solving various matters, including sexual offences. The customary criminal sanctions can vary between different tribes and indigenous communities. Here are some examples of customary sanctions that may be applied to children who commit sexual offences: Money or goods. The perpetrator is obliged to pay a fine in the form of money or certain goods to the victim or his family. Usually determined by customary figures based on the severity of the violation and the economic situation of the perpetrator. A customary ceremony, the perpetrator may be obliged to follow a particular customary ritual as a form of redemption and restoration of relations with the victim and society. These ceremonies may involve ritual cleansing or public apologies. Provisional exclusion, the perpetrator may be subject to temporary exclusion from the community It's meant to give a jera effect while giving the perpetrator time to reflect on his actions. Social work, the perpetrator may be asked to do social work as a form of responsibility for his actions. These forms of social work can vary, such as helping work in the field, cleaning up the neighborhood, or other community projects. Surveillance and construction, Authorities or other members of the community



cannot be assigned to oversee and build the perpetrators so that they do not interfere with their actions. It can involve moral guidance and education on indigenous and social values.<sup>19</sup>

Criminal liability in positive criminal law for perpetrators of criminal acts of sexual violence against children must have the following elements:

1. Objective element, namely there must be an element of being against the law.
2. Subjective element, namely that the perpetrator must have an element of error in the form of intent or negligence.

According to Pompe, as quoted by Martiman Projohamidjojo, the elements of *toerekenbaarheid* (accountability) are:

- a. The ability to think (*psychis*) in the maker allows the maker to control his mind and determine his will.
- b. And therefore, can understand the meaning and consequences of his actions.
- c. And because of that, the maker determines his will according to his opinion (about meaning and consequences).

Criminal liability according to customary criminal law can be seen from the actions and who must be held responsible. If someone commits a customary offense, in customary criminal law not only can the individual perpetrator be held responsible but also his family or relatives or traditional head. Meanwhile, from the purpose of punishment, positive criminal law can be found in the theory of punishment. The theories in question are absolute/absolute theory, relative/*nesbi* theory and combined theory (*verenigings orient theory*).

According to the absolute theory, every crime must be followed by a sentence, it cannot be done without bargaining, someone will be punished because they have committed a crime. It cannot be seen any consequences that might arise from the imposition of a crime, regardless of whether society might be harmed. Absolute theory is relevant to the retributive position, as stated by H.L. Packer, namely that humans are true moral agents, and it is criminal if they make wrong choices. It is only right for violators to be made to suffer for their mistakes. The aim of punishment is to cause suffering to

---

<sup>19</sup> Kayus Kayowuan Lewoleba and Muhammad Helmi Fahrozi, "Studi Faktor-Faktor Terjadinya Tindak Kekerasan Seksual Pada Anak-Anak," *Esensi Hukum* 2, no. 1 (July 27, 2020): 27–48, <https://doi.org/10.35586/esensihukum.v2i1.20>.

those who deserve to suffer and the aim of criminal law is to provide an acceptable basis within a social framework for the implementation of the crime. So, the retributive stance views a criminal who pays his debt to our society as feeling satisfied if the criminal gets what he deserves and dissatisfied if what he gets is too light.

According to the relative/relative theory, a crime does not absolutely have to be followed by a crime. For this reason, it is not enough to have punishment, but the benefits of a crime must also be questioned for society or for the criminal himself. Not only looking at the past, but also the future, so there must be a further goal than just imposing a crime. Therefore, this theory is called goal theory (*doel theorien*). In relative theory, we not only look at efforts to impose criminals, but also to improve the criminal so that he becomes a good person who no longer commits crimes. Meanwhile, the combined theory emerged as an attempt to try to handle the conflict between absolute theory and relative theory regarding the purpose of punishment. From these theories, it can be revealed that the essence of the purpose of punishment is, among other things, retaliation and prevention, which are organizationally aimed at creating order by paying attention to ethical values in society.<sup>20</sup>

The Indonesian legal system not only recognizes laws established by the government as valid positive law, but also recognizes the existence of customary law as mandated in Article 18 B paragraph (2) of the 1945 Indonesian Constitution. Apart from that, there is also the principle of *ius curia novit* in the judicial system which states that The judge may not reject a case submitted to him, on the grounds that there is no governing law.

Customary criminal law sees that the essence of crime is to repair individual losses and social losses caused by criminal acts. Customary sanctions are a reflection of socio-cultural values that show the concept of thinking with the direction and goals to be achieved. In the concept of customary law, customary reactions to violations are not intended to cause physical suffering. Customary sanctions are mostly intended to restore balance to the cosmos resulting from customary violations. In the traditional view, there is no view that customary provisions must be accompanied by the use of coercion. What

---

<sup>20</sup> Rachmad, Amdani, and Ulya, "Kontradiksi Pengaturan Hukuman Pelaku Pelecehan Seksual Terhadap Anak Di Aceh."

is called a mistake, namely customary law, is not a punishment. More than that, customary efforts function to restore steps that are outside the orderly lines of the cosmos in order to avoid disrupting the order of the cosmos.<sup>21</sup>

Since its inception, customary efforts are seen as the use of power to implement the provisions in the life guidelines called customs. But in essence, this is not coercion by using force. Traditional efforts are efforts to bring back a disturbed balance and are not a punishment, not a measure that is calculated to work for the individual concerned. In essence, punishment according to customary criminal law is given to restore balance to the cosmos caused by violations of custom. A comparison between sanctions for rape against children in positive criminal law and customary law can be seen in the following table:

Comparison of Criminal Sanctions for Sexual Violence Against Children between Positive Criminal Law and Customary Criminal Law

No	Comparison	Law	Customary Law
1	Law	Article 287 Indonesian Criminal Law Article 81 of the Indonesian Child Protection Law	customary laws of each region
2	Criminal sanctions	the maximum sentence is 9 years, and the maximum sentence is 15 years	There is no uniformity in imposing sanctions on perpetrators of sexual violence against children, only generally sanctions/corporal punishment or fines are applied
3	Criminal liability	Elements of unlawfulness and elements of error	transfer of criminal responsibility to the family
4	Criminal purposes	Revenge Deterrence Community protection Behavior improvement	Restore balance to the cosmos caused by violations of customs

<sup>21</sup> Heru Santoso, "Perlindungan Hukum Bagi Anak Korban Pelecehan Seksual," *Kajian Hukum Dan Keadilan* 1, no. 1 (2021): 14–21, <https://ejournal.unitomo.ac.id/index.php/hukum/article/view/2186/1010>.

