

## Judges' Considerations in the Case Judgment of Premarital Sex Crime with Underage Child Based on Mutual Love at the Bengkulu District Court

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#### ABSTRACT

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**Purpose:** This research aims to analyze the form of liability that can be imposed on child perpetrators for criminal acts of premarital sex with an underage child based on mutual love. Furthermore, this research aims to analyze the juridical and non-juridical considerations and the verdict of the judge in sentencing the child perpetrators for a premarital sex crime with an underage child in Bengkulu Court Judgment No. 20/Pid.Sus-Anak/2021/PN Bgl and No. 35/Pid.Sus-Anak/2022/PN Bgl.

**Methodology:** This research used normative legal research. The approach method employed in this research was a juridical approach, referring to the applicable laws and regulations. The analysis of legal materials in this research utilized a qualitative method, i.e., a step to describe the data obtained in sentence form.

**Results:** The results demonstrated that a child who committed criminal acts of premarital sex with an underage child based on mutual love can still be held criminally liable. The form of liability imposed on child perpetrators is imprisonment, but the special minimum provisions of imprisonment do not apply.

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Judges' Considerations in the Bengkulu District Court Judgment No. 20/Pid.Sus-Anak/2021/PN Bgl and No. 35/Pid.Sus-Anak/2022/PN Bgl are for the fact that there were non-juridical causalities of criminal acts of premarital sex with an underage child or sexual intercourse due to the romantic relationships between the victim and the perpetrator whose intercourse was consensual and did not always involve force or violence. These non-juridical considerations were made by the judge as mitigating circumstances for child perpetrators.

**Benefits:** This research can be used as reference material for the government and law enforcers, particularly judges, in deciding a case of premarital sex with an underage child committed by a child based on mutual love. Thus, law enforcement against child perpetrators of sexual abuse would become more impartial, and child victims would also receive attention and protection.

**Novelty/Originality:** Regarding the analysis of the judge's considerations in Judgment No. 20/Pid.Sus-Anak/2021/PN Bgl and No. 35/Pid.Sus-Anak/2022/PN Bgl on criminal liability for the child perpetrator of premarital sex with an underage child based on mutual love, the existing Law on Child Protection (UUPPA) has not comprehensively regulated the form of liability for child perpetrator of the premarital sex crime with underage children based on mutual love and non-juridical causality of the premarital sex crime with underage children.

**Keywords:** obscenity, children, consensual, mutual love

### **Abstrak**

**Tujuan:** Penelitian ini bertujuan untuk menganalisis bentuk tanggung jawab yang dapat dikenakan pada pelaku anak-anak untuk tindakan kriminal seks pra-perkawinan dengan anak di bawah umur berdasarkan cinta bersama. Selain itu, penelitian ini bertujuan untuk menganalisis pertimbangan-pertimbangan hukum dan non-judi dan putusan hakim dalam menghukum pelaku kejahatan seksual pra-perkawinan dengan anak di Pengadilan Bengkulu Keputusan No. 20/Pid.Sus-Anak/2021/PN Bgl dan No. 35/Ped.

**Metodologi:** Penelitian ini menggunakan penelitian hukum normatif. Pendekatan yang digunakan dalam penelitian ini adalah pendekatan hukum, mengacu pada hukum dan peraturan yang berlaku. Analisis materi hukum dalam penelitian ini menggunakan metode kualitatif, yaitu, langkah untuk menggambarkan data yang diperoleh dalam bentuk kalimat.

**Hasil:** Hasilnya menunjukkan bahwa seorang anak yang melakukan tindakan kriminal seks pra-perkawinan dengan seorang anak di bawah umur berdasarkan cinta bersama masih

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*dapat ditanggung kejahatan. Bentuk tanggung jawab yang dikenakan pada pelaku anak adalah penjara, tetapi ketentuan minimum khusus penjara tidak berlaku. Pertimbangan hakim dalam putusan Pengadilan Distrik Bengkulu No. 20/Pid.Sus-Anak/2021/PN Bgl dan No. 35/PID.Sust-Anak/2022/PNBgl adalah atas fakta bahwa ada kausal-kausal non-hukum dari tindakan kejahatan seks pra-perkawinan dengan anak di bawah umur atau hubungan seksual karena hubungan romantis antara korban dan pelakunya yang hubungan itu konsensual dan tidak selalu melibatkan kekuatan atau kekerasan. Pertimbangan-pertimbangan non-hukum ini dibuat oleh hakim sebagai keadaan meringankan bagi pelaku anak.*

**Manfaat:** Penelitian ini dapat digunakan sebagai bahan referensi bagi pemerintah dan penegak hukum, terutama hakim, dalam memutuskan kasus seks pra-perkawinan dengan anak yang masih kecil yang dilakukan oleh anak berdasarkan cinta bersama. Dengan demikian, penegakan hukum terhadap pelaku pelecehan seksual anak akan menjadi lebih adil, dan anak-anak korban juga akan menerima perhatian dan perlindungan.

