

**STATE LEGAL PROTECTION AGAINST CHILD SEXUAL ABUSE
AFTER PUNISHMENT AND A COMPRATIVE APPROACH**

THESIS



Arranged by:

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INTERNATIONAL PROGRAM UNDERGRADUATE PROGRAM

FACULTY OF LAW

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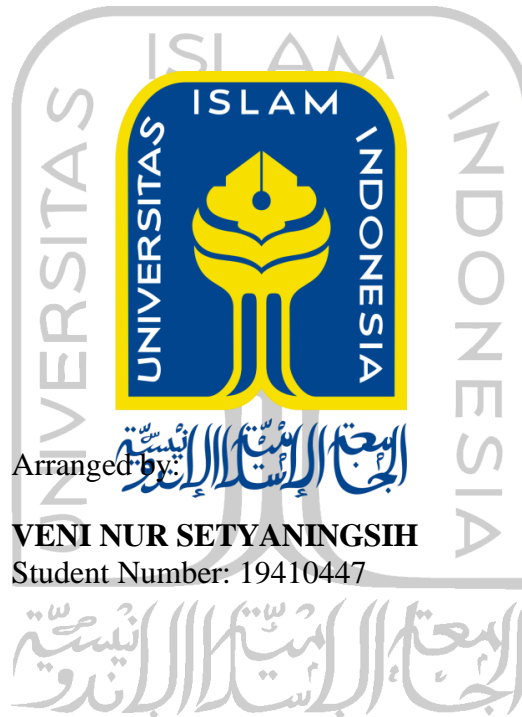
**STATE LEGAL PROTECTION AGAINST CHILD SEXUAL ABUSE
AFTER PUNISHMENT AND A COMPRATIVE APPROACH**

THESIS

Presented as the Partial Fulfillment of the Requirements to Obtain

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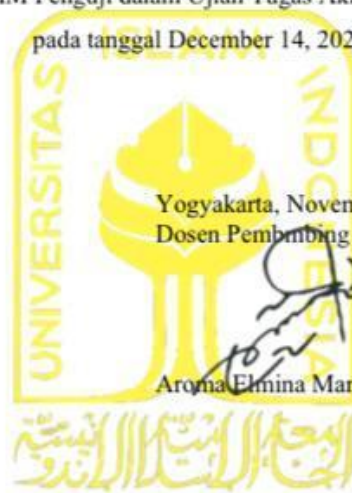
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**STATE LEGAL PROTECTION AGAINST CHILD SEXUAL ABUSE
AFTER PUNISHMENT AND A COMPARATIVE APPROACH**

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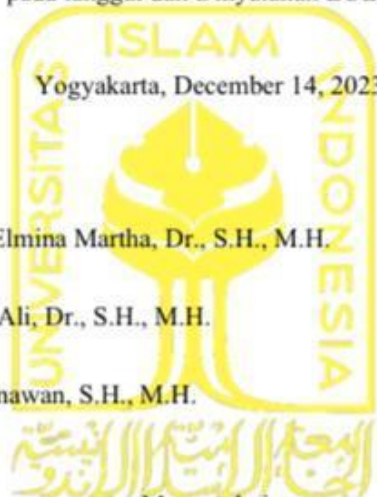
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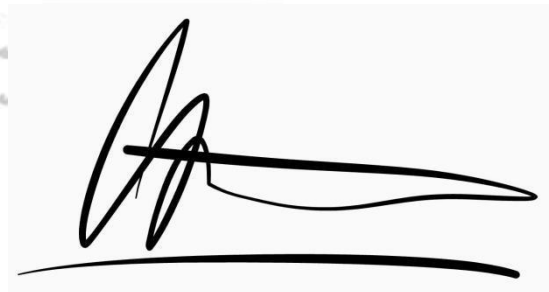
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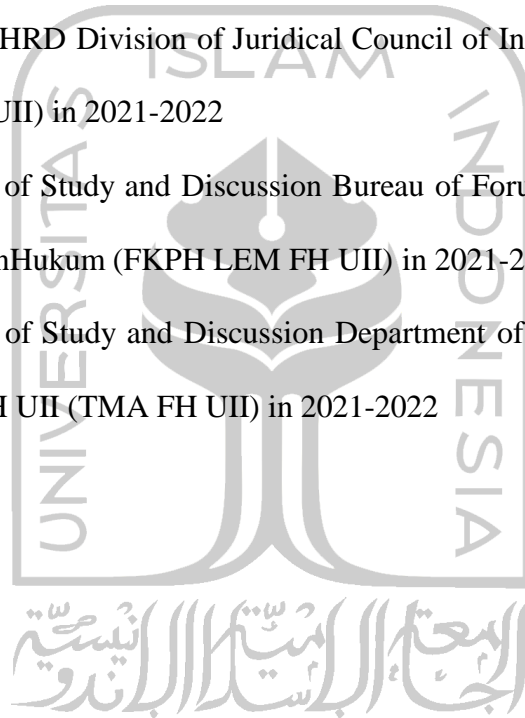


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MOTTO

“Tidak Penting Motto-mottoan yang Penting Cuma Senyum Ibu”

(Anwarul Muarif)

DEDICATION

This thesis is dedicated wholeheartedly to:

Allah Subhanallahu wa ta'ala,

Thanks to Allah SWT who always gives me strength, health and broad knowledge which made it possible to complete my thesis;

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Finally, the author realized that there are still a lot of things that need to be improved. Hopefully, this thesis can be useful for anyone who reads this.

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Yogyakarta, November 17th, 2023

Author,

Veni Nur Setyaningsih

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ABSTRACT

The phenomenon of sexual abuse against children is like mushrooms in the rainy season, sexual abuse against children is one of the serious problems and requires strong legal protection throughout the world. Legal protection of children is very important because children are a vulnerable group and need special protection to maintain their rights and welfare. Child sexual abuse can have serious long-term impacts on victims. This research uses empirical data, namely Interviews will contain how government agencies handle child sexual abusers after serving their sentences in Indonesia and South Korea. This research provides recommendations to the authorities to pay more attention to the handling of perpetrators of child sexual abuse cases. For example, enforcing the law such as being more assertive in sanctioning perpetrators of child sexual abuse and providing psychologist rehabilitation for perpetrators. Because the government is an institution that is also responsible for educating children.

Keywords: Child Protection, Handling of perpetrators, Sexual Violence.

CHAPTER I

INTRODUCTION

A. Background of Study

The development of various types of crime is a social reality that must be faced by today's society. Social reality that society must face today, that the problem of crime is unavoidable and will always exist. Crime becomes a disturbance to the welfare of society and the environment. In a book It is written that crime is an abstract conception, where crime cannot be felt or seen except for its consequences.¹

The phenomenon of child sexual abuse is like mushrooms in the rainy season, child sexual abuse is one of the serious problems and requires strong legal protection throughout the world. Legal protection of children is very important because children are a vulnerable group and need special protection in order to safeguard their rights and welfare. Child sexual abuse can have serious long-term impacts on victims. The impacts include psychological trauma, emotional disturbances, mental damage, behavioral disorders, social relationship disorders, and physical disorders. With adequate legal protection, there can be early

¹ Muladi and Barda Nawawi, *Criminal theories and policies*, Bandung, Alumni, 1998, p. 2.

intervention, rehabilitation, and appropriate recovery for victims of child sexual abuse.²

Indonesia and South Korea have significant child sexual abuse problems. According to a report by the Indonesian Child Protection Commission, cases of sexual violence against children in Indonesia have increased significantly from year to year. Meanwhile in South Korea, cases of child sexual abuse have also become a serious problem and attracted the attention of the government and society in the country. In Indonesia, stigma and discomfort in reporting cases of child sexual abuse remain a major challenge, while in South Korea, conservative views on sexual issues can be an obstacle in providing protection and handling cases of child sexual abuse.³

There are several factors that can contribute to child sexual abuse. However, it is important to remember that each case of child sexual abuse is unique and complex, and the factors that influence it can vary. Below are some factors that are commonly associated with child sexual abuse:

1. Power imbalance: Child sexual abuse often involves an imbalance of power between the perpetrator and the victim.

² Indonesian Child Protection Commission. (2019). *Laporan Tahunan Komisi Perlindungan Anak Indonesia* [Annual Report of Indonesian Child Protection Commission]. Jakarta: Komisi Perlindungan Anak Indonesia.

³ Yoo, J. Y., & Lee, H. J. (2019). A Comparative Study on Legal Provisions for the Protection of Children against Sexual Violence in Korea and Indonesia. *Journal of Korean Law*, Vol. 18, No. 1, tahun , p. 103-126.

Perpetrators often use the power, authority, or influence they have over the victim to coerce, manipulate, or threaten to keep the victim from resisting or reporting the abuse.

2. Gender inequality: In some cases, child sexual abuse is linked to gender stereotypes and gender inequality. Factors such as gender roles associated with dominant masculinity, misperceptions of sexuality, or inequality in relationships can exacerbate the risk of child sexual abuse.

3. Unsafe environment: Unsafe environments, including family, school or community environments that do not protect or attend to children's needs and safety, can increase the risk of child sexual abuse.

4. Psychiatric disorders or psychological problems: Some child sexual abusers have psychiatric or psychological problems, such as personality disorders, impulse control disorders, or lack of empathy. This can affect their ability to control their behavior and respect children's boundaries.

5. Lack of education and awareness: Lack of adequate education on children's rights, sexuality, sexual violence, and child protection can increase the risk of sexual violence. Lack of public awareness regarding these issues can also hinder effective reporting and intervention.

6. Poverty and social inequality: Poverty and social inequality can exacerbate the risk of child sexual abuse. Poor families may face high economic pressures and lack access to education and resources, increasing children's vulnerability to exploitation and violence.

7. Technological developments and internet access: Technological developments, such as internet access and social media, have brought new challenges in terms of child sexual exploitation. Children can become victims of sexual violence through online activities, such as online extortion or sexual abuse that is digitally recorded and disseminated.

The number of victims of sexual violence in children is also increasing every year, as reported by data from the Ministry of Women's Empowerment and Child Protection (KemenPPPA), there were 797 children who were victims of sexual violence throughout January 2022. Compared to 2019, the number of children who were victims of sexual violence reached 6,454, then in 2020 it increased to 6,980 and then to 8,730 victims in 2021.⁴ This figure shows the high prevalence of sexual violence that still threatens children in this country. The data reveals that sexual violence against children is a serious problem that needs serious attention from the government, society, and various related parties.

⁴ Looks on

<https://dataindonesia.id/varia/detail/sebanyak-21241-anak-indonesia-jadi-korban-kekerasan-pada-2022> Diakses pada tanggal 05 Juni 2023

The high number of victims of sexual violence indicates that there are still vulnerabilities that need to be addressed in the child protection system in Indonesia.

Child sexual violence has a long-term impact that is physically, emotionally, and psychologically damaging to victims. In addition, sexual violence also violates children's basic rights, including the right to life, safety, and protection from all forms of violence. In the context of the criminal justice system, Indonesia and South Korea have differences in the process of investigating and prosecuting cases of sexual violence against children. In Indonesia, the investigation process is still often criticized for not being professional and transparent, while in South Korea, the criminal justice system is considered more effective in handling cases of sexual violence against children. Based on these differences, a comparison of the legal treatment of perpetrators of child sexual abuse between Indonesia and South Korea can provide a more comprehensive picture of the challenges and efforts made by each country in protecting children from sexual violence and provide recommendations for improving the handling of cases of child sexual abuse in the future.

The legal treatment of child sexual abuse in Indonesia is regulated by various laws and regulations that aim to protect children and punish perpetrators of sexual abuse, among others:

Law No. 35/2014 on Child Protection: This law establishes the rights of children and provides legal protection for children, including children who are victims of sexual violence. This law regulates protection, prevention, rehabilitation, and criminal sanctions against child sexual abuse.

Law No. 23/2002 on Child Protection: This law regulates child protection in general, including protection against sexual violence. This law provides a legal basis for efforts to protect, care for, restore, and fulfill children's rights. Criminal Code (Kitab Undang-Undang Hukum Pidana): The Criminal Code is the basic law governing criminal offenses in Indonesia. Several articles in the Criminal Code relate to sexual violence, including sexual violence against children. For example, Article 81 on rape, Article 289 on sexual abuse, and Article 292 on child pornography. However, despite the existence of laws governing legal protection against child sexual abuse in Indonesia, implementation and law enforcement still face challenges. Some of the factors that affect the effective implementation of these laws include low public awareness, lack of access to justice for victims, and limited resources. In practice, efforts need to be made to raise public awareness, strengthen the law enforcement system, and improve mechanisms to protect child victims of sexual violence. This includes strengthening cooperation between relevant institutions,

increasing the capacity of law enforcement officers, providing assistance for victims, and easier access to health and rehabilitation services.

Similar to Indonesia, the legal treatment of child sexual abuse in South Korea is regulated by various laws and regulations that aim to protect children and punish perpetrators of sexual abuse, among others:

1. **Sexual Violence Prevention and Countermeasures Act:** This is the primary law governing sexual violence in South Korea. It protects children from sexual violence and provides a comprehensive legal framework for prevention, education, law enforcement, and victim protection.

2. **Child Protection Act:** This act provides for the general protection of children in South Korea, including protection against sexual violence. It provides a legal basis for the protection, rehabilitation, and recovery of victims of sexual violence.

3. **South Korean Penal Code:** The South Korean Penal Code contains various articles that regulate acts of sexual violence, including sexual violence against children. For example, Article 297 covers rape, Article 298 covers sexual abuse, and Article 300 covers forced sexual intercourse with a minor.

4. **Justice System:** South Korea has a judicial system that processes child sexual abuse cases. The judicial process

involves investigation by the police, prosecution by the prosecutor, and trial in court. During this process, victims are given the right to give testimony, protection, and psychological support.

5. Victim Protection Measures: The South Korean government also provides various protection measures for victims of sexual violence, including the provision of safe shelter facilities, access to medical services, psychological support, and legal assistance.

It is important to note that the implementation and enforcement of laws in the treatment of child sexual abuse in South Korea can also face challenges, such as lack of public awareness, stigmatization, and limited resources. Therefore, there are ongoing efforts by the government and various relevant parties to raise awareness, strengthen law enforcement, and improve access to protection services for victims of child sexual abuse in South Korea.

