



Legal Disharmony in the Protection of Child Victims of Sexual Violence in Indonesia: A Dignified Justice Perspective

Ismayana¹

¹ Faculty of Law, Swadaya Gunung Jati University, Indonesia

Corresponding Author: Ismayana E-mail: ismayana@ugj.ac.id

| ABSTRACT

Sexual violence against children constitutes a grave violation of human rights and human dignity, requiring a criminal law response that is not merely repressive but also protective and restorative. Although Indonesia has enacted various legal instruments governing the protection of child victims of sexual violence—including the Child Protection Act, the Sexual Violence Crimes Act, the former Criminal Code, and the 2023 National Criminal Code, empirical data over the past five years indicate that regulatory expansion has not been accompanied by effective victim protection and recovery. This study aims to critically analyze the normative disharmony within legal frameworks governing the protection of child victims of sexual violence, examine its implications for the effectiveness of victim recovery within criminal justice practice, and formulate a model for harmonizing child criminal law based on the paradigm of Dignified Justice oriented toward victim-centered justice. Employing a critical normative legal research method enriched with secondary empirical data, this study applies statutory, conceptual, and limited comparative approaches, using qualitative normative-argumentative analysis of legislation, court decisions, reports from child protection institutions, and internationally reputable literature from the past five years. The findings reveal three major structural problems: the disharmony in definitions of sexual violence reflecting a paradigm conflict between retributive-moralistic and victim-rights-based approaches; inconsistencies in sentencing systems that undermine legal certainty and equality before the law; and the absence of binding obligations for victim recovery, resulting in a criminal law framework that is effectively pseudo-victim-centered. This study concludes that reform of child criminal law in Indonesia must be directed toward paradigmatic harmonization that places victim recovery and the recognition of human dignity as the primary objectives of criminal law, enabling the criminal justice system to deliver substantive justice and sustainable protection for child victims of sexual violence.

| KEYWORDS

Sexual violence against children; criminal law disharmony; child protection; victim-centered justice; dignified justice.

I. INTRODUCTION

Sexual violence against children constitutes a serious violation of human rights and the dignity of the child, necessitating a criminal law response that is not solely repressive but also protective and restorative. In recent years, Indonesia has demonstrated strong normative commitment through the enactment and revision of various legal instruments, including the Child Protection Act, the Sexual Violence Crimes Act (UU TPKS), and the adoption of the 2023 National Criminal Code. However, this quantitative development of regulations has not been proportionally matched by qualitative improvements in the protection of child victims of sexual violence. International literature suggests that the proliferation of legal instruments without conceptual and institutional coherence may instead generate legal uncertainty and undermine substantive victim protection [1][2]. In this context, the core issue is not

the absence of law, but rather normative disharmony and conflicting justice paradigms that hinder the effectiveness of the criminal justice system in responding to the suffering of child victims.

Empirical data demonstrate that sexual violence against children in Indonesia represents a serious and escalating problem that extends far beyond isolated reporting increases. According to data from the Online Information System for the Protection of Women and Children (SIMFONI) of the Ministry of Women's Empowerment and Child Protection, in 2021 there were 6,547 reported cases of sexual violence against children out of a total of 14,517 cases of child abuse nationwide (45.1%), with this trend continuing to rise in subsequent years. More recent reports indicate that by mid-2024, approximately 7,842 cases of violence against children had been reported, the majority involving sexual violence against both girls and boys. National data further record 11,850 cases of violence against women and children between January and June 2024, more than 5,246 of which involved sexual violence, including child victims. This upward trend continued into 2025, with 13,845 reported cases of violence – including sexual violence – during the January–June period alone, many involving child victims suffering prolonged trauma. Geographically and demographically, sexual violence occurs across regions and age groups, frequently perpetrated by authority figures or individuals close to the victim, indicating that the threat is systemic rather than sporadic [3].