Positive criminal law has a different criminal purpose from customary criminal law, the purpose of punishment in positive criminal law is in the form of retaliation, deterrence, protection of society and correction of the perpetrator. Meanwhile, according to customary criminal law, the aim of punishment is how to restore balance to the cosmos caused by a violation of custom. Traditional efforts function to restore steps that are outside the orderly lines of the cosmos in order to avoid disrupting the order of the cosmos. Efforts to create customs appear as the use of power to implement the provisions of the life guidelines called customs. In essence, customary efforts to bring back a disturbed balance.<sup>22</sup>

Imposing sanctions according to customary criminal law can be done by first looking at the form of the crime. For crimes of sexual violence against children which are offenses contained in the Criminal Code and child protection laws, according to customary law, these offenses can be resolved first according to positive criminal law by proceeding in court, after being sentenced by a judge with imprisonment, then According to customary law for the offense of sexual violence, a prison sentence (*gevangenisstraf*) is not enough, because society has not been cleansed of the mental dirt caused by the act.<sup>23</sup> So according to customary law, after a district court imposes a sentence in the form of imprisonment, the perpetrator of sexual violence must be given corporal punishment or a fine to be paid to the state treasury in the place where the perpetrator of sexual violence is located. This means that customary law can be imposed in addition to the sanctions imposed by the judge in court.<sup>24</sup>

The imposition of a criminal sentence on an offender not only serves as a consequence of their actions but also stems from the state's regulation of prohibited activities, which are met with criminal sanctions for violators. These legal sanctions are designed to deter perpetrators and provide a sense of justice to victims. Throughout history, efforts to prevent crime have often relied on instilling fear. This approach led to the development of harsh criminal sanctions in ancient criminal law, often carried out

---

<sup>22</sup> Tavipah, "The Punishment of Violence against Children Is Reviewed from the Perspective of the Purpose of Punishment."

<sup>23</sup> Rizkiani, "Analisis Perlindungan Hukum Dalam Tindak Pidana Kekerasan Seksual Terhadap Anak Di Indonesia."

<sup>24</sup> Lilik Mulyadi, "Upaya Hukum Yang Dilakukan Korban Kejahatan Dikaji Dari Perspektif Sistem Peradilan Pidana Dalam Putusan Mahkamah Agung RI," *Jurnal Hukum Dan Peradilan* 1, no. 1 (2012): 1–34, [https://scholar.google.com/citations?view\\_op=view\\_citation&hl=id&user=XNBHQosAAAAJ&cstart=20&pagesize=80&citation\\_for\\_view=XNBHQosAAAAJ:4OULZ7Gr8RgC](https://scholar.google.com/citations?view_op=view_citation&hl=id&user=XNBHQosAAAAJ&cstart=20&pagesize=80&citation_for_view=XNBHQosAAAAJ:4OULZ7Gr8RgC).

publicly to serve as a warning to the broader community. The concept of threatening or frightening individuals as a preventive measure was further explored by Paul Johann Anselm von Feuerbach (1775-1833) in his theory of psychological coercion. Feuerbach's theory emphasizes deterrence not solely through punishment but also through criminal threats outlined in legislation, clearly defining crimes and the corresponding punishments as a means of prevention.<sup>25</sup>

There exists a significant correlation between community engagement and the behavioral attitudes of law enforcement officers during the law enforcement procedure. Community participation involves the active involvement of individuals in reporting criminal activities that have taken place, embodying a participatory approach. Public reporting serves as a valuable tool for law enforcement officers, enabling them to proactively address criminal incidents. Challenges within the law enforcement process can stem from two primary factors: the lack of public reports (underreported), which can impede the efficacy of law enforcement efforts, and incomplete resolutions of public reports (unsolved) by law enforcement officials, leading to public skepticism towards the law enforcement process.<sup>26</sup>

## CONCLUSION

Imposing sanctions on criminals aims to deter crime, including sexual offenses against children, in accordance with existing laws. The punishment should be appropriate to achieve justice in society, neither excessive nor insufficient. Islamic criminal law emphasizes justice in imposing sanctions, considering societal norms and customs. Legal reforms should focus on criminal sanctions and prevention of crimes, particularly sexual offenses against children, with consideration of customary laws. Customary criminal law in Indonesia emphasizes prevention and community wisdom, providing a basis for future reforms in addressing sexual crimes against children. Further research is needed to enhance legal provisions and handling of such crimes.

---

<sup>25</sup> Nanci Yosepin Simbolon et al., "Tinjauan Kriminologi Mengenai Ketimpangan Relasi Kuasa Dan Relasi Gender Dalam Kasus Kekerasan Seksual," *Jurnal Pengabdian Kepada Masyarakat Maju UDA Universitas Darma Agung Medan* 3, no. 3 (2022): 1–10, [https://scholar.google.com/citations?view\\_op=view\\_citation&hl=id&user=VhrJ8NkAAAAJ&cstart=20&pagesize=80&citation\\_for\\_view=VhrJ8NkAAAAJ:0EnyYjriUFMC](https://scholar.google.com/citations?view_op=view_citation&hl=id&user=VhrJ8NkAAAAJ&cstart=20&pagesize=80&citation_for_view=VhrJ8NkAAAAJ:0EnyYjriUFMC).

<sup>26</sup> UNICEF, *Preventing and Responding to Violence Against Children and Adolescents Theory of Change* (New York: United Nations Children's Fund (UNICEF), 2017).

The enforcement of serious crimes, while justified by law, requires additional support through more effective measures to achieve the intended objectives of punishment. A comprehensive approach is essential, involving the enhancement of the education system, instilling human values from an early age, empowering communities to recognize and report instances of violence, and providing rehabilitation for perpetrators of child violence. These efforts aim to ensure holistic protection for children and prevent future acts of violence. Research findings on violence against children in Indonesia not only enhance understanding of the issue but also serve as a foundation for actionable steps to enhance child protection and welfare in the country.