Therefore, the author is moved to compare the legal treatment of perpetrators of child sexual abuse between Indonesia and South Korea because it can provide a better understanding of the challenges and efforts to protect children from sexual violence in the two countries. This dispute can provide information on the different legal contexts, cultures, and criminal justice systems that affect the handling of child sexual abuse cases.

By comparing how the two countries handle child sexual abuse cases, we can identify weaknesses and strengths in their systems. This can provide useful information in developing more effective policies in protecting children from sexual violence and improving the criminal justice system in handling child sexual abuse cases. Thus, a comparison of the legal treatment of perpetrators of child sexual abuse between Indonesia and South Korea can help raise public and government awareness of the issue of child sexual abuse and contribute to creating a safer and more secure world for children.

For this reason, the author chose South Korea as a country to compare the handling of child sexual abuse with Indonesia for several reasons:

1. Significant rates of child sexual abuse in both countries: Both countries have high rates of child sexual abuse. Therefore, a comparison between Indonesia and South Korea in terms of handling child sexual abuse cases can provide useful information about the challenges and efforts to protect children from sexual violence.

2. Different social, cultural and legal conditions: Although Indonesia and South Korea have different social, cultural and legal contexts, they have similarities in addressing the issue of child sexual abuse. Therefore, a comparison between the two

countries can provide useful information on different ways to address this issue.

3. Innovations in addressing child sexual abuse:

South Korea is known as one of the countries that developed innovative programs to address child sexual abuse, such as the tracking bracelet program for perpetrators of child sexual abuse. Therefore, a comparison between Indonesia and South Korea in terms of innovations and best practices in handling cases of sexual violence against children can provide useful information in improving the handling of these cases in Indonesia.

Thus, a comparison of the legal treatment of sexual violence against children between Indonesia and South Korea can provide a more comprehensive picture of the challenges and efforts to protect children from sexual violence in both countries and can help increase awareness and efforts to protect children from sexual violence in both countries.

Based on the description above, the author is interested in examining the problem of the prevalence of sexual violence against children and comparing it with South Korea with the title "**STATE LEGAL PROTECTION AGAINST CHILD SEXUAL ABUSE AFTER PUNISHMENT AND A COMPRATIVE APPROACH**".

B. Problem Formulation

This research questions will formulate as follows:

1. How is the state legal treatment of child sexual abuse after sentencing in Indonesia and South Korea?
2. How The state legal protection should perpetrators of child sexual abuse be handled after serving their punishment in Indonesia when referring to South Korea?

C. Research Objectives

The result of this research will achieve including:

1. To find out How Indonesian and South Korean legal regulations related to sexual violence against children.
2. To find out How The state legal protection should perpetrators of child sexual abuse be handled after serving their punishment in Indonesia when referring to South Korea?

D. Research Originality

Comparison of This Research with Previous Research

No	PREVIOUS RESEARCH	EQUALITY	DIFFERENCE
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	(Name and Title)		
1.	Roy Syahputra (2018) “PENANGGULANGAN TERHADAP TINDAKAN KEKERASAN SEKSUAL PADA ANAK DITINJAU DARI UNDANG-UNDANG PERLINDUNGAN ANAK”	In general, this research is to find out what causes the high rate of sexual violence against children in Indonesia and how to deal with sexual violence against minors based on child protection laws.	1. This research examines how to overcome sexual violence against children. 2. My research is how to overcome the perpetrators of child sexual abuse cases after serving a sentence.
2.	Afra Fathimah (2022) “Penanganan kekerasan seksual terhadap anak yang berujung damai“	In general, this research is to find out how the handling and resolution of sexual violence cases that ended in peace.	1. This research examines why in this case the perpetrator and victim chose the peaceful route. 2. My research is how to overcome the perpetrators of child sexual abuse cases after serving a sentence.

3.	Cindrawati Umar(2021) “TINJAUAN HUKUM PIDANA DALAM PENERAPAN HUKUMAN TAMBAHAN KEBIRI KIMIA BAGI PELAKU KEKERASAN SEKSUAL TERHADAP ANAK BERDASARKAN PASAL 81 UU NO.17 TAHUN 2016”	In general, this research is to find out how are the Criminal Sanctions for Perpetrators of Sexual Violence Against Children Based on Law Number 17 Year 2016 and how is the Application of Additional Criminal Punishment of Chemical Castration in Indonesia.	1. This research examines why how important chemical castration is for child sexual abusers 2. My research is how to overcome the perpetrators of child sexual abuse cases after serving a sentence.
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E. Literatur Review

1. Overview of Sexual Violence Against Children

Children (plural:Children) are boys or girls who are immature or have not reached puberty. A child is also a second descendant, the word “child” refers to the opposite of a parent, and an adult is a child of a parent even though he or she is an adult. According to psychology, children are currently in a stage of development from infancy until they are 5 years old or 6 years old. This period is usually called the preschool period, after which it develops on a par with the elementary years.⁵

Violence means persecution, torture, or ill-treatment. According to WHO (in Bagong S et al., 2000), violence is the use of physical strength and power, threats or actions against oneself, individuals or groups of people, or society which results in or is likely to result in bruising/trauma, death, psychological disorders, developmental disabilities or deprivation of rights.⁶

2. Criminology Theory

Criminology is a science that studies crime from various aspects. The name criminology was invented by P.Topinard (1830-1911) a French anthropologist. Criminology consists of two syllables, which literally comes from the word "crimen" which means crime or

⁵ <https://kbbi.kemdikbud.go.id/entri/anak>, accessed on 3 May 2022, 15:06

⁶ hathit Manon, et.al, *Op.Cit*, page. 15

criminals and "logical" which means "crime". means crime or
criminal and "logos" which means science,

then criminology can be interpreted as the science of crime or criminals criminal.⁷

The scope of the discussion of criminology includes three points, namely:

a. The process of making criminal law and criminal procedure (making laws).⁸

b. Criminal etiology, which discusses the theories that cause crime (breaking of laws). the occurrence of crime (breaking of laws).

c. Reaction to violations of the law (reacting toward the breaking of laws), the reaction in this case is not only aimed at lawbreakers in the form of repressive measures but also to lawbreakers in the form of repressive measures but also reaction to "potential" lawbreakers in the form of efforts to prevent crime (criminal prevention)"

The object of study of criminology in its broadest sense includes three parts, namely:⁹

a. Crime, criminals, and those involved in a criminal case, i.e. police, prosecutors, judges, and victims. process, namely the police, prosecutors, judges, and victims.

b. The causes of crime. Criminologists agree that the causes of crime are part of criminology. The birth of criminology is due to the human

⁷ Topo Santoso dan Eva Achjani Zulfa, Kriminologi, (Jakarta: PT Raja Grafindo Persada, 2001), hlm. 9

⁸ A.S Alam, Pengantar Kriminologi, (Makassar : Pustaka Refleksi Books, 2010), hlm. 2

⁹ Frans Maramis, Hukum Pidana Umum dan Tertulis di Indonesia, (Jakarta: PT RajaGrafindo Persada, 2012), hlm. 28-29

desire to find out the causes of crime to find out the causes of crime.

c. Penology literally means the science of punishment. Penology is the study of the history, forms, and benefits of human reactions to crime or social reactions. benefits of human reactions to crime or social reactions society's reaction to crime.

Regarding the crime of rape, in the provisions of Article 285 of the Criminal Code which juridically regulates the crime of rape, there are elements that must be fulfilled, one of which is the presence of violence. must be fulfilled, one of which is the presence of violence. The element of violence violence is an element that distinguishes rape from other crimes of other crimes of decency regulated in the Criminal Code. Unlike the case with from a juridical perspective, from a criminological perspective the benchmark is consent, not violence, is the main issue. The element of consent that determines and qualifies an act as rape.¹⁰

According to Steven Box and J.E. Sahetapy, the definition of rape is criminologically based on the absence of consent from the victim. criminology is based on the absence of consent from the victim. Criminology is known for the existence of several theories that can be used to discuss and analyze problems related to with crime/delinquency.

1. Rehabilitation Treatment Theory

¹⁰ Made Darma Weda, Kriminologi, (Jakarta: Raja Grafindo Persada, 1996), hlm.70

Rehabilitation Treatment Theory is a theoretical framework used to design effective rehabilitation interventions and programs for individuals with physical, mental, or social impairments. The theory focuses on restoring and restoring individuals' functioning and helping them achieve optimal independence in daily life. The main goal of rehabilitation treatment theory is to help individuals overcome the barriers associated with their condition and facilitate the recovery process.¹¹ The rehabilitation approach involves the use of diverse strategies and techniques to promote adaptation, learning, and positive behavior change.

Some of the core principles of rehabilitation treatment theory include:

1. Holistic recovery: Treating the individual as a whole by taking into account the physical, mental, and social aspects of the rehabilitation process.
2. Collaboration: Encourages active participation of the individual in the planning and implementation of rehabilitation treatment. Building strong relationships between individuals, families, and healthcare providers.
3. Individualization: Tailoring the rehabilitation program according to the unique needs of each individual, taking into account their preferences, goals, and abilities.

¹¹ Adi Sujatno, Pencerahan Dibalik Penjara dari Sangkar Menuju Sanggar Untuk Menjadi Manusia Mandiri, Teraju, Jakarta, 2008, hlm. 123

4. Evidence-based approach: Using research and best practices supported by scientific evidence in designing effective rehabilitation interventions.
5. Focus on independence: Encourages individuals to achieve optimal independence in daily activities through skills training, environmental modifications, and appropriate support.
6. Monitoring and evaluation: Continuously monitor the individual's progress throughout the rehabilitation process and evaluate the effectiveness of the interventions.

Rehabilitation Treatment Theory of child sexual abusers focuses on the recovery and reintegration of the offender into society with the aim of preventing reoffending and protecting children from harm. Rehabilitation approaches in this context aim to change the behavior of sexual abusers, reduce the risk of re-offending, and promote offender responsibility and accountability for their actions.

The relationship between the theory of rehabilitation treatment and the legal treatment of the state against perpetrators of child sex abuse is to find out whether the policies that have been implemented by the state are appropriate and run properly or not, so that it can be an evaluation of the state in the future.

F. Operational Definition

An operational definition is a definition based on the observable characteristics of what is being defined.¹²

1. Child

A child is a person who is not yet an adult and has not reached the legal legitimacy limit age as a legal subject or as a subject of national law as determined by civil legislation.

2. Sexual Violence

Sexual violence is words or actions by a person to control or manipulate another person and make them engage in unwanted sexual activity.

G. Research Method

A. Type of Research

The research method used is the empirical method, a method that incorporates the use of empirical data sources to answer research questions. This method is often used in legal research and allows researchers to review and evaluate the applicable law and analyze its implementation in practice.

Basically, this research method uses empirical data but is supported by data obtained from legal materials, such as laws, regulations, court decisions, and other legal documents. Meanwhile,

¹² Jonathan Sarwono, *Quantitative & Qualitative Research Methods*, Graha Ilmu, Yogyakarta, 2006, p. 67.

empirical data is obtained from field observations, interviews, surveys, or statistical data related to the research topic.

The approach used in Indonesia is primary because it directly interviews law enforcement, while for South Korea it uses secondary data material because it only interviews lecturers who work in the field of sexual violence and conveys to prosecutors in South Korea and does not directly interview law enforcement in South Korea.

This method allows researchers to understand and analyze the applicable legal regulations and see how they are applied in practice. Empirical data also helps researchers to examine whether these regulations are effective in protecting children from sexual violence or not. Based on the explanation above, the author decided to use an empirical legal research method to research and write the discussion of this thesis as a legal research method.

H. Approach Method

There are several approaches to legal research. In this approach, the researcher obtains information from various aspects related to the problem being answered. The approach method in this research is :¹³

- Case Study: This method involves an in-depth study of a particular case or event that occurred in the field and is critically analyzed by

taking into account legal aspects and relevant empirical data.

- Survey: This method involves collecting data from respondents who are directly involved in handling cases of sexual violence against children in both Indonesia and South Korea.

¹³ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, Cetakan Kesembilan, Kencana, Jakarta, 2014, page., 137.

- Document Analysis: This method involves analyzing legal documents such as laws, policies and regulations relating to the handling of sexual violence against children in both Indonesia and South Korea.

- Interview: This method involves collecting data through interviews with informants who are experts in the legal, social and health fields related to handling sexual violence against children in Indonesia and South Korea.

A. Data Source

Information source

The sources of data processed in normative legal research are secondary data, i.e. document or library research by collecting and researching or discovering documents and literature that can provide the information or information needed by the researcher.

Secondary data sources in this study are divided into:

a. Primary Legal Materials, namely binding legal materials, consisting of:

- 1) the 1945 Constitution of the Republic of Indonesia;
- 2) Law Number 12 of 2022, Crime of Sexual Violence
- 3) Article 54 of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning child protection,

b. Secondary Legal Materials The definition of secondary legal materials is legal materials that provide an explanation of the

existing primary legal materials so that a more in-depth analysis and understanding can be carried out, consisting of:

- 1) Explanation of laws and regulations used as primary legal materials;
- 2) Literature books or readings related to the topic of writing;
- 3) Research results related to the topic of writing;
- 4) Opinion of competent experts with researchers;
- 5) Articles or writings of experts;
- 6) Electronic facilities that discuss problems

B. Data Collection Techniques

In research, there are three types of data collection tools, namely the study of documents or library materials, observations or observations, and interviews or interviews. Data collection techniques through library research, namely studying laws and regulations, with the other party is the need to express ideas, feelings, attitudes and questions.

C. Data Analysis Methods

The data obtained in this study were analyzed using qualitative methods, namely data analysis methods by grouping and selecting data obtained from field research according to their quality and correctness and then arranged systematically, which was then studied using deductive thinking methods connected with theories from literature study (secondary data), then conclusions are made

that are useful for answering the problem formulation in this study. The results of the analysis are presented descriptively, namely how to describe the actual situation in the field so that a description of the results of the research is obtained which is descriptive-qualitative in nature which will later obtain meaning and conclusions to answer the problem.