The disparity between reported cases and levels of victim recovery indicates that regulatory expansion has not translated into effective protection within criminal justice practice. International scholarship highlights that high prevalence rates of child sexual violence are often not accompanied by adequate legal mechanisms for comprehensive victim recovery. The mere proliferation of legal instruments does not automatically translate into justice for victims if those instruments are conceptually fragmented and institutionally misaligned (p. 193), a condition mirrored in Indonesia where law enforcement officials face legal dilemmas when selecting prosecutorial bases from overlapping statutes. Further argues that criminal justice systems overly focused on formal legal procedures frequently fail to bridge victims' lived experiences with meaningful recovery, resulting in revictimization within judicial processes [1][2]. This is evident in Indonesia, where despite increased reporting and convictions, many child victims do not receive restitution, psychological rehabilitation, or post-verdict social protection.

Globally, UNICEF reports that one in eight girls and women experiences sexual violence before the age of 18, with rates increasing when non-physical forms of abuse are included, underscoring the urgency of more effective legal responses (UNICEF, 2024). While Indonesia's experience is part of this global crisis, a critical distinction lies in its extensive yet fragmented legal framework that fails to integrate victim recovery as a core component of law enforcement. The persistent rise in child sexual violence cases over the past five years demonstrates that the imbalance between legal design and legal implementation is not merely theoretical but has direct consequences for victims' lives. These findings reinforce the argument that paradigmatic—rather than merely technical—harmonization is required, prioritizing dignity and recovery as central to modern criminal law.

Contemporary research in victimology and criminal law consistently demonstrates that offender-oriented justice systems grounded in moralistic paradigms tend to marginalize victims' experiences, needs, and recovery processes [4][5]. Dominant retributive approaches often assess enforcement success solely by imprisonment severity, without ensuring restitution, psychological rehabilitation, or social reintegration for victims. emphasize that sentencing inconsistency and unclear punishment objectives undermine criminal law legitimacy [6]. Although victim-centered and restorative justice concepts are increasingly prominent in global discourse, prior studies largely focus on single legal regimes or isolated policy approaches, leaving insufficient examination of cross-regime legal disharmony and its structural impact on child victims within criminal justice systems, particularly in developing countries such as Indonesia.

Addressing this gap, this study offers a critical analysis of disharmony across national legal regimes by integrating a normative-critical approach with secondary empirical perspectives and by formulating the paradigm of Dignified Justice as an integrative framework for child criminal law reform. Unlike prior studies that position restorative justice as an alternative model, this research situates Dignified Justice as a foundational normative paradigm uniting offender punishment, victim recovery, and recognition of human dignity [7]. Its contribution is both theoretical—enriching international discourse on victim-centered justice within plural and developing legal systems—and practical, providing a conceptual foundation for harmonizing child criminal law to enhance substantive protection and recovery for child victims of sexual violence.

The research not only offers a normative critique of the current criminal law system, but also presents a conceptual model of juvenile criminal law reform that is oriented towards human dignity and the best interests of children. By placing Dignified Justice as an integrative axis, this research is expected to provide a substantive contribution to the development of criminal law theory and victimology, as well as become a practical reference for policy makers and

law enforcement officials in building a criminal justice system that is fairer, more coherent and has a victim perspective. Accordingly, this study is significant not only for criminal law and victimology scholarship but also for policymakers and law enforcement actors seeking to realize substantive justice oriented toward the best interests of the child.

II. METHODOLOGY

This study employs a critical normative legal research design, enriched with secondary empirical data, to analyze normative disharmony in laws protecting child victims of sexual violence, assess its implications for victim recovery effectiveness, and formulate a harmonization model based on the paradigm of Dignified Justice oriented toward victim-centered justice. This approach enables systematic evaluation of legal coherence, principles, and structures within a national legal system while linking them to implementation realities (law in action), as recommended in contemporary socio-legal research [1][8]). In this approach, the main object of study is not the population or respondents, but legal norms, principles, doctrine and court decisions as legal material that is analyzed argumentatively and systematically. Therefore, the sampling concept is not relevant to apply in this research design.