**Novelty dan Originality:** Berkaitan dengan analisis pertimbangan hakim dalam Keputusan No. 20/Pd.Sus-Anak/2021/PN Bgl dan No. 35/Pid.Sust-Anak/2022/PNBgl tentang tanggung jawab pidana bagi anak yang melakukan hubungan seksual pra-perkawinan dengan anak di bawah umur atas dasar cinta bersama, Undang-Undang Perlindungan Anak (UUPA) saat ini belum secara komprehensif mengatur bentuk tanggung jawab anak-anak yang melakukan kejahatan seks pra-Perkawinan terhadap anak di atas usia di atas umur berdasarkan cinta bersama dan kausalitas non-juridis dari hubungan seksual di bawah usia.

**Kata kunci:** *obscenity, anak-anak, konsensual, cinta bersama*

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## INTRODUCTION

All children in Indonesia have the right to have their human rights protected, as mandated in Article 1 Section (2) of Act No. 35 of 2014. Article 1 Section (2) of Act No. 35 of 2014 specifically states that every child has the right to survival, growth, and development, as well as protection from violence and discrimination (Fitriani, 2016, p. 250). The Convention on the Rights of the Child, which Indonesia ratified through a Presidential Decree, became the main legal protection for Indonesian children. This is realized by the issuance of regulations in the Law on the Criminal Justice System for Children (UUSPPA) and the Law on Child Protection (UUPA).

For instance, Egypt is one of the countries that signed the Convention on the Rights of the Child, and it was implemented in Egypt on September 2, 1990, as Egypt Law No. 12 of 1996 Promulgating the Child Law Amended by Law No. 126 of 2008; Egypt also ratified Egypt's Reservations to the African Charter on the Rights and Welfare of the Child. In Article 1, it is asserted that the state shall ensure the protection of childhood and motherhood, the welfare of children, and provide suitable conditions for their appropriate upbringing in all respects within the framework of freedom and human dignity. Furthermore, the state shall, as a minimum, guarantee the rights of the child, as stated in the Convention of the Rights of the Child and all other relevant international covenants enforced in Egypt. For this law, the term "child" within the context of care and welfare shall mean all individuals who have not reached the age of eighteen (18) complete calendar years.

In this case, children are often vulnerable to becoming victims of crime, but over time, they can also become perpetrators of crime. In Indonesia, the records of the Indonesian Child Protection Commission (Komisi Perlindungan anak, Abbreviated as KPAI) in 2021 reported 2,615 complaints related to the special protection of children. Throughout 2022, this number decreased by 27.27% compared to 2021, with as many as 1,903 complaints related to the special protection of children, with most cases of children being victims of sexual crimes totaling 746 cases, whereas 187 cases were related to Children Against the Law as perpetrators of criminal acts (2022, Retrieved from <https://dataindonesia.id/ragam/detail/kpai-catat-4124-kasus-perlindungan-anak-hingga-november-2022>).

The term sexual violence, specifically, is an act that can be categorized as unnatural sexual relations and behavior, resulting in serious losses and consequences for the victims (Wahid & Irfan, 2001: 32). Other factors trigger sexual violence, which is stimulated by the influence of the environment around the perpetrator, such as the perpetrator seeing or witnessing things related to pornographic action and pornography and the perpetrator's sexual desire arises so that the perpetrator wants to vent his desire in various ways (Kristiani, 2014: 372). Violent crime is also a form of crime in a society whose development is increasingly diverse in terms of motive, nature, form, intensity, and modus operandi (Kristiani, 2014: 372).

The increasing number of cases of sexual violence against children has left many parties, especially parents, deeply concerned. It makes parents realize that sexual violence is real and always threatens children anytime and anywhere. The high number of cases of sexual violence against children, in particular, indicates that children are a very vulnerable group because of the

perception that they are weak, helpless individuals, and children have a high level of dependence on the adults around them (Amin et al., 2018).

However, what is even more saddening is that children are not only victims of sexual violence but in many cases, they are also found to be perpetrators of sexual violence, such as criminal acts of premarital sex with underage children. Sexual violence against children does not have to involve direct bodily contact between the perpetrator and the child as the victim. Forms of sexual violence itself can occur in acts of rape or sexual abuse (Sari, A. P., 2009).

Sexual abuse is a vicious act related to sexual desire that violates moral norms in a society in which the perpetrator can be punished with criminal penalties (Putra, 2016). Premarital sex with an underage child is generally based on the perpetrator feeling repressed in showing his sexual expression, but there are other elements, such as the desire for revenge or mental illness (Silitonga & Zul, 2014, p. 64). Sexual abuse tends to happen to someone weak and easily tricked, such as girls and boys. Premarital sex with underage child against children is a criminal offense that can be threatened with severe sanctions but still occurs in society.