## BIBLIOGRAPHY

- Archita, Diaz Anugrianti, Muchtar Syamsuddin, and Azisa Nur. "The Concept Of Imposing Criminal Sanctions For Perpetrators Of Child Sexual Violence: The Deterrent Effect." *European Journal of Law and Political Sciences*, no. 3 (2019): 14–19. <https://doi.org/10.29013/EJLPS-19-3-14-19>.
- Bellia, Sharne, Debra Jackson, Marie Hutchinson, and Leah East. "Registered Nurses' Understanding, Knowledge and Perceptions of The Association Between Sexually Transmitted Infections and Domestic Violence." *Collegian* 27, no. 5 (October 2020): 561–66. <https://doi.org/10.1016/j.colegn.2020.01.003>.
- Conte, Jon R, Steven Wolf, and Tim Smith. "What Sexual Offenders Tell Us About Prevention Strategies." *Child Abuse & Neglect* 13, no. 2 (January 1989): 293–301. [https://doi.org/10.1016/0145-2134\(89\)90016-1](https://doi.org/10.1016/0145-2134(89)90016-1).
- Dahlia, Sitti, Sartiah Yusran, and Ramadhan Tosepu. "Analisis Faktor Penyebab Perilaku Pelecehan Seksual Terhadap Anak Di Bawah Umur Di Kecamatan Angata Kabupaten Konawe Selata ." *Jurnal Nursing Update* 13, no. 3 (2022): 169–79. <https://stikes-nhm.e-journal.id/NU/article/download/840/819>.
- Doyle, Jessica Leigh. "Experiences of Intimate Partner Violence: The Role of Psychological, Economic, Physical and Sexual Violence." *Women's Studies International Forum* 80 (May 2020): 102370. <https://doi.org/10.1016/j.wsif.2020.102370>.
- Elliott, Michele, Kevin Browne, and Jennifer Kilcoyne. "Child Sexual Abuse Prevention: What Offenders Tell Us." *Child Abuse & Neglect* 19, no. 5 (May 1995): 579–94. [https://doi.org/10.1016/0145-2134\(95\)00017-3](https://doi.org/10.1016/0145-2134(95)00017-3).

- Featherstone, Lisa. *Sexual Violence in Australia, 1970s–1980s. World Histories of Crime, Culture and Violence*. Cham: Springer International Publishing, 2021. <https://doi.org/10.1007/978-3-030-73310-0>.
- Guggisberg, Marika. “Sexually Explicit Video Games and Online Pornography – The Promotion of Sexual Violence: A Critical Commentary.” *Aggression and Violent Behavior* 53 (July 2020): 101432. <https://doi.org/10.1016/j.avb.2020.101432>.
- Hadi, Sutrisno. *Metodologi Research*. Yogyakarta: Penerbit Fakultas Psikologi UGM, 1982.
- Kayowuan Lewoleba, Kayus, and Muhammad Helmi Fahrozi. “Studi Faktor-Faktor Terjadinya Tindak Kekerasan Seksual Pada Anak-Anak.” *Esensi Hukum* 2, no. 1 (July 27, 2020): 27–48. <https://doi.org/10.35586/esensihukum.v2i1.20>.
- Mahardika, Agus Rai, Anak Agung Sagung Laksmi Dewi, and I Made Minggu Widyantara. “Sanksi Pidana Bagi Pelaku Tindak Pidana Pedofilia Terhadap Anak.” *Jurnal Konstruksi Hukum* 1, no. 1 (August 27, 2020): 19–25. <https://doi.org/10.22225/jkh.1.1.2124.19-25>.
- Mulyadi, Lilik. “Upaya Hukum Yang Dilakukan Korban Kejahatan Dikaji Dari Perspektif Sistem Peradilan Pidana Dalam Putusan Mahkamah Agung RI.” *Jurnal Hukum Dan Peradilan* 1, no. 1 (2012): 1–34. [https://scholar.google.com/citations?view\\_op=view\\_citation&hl=id&user=XNBHQosAAAAJ&cstart=20&pagesize=80&citation\\_for\\_view=XNBHQosAAAAJ:40ULZ7Gr8RgC](https://scholar.google.com/citations?view_op=view_citation&hl=id&user=XNBHQosAAAAJ&cstart=20&pagesize=80&citation_for_view=XNBHQosAAAAJ:40ULZ7Gr8RgC).
- Rachmad, Andi, Yusi Amdani, and Zaki Ulya. “Kontradiksi Pengaturan Hukuman Pelaku Pelecehan Seksual Terhadap Anak Di Aceh.” *Jurnal Hukum Dan Peradilan* 10, no. 2 (July 31, 2021): 315–36. <https://doi.org/10.25216/jhp.10.2.2021.315-336>.
- Regehr, Cheryl, Kaitlyn Regehr, and Arija Birze. “Traumatic Residue, Mediated Remembering and Video Evidence of Sexual Violence: A Case Study.” *International Journal of Law and Psychiatry* 81 (March 2022): 101778. <https://doi.org/10.1016/j.ijlp.2022.101778>.
- Rizkiani, Nabila. “Analisis Perlindungan Hukum Dalam Tindak Pidana Kekerasan Seksual Terhadap Anak Di Indonesia.” *Journal Bevinging* 1, no. 4 (2023): 1–9. <https://www.journal.uniba.ac.id/index.php/JB/article/view/842>.
- Santoso, Heru. “Perlindungan Hukum Bagi Anak Korban Pelecehan Seksual.” *Kajian Hukum Dan Keadilan* 1, no. 1 (2021): 14–21. <https://ejournal.unitomo.ac.id/index.php/hukum/article/view/2186/1010>.
- Simbolon, Nanci Yosepin, Ria Sintha Devi, Alusianto Hamonangan, and Muhammad Yasid. “Tinjauan Kriminologi Mengenai Ketimpangan Relasi Kuasa Dan Relasi Gender Dalam Kasus Kekerasan Seksual.” *Jurnal Pengabdian Kepada Masyarakat*

Maju UDA Universitas Darma Agung Medan 3, no. 3 (2022): 1–10. [https://scholar.google.com/citations?view\\_op=view\\_citation&hl=id&user=VhrJ8NkAAAAJ&cstart=20&pagesize=80&citation\\_for\\_view=VhrJ8NkAAAAJ:0EnyYjrIUfMC](https://scholar.google.com/citations?view_op=view_citation&hl=id&user=VhrJ8NkAAAAJ&cstart=20&pagesize=80&citation_for_view=VhrJ8NkAAAAJ:0EnyYjrIUfMC).

Subekti, Hartiwiningsih, and I Gusti Ayu Ketut Rachmi Handayani. “The Urgency of Recovery for Child Performers of Crime of Sexual Violence .” *Baltic Journal of Laws and Politic* 15, no. 3 (2022): 147–60. <https://versita.com/manuscript/index.php/Versita/article/view/648/748>.

Susila, Jaka. “Monodualistik Penanganan Tindak Pidana Pelecehan Seksual Perspektif Pembaharuan Hukum Acara Pidana Indonesia.” *Al-Ahkam Jurnal Ilmu Syari’ah Dan Hukum* 4, no. 2 (December 31, 2019): 180–93. <https://doi.org/10.22515/al-ahkam.v4i2.1795>.