Data were collected through analysis of key statutes (the Child Protection Act, UU TPKS, the former Criminal Code, and the 2023 National Criminal Code), purposively selected court decisions on child sexual violence, and a literature review of internationally reputable journals (Scopus/WoS) from the past five years, academic books, and reports from international institutions such as UNODC and UNICEF[9]. Data analysis employed qualitative normative-argumentative techniques involving normative mapping, consistency assessment, identification of paradigm conflicts (retributive versus victim-centered), and theoretical dialogue with victimology, restorative justice, and victim-centered justice theories to evaluate the extent to which the legal system accommodates victims' experiences and needs [6][2]. Legal analysis focuses on the coherence of norms, principles and legal structures, as well as on critical assessment of how the law should work (law as it ought to be), not on empirically testing cause-and-effect relationships as is common in quantitative social research. Therefore, the disharmony of the criminal law regime, the dominant justice paradigm, and the quality of protection and recovery of child victims in this research are not operationalized as dependent or independent variables in the sense of empirical methodology, but are instead treated as normative-analytical concepts that are intertwined in one legal system.

Findings were validated through source triangulation across legal norms, court decisions, and scholarly literature to enhance analytical credibility [10]. Ethical considerations were rigorously applied by maintaining victim anonymity, avoiding exploitation of suffering narratives, and upholding the best interests of the child principle, ensuring methodological coherence between theoretical foundations, research objectives, and normative-empirical analysis in support of child criminal law reform oriented toward victim recovery and dignity [7][9].

III. RESULTS AND DISCUSSION

A. Legal Disharmony and the Ineffectiveness of Protection for Child Victims of Sexual Violence

The results of the normative analysis, enriched with secondary empirical findings comprising reports from child protection institutions, court decisions, and law enforcement practices indicate that legal protection for child victims of sexual violence in Indonesia remains fragmented and inconsistent. Although Indonesia has adopted a range of legal instruments that appear quantitatively progressive, including the Child Protection Act, the Sexual Violence Crimes Act (UU TPKS), the former Criminal Code, and the 2023 National Criminal Code, this layered regulatory framework has not succeeded in establishing an integrated system of protection substantively oriented toward victim recovery.

These findings confirm the argument advanced who emphasize that “the mere proliferation of legal instruments does not automatically translate into justice for victims if those instruments are conceptually fragmented and institutionally misaligned” (p. 193)[2]. In other words, regulatory complexity does not necessarily correlate with the quality of victim protection. In the Indonesian context, normative plurality has instead created legal uncertainty and inconsistent law enforcement practices.

Empirically, the rising number of child sexual violence cases has not been accompanied by uniform legal application or adequate guarantees of victim recovery. Law enforcement authorities frequently face dilemmas in determining the appropriate legal basis for prosecution, as each instrument regulates definitions, scope, and legal consequences differently. This condition reflects a pronounced gap between law in the books and law in action critique that criminal justice systems often fail to bridge formal legal norms with the lived experiences of sexual violence victims[1].

Unlike prior studies that tend to examine individual legal regimes in isolation, this research demonstrates that the core problem of child victim protection lies in the lack of synchronization across legal regimes. Such disharmony not only undermines legal certainty but also directly weakens the structural position of child victims within the criminal justice system.

1. Disharmony of Definitions and Legal Norms: A Paradigmatic Conflict within a Single Legal System

Analysis of statutory regulations reveals that disharmony in the definition of child sexual violence is not merely a matter of technical drafting, but rather a reflection of a deeper paradigmatic conflict within the national legal system. The Child Protection Act continues to employ general terminology focused on conventional forms of sexual violence, rendering it insufficiently responsive to contemporary forms of sexual crime, including non-physical and digitally mediated sexual violence.

In contrast, the Sexual Violence Crimes Act (UU TPKS) adopts a more progressive approach by expanding the definition of sexual violence to encompass sexual exploitation, psychological manipulation, and sexual violence perpetrated through electronic media. This approach reflects a victim-rights-based paradigm. However, this paradigm remains misaligned with both the former Criminal Code and the 2023 National Criminal Code, which continue to rely on normative constructions oriented toward morality and sexual propriety.

“traditional criminal law frameworks remain anchored in moralistic and offender-focused paradigms, which are ill-equipped to capture the lived realities of sexual violence victims” (p. 195). This paradigmatic conflict not only generates legal uncertainty but also obstructs effective victim protection. Further argues that definitions of sexual violence that are not grounded in victims’ experiences risk producing procedural rather than substantive justice[1][2].