Article 1 of Act No. 11 of 2012 on the Child Criminal Justice System (UUSPPA) mentions children who commit criminal offenses as children in conflict with the law. Children in conflict with the law are those who are victims of criminal acts and those who are witnesses to criminal acts. According to Article 1 Section (3), what is meant by a child is one who is aged 12 but has not reached 18 years. The Law on the Criminal Justice System for Children (UUSPPA) reminds every Indonesian to be aware of children's rights, especially in the case of children against the law, starting from the process of investigation, prosecution, trial, and implementation of Court Judgments to the return of children to social life.

Bearing in mind the definition of a child as in the Law on the Criminal Justice System for Children (UUSPPA) and the Law on Child Protection (UUPA), where the age limit for children is determined if they have not reached 18 years of age, it is not justified to force a child victim who is an underage girl who is legally deemed incapable of giving consent to have sexual intercourse (Hendrawati & Kurniaty, 2020, p. 40). Therefore, the crime of premarital sex with an underage child committed by a child perpetrator against the victim, who is also a child, can be punished. In its law enforcement, Act No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection is used as a basic reference for providing sanctions or punishments to perpetrators of child sexual abuse against children on a consensual basis who

can be punished for child sexual abuse, as stipulated in Article 76D, Article 76E, Article 81 Sections (1) (2) and (3), Article 82 Section (1) of Act No. 35/2014 concerning Child Protection.

The judge, in imposing a sentence, first considers the aggravating and mitigating circumstances for the defendant. The interesting point from the Bengkulu District Court Judgment No. 20/Pid.Sus-Anak/2021/PN.Bgl and the others was a Judgment with No. 35/Pid.Sus- Anak/2022/PN.Bgl regarding the crime of child abuse is that both have similarities in the judge's considerations. Both judgments contain a narrative of the actions of the child perpetrator and child victim based on mutual consent as a mitigating circumstance. Based on the position of the two cases, it is clear that there is an element of "deception or persuasion" from the child perpetrator by promising to marry the child victim if the child victim becomes pregnant as a result of the sexual abuse committed by the child perpetrator.

Further, the Law on Child Protection (UUPA) does not recognize the term "mutual consent" for the crime of premarital sex with underage children against children, although there are allegations that the victim committed the act based on mutual consent. Consequently, an analysis of criminal liability by children as perpetrators of the criminal act of premarital sex with underage children is needed. Therefore, it can be said that the narrative that the obscene act was committed based on a situation of mutual consent between the perpetrator and the victim, who is still a child, cannot necessarily be used as an excuse for the perpetrator to be free from the law. Accordingly, the problems in this research are: What are the liabilities of children as perpetrators of the criminal acts of premarital sex based on mutual love? What is the analysis of the judge's considerations in the judgment of the case of criminal acts of premarital sex with an underage child based on mutual love in Bengkulu District Court?

## **RESEARCH METHOD**

This research employed sociologic legal research, using secondary materials as initial data, followed by primary materials. Data were obtained through field studies consisting of literature studies or other official documents and interviews (Amiruddin, 2012: 34). In addition, the juridical sociological approach looks at the interaction of community behavior as a result of the existing norm system. This type of sociologic legal research is focused on examining the use of applicable legal norms, describing them comprehensively, and then providing legal solutions to the problems under study. It is also possible to obtain data in the field to examine

the problem formulation more deeply to support normative research (Darme & KRH, 2016, p. 41).

This study used primary and secondary data. Secondary data sources were obtained from indirect sources, where the data were gathered and recorded by other parties. Meanwhile, primary data were obtained by conducting direct interviews with judges in accordance with the needs of research materials attained from field studies. Secondary data, in fact, includes primary, secondary, and tertiary legal materials. Besides, the approach method employed in this research was a juridical approach, i.e., legal research carried out through the step of examining library materials or secondary data used as the basis for research by tracing regulations and other literature sources relevant to the problem being studied (Soekanto & Mamudji, 2001. pp. 13-14). Following that, while the data collection method used in this research was literature research, the analysis of legal materials utilized a qualitative method, a step to describe the data obtained in sentence form. Moreover, the analysis method often used in legal case studies is the content analysis method (Amirudin dan Asikin, 2004. p. 95).