Chapter II

Literature review

A. An overview of children

1.1 Definition of children

Child (plural: children) is a boy or girl who is not yet an adult or has not yet experienced puberty. Marsaid quoted from Soedjono Dirjisisworo who stated that according to customary law, minors are those who have not yet determined concrete physical signs that they have matured.¹⁴ According to Law Number 13 of 2003 concerning Manpower, child is every person under the age of 18 (eighteen) years.¹⁵ If we look at Law No. 17 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection, said that child is someone who is not yet 18 (eighteen) years old, including children who are in the womb.¹⁶ In the Convention on the Rights of the Child, the definition of a child is:

“For the purpose of the present Convention, a child means every human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier.”

Every child needs to be protected, that's why there is a law regulate about child protection. Article 1 paragraph (2) of Law Number 35 of 2014 concerning Child Protection stipulates that

¹⁴ Marsaid, *Perlindungan Hukum Anak Pidana Dalam Perspektif Hukum Islam* (Maqasid Asy-Syari'ah), (Palembang: NoerFikri, 2015) page. 56-58.

¹⁵ Law No. 13 of 2003 concerning Manpower, page. 6

¹⁶ Law of the Republic of Indonesia No. 17 of 2016 concerning Establishment of Government Regulation in Substitute of Law No. 1 of 2016 concerning Second Amendment to Law No. 23 year 2002 concerning Child Protection into Law, page 4.

child protection is all activities to guarantee and protect children and their rights so that they can live, grow, and develop, and participate optimally in accordance with human dignity, and receive protection from violence and discrimination. Child protection can also be interpreted as all efforts aimed at preventing, rehabilitating, and empowering children who experience child abuse, exploitation, and neglect, in order to ensure the survival and growth and development of children fairly physically, mentally and socially.¹⁷

Here are some expert opinions about the definition of child protection:

a) According to Santy Dellyana, "Child protection is an effort to make oneself to provide protection for children so that they can carry out their rights and obligations in the future."¹⁸

b) J.E. Doek and H.M.A Drewes classify child protection into two parts, namely:¹⁹ In a broad sense, "Child protection law is all the rules of life that provide protection for individuals who have not yet reached adulthood and provide an obligation for them to be able to grow and develop." In a narrow sense, "Child protection law

¹⁷ Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dan Perempuan*, Bandung: Refika Aditama, 2014, page 4.

¹⁸ Santy Dellyana, *Wanita dan Anak di Mata Hukum*, Yogyakarta: Liberty, 1998, page.6.

¹⁹ Maulana Hasan Wadong, *Advokasi dan Hukum Perlindungan Anak*, Jakarta: Grasindo, 2000, page.41.

includes the law contained in the provisions of civil law, criminal law and procedural law.”

Regarding what legal protections are given to children by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, it can be seen in the article listed below:

1. Article 59 paragraphs (1) and (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states:

(1) The Government, Regional Government, and other state institutions are obliged and responsible to provide Special Protection to Children.

(2) Special Protection for Children as referred to in paragraph is given to:

- a. Children in emergency situations;
- b. Children in conflict with the law;
- c. Children from minority groups and isolated;
- d. Economically and/or sexually exploited children;
- e. Children who are victims of abuse of narcotics, alcohol, psychotropic, and other addictive substances;
- f. Children who are victims of pornography;
- g. Children with HIV/AIDS;
- h. Child victims of kidnapping, sale, and/or trafficking;

- i. child victims of physical and/or psychological violence;²⁰
2. Article 69A Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states: “Special Protection for Child victims of sexual crimes as referred to in Article 59 paragraph (2) letter j is carried out through efforts:
 - a. education about reproductive health, religious values, and moral values;
 - b. social rehabilitation;
 - c. psychosocial assistance from treatment to recovery; and
 - d. providing protection and assistance at every level of examination, from investigation, prosecution, to examination in court.”²¹

Sexual violence includes forcing sexual intercourse against people who live within the scope of the household (such as wives, children, and domestic workers). Furthermore, it is explained that sexual violence is any act in the form of forcing sexual relations, forcing sexual relations with other people for commercial purposes and or certain purposes. Sexual violence can be in the form of pre-sexual contact treatment between children and older people

²⁰ Law of the Republic of Indonesia No. 35 of 2014 concerning Amendment to Law No. 23 of 2002 concerning Child Protection, page 24-25.

²¹ *Ibid*, page 30.

(through words, touch, visual images, exhibitionism or direct sexual contact treatment between children and adults (incest, rape, sexual exploitation).²²

In Indonesia, sexual violence against children have a broad meaning. Sexual harassment is a term in society to describe an act of sexual violence, while in law the term sexual harassment is rarely used because it prefers to use the term sexual violence except in Law Number 9 of 1999 concerning Human Rights which mentions the term sexual harassment. Sexual harassment of children is included in a row of decency offenses, while the offense itself is an act that is prohibited by law, while decency is about goodcustoms in relationships between various members of the community but specifically regarding the gender (sexual) of a human being, morality is different from politeness because the term politeness generally refers to

²² Thathit Manon, et.al., *Op.Cit*, page. 19.

good habits and is not limited to gender (sexual). Decency offenses against children in the Criminal Code will be divided into 2, namely: ²³

a) Sexual Intercourse

This crime is contained in Book II Chapter XIV of the Criminal Code concerning Crimes Against Morals. This crime is defined as a criminal act related to sexuality that can be committed against men or women. Sexual intercourse is divided into several types, namely:

1) Sexual intercourse with coercion is regulated in Article 285 of the Criminal Code.

2) Sexual intercourse without coercion is regulated in 286 and 287 of the Criminal Code.

3) Sexual intercourse against children is regulated in Article 287 of the Criminal Code.

b) Obscenity Act

Obscenity is an act that leads to sexual acts or can be in the form of words and images that lead to sexual activity which is carried out to achieve self-satisfaction outside the marriage bond. Obscene acts on children can also be oriented to verbal and non-verbal sexual activities, such as holding someone's

²³ Indonesian Criminal Code.

genitals, invitations to have sex that the victim does not want and there is an element of coercion in it. Obscene acts on children are regulated in Articles 287, 288, 289, 290 and 291 of the Criminal Code.

Regarding the punishment for perpetrators of sexual violence against children according to Law Number 35 of 2014 concerning Child Protection is a minimum of 5 years and a maximum of 15 years in prison and a maximum fine of Rp.5,000,000,000.00 (five billion rupiah). While other punishments according to the Criminal Code articles 287 and 292 state that the maximum sentence for perpetrators of obscenity act of children is 9 years (article 287) and a maximum of 5 years (article 292).²⁴ The law on child protection as *lex specialis* provides a greater threat than what is regulated in the Criminal Code.

According to Russel's view in Yohannes Fery's book there are 3 (three) categories of sexual violence against children, namely:²⁵

- a) Very serious sexual violence. There are anal, oral and oral genitalsex.

²⁴ Indonesian Criminal Code.

²⁵ Yohannes Ferry, *Kekerasan Seksual Pada Anak Dan Remaja*, Jakarta, PT.Rajawali, 1997, page 2.

b) Serious sexual violence, namely by showing scenes of sexual intercourse in front of children, showing pornographic sites or

images to children, ordering children to hold the perpetrator's genitals with the aim of obtaining satisfaction, or other sexual activities but not yet reaching sexual relations such as very serious sexual violence.

c) Serious enough sexual violence, namely touching the child's sexuality (child privacy) or by forcibly removing the child's clothes.

Sexual violence against children itself is defined as an act of coercion to have sexual relations or other sexual activities, which are carried out by adults against children, with violence or not, which can occur in various places regardless of culture, race and strata of society. The victims can be boys or girls, but generally the victims are girls under 18 years old.²⁶

1.2 Right and obligation of children

Children's rights and responsibilities are the principles that govern the relationship between children and adults, especially parents and society at large. Here are some of the rights and duties that generally apply to children:²⁷

Children's Rights:

²⁶ N Katjasungkana, *Penyalahan Seksual Pada Anak*, Jakarta, Mitra Wacana, 2000, page

²⁷ Dellyana Shanty, *Wanita Dan Anak Di Mata Hukum*, Liberty, Yogyakarta, 2004,

a. Right to life: Every child has the right to protection against all forms of violence, neglect, or exploitation that endanger his or her life. Right to education: Every child has the right to quality, free and compulsory education at least up to primary level.

b. Right to health: Every child has the right to access to adequate health services to maintain their health.

c. Right to protection: Every child has the right to protection from all forms of discrimination, abuse, exploitation, and physical and psychological violence.

d. Right to participation: Every child has the right to express his/her opinion in all matters relating to him/her, and to be given the opportunity to participate in social, cultural and political activities.²⁸

Obligations of Children:²⁹

a. Duty to obey: Children have an obligation to abide by the rules and regulations established in the family, school and community.

b. Duty to learn: Children have an obligation to strive to learn seriously and respect teachers and adults who assist them in the education process.

²⁸ Bismar Siregar, *Aspek Hukum Perlindungan hak-Hak Anak: Suatu Tinjauan*, Rajawali Pers, Jakarta, 2005, hlm. 52.

²⁹ Nasikh Ulwan, *Pendidikan Anak dalam Islam Kaidah-Kaidah Dasar*, (Bandung: Remaja Rosdakarya), hlm 33.

c. Duty to health: Children have an obligation to take care of their own health by following a healthy diet, exercising and staying away from health-risk behaviors.

d. Obligation to respect adults: Children have an obligation to respect and obey their parents, teachers and other adults who are responsible for them.

e. Obligation to take responsibility: Children have an obligation to take responsibility for their own actions and behavior, and learn to make good and responsible decisions.

Children's rights and obligations may vary from country to country, depending on the laws and policies in place. It is important for communities and governments to ensure that children's rights are recognized and protected, while also providing guidance and educating children on their obligations as responsible members of society.

B.Overview of child sexual abuse

1.3 Definition of child sexual abuse

Sexual violence is a serious problem facing modern civilization today, because the act of sexual violence shows the malfunction of a norm in a person. The violation of a human right and (the perpetrator) which results in the violation of the human rights and interests of other people who are victims.

The increasing prevalence and development of sexual violence by the National Commission on Violence Against Women (Komnasnas) Protection of Children and Women mentions several forms of sexual violence include rape, sexual harassment, sexual exploitation, sexual torture, sexual slavery and sexual intimidation/attack, sexual nuances including threats or attempts at rape.³⁰

The form of sexual violence above mentioned is sexual harassment sexual harassment, in society in general it is common to equate sexual violence and sexual harassment with the same action. Sexual harassment and sexual violence can be said to be almost the same. The same, but in fact sexual harassment is actually apart of the forms of sexual violence as mentioned by the National Commission for the Protection of Children and Women mentioned above, however in the criminal law, the term sexual harassment is not introduced.

but only sexual violence which is divided into sexual intercourse and sexual abuse. sexual harassment is a language that is familiar to the community society.

Sexual harassment is behavior of a sexual nature that is unwanted and unintended. Behavior that is unwanted and unwanted by the recipient or the victim and has the result in disturbing the

recipient of the harassment, the behavior that can be behavior that can be classified as an act of sexual harassment such as coercion to sexual activity, degrading statements oriented towards sexuality or sexuality, jokes sexuality or sexuality, sexually oriented jokes, requests for sexual

to perform sexual acts favored by the perpetrator as well as speech or behavior with sexual connotations. behavior with sexual connotations, these actions can be conveyed directly or indirectly (implicitly).³¹

1.4 Type of child sexual abuse

Forms of sexual harassment in accordance with the above statement can be categorized into:

a. Verbal sexual harassment

Verbal forms of sexual harassment are more done with form of speech/words directed at other people but leads to something related to sexual leads to something related to sexuality, this harassment can take the form of

This harassment can take the form of:

1) Joking, teasing the opposite sex or the same sex, or asking questions about sexual matters in discussions or discussions or chats that are not specifically about sexual matters.

³¹ N.K. Endah Trwijati, Pelecehan Seksual : Tinjauan Psikologis, fakultas psikologi Universitas Surabaya, Savy Amira Women's Crisis Center, Hlm.1. diakses pada 15 Juli 2023, pukul 16.00 WIB.

2) Whistling that is sexually oriented.

3) Conveying or asking other people about sexual desires or sexual activities that the person has done, which makes the person uncomfortable.

4) Criticizing or commenting on physical features that lead to parts of sexuality, such as the shape of the buttocks or the size of one's genitals.

b. Non-verbal sexual harassment

Non-verbal harassment is the opposite of verbal harassment.

verbal harassment is the use of words or written or invitation in the form of writing in this non verbal category more use of action but not in direct contact between the perpetrator and the victim, for example:

1) Showing one's own genitals in front of other people either personally or in public,

2) Staring at other people's sexual parts with a seductive gaze,

3) Rubbing one's genitals against another person.

c. Physical sexual harassment

In this category of sexual harassment between the perpetrator and the victim there has been physical contact, which can be classified as mild and severe, for example can be classified into mild and severe acts, for example:

- 1) Groping a person's body with sexual content and not at the desired by the victim.
- 2) Rape or coercion into sexual acts.
- 3) Hugging, kissing or patting someone who is sexually oriented.

1.5 Criminal sanctions for perpetrators of child sexual abuse in Indonesia

In Indonesia, criminal sanctions for perpetrators of child sexual abuse are regulated in Law Number 23 of 2002 concerning Child Protection. The following are some of the criminal sanctions that can be applied against perpetrators of child sexual abuse in Indonesia:³²

- a. Imprisonment: Perpetrators of child sexual abuse can be sentenced to imprisonment for varying lengths of time, depending on the severity of the act committed. The minimum prison sentence is 3 years, while the maximum sentence can be up to 20 years in prison or even a life sentence, depending on the crime committed.
- b. Fines: In addition to imprisonment, perpetrators of child sexual abuse may also be subject to fines that vary in amount. The amount is determined by the court based on the circumstances of the perpetrator and the harm caused to the victim.

³² Undang-Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak.

c. Deprivation of certain rights: Perpetrators of child sexual abuse may lose certain rights as an additional sanction. For example, the right to teach, the right to obtain childcare, or the right to work in a field related to children.

d. Recovery and rehabilitation: In addition to criminal sanctions, perpetrators may also be subject to recovery and rehabilitation programs in accordance with applicable provisions. The purpose of this program is to ensure that the perpetrator receives treatment, guidance, and recovery so as not to repeat acts of child sexual abuse in the future.

1.6 Criminal sanctions for perpetrators of child sexual abuse in South Korea

In South Korea, criminal sanctions for perpetrators of child sexual abuse are set out in the Child Welfare Act, not in the Sexual Crimes Act.