This study extends these insights by demonstrating that paradigmatic conflict in Indonesia has become institutionalized within unsynchronized legislation, thereby narrowing the space for recognition of the suffering and needs of child victims within the criminal justice system.

2. Inconsistencies in the Sentencing System and the Dominance of the Retributive Approach

Beyond definitional disharmony, this research identifies significant inconsistencies within the sentencing system. Substantially similar acts of sexual violence against children may result in different sentencing outcomes depending on the statute used as the basis for prosecution. This condition creates opportunities for sentencing disparity and unequal legal treatment of victims. Within modern criminal law theory assert that “consistency and proportionality are foundational to the legitimacy of criminal punishment” [6]. However, the findings of this study demonstrate that these principles have not been adequately realized in the practice of protecting child victims of sexual violence in Indonesia. Critiques of the dominance of the retributive approach are also prevalent in international scholarship. Traditional punitive responses to sexual violence often fail to address the long-term psychological harm suffered by victims [5]. Further contends that without integrating victim recovery, sentencing systems risk prolonging trauma rather than facilitating healing [11]. This research reinforces these critiques by showing that sentencing inconsistency in Indonesia is not merely a matter of prosecutorial policy, but a manifestation of a criminal law paradigm that remains offender-oriented, relegating victim needs and recovery to a secondary position.

3. The Absence of Binding Victim Recovery Obligations and the Pseudo-Victim-Centered Character of the Law

The findings further reveal that obligations for victim recovery—including restitution, medical and psychological rehabilitation, and social reintegration—are formulated in an optional manner and remain highly dependent on the discretion of law enforcement officials or judges. The absence of imperative legal obligations means that victim recovery is not treated as an integral component of offenders’ criminal responsibility.

Within victimology literature, Victim Impact Statements (VIS) serve to ensure that “the harm experienced by victims is not marginalised in sentencing decisions” (p. 275) [12]. However, comparable mechanisms have not been systematically institutionalized within Indonesian criminal procedure, particularly in cases involving children.

Characterizes such conditions as symbolic victim recognition, namely the normative acknowledgment of victims without tangible guarantees of recovery [13]. Justice systems that acknowledge victims rhetorically but fail to ensure repair risk deepening victims’ sense of betrayal (p. 10) [4]. This study extends these critiques by identifying Indonesia’s legal framework as a form of pseudo-victim-centered law: formally recognizing victims’ rights while failing to provide binding legal mechanisms to realize them

B. Discussion: Paradigmatic Conflict and the Failure to Achieve Dignified Justice

The discussion of these findings confirms that Indonesian criminal law responses to child sexual violence remain dominated by an offender-oriented perspective. The success of law enforcement is primarily measured by the severity of imprisonment rather than by the extent to which victims receive adequate and sustainable recovery. a justice system that measures success solely by punishment fails victims of sexual violence” (p. 250)[1], emphasize the necessity of integrating victim recovery as a normative objective of the criminal justice system[14].

Legal disharmony also affects the position of child victims, who continue to be treated as objects of the judicial process. Victims’ rights often terminate at the evidentiary stage, without guarantees of post-verdict recovery, contradicting the principle that child victims must be recognized as rights-bearing subjects throughout the judicial process [9]. This study adds that without normative harmonization, recognition of victims as subjects of rights is difficult to achieve systemically[15].

Through the lens of Dignified Justice, this research emphasizes that legal disharmony is not merely a technical legislative issue, but a paradigmatic conflict over the meaning of justice itself. Dignified Justice is positioned as an integrative model that unites offender punishment, victim recovery, and recognition of human dignity as the normative core of criminal law. This model aligns assertion that “justice must be responsive not only to wrongdoing but also to the harm suffered” (p. 64), while offering a novel contribution by positioning Dignified Justice as the primary normative framework for reforming child criminal law in Indonesia[7].

Accordingly, criminal law reform must be directed toward paradigmatic harmonization through the integration of definitions of child sexual violence, alignment of sentencing systems with victim-centered justice, codification of binding victim recovery obligations, and recognition of victim participation mechanisms such as Victim Impact Statements. In this way, criminal law can function not only to punish, but also to meaningfully restore the dignity and well-being of child victims of sexual violence.