## RESULTS AND DISCUSSION

### A. Analysis of Criminal Liability by Child as Perpetrator of the Criminal Act of Premarital Sex with Underage Child Based on Mutual Love

In the Indonesian Criminal Code, obscenity is categorized as an act violating decency (Prihatmini, 2023). Sexual abuse is a type of abuse that, based on the perpetrators' identity, is divided into two categories. First, familial abuse is a type of abuse in the form of incest, i.e., sexual violence, where the victim and perpetrator are related or are part of the same nuclear family. This includes people who become the substitute for parents, such as stepfathers, stepmothers, caretakers, or other people who are trusted to take care of the child. Second, extrafamilial abuse is where the abuse is committed by people other than the victim's family (Surbakti et al., 2022). Suppose sexual freedom is associated with a person's ability to control himself or herself in the area of sexual intercourse. In that case, sexual integrity means a legally protected condition that prohibits sexual intercourse with a person who, for certain reasons (for example, under the age or mental illness), is not a carrier of sexual freedom (Estudios et al., 2021).

In this instance, children's actions and behavior have to be closely monitored by parents and professionals. It has been reported that some behavioral changes in child victims of sexual abuse and their misinterpretation or misperception can exacerbate the problem (Mileva et al., 2020). Sexual violence against children not only places them in a disadvantaged position but also exposes the imbalance in the enforcement of law in Indonesia. Children, as victims, not only suffer from moral and material losses but more importantly, they lose legal protection in the social reality of society (Rahmawati et al., 2023). Victims of violence undoubtedly need treatment according to their needs. The protection of women and children is the state's commitment, as stipulated in the 1945 Constitution of the Republic of Indonesia, Article 28, Section 4 (Tielung et al., 2019).

According to French and Dishion (2003), the meaning of premarital sexual behavior is all forms of sexual behavior that come from the sexual desire for the opposite sex by adolescents before marriage, and this act could be either from performing less intimate relationships to performing sexual intercourse (Md.Shahid et al., 2017, p. 158). In the opinion of R. Soesilo (2013, p. 212), sexual abuse or obscene acts are all activities that violate the norms of decency or vile acts within the context of sexual lust, such as kissing, groping the genitals, groping the breasts, and more. In most cases, the victims of premarital sex with underage children are children. Moeljatno (2003, p. 106) explains that premarital sex with an underage child is said to be all acts that violate immorality or vile acts related to sexual lust. Also, according to P.A.F Lamintang and Djisman Samosir (1997, p. 193), premarital sex with an underage child is defined as the act of a person who by violence or threat of violence forces a woman to have sexual intercourse outside of marriage with him.

Constitutional Court Judgment No. I/PPU-VII/2010 states that the age limit for children who can be held criminally liable or who can be brought to court is at least 12 (twelve) years old (Rahmat, 2014, p. 8). A person who can be held criminally liable is only someone who is "capable of liability." This liable capacity refers to the state and ability of a person's "soul" or *geestelijke vermogens*, and not to the state and ability to "think" or *verstanddelijke vermogens* even though the official term used in Article 44 of the Criminal Code is *verstanddelijke vermogens*, which is translated as "the state and ability of a person's soul" (Taufiqurrohman, 2020: 28).



The protection of children is carried out to support the implementation of the rights and obligations of each child so that they can grow and develop optimally and positively both physically, psychologically, and socially (Gultom, 2008, p. 33). The form of criminal liability for children as perpetrators of criminal acts is regulated in Act No. 11 of 2012 concerning the Criminal Justice System for Children, which aims to provide legal certainty in the criminal sentencing process (Dirwansyah et al., 2021, p. 187). Legal protection for children who are perpetrators of criminal acts also needs serious attention. For this reason, it is important to know the concept of legal protection that must be given to children, i.e., the concept of restorative justice and the concept of diversion (Handayani & Hariawan, 2019, p. 65).

The protection for children who are victims of criminal acts in the Criminal Justice System for Children can include rehabilitation, receiving legal assistance, guarantees of confidentiality, procedural rights in the judicial process, open access to information, and compensation (Juanda et al., 2021, pp. 253–256).

In connection with criminal liability for children based on the principle of expediency, judges, in deciding a child's case, are not only guided by statutory regulations but also need to consider that society and the state also have a significant role in fulfilling children's rights (Sulardi, 2015, p. 254). The principle of the best interests of children in protecting children's rights is outlined in the Convention on the Rights of the Child, which has been ratified by Presidential Decree No. 36 of 1990 concerning Ratification of the Convention on the Rights of the Children, elucidating that children's rights can be properly protected. It views the best interests of children as of paramount importance in making all decisions relating to children (Nisa, 2021: 47).

Furthermore, culpability is the main factor for a person to be held criminally liable, not only the mental element of the criminal offense (Huda, 2006, p. 4). *Mens rea* itself is defined as the mental element of the perpetrator of a criminal offense, which consists of intent and negligence. Thus, the act is separated from culpability, and if there is an act and culpability, the perpetrator can be held criminally responsible (criminal liability) (Sjawie, 2017, p. 14). Chairul Huda (2006, p. 62) also states that criminal liability must be considered to exist unless there are reasons for criminal erasure.