The Child Welfare Act regulates the protection of children from sexual violence and provides criminal sanctions for perpetrators. Here are some of the criminal sanctions that can be applied in South Korea:³³

Imprisonment: Perpetrators of child sexual abuse are punishable by imprisonment for varying lengths of time depending on the severity

³³ ACT ON SPECIAL CASES CONCERNING THE PUNISHMENT OF SEXUAL CRIMES Act No. 11048, Sep. 15, 2011

of the crime. The minimum prison sentence is 3 years, and the maximum sentence can be up to 20 years or even a life sentence.

a. Fines: The offender may also be subject to a fine as an additional sanction. The amount is determined by the court according to the circumstances of the offender and the harm caused to the victim.

b. Deprivation of certain rights: Perpetrators of child sexual abuse may face deprivation of certain rights as an additional sanction. For example, the right to work with children, custody of children, or other rights related to the existence of children.

c. Rehabilitation program: After serving a criminal sentence, child sexual abuse offenders in South Korea may be subject to rehabilitation programs. The aim is to help offenders improve their behavior and prevent them from repeating similar crimes in the future.

c. **An overview of criminology theory**

1.7 definition of criminology theory

The name criminology was first coined by P.Topinard (1830-1911), a French anthropologist.³⁴ The name criminology invented by P.Topinard (1830-1911), a French anthropologist, literally means "crime". Criminology comes from the word "Crimen" which means crime or criminal and "logos" which means science, then criminology can mean the study of criminals and crime.

The origins of the development of criminology undeniably originated from the investigations of C. Lamborso (1879). In fact Lamborso, according to Pompe, is considered as one of the revolutionary figures in the history of criminal law. However, there are several other opinions that suggest that the scientific investigation of crime is not from Lamborso investigation of crime is not Lamborso's but Adhole Quetelet's. Quetelet, a Belgian with expertise in mathematics.

In fact, it was from him that "criminal statistics" were derived, which are now used primarily by police in all countries in providing by the police in all countries in providing a description of the development of crime in their country.the development of crime in the country.³⁵

³⁴ As. Alam & Amir Ilyas, 2010, Pengantar Kriminologi, Pustaka Refleksi, Makassar, Hal 1

³⁵ Atmasasmita, R. 2010. Teori dan Kapita Selekta Kriminologi, Refika Aditama, Bandung, hlm 9

Definition of Criminology and Crime According to Bonger, cited by Abintoro Prak, criminology is a science that aims to investigate the broadest symptoms of crime (theoretical or pure criminology). crime as broadly as possible (theoretical or pure criminology). Wolfgang, quoted by Wahyu Muljono divides criminology as an act referred to as crime, the perpetrator of the crime, and the reaction shown both to the act and to the perpetrator.³⁶

While criminal etiology (criminal aetiology) is the science that investigates or discusses the origins or causes of crime. Furthermore, Moeljanto argues that criminology is to understand the causes of crime. what causes people to do evil. Is it because of his talent is evil, or is it driven by the state of the surrounding society (milieu) both sociological and economic conditions. Or are there other causes. If these causes are known, then in addition to punishment, appropriate measures can be taken, so that other people no longer do so, or other people will not do so.

Criminology is usually divided into three parts:³⁷

1. Criminal Biology, which investigates the person himself or herself for the causes of his actions, both in body and spirit.
2. Criminal Sociology, which tries to find the causes in the society in which the criminal lives.

³⁶ Santoso, Topo dan Zulfa, A. E, 2001. Kriminologi. RajaGrafindo Persada. Jakarta, hlm 12

³⁷ Moeljatno, 2008. Asas-Asas Hukum Pidana. Rineka Cipta. Jakarta, hlm 14.

3. Criminal Policy, i.e. what measures should be taken to prevent others from committing such crimes.

The object of study of criminology includes three things, namely criminals, crimes and society's reaction to criminals and crime.

1. Crime.

If we read the Criminal Code or special laws, we will not find a formulation of crime. Therefore, legal scholars legal scholars provide limitations on crimes which are classified into in three aspects, namely :

a. Juridical aspect.

According to Muljanto, a crime is an act that is prohibited by criminal law and threatened with punishment. whoever violates the prohibition is called a criminal act. who violates the prohibition is called a criminal act. While According to R. Soesilo, crime is an act of behavior that is contrary to the law. contrary to the law, to be able to see whether the act is contrary or not the law must first must first exist before the event is created.³⁸

b. Sociological aspect

Crime from the sociological aspect stems from the opinion that human beings as social beings need to be guarded from every crime.³⁹

c. Psychological aspects

³⁸ H. M Ridwan dan Ediwarman, Op.Cit., hlm. 45.

³⁹ Topo Santoso dan Eva Achjani Zulfa, Op.Cit., hlm. 57

Crime from a psychological aspect is a manifestation of the psyche that is revealed in human behavior that contradicts norms. Actions that contrary to the norms prevailing in society. This is a deviant (abnormal) behavior that is very closely related to the psychology.⁴⁰

2. Perpetrator

Perpetrators are people who commit crimes, often referred to as criminals. The study of offenders aims to find the reasons causes of people committing crimes. Traditionally, people look for the biological, psychological and socio-economic causes of crime. This study is usually conducted on people who are imprisoned or ex-convicts.

3. Community reaction to crime.

The study of reactions to crime aims to study the views and responses of the community to actions or symptoms that arise in the community that are seen as detrimental or endanger the wider community. Meanwhile, the study of reactions to perpetrators (criminals) aims to study the views and actions of society towards the perpetrators of crime.⁴¹

Meanwhile, according to A.S Alam, the scope of the discussion of criminology includes three main things,⁴² namely :

⁴⁰ Chainur Arrasjid, Suatu Pemikiran Tentang Psikologi Kriminal. Kelompok Studi Hukum dan Masyarakat, Medan: Fakultas Hukum USU, tanpa tahun, hlm. 31-32

⁴¹ H. M Ridwan dan Ediwarman, Op. Cit., hlm. 81.

⁴² Moeljatno, 2008, Asas-Asas Hukum Pidana, Rineka Cipta, Jakarta, Hal 14.

1. The process of making criminal law and criminal procedure law.
The discussion in the making of criminal law (making laws), includes:
 - a. Definition of crime
 - b. Elements of Crime
 - c. Relativity of the definition of crime
 - d. Classification of Crimes
 - e. Crime statistics
2. Criminal etiology, which discusses the theories that lead to the occurrence of crime (breaking of laws), including:
 - a. Alien-alien criminology
 - b. Criminological theories
 - c. Various perspectives of criminology
3. Reaction to the violation of the law (reaching towards the breaking laws), includes:
 - a. Theory of Punishment
 - b. Efforts - efforts to overcome / prevent crime both in the form of preventive, repressive and rehabilitative measures. The reaction in this case is not only aimed at law violators in the form of repressive law violators in the form of responsive action but this is also a reaction to prospective criminals.

1.8 The purpose of criminological theory on child sexual abuse perpetrators

The purpose of criminological theory on child sexual abuse offenders is to investigate, understand and explain the factors that influence the occurrence of child sexual abuse. Through the criminological theory approach, the following objectives can be identified:⁴³

1. **Analyzing the Causes of Child Sexual Abuse:** Criminological theory aims to identify the various social, psychological, and environmental factors that can lead to child sexual abuse. This analysis helps to understand the background and motives of the perpetrator, as well as the conditions that facilitate the act of violence.

2. **Preventing and Reducing the Incidence of Sexual Violence:** One of the main goals of criminological theory is to provide insight into how to prevent child sexual abuse. By understanding the causes and risk factors, prevention efforts can be directed towards reducing the incidence of child sexual abuse.

3. **Improving Criminal Justice System Response:** Criminological theory assists in formulating a more effective approach in dealing with child sexual abuse cases within the

⁴³ Rony Rahman Nitibaskara, *Perangkap Penyimpangan dan Kejahatan Teori Baru Dalam Kriminologi*, YPKIK, Jakarta, 2009

criminal justice system. Improved approaches may include victim care, offender rehabilitation, and appropriate sentencing.

4. Building Appropriate Interventions and Programs: Criminological theory can help design and evaluate interventions and programs aimed at reducing child sexual abuse. These programs may include prevention campaigns, therapeutic interventions, and support for victims.

5. Considering Victim Factors: In addition to understanding the factors that influence perpetrators, criminological theory can also help consider the impact of sexual violence on victims. This includes how victims respond to and recover from traumatic events, as well as the implementation of measures that assist victims in the treatment and recovery process.

6. Understanding Group and Environmental Dynamics: Criminological theory also considers the role of social groups and environments in supporting or preventing child sexual abuse. By understanding the social environment at play, efforts can be identified to create a safer environment for children.

Overall, the goal of criminological theory on child sexual abuse offenders is to develop comprehensive insights and effective solutions in addressing this serious issue and protecting children from sexual violence.

D. An overview of rehabilitation theory

1.9 definition of rehabilitation theory

The Elucidation of Article 18 paragraph (1) of PP 70/2020 formulates the definition of rehabilitation, which is an effort to restore physical, psychological, social, and spiritual conditions to the perpetrator so that they are able to carry out daily life activities reasonably, which is provided by the Government as a party that fulfills rights to perpetrators of sexual violence.⁴⁴

Rehabilitation Treatment Theory is an approach in criminology and the criminal justice system that emphasizes the importance of rehabilitation and treatment for offenders. This theory focuses on efforts to help individuals involved in criminal behavior to change, develop, and return to society as productive and positive members.

The rehabilitative treatment theory approach rejects the traditional view that focuses solely on punishment or retribution for criminal behavior. Instead, this theory identifies that many offenders have personal, emotional, and social problems that underlie their criminal behavior. Therefore, rehabilitative treatment theory seeks to address these issues through various rehabilitation programs and interventions.

⁴⁴ [Http://kbbi.web.id/rehabilitasi](http://kbbi.web.id/rehabilitasi). Diakses pada Kamis 28 Juli 2023 pukul 00:27 WIB.

Some of the key principles of rehabilitative treatment theory include:

1. **Focus on Treatment and Reintegration:** This theory prioritizes treatment and social reintegration efforts for offenders. The aim is to help the offender overcome the underlying problems of criminal behavior and guide them to return to being functioning members of society.

2. **Individualization Approach:** Each offender is considered unique and has different treatment needs. Therefore, rehabilitation treatment theory emphasizes the importance of the individualization approach in designing rehabilitation programs that are appropriate for each offender.

3. **Treatment Program Integration:** This theory includes various treatment programs, such as counseling, behavioral therapy, drug rehabilitation, education, and social skills. This integration of treatment programs is intended to provide a holistic approach that helps address the various issues underlying criminal behavior.

4. **Community Support:** Rehabilitation treatment theory recognizes the importance of community support in the offender's reintegration process into society. Support from family, friends, and the social environment can help facilitate positive change.

The main goal of rehabilitative treatment theory is to reduce the rate of reoffending and help the offender to avoid re-engaging in

criminal behavior. Through an appropriate rehabilitative approach, it is hoped that offenders can form more positive patterns of behavior and build a better life after leaving the criminal justice system.

1.10 Application of rehabilitation theory

There are several types and classifications of measures for the rehabilitation of perpetrators of sexual violence, namely as follows:

1) For perpetrators of sexual intercourse based on a court decision that has permanent legal force, chemical castration, installation of electronic detection devices, and rehabilitation based on Article 2 paragraph (1) of PP 70/2020.

2) Against the perpetrators of Obscene Acts based on a court decision that has permanent legal force, the installation of electronic detection devices and rehabilitation based on Article 2 paragraph (2) of PP 70/2020.

3) For chemical castration, the implementation and stages are regulated in Article 5 to Article 13 of PP 70/2020.

4) The action of installing an electronic detection device is regulated in Article 14 to Article 17 of PP 70/2020

5) Rehabilitation measures in the form of psychiatric, social, and medical rehabilitation are regulated in Articles 18 to 20 of PP 70/2020.

4.3 The purpose of rehabilitation care theory

There are objectives achieved by the government, namely to minimize the repetition of similar crimes and to make this rehabilitation an effort to reintegrate offenders into social life. Reintegration in this study according to the Big Indonesian Dictionary (hereinafter referred to as KBBI) has the meaning of reunification or reintegration Kamus Besar Bahasa Indonesia (KBBI), which is specific to the state of sexual violence perpetrators so that they can be "restored" and return and be accepted by the general public properly.

The goal of rehabilitative treatment theory for child sexual abusers is to reduce the risk of re-offending, increase understanding and awareness of the consequences of their actions, and help them develop skills and alternative strategies to resolve problems or conflicts without involving violence.

Some specific goals of rehabilitative treatment for child sexual abusers include:

1. Stopping sexually violent behavior: The primary goal of treatment is to help the offender stop committing acts of child sexual abuse. This involves identifying and addressing the drivers of violent behavior as well as developing self-control and awareness regarding the consequences of such acts.

2. Promote empathy and healthy emotions: Sexual abusers may have difficulty in understanding the feelings and emotions of others, especially their victims. Therefore, another goal of treatment is to improve their empathy skills and develop healthier relationships with others.

3. Addressing trauma and psychological issues: Some sexual abusers may have underlying psychological issues, such as past trauma or mental disorders. Treatment will help address these issues and provide the necessary support for recovery.

4. Changing mindsets and attitudes: Rehabilitation treatment will help the offender identify and change mindsets or attitudes that support sexually violent behavior. This involves replacing detrimental thought patterns with a healthier and more positive outlook.

5. Developing social skills: Perpetrators of sexual violence often have difficulties in interacting socially and coping with conflict. Treatment will help them develop the social skills necessary to interact constructively with others.

6. Preventing repeat behavior: In addition to stopping committing acts of sexual violence, the long-term goal of treatment is to prevent such behaviors from recurring in the future. This involves identifying risk factors and developing strategies to avoid situations that may trigger violent behavior.

7. Supporting integration back into society: After undergoing rehabilitation treatment, the ultimate goal is to help the sexually violent offender to return to functioning positively in society without engaging in sexually violent behavior.

Rehabilitation treatment for child sexual abusers should be conducted by trained professionals who have knowledge and experience in this field. Treatment often involves a combination of individual and group therapy, as well as support from family and social environment to achieve more effective and sustainable results.