IV. CONCLUSION

This study concludes that legal protection for child victims of sexual violence in Indonesia remains structurally weak due to normative disharmony and conflicting justice paradigms within criminal law. Although Indonesia has adopted a range of relatively progressive legal instruments, the findings demonstrate that the proliferation of regulations has not succeeded in establishing an integrated protection system oriented toward victim recovery. This is reflected in the disharmony of sexual violence definitions, inconsistencies in the sentencing system, and the absence of binding obligations for victim recovery, rendering criminal law effectively pseudo-victim-centered. These conditions help explain why the increased reporting of child sexual violence cases over the past five years has not been accompanied by adequate guarantees of restitution, rehabilitation, and social reintegration, and why child victims continue to be positioned as objects rather than rights-bearing subjects within the criminal justice process. Theoretically, this study underscores the importance of paradigmatic harmonization based on the concept of Dignified Justice, which integrates offender punishment, victim recovery, and the recognition of human dignity as the primary objectives of criminal law. Practically, it provides a conceptual foundation for reforming child criminal law toward a more victim-centered approach. Nevertheless, this study is limited to normative analysis and secondary empirical data; future research is therefore encouraged to develop primary empirical studies and cross-national comparative analyses to strengthen the implementation of substantive justice for child victims of sexual violence.

REFERENCES

- [1] K. Daly, “Reconceptualizing sexual victimization and justice,” in *Justice for victims*, Routledge, 2014, pp. 378–395.
- [2] C. McGlynn and N. Westmarland, “Kaleidoscopic justice: Sexual violence and victim-survivors’ perceptions of justice,” *Soc. Leg. Stud.*, vol. 28, no. 2, pp. 179–201, 2019.
- [3] Rachmawati, “Kekerasan Seksual Jadi Kasus Tertinggi terhadap Perempuan dan Anak di Indonesia,” *Kompas*, Jakarta, Jun. 15, 2025. [Online]. Available: https://www.kompas.com/jawa-tengah/read/2025/06/15/161600788/kekerasan-seksual-jadi-kasus-tertinggi-terhadap-perempuan-dan-anak?page=all#google_vignette
- [4] J. Herman, *Truth and repair: How trauma survivors envision justice*. Hachette UK, 2023.
- [5] B. Burghardt and L. Steinl, “Sexual violence and criminal justice in the 21st century,” *Ger. Law J.*, vol. 22, no. 5, pp. 691–702, 2021.

- [6] A. Ashworth and J. Horder, *Principles of criminal law*. Oxford University Press, USA, 2013.
- [7] J. Braithwaite, "Principles of restorative justice," *Restor. justice Crim. justice Compet. or reconcilable Paradig.*, vol. 360, pp. 1-20, 2003.
- [8] R. Banakar and M. Travers, *Theory and method in socio-legal research*. Bloomsbury Publishing, 2005.
- [9] W. H. Organization, *INSPIRE handbook: Action for implementing the seven strategies for ending violence against children*. World Health Organization, 2019.
- [10] J. W. Creswell and C. N. Poth, *Qualitative inquiry and research design: Choosing among five approaches*. Sage publications, 2016.
- [11] M. Donaghy, "Restorative justice for cases of sexual violence: A literature review," *Brisbane Rape Incest Surviv. Support Cent.*, 2020.
- [12] J. V Roberts and M. Manikis, "Victim personal statements: A review of empirical research," *Vict. Pers. Statements Sentencing A Rev. Empir. Res. (London Off. Comm. Vict. Witn. Engl. Wales, 2011)*, 2011.
- [13] J. Doak, *Victims' rights, human rights and criminal justice: Reconceiving the role of third parties*. Bloomsbury Publishing, 2008.
- [14] R. Justice, "An introduction to restorative justice." Van Ness, DW &, 2006.
- [15] T. R. Tyler and A. Mentovich, "Procedural justice theory," *Leg. Epidemiol. Theory Methods*, p. 99, 2023.