A criminal offense that occurs as a result of a person's actions will basically result in sanctions or punishment for the perpetrator. The basis of a criminal act is the legal principle that applies to everyone, and the criminalization of a person is based on a principle called the principle of guilt (Rusianto, 2018). Acts against the law are not enough for a person to be penalized, so to be penalized, there is still another requirement, namely that there is an element of culpability in the actions committed by the person (Sudarto, 1988, p. 85).

The enactment of Act No. 11 of 2012 on the new Criminal Justice System for Children provides legal assurances that the age limit of children who can be held liable is 12 years old but has not reached 18 years old. Article 21, Section (1) of the UUSPPA regulates the age limit of children who can be brought to a Juvenile Court, such as a child who is 12 years old but has not reached 18 years old. As such, it can be concluded that, according to the UUSPPA, children under the age of 12 are deemed unable to take liability for their actions. Article 69, Section 2 of Act No. 11 of 2012 concerning the Criminal Justice System for Children also stipulates that children who commit a criminal offense have reached the age of 12 years but have not reached 14 years can only be punished in the form of action. Based on the provisions of the article, criminal liability for children can only be used against children who are 14 years old.

Criminal liability for perpetrators of child sexual abuse is applied not only to adults but also to children who become perpetrators of sexual abuse because there is culpability, and it fulfills the elements of a criminal offense. Based on the provisions in Act No. 11 of 2012 concerning the Criminal Justice System for Children, law enforcers are obliged to seek diversion for children in conflict with the law. However, in the case of criminal acts of premarital sex with an underage child, diversion cannot be sought since diversion can only be given to children who commit criminal acts with imprisonment under 7 years on Article 7, Section 2 point (a), of Act No. 11 of 2012. Criminal punishment against perpetrators of child premarital sex with underage children is regulated in Article 81, Section (2), of Act No. 35 of 2014 concerning amendments to Act No. 23 of 2002 concerning Child Protection.

In some cases, the crime of premarital sex with an underage child is committed between the victim and the perpetrator based on mutual consent or in the sense that there is no force, and of course, there is no element of unlawful acts. Children and women are

latent victims, defined as those who have particular qualities and characteristics that make them more likely to become victims (Muladi, 2005, p. 43). The victim of the premarital sex crime with an underage child, who is still included in the category of children, is deemed unable to give consent with their common sense or without the assistance of parents or guardians, so it is not justified to force or use deception to persuade a child to commit obscene acts, as in Article 81 of Government Regulation in Lieu of Law (abbreviated as Perppu) No. 1 of 2016 juncto Article 76D of Act No. 35 of 2014. Hence, obscene acts committed by children against victims who are also still categorized as children cannot be separated from the law. Based on the provisions of Article 81 Section (2) of Act No. 11 of 2012 concerning the Criminal Justice System for Children, the perpetrator of the criminal act of premarital sex with an underage child can still be held criminally liable for committing it, so there is no reason to abolish the punishment for the child as the perpetrator and is considered capable of being liable (physically and mentally healthy).

The form of liability that can be imposed on the perpetrator of child premarital sex with an underage child on the basis of mutual consent where the victim and the perpetrator are both still categorized as children can be in the form of imprisonment, but with a note that the special minimum provisions of imprisonment do not apply to children as stipulated in Article 79 Section (3) of Act No. 11 of 2012 concerning Criminal Justice System for Children. The case of premarital sex with an underage child as the perpetrator is in the children's justice system, where on the one hand, the child is the perpetrator of a criminal offense, but on the other hand, the child is the victim or object in the process of Criminal Justice System for Children. The judge must still consider the condition of the perpetrator, who is still a "child," by looking at the background of the criminal offense of sexual abuse, the values of justice (Nasution, 2020, p. 51), as well as the principle of the best interests of the child as referred to in article 2 point b of Act No. 35 of 2014 concerning amendments to Act No. 23 of 2002 concerning Child Protection (Nasution, 2020, p. 76).

The ages of the child perpetrators of the premarital sex crime with an underage child on the basis of mutual love in both Judgments No. 20/Pid.Sus-Anak/2021/PN Bgl and No. 35/Pid.Sus-Anak/2022/PN Bgl at the time of trial were still 16 years old or still children. Article 21, Section (1) of the UUSPPA, regulates the age limit of children who

can be taken to a Juvenile Court as a child who has reached the age of 12 years but has not reached 18 years. It can be concluded that, according to UUSPPA, children under the age of 12 are considered unable to take liability for their actions. Considering the age of the child perpetrator of the sexual abuse crime based on mutual consent where he is still 16 years old or falls into the category of children in conflict with the law, the child perpetrator can be held liable through the trial process at the Juvenile Court with a single judge and still consider the rights of the perpetrator as a child.