E. An overview of child sexual abuse in Islam

1.11 Definition of islamic criminal law

Islamic Criminal Law is a translation of the word *fiqh jinayah*. *Fiqh Jinayah* is any legal provision regarding criminal acts or criminal acts committed by *mukallaf* people (persons who can be burdened with obligations), as a result of an understanding of the detailed legal postulates of the Qur'an and hadith.⁴⁵ The definition of *fiqh* in terms proposed by Abdul Wahab Khallaf is: *Fiqh* is the science of practical laws taken from detailed postulates. In addition, *fiqh* is a practical set of laws taken from

⁴⁵ Ahmad Wardi Muslich, *Hukum Pidana Islam*, Sinar Grafika, Jakarta, 2005, p. 9.

detailed postulates.⁴⁶ As for *jinayah* in terms as stated by Abdul Qadir Audah, namely: *Jinayah* is a term for deeds prohibited by the syara', whether the deed is about soul, property, or others.

Islamic Criminal Law is Allah's sharia, which contains benefits for human life both in the world and hereafter. Islamic Sharia means material and contains a fundamental obligation for every human being to carry it out. The concept of sharia is a human obligation to place Allah as a right, both in oneself and in others.⁴⁷ In criminal cases, the Messenger of Allah decided on the form of punishment against the perpetrators of criminal acts in accordance with the revelation of Allah.

After the Prophet's death, the community and religious leadership task was continued by "al-Kulafa'ar-Rasyidun" as the leader of the Muslims, who held central power. The Caliph directly referred to the Qur'an and the Sunnah of the Messenger of Allah to decide a criminal case and the form of punishment against the perpetrator. If there is a case that is not explained by the two sources, the caliph holds consultations with the companions, and his decision is based on *ijtihad*.

⁴⁶ Abdul Wahab Khallaf, *Ilmu Ushul Al Fiqh*, Ad Dar Al Kuwaitiyah, cet. VIII, 1968, p.

⁴⁷ Zainuddin Ali, *Hukum Pidana Islam*, Ctk. Kesatu, Sinar Grafika, Jakarta, 2007, p.

1.12 Source and purpose of Islamic criminal law

Islamic Criminal Law is part of Islamic Law. The source of Islamic Criminal Law is based on the Qur'an, As-Sunnah, *ijma'* and *qiyas*.

a. Qur'an

The primary source of law in Islamic Criminal Law is Qur'an. The Qur'an is a collection of the words of Allah that were handed down to the Prophet Muhammad SAW to become a guide for life for mankind from the apostolic time of the Prophet to the end of time. The word Qur'an comes from Arabic, which means reading. The paragraphs in the Qur'an specifically talk about the law (ahkam verse). There are about 350 (three hundred and fifty) verses that are the source of the fundamental law and the source of all sources of law. The text (nash) in the Qur'an must have come from Allah whose

point of appointment to the law has 2 (two) forms, namely as follows:⁴⁸

- 1) Qathi'iy al-dalalah i.e., his appointment is specific because it has only one sense; and
- 2) Dhanniy al-dalalah i.e., his appointment to the law, was based only on factual allegations because they had two or more meanings, so there were frequent scholarly disputes.

The laws contained in the Qur'an include :⁴⁹

- a) The laws of *I'tiqadiyyah* are the laws relating to faith in Allah, to angels, to the Books, to the Apostles of Allah and to the hereafter.
- b) The laws of *Khuluqiyyah*, that is, laws related to morals. Human beings are obliged to have good character and stay away from destructive behavior.
- c) The laws of *Amaliyah*, that is, laws relating to human deeds. This law of *Amaliyah* is twofold; concerning worship and about *muamalah* in a broad sense. The rulings in the Qur'an relating to the field of worship and the field of *al-Ahwal al-Syakhshiyah* / individual or

⁴⁸ Ahmad Wardi Muslich, *Op. Cit*, p. 35-37.

⁴⁹ Siska Lis Sulistiani, "Perbandingan Sumber Hukum Islam", *Jurnal Peradaban dan Hukum Islam*, Vol. 1, No. 1, Prodi Hukum Keluarga Islam, Fakultas Syariah, Universitas Islam Bandung, 2018, p. 105.

family matters are mentioned in more detail than the other areas of law.

b. As-Sunnah

As-Sunnah linguistically (etymologically) is a path, a rule, a habituated way or a commendable way. Sunnah is more commonly referred to as hadith which has several etymological meanings, namely *Qorib* which means close, *Jadid* means new, and *Khobar* which means news or news. Sunnah linguistically means “habituated way” or “commendable way”. Sunnah (hadith) is a word, deed, as well as confession and nature narrated from the Prophet Muhammad SAW.⁵⁰ The Sunnah has the following functions :⁵¹

- 1) Explain the rulings contained in the Quran;
 - 2) Strengthening the laws that have been stated in the Qur’an;
- and
- 3) As an independent source of law.

c. *Ijma’*

Ijma’ is one of the *syara’* postulates with a level of argumentative power below the *nash* postulates (Qur’an and Hadith). It is the first postulate after the Qur’an and Hadith, which can be used as a guide in exploring the laws of the *syara’*.

⁵⁰ Ahmad Wardi Muslich, *Op. Cit.*, p. 41.

⁵¹ *Ibid*, p. 45.

According to Romli in his book “Muqaranah Mazahib Fil Ushul” revealed that Ijma’ can mean the agreement or consensus of several

people on a matter. In other word, *ijma'* is scholarly consensus to give solution and resolved a problem.

d. *Qiyas*

Qiyas or analogy is an important instrument in making islamic law decisions to overcome legal void. This is a principle of analogy in the interpretation of Islamic Law, which is not clearly covered in Qur'an or Sunnah. According to Abdul Wahab Al-Khallaf in his book "The Science of Ushul Fiqih" argues that *qiyas* is to equate a case for which there is no legal text (*nash*) with a case for which there is *nash* the law (in the existing law *nash*), because the second similarity is in the *illat* of the law.⁵²

In addition, Islamic Law has other sources of law that also come from the human mind, but these sources are still partly debated among scholars, namely:⁵³

1. *Istihsan*, i.e., prioritizing justice and social interests by deviating from existing provisions;
2. *Maslahah mursalah*, i.e., filling the legal void by considering the public interest;

⁵² Asrowi, "Ijma dan *Qiyas* dalam Hukum Islam", *Jurnal Aksioma Al-Musaqoh*, Vol. 1, No. 1, STAI La Tansa Mashiro Indonesia, 2018, p. 35.

⁵³ Mohammad Daud Ali, *Asas-asas Hukum Islam: Pengantar Ilmu Hukum dan Tata Hukum Islam di Indoneseia*, Rajawali, Jakarta, 2004, p. 100-111.

3. *Istidal*, i.e., drawing legal conclusions through two different acts;
4. *Urf* or customs are customs or habits that do not contradict the principles of Islamic law.

The purpose of Islamic Criminal Law is undoubtedly also in linewith the purpose of human life, which does not deviate from the national ideals of the Unitary State of the Republic of Indonesia (NKRI), namelyhappiness and justice of living both in the world and the hereafter and for the benefit and welfare of mankind on earth. According to al- Syathibi, what is meant by benefit can be realized if five main elementsare realized: religion, soul, descent, reason, and property.⁵⁴ According to al-Syathibi, the determination of the five basic human needs is based on the postulates of the Qur'an and Hadith. These postulates serve as *al-qawaid al-kulliyah* (general rules) in establishing *al-kulliyah al-khamsah* (five basic needs). Another goal is to guarantee the necessitiesof life (secondary needs) or *Hajiyat*.

⁵⁴ Adimarwan Azwar Karim, *Sejarah Pemikiran Ekonomi Islam*, Raja Grafindo, Jakarta,2012, p. 380.

The purpose of Islamic legislation is to make various improvements, namely to make humans able to organize and fill social life better or *tahsinat*.⁵⁵ In the Qur'an, Allah has also explained how to decide Islamic criminal cases, which is stated in Surah Al-Ma'idah verse 48, which reads:

وَأَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَابِ وَمُهَيْمِنًا عَلَيْهِ
فَأَحْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ عَمَّا جَاءَكَ مِنَ الْحَقِّ لِكُلِّ
جَعَلْنَا مِنْكُمْ شُرَعًا وَمِنْهَا جَاءَ وَلَوْ شَاءَ اللَّهُ لَجَعَلَكُمْ أُمَّةً وَاحِدَةً وَلَكِنْ
لِيَبْلُوَكُمْ فِي مَا آتَاكُمْ فَاسْتَبِقُوا الْخَيْرَاتِ إِلَى اللَّهِ مَرْجِعُكُمْ جَمِيعًا فَيُنشِئُكُمْ
بِمَا كُنْتُمْ فِيهِ تَخْتَلِفُونَ

Means:

We have revealed this book with the truth to you (O Prophet) as a confirmation of previous Scriptures and a supreme authority on them. So, judge between them by what Allah has revealed, and do not follow their desires over the truth that has come to you. We have ordained a code of law and a way of life to each of you. If Allah had willed, He would have made you one community, but His Will is to test you with what He has given (each of) you. So, compete with one another in doing

55 Wael B.Hallaq, *Sejarah Teori Hukum Islam*, PT Raja Grafindo Persada, Jakarta, 2000, p. 246-248.

good. To Allah you will all return, then He will inform you (of the truth) regarding your differences.

1.13 Definition of child sexual abuse in the light of Islamic criminal law

Criminal acts in Islamic criminal law are known as *jarimah*, which are divided into three. First, *hudud jarimah*, namely *jarimah* whose punishment has been determined both in form and amount by *syara'*, such as adultery, accusing of adultery, drinking, stealing, robbing, leaving Islam and rebelling. Second, *jarimah qisas*, namely *jarimah* whose punishment has been determined by *syara'*, but there is terms of forgiveness, namely that the punishment can be transferred to *al-diyat* (fine) or even free from punishment, if the victim or the victim's guardian forgives the perpetrator. Third, *jarimah ta'zir*, namely *jarimah* whose punishment is not determined both in form and amount by *syara'*, but given to the state its authority to determine it in accordance with the demands of benefit or criminal acts that are not determined by sanctions by the Qur'an and hadith are referred to as *ta'zir* criminal acts. *Jarimah hudud* can be transferred to be *jarimah ta'zir* if there is *syubhad* (something that is doubtful or

unclear.), both *syubhat fi al- fi'li*, *fi al-fa'il*, and *fi almahal*, and if the *hudud jarimah* does not meet the requirements.⁵⁶

Islam has regulated about sexual violence, but it is included in the category of adultery and included in the category of sexual intercourse and in Islam when someone commits adultery the punishment is stoning or having half the body buried in the ground and stoned in front of people to death.

Adultery is included in the *jarimah* whose punishment is *hudud*. *Jarimah* itself means doing or leaving an act that has been authorized or has been declared unlawful and sanctioned by the *Shari'a*, while *hudud* is a punishment that has been determined by Allah in the Qur'an and is the right of God or the rights of the general public.⁵⁷

Based on Islamic Law, the offense of adultery has the following elements:

- a. Sexual intercourse;
- b. Between men and women, between women and women, and between men and men;
- c. Done voluntarily or by force;

⁵⁶ Nur Sa'ada, "Tinjauan KUHP dan Fiqh Jinayah terhadap Zina dan Turunannya dalam Qa'nu", *Al-Qānūn*, Vol. 19, No. 1, Juni 2016, p. 100-101.

⁵⁷ Muhammad Ichsan, M. Endrio Susila, 2008, *Hukum Pidana Islam Sebuah Alternatif*, Yogyakarta, LabHukum Universitas Muhammadiyah Yogyakarta, p 68.

- d. By people who are bound in marriage or not bound in marriage.

The elements of the adultery offense in the Islamic concept above make a distinction between the adultery offense and its punishment, namely: *muhsan* adultery in which the adulterer already has a legal partner (bound in marriage) and *ghairu muhsan* adultery in which the adulterer has never been married and does not have a legal partner.⁵⁸

If adultery is committed by coercion, the perpetrator of adultery will be stoned and the victim of the act will be released. This is regulated in QS.An-Nisa verse (19) which is translated and reads:

*“O believers! It is not permissible for you to inherit women against their will or mistreat them to make them return some of the dowry
‘as a ransom for divorce’—unless they are found guilty of adultery. Treat them fairly. If you happen to dislike them, you may hate something which Allah turns into a great blessing.”*

⁵⁸ Umi Rozah, “DELIK ZINA: UNSUR SUBSTANSIAL DAN PENYELESAIANNYA DALAM MASYARAKAT ADAT MADURA”, *Masalah-Masalah Hukum*, Jilid 48 No.4, Oktober, 2019, p. 370.

Allah SWT has confirmed that humans do have lust, including sexual lust, which is stated in QS. Ali Imran verse (14) which reads:

“The lust (extreme desire) towards women and children, of hoarded treasures of gold and silver, of branded beautiful horses and cattle and well-tilled land, is made to seem beautiful to men;”

These lusts must be controlled, especially in this case the lust for sexuality which will lead to the act of adultery which is very hated by Allah because adultery in Islam is a major sin, this is explained in the QS. Al Furqan verse (68), which states that acts which are major sins include disbelievers, killing without a reason justified by Allah and adultery.

Sexual intercourse or adultery is different from obscenity acts, in Islam obscenity acts are called acts of someone approaching adultery and are regulated in the QS. Al Isra verse (32) which is translated and reads:

“Do not go near adultery. It is truly a shameful deed and an evil way”.

Of the two verses above, there are two prohibitions, namely the prohibition of adultery and the prohibition of approaching it, if equated with the positive law that applies in Indonesia, it will not

differ much what is meant by sexual violence which in Islam is known as adultery (*zina*) and with this verse we know what is meant by sexual violence is an act that is carried out by force and is hated by God for an act that leads to sexuality.

Sexual violence against children in Islam is something that is very hated by Allah, but there is a difference between sexual violence of children in Islam and positive Indonesian law, namely the age of maturity which according to Islam is pegged to the age of puberty (*baligh*) of a child, this age is obtained earlier than the adult age according to Indonesian positive law which on average stipulates 18-21 years old.