Tavipah, Yani Brilyani. “The Punishment of Violence against Children Is Reviewed from the Perspective of the Purpose of Punishment.” *LEGAL BRIEF* 13, no. 1 (2024): 70–78. <https://doi.org/https://doi.org/10.35335/legal.v13i1.924>.

UNICEF. *Preventing and Responding to Violence Against Children and Adolescents Theory of Change*. New York: United Nations Children’s Fund (UNICEF), 2017.

Wahyuni, Fitri, Aris Irawan, and Siti Rahmah. “The Legal Protection For Children Of Sexual Violence Victims In Indragirii Hilir Regency.” *International Journal of Educational Research & Social Sciences* 2, no. 2 (April 30, 2021): 322–27. <https://doi.org/10.51601/ijersc.v2i2.46>.

Wismayanti, Yanuar Farida, Patrick O’Leary, Clare Tilbury, and Yenny Tjoe. “Child Sexual Abuse in Indonesia: A Systematic Review of Literature, Law and Policy.” *Child Abuse & Neglect* 95 (September 2019): 104034. <https://doi.org/10.1016/j.chiabu.2019.104034>.





**Jurnal Kanun FH Unsyiah** . <kanun.jih@usk.ac.id>

kepada saya ▾



Terjemahkan ke Indonesia



Salam Hormat,

Apakah paper dengan judul diatas sudah di publish di tempat lain?

Apabila tidak, apakah masih berminat kami teruskan untuk tahap selanjutnya?

Silakan menghubungi kami secepatnya di 085266222081

Terima kasih

← Balas

→ Teruskan



[Kanun] CRIMINAL SANCTIONS FOR PEOPLE OF SEXUAL CRIMES AGAINST CHILDREN ACCORDING TO POSITIVE CRIMINAL LAW AND TRADITION ▶ Kotak Masuk

**Universitas Islam Indragiri Fitri wahyuni**  
CRIMINAL SANCTIONS FOR PEOPLE OF SEXUAL CRIMES AGAINST CHILDREN ACCORDING TO POSITIVE CRIMINAL LAW AND TRADITIONAL CRIMINAL Fitri Wahyuni1, Aris Irawan2, Riana Sab, 20 Jul, 17:09

**Universitas Islam Indragiri Fitri wahyuni** kepada Universitas, saya ✉️ Sab, 20 Jul, 17:06 ★ 😊 ↩️

Satu lampiran • Dipindai dengan Gmail



↩️ Balas ↩️ Balas ke semua ➡️ Teruskan 😊

[Kanun] CRIMINAL SANCTIONS FOR PEOPLE OF SEXUAL CRIMES AGAINST CHILDREN ACCORDING TO POSITIVE CRIMINAL LAW AND TRADITION Kotak Masuk

**Universitas Islam Indragiri Fitri wahyuni**  
CRIMINAL SANCTIONS FOR PEOPLE OF SEXUAL CRIMES AGAINST CHILDREN ACCORDING TO POSITIVE CRIMINAL LAW AND TRADITIONAL CRIMINAL Fitri Wahyuni1, Aris Irawan2, Riana

**Universitas Islam Indragiri Fitri wahyuni** [ejurnal@iisak.ac.id](mailto:ejurnal@iisak.ac.id)  
kepada Universitas, saya



Sab, 20 Jul, 17:06

Satu lampiran • Dipindai dengan Gmail



Balas Balas ke semua Teruskan

## Submission

Authors	Fitri Wahyuni, Aris Irawan, Riana Kesuma Ayu
Title	PUNISHMENT FOR INDIVIDUALS COMMITTING SEXUAL CRIMES AGAINST CHILDREN: A COMPARATIVE ANALYSIS OF POSITIVE AND TRADITIONAL CRIMINAL LAW IN INDONESIA
Original file	20906-65207-1-SM.DOC 2021-04-27
Supp. files	None
Submitter	Universitas Islam Indragiri fitri wahyuni 
Date submitted	April 27, 2021 - 10:08 AM
Section	Articles
Editor	Mahfud Jufri 
Author comments	assalamualaikum wr.wb. berikut saya kirimkan manuskrip jurnal saya di jurnal Kanun
Abstract Views	0

## Status

Status	Published Vol. 26, No. 1, April 2024: Islam and Human Rights: National and Global Perspective
Initiated	2024-08-05
Last modified	2024-08-06

## Submission Metadata

### Authors

Name	Fitri Wahyuni 
Affiliation	Universitas Islam Indragiri
Country	Indonesia
Bio Statement	Fakultas Hukum Universitas Islam Indragiri
Principal contact for editorial correspondence.	
Name	Aris Irawan 
Affiliation	University of Borneo Tarakan
Country	Indonesia
Bio Statement	—
Name	Riana Kesuma Ayu 
Affiliation	Sultan Adam of Law School
Country	Indonesia
Bio Statement	—

### Title and Abstract

Title	PUNISHMENT FOR INDIVIDUALS COMMITTING SEXUAL CRIMES AGAINST CHILDREN: A COMPARATIVE ANALYSIS OF POSITIVE AND TRADITIONAL CRIMINAL LAW IN INDONESIA
Abstract	The current punishment for sexual crimes against children, limited to imprisonment, is deemed ineffective in deterring perpetrators. This article delves into this issue through the lens of positive and customary criminal law. Employing a doctrinal method and drawing from various legal sources, the article reveals that the existing punishment under the Indonesian Criminal Code and Child Protection Laws fails to significantly reduce the incidence of such crimes. As a potential solution, traditional law

EDITORIAL TEAM

REVIEWERS

FOCUS AND SCOPE

PUBLICATION ETHICS

AUTHOR GUIDELINE

PEER REVIEW PROCESS

ONLINE SUBMISSION

OPEN ACCESS STATEMENT

LICENSING TERMS

PLAGIARISM POLICY

ARCHIVING POLICY

JOURNAL TEMPLATE



TOOL



INDEX IN





E-ISSN : 2527-8428

# KANUN | JURNAL ILMU HUKUM

[HOME](#) [ABOUT](#) [USER HOME](#) [CATEGORIES](#) [SEARCH](#) [CURRENT](#) [ARCHIVES](#) [ANNOUNCEMENTS](#) [CALL FOR ARTICLES](#)

Home > User > Author > Submissions > #20906 > Review

## #20906 Review

[SUMMARY](#) [REVIEW](#) [EDITING](#)