Judgments No. 20/Pid.Sus-Child/2021/PN Bgl and No. 35/Pid.Sus-Child/2022/PN Bgl explain that the act of premarital sex with an underage child committed by the child perpetrator against the victim was carried out deliberately and consciously, as evidenced by the persuasion or trickery carried out by the child perpetrator to the victim after the child victim refused to commit the obscene act. Judgment No. 20/Pid.Sus-Anak/2021/PN Bgl describes the efforts of the child perpetrator to deceive by saying, "*kalau kau hamil aku mau nikahin*" (if you get pregnant, I want to marry you) so that the child victim obeys the lust of the child perpetrator to have sexual intercourse until the child perpetrator feels satisfied.

Additionally, Court Judgment No. 35/Pid.Sus-Anak/2022/PN Bgl elucidates that the child perpetrator also carried out a series of tricks by persuading the child victim and saying, "*idak papo, om kelak tanggung jawab*" (it is okay, I will be responsible later) because of the seduction and promises of the child perpetrator, it made the child victim weak. Based on the judge's factors considered in the judgment, the actions of the child perpetrator were carried out consciously and deliberately by doing a series of tricks to launch his depraved actions so the child perpetrator can be held criminally liable as stipulated in the Law on the Criminal Justice System for Children.

In Court Judgment No. 20/Pid.Sus-Anak/2021/PN Bgl, the child victim, was invited to engage in sexual activity by the child perpetrator, but she declined the invitation out of fear of becoming pregnant. The perpetrator forces the child victim to accept a sexual invitation the following day to prevent the child victim from rejecting it and preventing the child perpetrator from returning to sexual relations with the victim. Criminal liability for child perpetrators of premarital sex crime with underage children based on mutual love is in the form of guidance in Child Special Development Institute (Abbreviated as LPKA) Bengkulu for 9 (nine) months and work training for 1 (one) month. In comparison, in Court Judgment

No. 35/Pid.Sus-Anak/2022/PN Bgl, the criminal liability of the child perpetrator of the premarital sex crime with an underage child based on mutual love is in the form of imprisonment for 1 year and 6 months and vocational training for 1 month. The basis for the panel of judges to punish in the form of imprisonment and vocational training is Act No. 35 of 2014 concerning Child Protection and the fact that the defendant is still categorized as a child.

**B. Analysis of Judges' Consideration in the Judgment on the Criminal Acts of Premarital Sex with Underage Child Based on Mutual Love in Judgments No. 20/Pid.Sus-Child/2021/PN Bgl and No. 35/Pid.Sus-Child/2022/PN Bgl.**

The child perpetrator who committed the premarital sex crime with an underage child in both Cases No. 20/Pid.Sus-Child/2021/PN Bgl and No. 35/Pid.Sus-Child/2022/PN Bgl was based on mutual love. It can be claimed that there was no element of coercion, violence, or fear of violence because the child perpetrator in both cases committed the crime of premarital sex with underage children based on mutual affection, or what is known as "consensual." Acts between children who are the victims and the perpetrators can be influenced by internal factors like the children's emotional and mental states, which are not yet stable, and external factors like low education, an unhealthy friendship environment, and an unbalanced family, which prevents children from receiving enough attention. Supposedly, parents must play a significant role in assessing if children have appropriately matured and developed.

There are facts regarding the non-juridical causality of the premarital sex crime with an underage child or intercourse, such as the victim and the perpetrator dating each other, that indicate that sexual intercourse with the victim does not always occur by the perpetrator by force or violence. Additionally, this causality has not been fully regulated by the existing Law on Child Protection (Angin et al., 2022, p. 152). When determining such a judgment in a case, judges can consider causality as a non-juridical consideration. In determining the causal relationship between actions and their consequences, criminal law requires specific criteria to establish the causal relationship between acts and the results they produce (Kalensang, 2016, p. 14).

According to R. Tresna (1959, p. 24), cause and effect in criminal law can be described as follows: Firstly, the cause of the act is clearly described, meaning that there is an act that is clearly prohibited. Secondly, an effect is clearly described, meaning that there is a reality that really arises because of a cause (*causa*). In their consideration, the judges must be careful in describing the elements of the criminal offense that are proven to fulfill the element of "committing deceit, a series of lies, or inducing." Judges must also reconsider the causality and chronology of events as well as the internal and external factors of the perpetrators who are in the category of children.

Regarding this issue, the authors interviewed Ms. ITR, who was the judge who gave Case Judgements No. 20/Pid.Sus-Anak/2021/PN Bgl and No. 35/Pid.Sus-Anak/202/PN Bgl in her capacity as a judge and a spokesperson from the Bengkulu District Court (interviewed on February 28, 2023). According to Judge ITR, the children's judge is required to be more concerned about the child perpetrator because, however, the child must be protected by the state, so the judge needs to assess whether the child's actions include juvenile delinquency. The judge's judgment considered the research report and recommendations from PK Bapas (Community Supervisor of the Correctional Center), which included the family side, the children's behavior in the community, and their school. Judges in Juvenile Court also follow the needs of the child and the community.