The punishment of lashing and stoning is a punishment that Allah has prescribed for adulterers and is clearly regulated in QS. An Nur verse

(2) which is translated and reads:

“As for female and male fornicators, give each of them one hundred lashes, and do not let pity for them make you lenient in ‘enforcing’ the law of Allah, if you ‘truly’ believe in Allah and the Last Day. And let a number of believers witness their punishment.”

The flogging in the verse is in the form of lashing and then stoning is done by planting the adulteress in the ground up to the

chest, then stoned to death in front of many people with the aim of reminding Muslims so that no one violates the law of Allah SWT.

The punishment for lashing and stoning applies to married adulterers (*muhsan*), namely by being lashed 100 times and then stoning to death, but if the adulterer is an unmarried person (*ghairu muhsan*) then the punishment is being lashed 100 times and exiled for 1 year, the Prophet Muhammad SAW said:

“take it from me, take it from me, indeed Allah has given them another way, namely those who are unmarried (zina) with unmarried people, the punishment is 100 lashes and exile for a year, as for those who are married (adultery) with people who married, the punishment is 100 lashes and stoning”.

The punishment for adultery in Islam is very heavy when compared to the punishment from the law in force in Indonesia because in Islam adultery is a big sin so the proof should not be arbitrary considering the punishment is also very heavy.

Proof of adultery is by way of 4 adult male witnesses who saw the act, namely seeing the female and male genitals during penetration. Another proof is done by admitting the person who commits adultery if he has committed adultery 3 times.⁵⁹ Adultery committed by both of them wanting to commit adultery, the punishment is also carried out on both of them because all are considered as perpetrators, but if it is carried out by force, only the perpetrator gets punished and the victim will be released from punishment.

⁵⁹ Haidar Abdullah, *Kebebasan Seksual Dalam Islam*, Jakarta, Pustaka Zahra, 2006, page.

CHAPTER III

DISCUSSION AND RESULT

STATE LEGAL TREATMENT OF CHILD SEXUAL ABUSERS AFTER SENTENCING IN INDONESIA AND SOUTH KOREA

A. The state legal treatment of perpetrators of child sexual abuse after sentencing in Indonesia and South Korea

A child is any person who is not yet 18 (eighteen) years old. Therefore, their activities need to be protected to ensure and protect children and their rights so that they can live, grow, and develop, and participate optimally in accordance with the dignity of humanity, and receive protection from violence and discrimination.⁶⁰ In Law No. 35 of 2014 article 59 paragraph (2) letter (j) explains that one form of protection for children is children who are victims of sexual violence.⁶¹

Punishment of perpetrators of child sexual abuse as a form of suffering that is deliberately imposed on a person as a legal consequence (sanction) for his actions that have violated the prohibition of criminal law, the prohibition in criminal law is referred to as a criminal offense (*strafbaar feit*). Based on this

⁶⁰ Marsaid, *Perlindungan Hukum Anak Pidana Dalam Perspektif Hukum Islam* (Maqasid Asy-Syari'ah), (Palembang: NoerFikri, 2015) page. 56-58.

⁶¹ Law No. 35 of 2014 article 59 paragraph (2) letter (j)

opinion, it is stated that punishment contains elements that are essentially the imposition of suffering or pain or other unpleasant consequences, the punishment is given intentionally by a person or body that has the power (authorized person or institution), and is imposed on someone who is responsible for a criminal offense according to the law.⁶²

The government's handling of cases of sexual violence against children is very important for the survival of children in the future, Along with its development, affirmative action has been adopted by various countries in the world which are also outlined in various forms of policy. Among them are Indonesia and South Korea, which are also working on how to handle perpetrators of sexual violence against children by ratifying various international instruments.⁶³

The handling of offenders after serving their sentences is sometimes not taken seriously, this results in some offenders who are less well monitored after serving their sentences, because they are considered finished with their sentences. Some policy outcomes tend to lack perspective on post-sentencing, while the purpose or target of the policy formation is the handling of offenders after serving their sentences. When viewed from criminological theory, it states that in handling perpetrators in cases of sexual violence

⁶² Articles 81 verse (1) and 82 verse (1), Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, page 44-45

⁶³ N Katjasungkana, *Penyalahan Seksual Pada Anak*, Jakarta, Mitra Wacana, 2000, page

against children there are 2 factors that cause someone to commit acts of sexual violence against children, namely internal factors and external factors.

Although Indonesia and South Korea have both implemented policies on child sexual abuse, in the implementation of the policies, there is a difference between Indonesia and South Korea. significant differences in the handling of post-sentence offenders. Indonesia is still far behind in its handling. The incident should have been disallowed by Indonesia because it has done so several times regulatory changes. Given that children's rights are rights that must be manifested in order to break the chain of sexual violence. In this section, the author is interested in further reviewing by comparing the state's legal treatment of perpetrators of child sexual abuse after serving a sentence between Indonesia and South Korea.

1. The state legal treatment of perpetrators of child sexual abuse after sentencing in Indonesia

Indonesia has a fairly high population, which also triggers how child sexual abuse occurs. In accordance with the theory of criminology which states that the cause of a person committing a crime or sexual violence, one of which is labeling theory, which in this theory makes perpetrators of sexual violence tend to internalize the label and behave in accordance with the expectations or stereotypes attached to the label. This process can lead to a spiral

of criminal behavior, where people who are labeled as criminals tend to continue to commit criminal behavior because they are considered "criminals" by society. Therefore, often perpetrators do not even hesitate to commit repeatedly because they think that they have already been labeled bad by society so they better do it again because even if they stop or change, society still considers them bad as a criminal.

Thus it is necessary to have guidance or continuation from the government so that perpetrators of sexual violence against children do not do the same thing again in the future after serving their sentences. In accordance with the theory of rehabilitation in Indonesia, it is very good, but the theory is more emphasized on narcotics offenders and perpetrators of sexual violence with child perpetrators. So for perpetrators of sexual violence against children whose perpetrators are adults, this has not yet been realized. In Indonesia, the handling of perpetrators of sexual violence against children is regulated in articles 81 and 82 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which stipulates that perpetrators of sexual abuse against children are sentenced to a maximum of 15 years. The law regulates the protection of women and children from all forms of violence, including sexual violence against

children. This law focuses on protecting the rights, welfare and safety of women and children in Indonesia.

Fifteen years of imprisonment in my opinion is not comparable to what the victim has experienced. Considering that this incident can have a very big influence on the victim, starting from physical disorders to psychological disorders that he will suffer for life. The doctor's opinion is supported by the results of research stating that sexual abuse of children will interfere with the process of growth and development of the child. The adverse psychological effects that can be suffered include depression, post-trauma, paranoia about certain things such as going to the bathroom or meeting people. Furthermore, it can reduce learning performance, depression, and low self-esteem.

If this psychological trauma is not properly addressed, it can have three possible long-term effects. **Firstly**, the victim may view this as an overreaction that eventually pushes her into promiscuity. **Second**, it may encourage the victim to take revenge and foster deviant behavior within herself. And in the future he may become a homosexual. **Third, the** worse thing is revenge carried out in the future by the victim by doing the same thing to other people or in short, later he becomes a pedophile. However, according to research some perpetrators of sexual abuse against minors have experienced similar things as children.

There have been significant changes in the last 5 years. These changes are presented in the data on child sexual abuse in Indonesia from 2019-2023 in the table below:

Table 1.1 Data on sexual violence against children in Indonesia 2019-2023

2019	2020	2021	2022	2023
11.057	11.278	14.517	4.683	202 / Jan-May

Source: Ministry of Women's Empowerment and Child

Protection (PPPA)

According to the data above, it can be concluded that cases of sexual violence against children had increased from 2019-2021 and had experienced a significant decline in 2022. If you look back at the highest case experienced in 2021 where in this situation it is still included in the Covid 19 pandemic. The reason why sexual violence in that year increased is because many people understand and dare to report cases of sexual violence against children, but some people do not understand and do not understand how to report and even the children themselves do not know what sexual violence actually is. To suppress and reduce the number of sexual violence against children in Indonesia, the mechanism for handling

perpetrators of sexual violence against children must be in accordance with Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Therefore, the author conducted interviews with the Yogyakarta Regional Police, the Yogyakarta District Attorney's Office and the Yogyakarta District Court to find out how the process and resolution of sexual violence against children. From the results of the interviews, the following is an explanation of how the procedures of government institutions in handling perpetrators of sexual violence against children:

A.DIY POLDA

The police in child sexual abuse cases is the beginning of how the perpetrator is dealt with, in this case the process of arresting a child sexual abuse perpetrator by the police can vary based on the jurisdiction and legal regulations in a country. However, here is a general overview of the steps that are typically taken in the police arrest process of child sexual abuse perpetrators:⁶⁴

- 1) Receipt of the report: The process begins when a report of suspected child sexual abuse is received by the police. This report can be filed by the victim, the victim's family, teachers, health professionals, or others who know or suspect sexual violence.

⁶⁴ Interview with Mr.Nandang Djunaedi, S.I.K., M.M.; as a Human Resources Bureau at POLDA DIY on July 20th, 2023.

- 2) Preliminary investigation: Upon receiving the report, the police will start the initial investigation. They will gather preliminary information about the incident, the victim, and the perpetrator. This step may involve interviews with the victim, witnesses, and other relevant parties.
- 3) Evidence collection: The police will collect physical and non-physical evidence related to the case. Physical evidence may include forensic examinations and physical evidence from the scene. Non-physical evidence may include recorded victim and witness statements.
- 4) Arrest: If there is sufficient evidence to support an arrest, the police will issue an arrest warrant based on the results of the investigation. The arrest of the perpetrator will be carried out by police officers.
- 5) Preliminary examination: Upon arrest, the offender will be subjected to an initial examination regarding the alleged sexual assault. This may involve a police interview with the offender to get his/her initial statement regarding the case.
- 6) Offender rights: Offenders have legal rights, including the right to have a lawyer and the right to maintain their right to silence. These are basic principles in the criminal justice system that ensure that offenders get fair treatment.

- 7) Forensic examination: A forensic examination will be conducted on physical evidence related to the case. This may involve a medical examination of the victim to gather further evidence.
- 8) Interrogation and further investigation: The police will conduct further interrogations of the perpetrator and witnesses to gather additional information and clarify the details of the case.
- 9) Prosecution: If there is sufficient evidence, the investigator will refer the case to the court. The court will determine whether or not to proceed with the case.
- 10) Trial and sentencing: If the defendant is found guilty in a court of law, the court will impose a sentence in accordance with the applicable law. These penalties may vary depending on the jurisdiction and legal policies of the country.

There are several difficulties or obstacles experienced by the Police in uncovering cases of sexual violence against children, namely: ⁶⁵

- 1) Limited physical evidence: In some cases, it is difficult to collect enough physical evidence to support prosecution, especially if the incident occurred much later in time or if the victim did not seek immediate medical attention.

⁶⁵ *Ibid.*

- 2) Victim distrust: Children may feel afraid, embarrassed, or intimidated to report sexual violence. This can lead to mistrust of their report, and make the investigation process more difficult.
- 3) Difficulties in interviewing children: Interviewing child victims of sexual violence requires special skills. Children may struggle to articulate events or feel intimidated when being interviewed by police officers.
- 4) Absence of witnesses: Child sexual abuse often occurs in places where there are no witnesses. This can make it difficult to prove a case in court.
- 5) Social pressure: Some victims or their families may feel pressured by social or cultural factors not to report or cover up the incident, especially if the perpetrator is a family member or known person.
- 6) Lack of resources: Police may have limited resources, both in terms of personnel trained to handle juvenile cases and in terms of forensic technology needed to collect evidence.
- 7) The importance of confidentiality: Child sexual abuse cases must be handled in strict confidence to protect the rights and privacy of the victim. However, this can present challenges in information sharing and coordination between the agencies involved.⁶⁶

⁶⁶ *Ibid.*

8) Lack of experience: Some police officers may lack training in handling child sexual abuse cases. This may affect the quality of the investigation and the approach taken in handling the case.

9) Agency coordination: Child sexual abuse cases involve multiple agencies such as the police, social services, health care providers, and justice agencies. Coordination between these agencies may not always be seamless, which can affect the effectiveness of case management.

And also here are some aspects that are usually considered in post-punishment handling: ⁶⁷

1) Offender monitoring: After the offender has been released from prison or served any other sentence, the police may monitor the offender in various ways, such as electronic monitoring or regular visits by police officers.

2) Registration as a sexual offender: In some jurisdictions, perpetrators of child sexual abuse must register as sexual offenders once they are released from prison. This registration helps authorities to monitor offenders and inform the community of their whereabouts.

3) Community monitoring: The police can communicate with neighbors and communities around where the offender lives, informing them about the whereabouts of offenders who have

⁶⁷ *Ibid.*

served their time. This helps the community remain vigilant and allows them to take preventive measures.

4) Training and education: Police should continue to improve officer training in handling sexual violence cases and in understanding the behavioral dynamics of perpetrators. Community education is also important to raise awareness about risks and preventive measures.⁶⁸

It can be concluded that the handling of perpetrators of sexual violence against children in government institutions, namely the Police, has handled in accordance with the correct procedures, but the handling of the perpetrators after serving the sentence has not been realized because in this case the Police are more focused on the victim and also work with social institutions and child protection agencies that exist to protect victims in and after the perpetrators of sexual violence serve their sentences so that victims can live a decent life as before.⁶⁹

B. Yogyakarta District Attorney's Office

The prosecution has an important role in handling perpetrators of child sexual abuse, including in investigation, prosecution, and supervision after court decisions. Here are some

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

of the key roles of the prosecution in handling child sexual abuse cases:⁷⁰

1. Investigation and Prosecution: The Public Prosecution Service has the authority to order investigations into child sexual abuse cases. They work with the police and other investigators to collect evidence, interview witnesses, and ensure that perpetrators are brought to justice in accordance with the law.

2. Legal Prosecution: Once the investigation is complete, the prosecution may decide to charge the offender in court. They draft the charges based on the available evidence and strive to ensure that the offender is tried fairly and in accordance with the law.

3. Role in Court: The prosecution represents the government in court and is responsible for proving their case against the perpetrator. They present evidence to the judge and play a role in ensuring that the trial proceeds properly.

4. Victim Protection: Prosecutors should also ensure the protection of victims of sexual violence, especially if the victims are children. They can take measures to ensure that the identity of the victim remains confidential and that they get appropriate support throughout the legal process.