### Submission

Authors Fitri Wahyuni, Aris Irawan, Riana Kesuma Ayu

Title PUNISHMENT FOR INDIVIDUALS COMMITTING SEXUAL CRIMES AGAINST CHILDREN: A COMPARATIVE ANALYSIS OF POSITIVE AND TRADITIONAL CRIMINAL LAW IN INDONESIA

Section Articles

Editor Mahfud Jufri

### Peer Review

#### Round 1

Review Version 20906-65208-1-RV.DOC 2021-04-27

Initiated 2023-12-12

Last modified 2024-07-14

Uploaded file Reviewer A 20906-122459-1-RV.DOC 2023-12-14  
Reviewer B 20906-122460-1-RV.DOC 2023-12-14

### Editor Decision

Decision Accept Submission 2024-08-04

Notify Editor Editor/Author Email Record 2024-08-04

Editor Version 20906-139100-1-ED.DOCX 2024-08-04

Author Version 20906-122537-1-ED.DOCX 2023-12-15 [DELETE](#)  
20906-122537-2-ED.DOCX 2024-07-21 [DELETE](#)  
20906-122537-3-ED.DOCX 2024-07-21 [DELETE](#)

Upload Author Version  No file chosen

#### USER

You are logged in as...  
**1016058601**

- » My Journals
- » My Profile
- » Log Out

#### EDITORIAL TEAM

#### REVIEWERS

#### FOCUS AND SCOPE

#### PUBLICATION ETHICS

#### AUTHOR GUIDELINE

#### PEER REVIEW PROCESS

#### ONLINE SUBMISSION

#### OPEN ACCESS STATEMENT

#### LICENSING TERMS

#### PLAGIARISM POLICY

#### ARCHIVING POLICY

#### JOURNAL TEMPLATE



Home > User > Author > Submissions > #20906 > **Editing**

# #20906 Editing

- SUMMARY
- REVIEW
- EDITING**

## Submission

Authors Fitri Wahyuni, Aris Irawan, Riana Kesuma Ayu

Title PUNISHMENT FOR INDIVIDUALS COMMITTING SEXUAL CRIMES AGAINST CHILDREN: A COMPARATIVE ANALYSIS OF POSITIVE AND TRADITIONAL CRIMINAL LAW IN INDONESIA

Section Articles

Editor Mahfud Jufri

## Copyediting

COPYEDIT INSTRUCTIONS

REVIEW METADATA	REQUEST	UNDERWAY	COMPLETE
1. Initial Copyedit File: None	—	—	—
2. Author Copyedit File: None <input type="button" value="Choose File"/> No file chosen <input type="button" value="Upload"/>	—	—	
3. Final Copyedit File: None	—	—	—

Copyedit Comments No Comments

## Layout

Galley Format	FILE	
1. PDF VIEW PROOF	20906-139304-1-PB.PDF	2024-08-06 0
Supplementary Files	FILE	None

Layout Comments No Comments

## Proofreading

REVIEW METADATA

### USER

You are logged in as...  
**1016058601**  
 » My Journals  
 » My Profile  
 » Log Out

### EDITORIAL TEAM

### REVIEWERS

### FOCUS AND SCOPE

### PUBLICATION ETHICS

### AUTHOR GUIDELINE

### PEER REVIEW PROCESS

### ONLINE SUBMISSION

### OPEN ACCESS STATEMENT

### LICENSING TERMS

### PLAGIARISM POLICY

### ARCHIVING POLICY

### JOURNAL TEMPLATE



### TOOL



## #20906 Summary

[SUMMARY](#) [REVIEW](#) [EDITING](#)

### Submission

Authors	Fitri Wahyuni, Aris Irawan, Riana Kesuma Ayu
Title	PUNISHMENT FOR INDIVIDUALS COMMITTING SEXUAL CRIMES AGAINST CHILDREN: A COMPARATIVE ANALYSIS OF POSITIVE AND TRADITIONAL CRIMINAL LAW IN INDONESIA
Original file	20906-65207-1-SM.DOC 2021-04-27
Supp. files	None
Submitter	Universitas Islam Indragiri fitri wahyuni
Date submitted	April 27, 2021 - 10:08 AM
Section	Articles
Editor	Mahfud Jufri
Author comments	assalamualaikum wr.wb. berikut saya kirimkan manuskrip jurnal saya di jurnal Kanun
Abstract Views	0

### Status

Status	Published Vol. 26, No. 1, April 2024: Islam and Human Rights: National and Global Perspective
Initiated	2024-08-05
Last modified	2024-09-06

### Submission Metadata

#### Authors

Name	Fitri Wahyuni
Affiliation	Universitas Islam Indragiri
Country	Indonesia
Bio Statement	Fakultas Hukum Universitas Islam Indragiri Principal contact for editorial correspondence.
Name	Aris Irawan
Affiliation	University of Borneo Tarakan
Country	Indonesia
Bio Statement	—
Name	Riana Kesuma Ayu
Affiliation	Sultan Adam of Law School
Country	Indonesia
Bio Statement	—

#### Title and Abstract

Title	PUNISHMENT FOR INDIVIDUALS COMMITTING SEXUAL CRIMES AGAINST CHILDREN: A COMPARATIVE ANALYSIS OF POSITIVE AND TRADITIONAL CRIMINAL LAW IN INDONESIA
-------	--

You are logged in as...

1016058601

- » My Journals
- » My Profile
- » Log Out

[EDITORIAL TEAM](#)

[REVIEWERS](#)

[FOCUS AND SCOPE](#)

[PUBLICATION ETHICS](#)

[AUTHOR GUIDELINE](#)

[PEER REVIEW PROCESS](#)

[ONLINE SUBMISSION](#)

[OPEN ACCESS STATEMENT](#)

[LICENSING TERMS](#)

[PLAGIARISM POLICY](#)

[ARCHIVING POLICY](#)

[JOURNAL TEMPLATE](#)



[TOOL](#)



[INDEX IN](#)



## Title and Abstract

Title PUNISHMENT FOR INDIVIDUALS COMMITTING SEXUAL CRIMES AGAINST CHILDREN: A COMPARATIVE ANALYSIS OF POSITIVE AND TRADITIONAL CRIMINAL LAW IN INDONESIA

Abstract The current punishment for sexual crimes against children, limited to imprisonment, is deemed ineffective in deterring perpetrators. This article delves into this issue through the lens of positive and customary criminal law. Employing a doctrinal method and drawing from various legal sources, the article reveals that the existing punishment under the Indonesian Criminal Code and Child Protection Laws fails to significantly reduce the incidence of such crimes. As a potential solution, traditional law could serve as supplementary punishment, involving corporal punishment or fines payable to the state treasury. This suggests that customary law could complement judicial sanctions. However, the implementation of such additional measures warrants evaluation to address other environmental factors that may contribute to these crimes.