According to Judge ITR, the criminal act of premarital sex with an underage child can be founded on mutual consent, whether the perpetrator is a child or an adult. The judge observes that men are more frequently the offenders of sexual crimes like sexual abuse against children. So far, women have always been protected, even with the possibility that sex was initiated with the woman's seduction and with their agreement.

The Bengkulu District Court Judgment No. 20/Pid.Sus-Anak/2021/PN Bgl, in the victim's witness statement, mentioned that the child victim and the child perpetrator had a dating relationship. The child victim admitted that the child perpetrator committed obscene acts on the victim seven to ten times. Still, the child victim also loved the child perpetrator and wanted to marry the perpetrator, but the child perpetrator did not want to take liability because he was still 16 years old. Judge ITR made the element "based on mutual consent" a mitigating circumstance for the child perpetrator by assessing that the relationship was dating and the victim was willing to have intercourse, which had been

carried out repeatedly. If the victim agrees to marry the perpetrator, this is to mitigate the punishment for the child perpetrator, as it is considered that restorative justice has occurred.

Judge ITR also conveyed that a judge can only impose a sentence on the perpetrator and not enforce marriage. The judge in the consideration of Bengkulu District Court Judgment No. 20/Pid.Sus-Anak/2021/PN Bgl was very careful to elaborate on the elements of the criminal offense regulated in Article 81 Section (2) of Act No. 35 of 2014 concerning Child Protection, most importantly on the element of "deception, a series of lies, or inducing a child to have sexual intercourse," considering the possibility of non-juridical causality, namely that the actions were carried out by the victim and the perpetrator on a consensual basis.

Based on the Bengkulu District Court Judgment No. 20/Pid.Sus-Anak/2021/PN Bgl, the perpetrator has been proven legally and convincingly guilty of committing the crime of "intentionally inducing a child to have sexual intercourse," as prosecuted by the public prosecutor. The judge sentenced the child to nine months of guidance at the Child Special Development Institute (LPKA) Bengkulu and one month of job training at the "FLAMBOYAN MOTOR" motorcycle workshop in Giri Kencana Village, Bengkulu City.

According to the authors' analysis, the judge has been wise in handing down a verdict against the child offender. The judge's judgment was lighter than the prosecutor's charges, which charged the child with imprisonment for one year and six months and vocational training for two months at LPKA Bengkulu. The judge had considered the chronology of the incident and the mental condition of the child perpetrator, who was the victim of his parents' divorce and, therefore, lacked supervision and education.

The judge also considered the non-juridical causality "based on mutual consent" as a mitigating circumstance for the child perpetrator of the premarital sex crime with an underage child. The verdict imposed in the form of guidance punishment has provided a deterrent effect for the child offender by taking into account the best interests of the child. The existence of this incident is a lesson for victims and perpetrators that obscene acts committed are wrong and violate the law so that they can be punished.





In a different judgment, the judge imposed a prison sentence on the child perpetrator of the child molestation crime. Based on the Bengkulu District Court Judgment No. 35/Pid.Sus-Anak/2022/PN Bgl, it is elucidated that the child was born on May 27, 2006, and at the time the verdict was read on August 18, 2022, the child was 16 years old. Thus, in this case, the judge decided to punish the child with imprisonment for one year and six months and job training for one month because he was proven to have committed the crime of child molestation, as stated in Article 81, Section 2, of Act No. 35 of 2014 concerning Child Protection. According to the judge who decided the case, the age of the child, who was more than 18 years old at the time of trial, could be taken into consideration for the judge to impose imprisonment on the child perpetrator of the premarital sex crime with an underage child. The judgment explained that the age of the child perpetrator at the time the verdict was read was only 16 years old.

According to the authors' analysis, the judge who rendered the sentence of imprisonment disregarded the child protection concept stated in Article 2 of Act No. 35 of 2014. Children who commit crimes should not only be punished to exact retribution for their misdeeds but also to take into account their social lives and psychological health. It is best to avoid using jail as a form of punishment for children. Based on the guiding principles of the best interests of the child and law and order, to avoid the negative impacts of imprisonment, punishment for children must be based on the best interests of the child; therefore, wherever possible, the child should not be deprived of freedom through imprisonment. The authors also believe that the judgment does not reflect the principles of expediency and the best interests of the child since the inclusion of this case in the judicial process has taught the child victim and child perpetrator that the actions taken are wrong and violate the law, both applicable positive law and norms in society. Related to that, the child still has the potential for a long future. Taking into account the judge's consideration, who assessed that the actions of the perpetrator and the victim were based on mutual consent as a mitigating circumstance, the judge's verdict should have been lighter than the demands of the Public Prosecutor (JPU).