5. Mediation and Alternative Resolution: In some cases, the prosecution may take a mediation or alternative resolution

⁷⁰ Interview with Mr. Aditya Rachman Rosadi as a Criminal division prosecutor at Yogyakarta District Attorney's Office on July 20th, 2023.

approach, especially if the offender is willing to admit his or her guilt and is willing to take steps to improve his or her behavior.

6. Sentencing: The prosecution also has a role in determining the charges against the offender if found guilty. They develop arguments for the type of punishment that fits the crime committed, taking into account various factors such as the damage caused to the victim, the interests of society, and the applicable law.

7. Monitoring the Implementation of Sentences: After a court decision is handed down, the prosecution can monitor the implementation of the sentence given to the offender, including monitoring so that the offender does not commit similar crimes in the future.

Prosecutors, like other law enforcement agencies, often face various difficulties and obstacles in uncovering cases of child sexual abuse. Some of these include:⁷¹

1. Non-reporting: Many cases of child sexual abuse go unreported due to factors such as fear, shame, or pressure from the perpetrator or the victim's family. This makes it difficult for the prosecution to initiate an investigation in the absence of a report.

2. Lack of Physical Evidence: In some cases, especially if reporting occurs long after the incident, sufficient physical evidence is

⁷¹ *Ibid.*

difficult to gather. This can hamper the prosecution's ability to build a strong case.

3. Child Testimony: Children often struggle to provide consistent and detailed testimony regarding incidents of sexual violence. They may feel afraid or uncomfortable when placed in a trial or examination situation.

4. Victim Protection: Protecting the identity and safety of child victims is crucial. However, this can be challenging due to the risk of information being leaked or the victim being discovered by the perpetrator or their followers.

5. Lack of Resources: The prosecution may have limitations in terms of trained personnel to handle juvenile cases and in terms of forensic technology needed to collect evidence.

6. Legal limitations: Some jurisdictions may have less stringent or inadequate laws in dealing with child sexual abuse cases. This may affect the prosecution's ability to bring charges or impose appropriate penalties.

7. Challenges in Obtaining Cooperation: In some cases, cooperation from victims' families or other witnesses may be difficult to obtain. They may be afraid or reluctant to get involved in the legal process.

8. Investigative Complexity: Child sexual abuse cases often involve complex dynamics, especially if the perpetrator is a family

member or known person. This can make investigations and evidence gathering more difficult.

It is important to note that despite these constraints, prosecutors remain committed to investigating and prosecuting child sexual abuse cases to ensure justice for victims and communities. Efforts to improve officer training, public awareness, and cross-agency cooperation can help overcome some of these obstacles.

Policies adopted by prosecutors in dealing with child sexual abuse offenders after release from prison can vary by jurisdiction and country. Generally, however, they aim to prevent the offender from committing similar acts in the future, protect the community, and provide support to victims. Here are some possible policies:⁷²

1. Post-release monitoring: The Public Prosecution Service may monitor the offender in various ways, such as electronic monitoring, regular visits by police officers, or periodic checks to ensure that the offender has not violated the sentence and has not re-offended.

2. Sexual Offender Registration: In many jurisdictions, sexual offenders are required to register as sexual offenders upon release from prison. Prosecutors can ensure that offenders carry out this obligation and inform the community of their existence.

3. Behavior Change Programs: The prosecution may encourage or supervise the offender to attend a behavior change or rehabilitation

⁷² *Ibid.*

program as part of their sentence. This may involve anger management programs, cognitive therapy, or mental and emotional support services.

4. Prohibition of Proximity to Children: The offender may be prohibited from approaching places where children gather, such as schools, playgrounds, or places of worship. The prosecution can ensure that the offender complies with this prohibition.

5. Notification Obligation: The prosecution may require the perpetrator to notify those who live with or near them of their status as a perpetrator of sexual violence.

6. Education and Counseling: The prosecution may order the perpetrator to attend an education or counseling program relating to sexual violence, its consequences, and its impact on victims.

7. Community Supervision: The prosecution may work with correctional institutions and social service providers to supervise the reintegration of the offender into the community. This can involve supervision of their living arrangements, employment, and interactions with the community.

8. Further Sanctions: If the offender violates the terms or commits similar acts again, the prosecution may take further legal action, including bringing the offender back to court.

These policies aim to create a safe environment for the community and protect potential victims. However, it is also important to

ensure that the policy is in line with the rights of the perpetrator and the principles of fair law. It can be concluded that the handling of perpetrators of sexual violence against children in government institutions, namely the Prosecutor's Office, has handled in accordance with the correct procedures, but the handling of the perpetrators after serving the sentence has not been realized because in this case the Police are more focused on the victim and also work with social institutions and child protection agencies to protect victims in and after the perpetrators of sexual violence serve their sentences so that victims can live a decent life as before.⁷³

However, in some of the aspects above it turns out that in Indonesia some of these policies are still not implemented perfectly because in accordance with PP No. 70 of 2020 concerning procedures for implementing chemical castration, installing electronic detection devices, rehabilitation, and announcing the identity of perpetrators of sexual violence against children still cannot be implemented because they still have to wait 5 years after being published, which means that it will only be implemented in 2025. The rest of the handling of cases of sexual violence against children after serving a sentence cannot be implemented properly and considering that the presidential regulation was made in a new

⁷³ *Ibid.*

situation and not because from the beginning it was firmly established how to handle the perpetrator after serving the sentence so that the perpetrator gets a deterrent effect and has no intention of doing it again or repeatedly because he feels deterred by the existing or already given punishment.

2. The state legal treatment of perpetrators of child sexual abuse after sentencing in South Korea

Similar to Indonesia, in South Korea cases of child sexual abuse are also a matter of great concern to the local government. This is also a matter that must be considered, in accordance with criminological theory which states that the cause of someone committing a crime or sexual violence, one of which is labeling theory where in this theory makes perpetrators of sexual violence tend to internalize the label and behave in accordance with the expectations or stereotypes attached to the label. This process can lead to a spiral of criminal behavior, where people who are labeled as criminals tend to continue to commit criminal behavior because they are considered "criminals" by society. Therefore, often perpetrators do not even hesitate to commit repeatedly because they think that they have already been labeled bad by society so

they better do it again because even if they stop or change, society still considers them bad as a criminal.

Thus it is necessary to have guidance or continuation from the government so that perpetrators of sexual violence against children do not do the same thing again in the future after serving their sentences. In accordance with the theory of rehabilitation in Indonesia, it is very good, but the theory is more emphasized on narcotics offenders and perpetrators of sexual violence with child perpetrators. So for perpetrators of sexual violence in children whose perpetrators are adults, this has not yet been realized. In South Korea, the handling of perpetrators of sexual violence against children is regulated in the "Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes" (Act No. 11705), or what is known in Korean as the "Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes".

"성폭력범죄의 처벌 등에 관한 특례법" is a law that regulates various aspects related to sexual crimes in South Korea. This law includes sexual abuse of children.

There have been significant changes in the last 5 years. These changes are presented in the data on child sexual abuse in South Korea from 2019-2013 in the table below:⁷⁴

⁷⁴ Interview with Ms. Park Jihyun as a Professor of Data and Statistics Youngsan University at South Korea on July 25th, 2023.

Table 1.1 Data on child sexual abuse in South Korea 2019-2023

2019	2020	2021	2022	2023
2.387	3.397	3.005	2.467	83/ Jan-May

Source: Korea Child Protection Agency (Korea CPA)

According to the data above, it can be concluded that cases of sexual violence against children had increased from 2019-2021 and had experienced a significant decline in 2022. If you look back at the highest case experienced in 2021 where in this situation it is still included in the Covid 19 pandemic. The reason why sexual violence in that year increased is because many people already understand and dare to report cases of sexual violence against children, but some people do not understand and do not understand how to report and even the children themselves do not know what sexual violence actually is. To suppress and reduce the number of child sexual abuse cases in Indonesia, the mechanism for handling perpetrators of child sexual abuse cases must be in accordance with the Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes (Act No. 11705). Therefore, here is how the government handles cases of child sexual abuse in South Korea.

A. Police

The process of handling child sexual abuse cases by the police in South Korea generally involves a series of steps designed to investigate the incident, gather evidence, and pursue legal action

against the perpetrator. Here is an overview of how the process unfolds:⁷⁵

1. Reports: A case usually starts with a report by the victim, the victim's family, or others with knowledge of the incident. Reports can be filed at the local police station.

2. Preliminary Inspection: Upon receiving a report, police officers will conduct an initial investigation. They will gather preliminary information about the incident, the victim, and the perpetrator. This may be done in person or through interviews.

3. Evidence Collection: The police will start collecting evidence to support the investigation. This may include medical examinations of the victim, interviews with witnesses, CCTV footage, and other relevant evidence.

4. Investigation: The investigation process involves gathering further evidence, identifying the perpetrator, and reconstructing the chronology of events. The team of investigators will search for evidence to prove the crime and identify the perpetrators.

5. Interviews and Examinations: Victims, witnesses, and perpetrators may be asked to undergo further questioning. These examinations are usually conducted by officers trained to handle sexual assault cases.

⁷⁵ *Ibid.*

6. Detention or Supervision: If there is sufficient evidence pointing to a specific perpetrator, the police may detain or supervise the perpetrator during the investigation.

7. File Submission: Once the investigation is complete, the police will compile relevant evidence and information in an investigation file. This file will be submitted to the prosecutor for further consideration.

8. Further Legal Process: The prosecutor will assess the investigation file and decide whether or not to bring the case to court. If there is enough evidence, the case will be submitted to court

9. Trial: The case will be heard by the court. Evidence and testimonies will be presented, and the court will make a decision based on the facts and applicable law.

10. Punishment: If found guilty, the offender will be sentenced by the court in accordance with the applicable laws in South Korea.

11. Victim Support Services: Throughout this process, victims may be given access to specialized support services, including counseling and protection support.

There are several difficulties or obstacles experienced by the Police in uncovering cases of sexual violence against children, namely: Police in South Korea, as in any country, can face a number of obstacles and difficulties in solving child sexual abuse cases. Some

of the factors that may affect their ability to deal with these cases effectively include:⁷⁶

1. Victim Discomfort: Children who are victims of sexual violence may feel afraid or embarrassed to talk about their experiences. This can make it difficult for police to obtain accurate and complete information.

2. Lack of Evidence: Evidence in sexual assault cases is often private or eyewitnesses may not be available. This can make investigations more difficult.

3. Influence of the Offender or Offender's Family: In some cases, the perpetrator or the perpetrator's family may try to obstruct the investigation or put pressure on the victim or witnesses.

4. Lack of Community Education and Awareness: Lack of understanding about sexual violence and lack of awareness about the importance of reporting such cases may hinder initial reports or reduce support from the community.

5. Resource Limitations: At times, the police may face resource limitations, both in terms of personnel and equipment, which may affect their ability to thoroughly investigate each case.

6. Lack of specialized training: Handling child sexual abuse cases requires specialized knowledge and training. Lack of adequate

training in this regard can affect the ability of the police to handle such cases.

7. Sensitive Victimization Approach: Dealing with child victims of sexual violence requires a very sensitive approach and children need to be treated with care. Not all police officers may have this skill.

8. Legal Complexity: Laws and regulations relating to child sexual abuse cases may be complex and changing, which can confuse the process.

9. Cross-agency cooperation: Handling child sexual abuse cases often involves cross-agency cooperation, such as the prosecutor's office and child protection agencies. It is not always easy to coordinate this cooperation.

Post-sentence offender management by the police in South Korea involves a series of measures designed to monitor the offender, prevent reoffending, and protect the community from potential harm. Some of the aspects that may be involved in post-sentence offender handling by the police may include:⁷⁷

1. Sexual Offender Registration: In South Korea, sexual offenders are often required to register as sexual offenders upon release from

prison. This information is recorded and accessible to the public through the sexual offender registration system.

2. Electronic Monitoring: Some offenders may be required to wear electronic monitoring devices, such as monitoring bracelets, which allow authorities to track their movements and ensure they do not approach restricted areas or potential victims.

3. Prohibition of Approaching the Victim or Restricted Areas: The perpetrator may be legally prohibited from approaching the victim or certain areas, such as schools or places frequented by children.

4. Rehabilitation and Behavior Change Program: The offender may be required to attend a rehabilitation program or behavior change therapy to prevent similar acts in the future.

5. Restrictions on Employment and Activities: The court may impose restrictions on the type of work or activities that the offender can engage in, especially those related to children or risky environments.

6. Monitoring and Assessment: The monitoring officer may monitor and assess the offender's behavior on a regular basis to ensure that they comply with the conditions and restrictions set out.

7. Social Reintegration Program: Offenders may also be directed to social reintegration programs designed to help them return to functioning in society in a positive way.

8. Victim Support: Throughout this process, the rights and protection of the victim should remain paramount. Victims should be given access to counseling support and protection.

It can be concluded that the handling of perpetrators of sexual violence against children in government institutions, namely the Police, has handled in accordance with the correct procedures, and has been running in accordance with the applicable law. Not only paying attention to the victim but also paying attention to the perpetrator in the future.

B. South Korean Prosecutor's Office

Prosecutors have a key role in handling child sexual abuse cases in South Korea. They are responsible for overseeing the investigation, prosecution, and trial of these cases. Here are some of the key roles of the prosecution in handling child sexual abuse cases:⁷⁸

1. Prosecution: The Public Prosecution Service has the authority to decide whether or not a case will be brought to court. They evaluate the evidence gathered during the investigation and decide if there is enough evidence to support legal charges against the perpetrator.

2. Additional Investigation: If necessary, the prosecution may order additional investigations to gather further or in-depth evidence.

⁷⁸ *Ibid.*

They can collaborate with the police to ensure the investigation is conducted properly.

3. Cross-Agency Coordination: The Public Prosecutor's Office can act as a liaison between the various agencies involved in handling the case, including the police, child protection agencies, and health services. Good coordination is important to maintain a smooth and effective flow of information.

4. Victim Protection: The prosecution is responsible for ensuring that victims' rights and protections are met throughout the entire legal process. They can ensure victims get the necessary counseling support and protection.

5. Court advocacy: The Public Prosecution Service represents the interests of the community in court and presents evidence and arguments to support the prosecution of offenders.