## Indexing

Academic discipline and sub-disciplines —  
Keywords Criminal Sanctions; Sexual Violence; Criminal Law; Customary Law  
Language en

## Supporting Agencies

Agencies —

## References

References Archita, Diaz Anugrianti, Muchtar Syamsuddin, and Azisa Nur. "The Concept Of Imposing Criminal Sanctions For Perpetrators Of Child Sexual Violence: The Deterrent Effect." *European Journal of Law and Political Sciences*, no. 3 (2019): 14–19. <https://doi.org/10.29013/EJLPS-19-3-14-19>.

Bellia, Sharne, Debra Jackson, Marie Hutchinson, and Leah East. "Registered Nurses' Understanding, Knowledge and Perceptions of The Association Between Sexually Transmitted Infections and Domestic Violence." *Collegian* 27, no. 5 (October 2020): 561–66. <https://doi.org/10.1016/j.colegn.2020.01.003>.

Conte, Jon R, Steven Wolf, and Tim Smith. "What Sexual Offenders Tell Us About Prevention Strategies." *Child Abuse & Neglect* 13, no. 2 (January 1989): 293–301. [https://doi.org/10.1016/0145-2134\(89\)90016-1](https://doi.org/10.1016/0145-2134(89)90016-1).

Dahlia, Sitti, Sartiah Yusran, and Ramadhan Tosepu. "Analisis Faktor Penyebab Perilaku Pelecehan Seksual Terhadap Anak Di Bawah Umur Di Kecamatan Angata Kabupaten Konawe Selata ." *Jurnal Nursing Update* 13, no. 3 (2022): 169–79. <https://stikes-nhm.e-journal.id/NU/article/download/840/819>.

Doyle, Jessica Leigh. "Experiences of Intimate Partner Violence: The Role of Psychological, Economic, Physical and Sexual Violence." *Women's Studies International Forum* 80 (May 2020): 102370. <https://doi.org/10.1016/j.wsif.2020.102370>.

Elliott, Michele, Kevin Browne, and Jennifer Kilcoyne. "Child Sexual Abuse Prevention: What Offenders Tell Us." *Child Abuse & Neglect* 19, no. 5 (May 1995): 579–94. [https://doi.org/10.1016/0145-2134\(95\)00017-3](https://doi.org/10.1016/0145-2134(95)00017-3).

Featherstone, Lisa. *Sexual Violence in Australia, 1970s–1980s. World Histories of Crime, Culture and Violence*. Cham: Springer International Publishing, 2021. <https://doi.org/10.1007/978-3-030-73310-0>.

Guggisberg, Marika. "Sexually Explicit Video Games and Online Pornography – The Promotion of Sexual Violence: A Critical Commentary." *Aggression and Violent Behavior* 53 (July 2020): 101432. <https://doi.org/10.1016/j.avb.2020.101432>.

## INDEX IN



## ASSOCIATED WITH



Pages 886 933  
Online 2  
Vis. today 37



# KANUN

## JURNAL ILMU HUKUM

HOME ABOUT LOGIN REGISTER CATEGORIES SEARCH CURRENT ARCHIVES ANNOUNCEMENTS CALL FOR ARTICLES

Home > Vol. 26, No. 1, April 2024: Islam and Human Rights: National and Global Perspective > **Wahyuni**

Download this PDF file

1 dari 16

Perbesaran Otomatis

***PUNISHMENT FOR INDIVIDUALS COMMITTING SEXUAL CRIMES AGAINST CHILDREN: A COMPARATIVE ANALYSIS OF POSITIVE AND TRADITIONAL CRIMINAL LAW IN INDONESIA***

Fitri Wahyuni<sup>1</sup>, Aris Irawan<sup>2</sup>, Riana Kesuma Ayu<sup>3</sup>  
1 Faculty of Law, Master of Laws, Islamic University of Indragiri Riau  
2 Faculty of Law, Master of Laws, University of Borneo Tarakan, North Kalimantan.  
3 Master of Laws, Sultan Adam of Law School, Banjarmasin  
✉ [corresponding email: fw160586@gmail.com](mailto:fw160586@gmail.com)

Submitted: 27/04/2023; Accepted: 12/12/2023; Revision: 15/12/2023;  
Approved: 30/04/2024

DOI: <https://doi.org/10.24815/kanun.v26i1.20906>

**ABSTRACT**

The current punishment for sexual crimes against children, limited to imprisonment, is deemed ineffective in deterring perpetrators. This article delves into this issue through the lens of positive and customary criminal law. Employing a doctrinal method and drawing from various legal sources, the article reveals that the existing punishment under the Indonesian Criminal Code and Child Protection Laws fails to significantly reduce the incidence of such crimes. As a potential solution, traditional law could serve as supplementary punishment, involving corporal punishment or fines payable to the state treasury. This suggests that customary law could complement judicial sanctions. However, the implementation of such additional measures warrants evaluation to address other environmental factors that may contribute to these crimes.

**Keyword:** Criminal Sanctions; Sexual Violence; Criminal Law; Customary Law

**INTRODUCTION**

### USER

Username

Password

Remember me

**EDITORIAL TEAM**

**REVIEWERS**

**FOCUS AND SCOPE**

**PUBLICATION ETHICS**

**AUTHOR GUIDELINE**

**PEER REVIEW PROCESS**

**ONLINE SUBMISSION**

**OPEN ACCESS STATEMENT**

**LICENSING TERMS**

**PLAGIARISM POLICY**

**ARCHIVING POLICY**

**JOURNAL TEMPLATE**





P-ISSN : 0824-3499  
E-ISSN : 2527-8428

# KANUN | JURNAL ILMU HUKUM

HOME ABOUT LOGIN REGISTER CATEGORIES SEARCH CURRENT ARCHIVES ANNOUNCEMENTS CALL FOR ARTICLES

Home > Vol. 26, No. 1, April 2024: Islam and Human Rights: National and Global Perspective > **Wahyuni**

Download this PDF file



## RESEARCH METHOD

The type and nature of the research This research uses normative law research, i.e. data research that has the object of the study of the law or rule of law. Normative research is carried out with the intention to give legal argumentation as the basis of determining whether an event is right or wrong and how good the event is according to the law. While this research is descriptive analytical in the sense of providing a picture accompanied by an explanation systematically, factual and accurate.<sup>9</sup>