Judge ITR explained that in imposing child criminal judgments in both Cases No. 20/Pid.Sus-Child/2021/PN Bgl and No. 35/Pid.Sus-Child/2022/PN Bgl, they were based on very casuistic considerations by looking at the manner of action and the principles of expediency and the best interests of the child.

The principle of expediency seen in the imposition of punishment to provide benefits to the child perpetrator and society. The principle of expediency is reflected in the punishment, which is more in the guidance of children to improve themselves so that they do not commit criminal acts again in the future. After the punishment is completed, it is expected that the child will be accepted back into the community.

Punishment of children must also be oriented towards the principle of the best interests of the child, in which the judge must consider the continuity of life and growth of the child. The settlement of cases of children as perpetrators of criminal acts based on the principle of the best interests of the child is also in line with the principle of *Parents Patriae*, which means that if the child needs help, the state must act, while children who are perpetrators of crimes are not punished but are given assistance and protection (Tongat, 2009, p. 31).

According to Judge ITR, children are prone to mental shock when serving time in prison, so it is important to pay attention to the child's growth as the main concern. The judge also considers aspects of juristic rights, philosophical rights, and sociological rights before handing down the two judgments. This sociological aspect influences non-judicial considerations in punishing the perpetrators of premarital sex crimes with underage children.

In Judge ITR opinion, the problem in sentencing child perpetrators of premarital sex with underage children in the jurisdiction of Bengkulu District Court is the failure to reach an agreement between the victim's family and the perpetrator's family. The victim's family often sees the restoration of dignity in the amount of money given by the perpetrator's family to the victim instead of looking at the victim's feelings. According to Judge ITR, the facts on the ground showed that the rate of child sexual abuse in Bengkulu City is still high, but many cases stop at the police level because the victim's family and the perpetrator have reached an agreement by paying compensation so that the victim's family then revokes the police report.

The factors behind the high rate of sexual crimes against children are economic factors and a relatively low level of sexual education, not only the child but also the parents, who do not have proper knowledge of the law. In the authors' opinion, it is necessary to do outreach on the law concerning the consequences of the actions of

children who commit criminal acts so that legal awareness will arise in society. To avoid children becoming perpetrators or victims of sexual crimes, sexual education is needed to introduce children to their genitals so that they do not have a shock when entering puberty. Judge Ivonne also sees the need for assistance or attention from families and communities to prevent children from becoming victims or perpetrators of premarital sex with underage child crimes.

As society's social life becomes increasingly complex, law enforcement is required to fulfill a sense of justice. The figure of a judge through the judgments he produces is vital because, in essence, the judge determines the implementation of judicial functions within the legal authority of the judiciary in this country (Dewantara, 1987, p. 149).

A judgment handed down by a judge must also contain legal certainty and be useful for each party in the dispute, so it is essential to respond to the judge's considerations carefully. A Court Judgment obtained from a judge's consideration that is not careful, good, thorough, just, and useful has the potential to be overturned by the High Court at the appeal level or the Supreme Court at the cassation level (Arto, 2004, p. 140).

## CONCLUSION

The form of liability that can be imposed on perpetrators of criminal acts of premarital sex based on mutual love where the victim is also still a child category can be in the form of imprisonment, but with a note that the special minimum provisions for imprisonment do not apply to children as stipulated in article 79 Section (3) of Act No. 11 of 2012 concerning the Criminal Justice System for Children. The age of the child perpetrator of the criminal acts of premarital sex based on mutual love in both judgments quo at the time of trial was still 16 years old or still a child. Act No. 11 of 2012 concerning the Criminal Justice System for Children provides legal certainty that the age limit for children who can be held liable for their actions is 12 (twelve) years old but has not reached 18 (eighteen) years old. Criminal liability for children can only be used on children who are 14 (fourteen) years old. Considering the age of the child perpetrator of criminal acts of premarital sex based on mutual love who was still 16 (sixteen) years old or enters the category of children in conflict with the law, the child perpetrator could be held criminally liable through the examination process in the Juvenile Court with a single judge and still pay attention to the rights of the perpetrator as a child.

The judge was judicious in imposing a verdict in Judgment No. 20/Pid.Sus-Anak/2021/PN Bgl. In contrast, the punishment imposed on child perpetrators of sexual abuse in Judgment No. 35/Pid.Sus-Anak/2022/PN Bgl does not reflect the principles of expediency and the best interests of the child. The judge who imposed the verdict of imprisonment ignored the principles of child protection outlined in Article 2 of Act No. 35 of 2014. Punishment of children as perpetrators of criminal offenses is not only to take revenge for crimes committed by children but also to look at their social lives and psychological conditions. As such, punishment in the form of imprisonment for children should be avoided as much as possible. The punishment of children must be based on the principle of the best interest of the child, so as much as possible, it should not deprive the child of freedom through imprisonment to avoid the adverse effects of imprisonment.

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