6. Consideration of Sentencing: The Public Prosecution Service has a role in considering the type of sentence that will be proposed to the offender if found guilty. They can make sentencing recommendations based on the facts of the case and applicable legal considerations.

7. Monitoring of Sentence Implementation: Once the offender has been sentenced, the prosecution may monitor the implementation of the sentence and ensure the offender complies with the obligations set by the court.

8. Case Monitoring: The Public Prosecution Service may continue to monitor the progress of the case and communicate with other authorities to ensure that all processes run smoothly.

9. Raising Community Awareness: The Public Prosecution Service can also engage in campaigns and programs to raise public awareness about child sexual abuse and the importance of reporting these cases.

Prosecutors in South Korea, like anywhere else, may face a number of obstacles and difficulties in solving child sexual abuse cases. Some of the obstacles that the prosecution may face in this context include:⁷⁹

1. Evidence Limitations: Sexual assault cases often involve evidence that is private and not always easy to collect. Electronic or forensic evidence may also be difficult to access or interpret appropriately.

2. Victim Discomfort or Trauma: Children who are victims of sexual violence may feel afraid, embarrassed, or traumatized to talk about their experiences. This may affect the quality and quantity of information obtained from the victim.

⁷⁹ *Ibid.*

3. Limited Eyewitnesses: In some cases, there are no direct eyewitnesses to an incident of sexual violence, making investigations more difficult.

4. Limitations of Investigations: The prosecution depends on the investigation conducted by the police. If the initial investigation is incomplete or inadequate, it may hinder the legal process.

5. Lack of Physical Evidence: Some sexual assault cases may not leave clear physical evidence, thus making the investigation more complicated.

6. Lack of Witnesses: Many times, sexual violence occurs in situations where only the victim and perpetrator are present. This may reduce the availability of witnesses who can provide testimony.

7. Third Party Influence or Intervention: In some cases, other parties may try to influence victims, witnesses, or evidence, or even try to obstruct the legal process

8. Resource Limitations: Prosecutors may also face limitations in terms of resources, both personnel and budget, which may affect their ability to handle cases meticulously.

9. Media and Community Pressure: Pressure from the media or community may influence the way the case is handled and may hinder a fair and objective process.

10. Victim Protection: The Public Prosecution Service must ensure that victims are adequately protected throughout the legal process, which may add to the complexity of the case.

11. Lack of Community Education and Awareness: Lack of community understanding and awareness about child sexual abuse may hinder initial reporting or support to victims.

How prosecutors deal with child sexual abuse offenders post-sentencing in South Korea, After a child sexual abuse offender has served a sentence in South Korea, prosecutors may take various measures to monitor the offender's behavior and ensure that they do not re-offend. Some of the steps the prosecution may take in dealing with offenders post-sentencing include:⁸⁰

1. Sexual Offender Registration: After serving their sentence, child sexual abusers may be required to register as sexual offenders. This means they will have to provide personal information to the authorities and their name will be entered into the public register of sexual offenders.

2. Electronic Monitoring: Certain offenders may be required to wear electronic monitoring devices, such as monitoring bracelets, that allow authorities to track their movements and ensure they do not approach restricted areas or potential victims.

⁸⁰ *Ibid.*

3. Restrictions on Employment and Activities: The Public Prosecution Service may impose restrictions on the offender to work or engage in certain activities that may increase the risk of reoffending, especially those related to children.

4. Rehabilitation and Behavior Change Program: The offender may be required to attend a rehabilitation program or behavior change therapy to prevent similar acts in the future.

5. Prohibition of Approaching the Victim or Restricted Areas: The perpetrator may be legally prohibited from approaching the victim, restricted areas, or communicating with children.

6. Routine Supervision: The Public Prosecution Service may decide to conduct routine supervision of the perpetrator to ensure they comply with all obligations and prohibitions set by the court.

7. Raising Public Awareness: The Public Prosecution Service can engage in educational programs and campaigns to raise public awareness about child sexual abuse and the importance of preventing it.

8. Assessment and Reevaluation: The prosecution may periodically evaluate the progress of the offender and reassess the measures implemented to ensure that they are effective. The main purpose of these measures is to protect the community from potential harm and prevent future acts of child sexual abuse. However, keep in

mind that the post-sentencing offender management system may vary based on the case and applicable regulations.

From the explanations above, it can be concluded that the differences in the handling of perpetrators of child sexual abuse between Indonesia and South Korea reflect differences in the legal system, culture, policies, and social infrastructure in the two countries. Here are some of the key differences that can be identified:⁸¹

1. **Laws and Policies:** Each country has unique laws and policies related to child sexual abuse. Indonesia has laws and regulations governing child sexual abuse, including the Child Protection Act. In South Korea, there is the "Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes" which regulates sexual crimes including against children.

2. **Justice System:** The judicial process and courts in each country may have differences in legal procedures, suspect rights, and victim protection. The way cases are investigated, brought to court, and adjudicated may vary.

3. **Sexual Offender Registration:** In South Korea, sexual offenders may be required to register as sexual offenders upon release from prison and their information is accessible to the public through the

⁸¹ *Ibid.*

sexual offender registration system. Indonesia also has a similar system where sexual offenders are registered, but the level of transparency and accessibility of information may differ.

4. Electronic Monitoring: In South Korea, certain actors may be required to install electronic monitoring devices. This system may not be implemented in Indonesia.

5. Rehabilitation Programs: Each country may have different rehabilitation or behavioral change programs for sexual abusers. These include therapy, counseling, and educational programs. In Indonesia, it is not yet .

6. Availability of Support Services: The availability of support services for victims of child sexual abuse, such as psychological counseling and protection, may vary by country.

7. Community Awareness: The level of community awareness about child sexual abuse can also affect how cases are managed. The level of reporting and support from the community may vary.

8. Inter-Agency Cooperation: The way in which agencies such as the police, prosecutor's office, child protection and health agencies work together in handling cases can also differ.

9. Sentencing Sanctions: The type and duration of punishment for perpetrators of child sexual abuse may vary between countries.

B . How The state legal protection should perpetrators of child sexual abuse be handled after serving their punishment in Indonesia when referring to South Korea?

The civil law system is implemented in both Indonesia and South Korea. Both countries adopt a civil law-based system that originates from Roman law. In this system, laws are codified in writing, and court decisions play a crucial role in determining legal interpretations. Additionally, both nations prioritize strong family and social values. As a result, in certain cases, legal punishments may reflect sensitivity to these values. Moreover, both Indonesia and South Korea have regulations and institutions in place to safeguard human rights. Despite differences in implementation, both are committed to protecting the rights of their citizens.

In approach between Indonesia and South Korea in addressing cases of sexual violence holds significant importance for both nations. They strive to handle perpetrators of sexual violence against children with the aim of achieving appropriate prevention effects and preventing similar actions in the future.

Fundamentally, both Indonesia and South Korea are determined to protect children from sexual abuse and have legislation and legal systems governing this issue. However, it's crucial to remember that the implementation and legal treatment of cases involving sexual abuse of children can vary due to factors such as cultural differences, legal traditions, and government policies.

Here are some potential similarities in the legal treatment of child sexual abuse in Indonesia and South Korea:

1. Child Protection: Both countries have laws specifically focused on protecting children, including protection against sexual abuse. For instance, in Indonesia, there is Law No. 35 of 2014 concerning Child Protection, while in South Korea, there exists a similar law called the Child and Adolescent Protection Act.

2. Severe Penalties: Both Indonesia and South Korea tend to impose severe penalties on perpetrators of child sexual abuse, including lengthy prison terms and substantial fines.
 3. Awareness Enhancement: Both countries aim to raise public awareness about the importance of shielding children from sexual abuse. This involves educational campaigns, training, and other efforts to inform the public about the risks of child sexual abuse.
 4. Institutional Collaboration: In both countries, governmental bodies, police, and non-governmental organizations (NGOs) collaborate to handle cases of child sexual abuse, encompassing investigation, prosecution, and victim support.
 5. Victim Protection: Both countries strive to provide protection and assistance to victims of sexual abuse, including counseling services, legal protection, and other efforts to help them cope with the impact of trauma.
- However, it's essential to note that the actual implementation of the law and treatment of cases involving sexual abuse of children can significantly vary. In practice, factors such as law enforcement, judicial systems, cultural aspects, and societal perspectives can influence how such cases are handled and punished in each country.

Variations in how Indonesia and South Korea address perpetrators of child sexual abuse under the law can encompass the following elements:

1. Legal Definitions: Distinctions may arise in how sexual harassment is defined and categorized within each country. The interpretation and legal description of sexual harassment could differ between Indonesia and South Korea.
2. Age of Protection: Variances in the age at which children receive legal protection may exist between the two countries, impacting the handling of child sexual abuse cases.
3. Legal Sanctions: Despite both nations imposing severe penalties for child sexual abuse, discrepancies might occur in the types and severity of penalties, including variations in maximum imprisonment periods or fines.
4. Parole Arrangements: Differences in parole conditions and procedures between Indonesia and South Korea could impact the duration offenders must serve before parole eligibility.
5. Law Enforcement Approach: Disparities may exist in law enforcement

practices, investigations, and trial proceedings, influencing how authorities handle child sexual abuse cases.

6. Government Policy: Divergent government policies, funding allocations for child protection programs, and initiatives for sexual abuse prevention may influence the management of such cases in each country.

7. Courts and Judicial Process: Variances in the legal process, encompassing court proceedings and evidentiary requirements, might be observed between Indonesia and South Korea.

8. Confidentiality of Victim Identity: Contrasting provisions concerning the confidentiality of victim identities may affect reporting, investigation, and protection procedures.

9. Counseling and Victim Support: Discrepancies in the accessibility and quality of support services, like counseling and psychological assistance, for victims of child sexual abuse might exist.

10. Public Awareness: The level of public awareness regarding child sexual abuse and the effectiveness of educational and prevention campaigns may fluctuate between the two countries.

In accordance with the above statement and existing data, what should be done by Indonesia with reference to how the handling of perpetrators of sexual violence against children in South Korea is by:

1. Making the latest laws that state how the handling of perpetrators of sexual violence after serving a sentence, because it is very important to monitor how the perpetrators after serving their sentences are afraid they will do the same thing.

2. Referring to the system in South Korea that every perpetrator of sexual violence will be given an electronic anklet which will be monitored by government agencies with a predetermined radius and time according to how the crime was committed, so that Indonesia should be given an electronic bracelet in accordance with like in South Korea. Considering that PP No. 20 of 2020 only gives electronic anklets to perpetrators who have undergone chemical castration.

3. Rehabilitation of perpetrators of sexual violence after serving a sentence so that it can be evaluated again whether after serving the sentence the perpetrator has a deterrent effect or not.

4. Create a special countermeasure and monitoring body for perpetrators of sexual violence against children after serving their sentences.

Referring to South Korea on how they handle offenders post-serving their sentences, the proper utilization of laws and government resources can help reduce the rates of sexual violence in Indonesia. Considering the high number of sexual violence cases involving children in Indonesia, its implementation is highly crucial. This implementation aims to make victims feel safe and secure in leading their future lives.

CHAPTER IV CLOSING

A. CONCLUSION

From the discussion in the previous chapter, conclusions can be drawn:

1. Sexual violence against children is the most cruel violation of human rights because it takes away a child's future. From the chapter that has been explained, it can be concluded that the handling of perpetrators of sexual violence against children in Indonesia and South Korea has a handling of perpetrators of sexual violence against children after serving different sentences. This can be caused by several factors that make perpetrators of child sexual abuse able to do the same thing even repeatedly.

The Indonesian government system has made regulations that are good enough to handle cases of sexual violence against children, it's just that the implementation has not been carried out properly because there is no legal regulation and has been established from the first so that it is a little less related to the handling of perpetrators after serving their sentences. In contrast to South Korea, which has implemented how to handle perpetrators after serving their sentences well because they already have

definite regulations and have long been implemented to avoid sexual violence against children from recurring.

2. Similarities:

a. Seriousness of Punishment: Both Indonesia and South Korea are serious in imposing penalties on perpetrators of child sexual abuse. Both countries recognize the importance of providing penalties that fit the level of the offense and protect the rights of the child.

b. Legal System: Both countries have legal systems that underpin the handling of child sexual abuse cases. The legal process is governed by laws and regulations governing the investigation, prosecution and trial of perpetrators of sexual crimes.

Differences:

c. Types of Penalties: Indonesia and South Korea may have differences in the types of penalties given to perpetrators of child sexual abuse. This could include differences in the duration of the sentence, the type of punishment (imprisonment, fines, rehabilitation), and additional types of sanctions such as registration as a sexual offender.

d. Rehabilitation Policy: South Korea may have a rehabilitative approach that focuses more on healing and reintegrating perpetrators of sexual violence in society after serving their sentence. In Indonesia, a rehabilitative approach may also exist, but differences in implementation may occur.

e. Public Awareness: Differences in the level of public awareness on the issue of child sexual abuse and the protection of children's rights may also affect how the community supports or oversees the handling of these cases after the offender has served their sentence.

B.SUGGESTION

In connection with this Based on the study in the above research, the author proposes several suggestions, as follows suggestions, as follows:

1. Psychologically Based Rehabilitation:

Both countries can strengthen rehabilitation programs that focus on psychological treatment for perpetrators of sexual violence. Therapy, counseling, and recovery programs can help reduce the risk of recurrence of such behavior.

2. Post-Detention Monitoring:

Implement a strict post-incarceration monitoring system for sexual violence offenders, including surveillance of their online activities, to minimize the risk of re-offending.

3. Education and Awareness

Increase education and awareness in the community about the devastating impact of child sexual abuse and the importance of child protection. Social campaigns and education programs in schools can help change community perceptions and behaviors.

4. Support for Victims:

Ensure adequate support for victims of sexual violence, including access to counseling, medical care, legal assistance, and psychological recovery programs.

5. Prevention Through Education:

Integrating education on preventing child sexual abuse into school curricula can help create a generation that is more aware of the risks and knows how to protect themselves.

6. Cross-Sector Collaboration:

Encourage stronger collaboration between the government, legal institutions, NGOs, and the private sector in efforts to address child sexual abuse cases. This synergy can increase the effectiveness of prevention and law enforcement measures.

7. Training for Law Enforcement Personnel:

Provide adequate training to law enforcement personnel in handling child sexual abuse cases, including sensitive interrogation.

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