## RESEARCH OUTCOME AND DISCUSSION

### 1. Purpose of punishment

Mediation as an act of a criminal can normally be justified not because it has positive consequences for the victim, victim and society. If a person is guilty of a criminal offence, he or she may be guiltless in the past and/ or in the future. If he/she is guiltful in the last time, the purpose of the penalty is to repay him or her, but the purpose is to repair his or her conduct. According to H.L. Packer, there are two conceptual views that each have different moral implications for each other: the retributive and the utilitarian.<sup>10</sup>

The retributive view assumes remuneration as a negative reward for deviant behaviour so that this view sees remunerating only as a redress for the mistakes committed on the basis of their respective moral responsibilities. This view is said to be looking

<sup>9</sup> Agus Rai Mahardika, Anak Agung Sagung Laksmi Dewi, and I Made Minggu Widyastara, "Sanksi Pidana Bagi Pelaku Tindak Pidana Pedofilia Terhadap Anak," *Jurnal Konstruksi Hukum* 1, no. 1 (August 27, 2020): 19–25, <https://doi.org/10.22225/kh.v1i1.1134-19-25>.

## USER

Username

Password

Remember me

## EDITORIAL TEAM

## REVIEWERS

## FOCUS AND SCOPE

## PUBLICATION ETHICS

## AUTHOR GUIDELINE

## PEER REVIEW PROCESS

## ONLINE SUBMISSION

## OPEN ACCESS STATEMENT

## LICENSING TERMS

## PLAGIARISM POLICY

## ARCHIVING POLICY

## JOURNAL TEMPLATE





P-ISSN : 0034-3433  
E-ISSN : 2527-8428

# KANUN | JURNAL ILMU HUKUM

HOME ABOUT LOGIN REGISTER CATEGORIES SEARCH CURRENT ARCHIVES ANNOUNCEMENTS CALL FOR ARTICLES

Home > Vol. 25, No. 1, April 2024: Islam and Human Rights: National and Global Perspective > **Wahyuni**

[Download this PDF file](#)

11 dari 16 Perbesaran Otomatis

essence, punishment according to customary criminal law is given to restore balance to the cosmos caused by violations of custom. A comparison between sanctions for rape against children in positive criminal law and customary law can be seen in the following table:

Comparison of Criminal Sanctions for Sexual Violence Against Children between Positive Criminal Law and Customary Criminal Law

No	Comparison	Law	Customary Law
1	Law	Article 287 Indonesian Criminal Law Article 81 of the Indonesian Child Protection Law	customary laws of each region
2	Criminal sanctions	the maximum sentence is 9 years, and the maximum sentence is 15 years	There is no uniformity in imposing sanctions on perpetrators of sexual violence against children, only generally sanctions/corporal punishment or fines are applied
3	Criminal liability	Elements of unlawfulness and elements of error	transfer of criminal responsibility to the family
4	Criminal purposes	Revenge Deterrence Community protection Behavior improvement	Restore balance to the cosmos caused by violations of customs

## USER

Username

Password

Remember me

[Login](#)

## EDITORIAL TEAM

## REVIEWERS

## FOCUS AND SCOPE

## PUBLICATION ETHICS

## AUTHOR GUIDELINE

## PEER REVIEW PROCESS

## ONLINE SUBMISSION

## OPEN ACCESS STATEMENT

## LICENSING TERMS

## PLAGIARISM POLICY

## ARCHIVING POLICY

## JOURNAL TEMPLATE



Download this PDF file

14 dari 16

future acts of violence. Research findings on violence against children in Indonesia not only enhance understanding of the issue but also serve as a foundation for actionable steps to enhance child protection and welfare in the country.

**BIBLIOGRAPHY**

Archita, Diaz Anugrianti, Mochtar Syamsuddin, and Azisa Nur. "The Concept Of Imposing Criminal Sanctions For Perpetrators Of Child Sexual Violence: The Deterrent Effect." *European Journal of Law and Political Sciences*, no. 3 (2019): 14-19. <https://doi.org/10.29013/EJLPS-19-3-14-19>.

Bellia, Sharne, Debra Jackson, Marie Hutchinson, and Leah East. "Registered Nurses' Understanding, Knowledge and Perceptions of The Association Between Sexually Transmitted Infections and Domestic Violence." *Collegian* 27, no. 5 (October 2020): 561-66. <https://doi.org/10.1016/j.collegn.2020.01.003>.

Corse, Jon R, Steven Wolf, and Tim Smith. "What Sexual Offenders Tell Us About Prevention Strategies." *Child Abuse & Neglect* 13, no. 2 (January 1989): 293-301. [https://doi.org/10.1016/0145-2134\(89\)90016-1](https://doi.org/10.1016/0145-2134(89)90016-1).

Dahlia, Sitti, Sartiah Yusran, and Ramadhan Tosepu. "Analisis Faktor Penyebab Perilaku Pelecehan Seksual Terhadap Anak Di Bawah Umur Di Kecamatan Angata Kabupaten Konawe Selatan." *Jurnal Nursing Update* 13, no. 3 (2022): 169-79. <https://stikes-nhm-e-journal.id/NU/article/download/840/819>.

Doyle, Jessica Leigh. "Experiences of Intimate Partner Violence: The Role of Psychological, Economic, Physical and Sexual Violence." *Women's Studies International Forum* 83 (May 2020): 102370. <https://doi.org/10.1016/j.wsif.2020.102370>.

Elliott, Michele, Kevin Browne, and Jennifer Killoyne. "Child Sexual Abuse Prevention: What Offenders Tell Us." *Child Abuse & Neglect* 19, no. 5 (May 1995): 579-94.

**USER**

Username:

Password:

Remember me

**EDITORIAL TEAM**

**REVIEWERS**

**FOCUS AND SCOPE**

**PUBLICATION ETHICS**

**AUTHOR GUIDELINE**

**PEER REVIEW PROCESS**

**ONLINE SUBMISSION**

**OPEN ACCESS STATEMENT**

**LICENSING TERMS**

**PLAGIARISM POLICY**

**ARCHIVING POLICY**

**JOURNAL TEMPLATE**



Hi ☰

***CRIMINAL SANCTIONS FOR PEOPLE OF SEXUAL CRIMES AGAINST CHILDREN ACCORDING TO POSITIVE CRIMINAL LAW AND TRADITIONAL CRIMINAL***



lenovo226092023...

The title should be changed to be more focused

Fitri Wahyuni<sup>1</sup>, Aris Irawan<sup>2</sup>, Riana Kusuma Ayu<sup>3</sup>

<sup>1</sup> Faculty of Law, Master of Laws, Islamic University of Indragiri Jl Subrantas Number 10 Indragiri Hilir Riau

<sup>2</sup> Faculty of Law, Master of Laws, University of Borneo Tarakan, North Kalimantan. Jalan, Amal Lama Number 1, East Tarakan, 77123, North Kalimantan

<sup>3</sup> Master of Laws, Sultan Adam of law school, Banjarmasin

✉ fw160586@gmail.com

Submitted: 00/00/000; Accepted: 00/00/0000; Revision: 00/00/0000; Approved: 00/00/0000

DOI: <https://doi.org/10.24815/kanun.v00i0.00000>

**ABSTRACT**

Sexual crimes against children are a crime that often occurs in everyday people's lives. Therefore, these crimes must be given sanctions that have a deterrent effect so that these crimes can be minimized. However, in reality, the sanction for sexual crimes against

position of conventional criminal law in the sanctioning of perpetrators of sexual abuse against children in positive penal law.

### RESEARCH METHOD

The type and nature of the research This research uses normative law research, i.e. data research that has the object of the study of the law or rule of law. Normative research is carried out with the intention to give legal argumentation as the basis of determining whether an event is right or wrong and how good the event is according to the law. While this research is descriptive analytical in the sense of providing a picture accompanied by an explanation systematically, factual and accurate.



lenovo226092023...

describe the method correctly

### RESEARCH OUTCOME AND DISCUSSION

#### 1. Purpose of punishment of perpetrators of crimes in accordance with positive criminal law and customary criminal law

Mediation as an act of a criminal can normally be justified not because it has positive consequences for the victim, victim and society. If a person is guilty of a criminal offence, he or she may be guiltless in the past and/ or in the future. If he/she is guilty in the last time, the purpose of the penalty is to repay him or her, but the purpose is to repair his or her conduct. According to H.L. Packer, there are two conceptual views that each have different moral implications for each other: the

## CONCLUSION

The aim of providing sanctions for perpetrators of crimes is to prevent people from committing crimes, including the prevention of sexual crimes against children in actual law as well as prevention that is in line with the laws that exist in society. If

Kanun: Jurnal Ilmu Hukum. Fakultas Hukum Universitas Sylah Kuala, Banda Aceh. 23111. ISSN: 0854-5499 | e-ISSN: 2527-8482. Open access: <http://www.jurnal.usk.ac.id/kanun>

sanctions are imposed, the amount of the punishment must be such that it is sufficient to realize the goal, namely a sense of justice in society, it cannot be less or more than the required limit, and in this way there is a principle of justice in imposing punishment. Criminal law as a source of law in Islamic law has provided the basics of justice in imposing criminal sanctions, including witnesses to customary crimes in society so that the concept of justice in society should be a reference in providing sanctions for perpetrators of crimes, especially sexual crimes against children. In legal reform related to the provisions of criminal sanctions as well as the prevention and handling of crimes,



lenovo226092023...

The conclusion needs to be explained again

- Lankford, A. (2021). A sexual frustration theory of aggression, violence, and crime. *Journal of Criminal Justice*, 101865.
- Regehr, C., Regehr, K., & Birze, A. (2022). Traumatic residue, mediated remembering and video evidence of sexual violence: A case study. *International Journal of Law and Psychiatry*, 101778. doi:<https://doi.org/10.1016/j.IJLP.2022.101778>
- Wahyuni, F., Irawan, A., & Rahmah, S. (2021). The Legal Protection For Children Of Sexual Violence Victims In Indragiri Hilir Regency. *International Journal of Educational Research and Social Sciences (IJERSC)*, 322-327. doi:<https://doi.org/10.51601/IJERSC.V2I2.46>
- Wismayanti, Y. F., O'Leary, P., Tilbury, C., & Tjoe, Y. (2019). Child sexual abuse in Indonesia: A systematic review of literature, law and policy. *Child Abuse & Neglect*, 104034. doi:<https://doi.org/10.1016/j.chiabu.2019.104034>



lenovo226092023...

add the reference





P-ISSN : 0854-5499

E-ISSN : 2527-8428

# KANUN | JURNAL ILMU HUKUM

[HOME](#) [ABOUT](#) [LOGIN](#) [REGISTER](#) [CATEGORIES](#) [SEARCH](#) [CURRENT](#) [ARCHIVES](#) [ANNOUNCEMENTS](#) [CALL FOR ARTICLES](#)

Home > Vol. 26, No. 1, April 2024: Islam and Human Rights: National and Global Perspective > **Wahyuni**

## PUNISHMENT FOR INDIVIDUALS COMMITTING SEXUAL CRIMES AGAINST CHILDREN: A COMPARATIVE ANALYSIS OF POSITIVE AND TRADITIONAL CRIMINAL LAW IN INDONESIA

*Fitri Wahyuni, Aris Irawan, Riana Kesuma Ayu*

### Abstract

The current punishment for sexual crimes against children, limited to imprisonment, is deemed ineffective in deterring perpetrators. This article delves into this issue through the lens of positive and customary criminal law. Employing a doctrinal method and drawing from various legal sources, the article reveals that the existing punishment under the Indonesian Criminal Code and Child Protection Laws fails to significantly reduce the incidence of such crimes. As a potential solution, traditional law could serve as supplementary punishment, involving corporal punishment or fines payable to the state treasury. This suggests that customary law could complement judicial sanctions. However, the implementation of such additional measures warrants evaluation to address other environmental factors that may contribute to these crimes.

### Keywords

Criminal Sanctions; Sexual Violence; Criminal Law; Customary Law

### Full Text:

PDF

### References

Wahyuni, Fitri. "Punishment for Sexual Crimes Against Children: A Comparative Analysis of Positive and Traditional Criminal Law in Indonesia." *Kanun: Jurnal Ilmu Hukum*, vol. 26, no. 1, April 2024, pp. 1-15.

### USER

Username

Password

Remember me

### EDITORIAL TEAM

### REVIEWERS

### FOCUS AND SCOPE

### PUBLICATION ETHICS

### AUTHOR GUIDELINE

### PEER REVIEW PROCESS

### ONLINE SUBMISSION

### OPEN ACCESS STATEMENT

### LICENSING TERMS

### PLAGIARISM POLICY

### ARCHIVING POLICY

### JOURNAL TEMPLATE

