

## Model for Settlement of Sexual Violence Crimes Committed by Children by Prioritizing the Best Interests of the Child

Rini Fathonah<sup>1</sup>, Nikmah Rosidah<sup>2</sup> and Maroni<sup>3</sup>

### Abstract

*Children are a mandate and gift from God Almighty who have the dignity and status of a whole human being. As human beings who are growing and developing, children can do good deeds or do those that are against the law. The rampant acts of sexual violence committed by children are alarming to many people. Although there are regulations regarding the juvenile criminal justice system that prioritize the best interests of children, the reality is that many court decisions impose prison sentences on children. This study aims to analyze the model for resolving sexual violence committed by children by prioritizing the best interests of children and prioritizing restorative justice. This study is a normative and sociological juridical research, with a legislative approach, case approach, conceptual approach, and comparative approach. By the qualitative research method, in this study, the data analysis used is the qualitative research method analysis model. The results of the study show that the model of resolution or flow in resolving sexual violence committed by children against children is divided into 2 mechanisms, namely through the juvenile criminal justice system (SPPA) and through the marriage dispensation application mechanism. The resolution of sexual violence crimes committed by children cannot be separated from the inhibiting factors in its implementation, namely the lack of adequate facilities and infrastructure, special rooms for children, operational costs, and the lack of law enforcement officers in terms of quantity.*

**Keywords:** Children, Sexual Violence, Criminal Justice System

### INTRODUCTION

Children are a mandate and gift from God Almighty who have the dignity and honor of a whole human being. As a human being who is growing and developing, children can do good deeds or deeds that are against the law. The actions carried out by children are the result of a learning process through their environment. In the process of their development, children imitate (copy) their environment. Children very easily imitate the models they encounter, and the results can be shown directly or in the future (Marilyne Dragon and Diane Poulin-Dubois, 2023).

Human behavior in living in society and the state is increasingly complex and even multi-complex (Hadibah Zachra Wadjo, 2023). Behavior that is by norms is not a problem, but behavior that is not by norms generally causes problems in the legal field and is detrimental to society (Christine Horne and Stefanie Mollborn, 2020). The development of law will always develop along with the development of society. Likewise, legal problems will also develop along with the development of problems that occur in society. It is undeniable that along with the development of the times, criminal acts that develop in society are not only carried out by adults, but children also often commit unlawful acts in various forms and types.

The world of juvenile delinquency often referred to as (juvenile delinquency) is not a condition that occurs by itself. Criminal acts committed by children must always be given serious attention to their prevention and resolution (A. Sarwanto, 2023). Among the various forms and types of criminal acts committed by children are sexual intercourse and sexual violence (Raden Muhammad Arvy Ilyasa, 2021). The phenomenon of crimes against morality relating to behavior about sexual matters (a condition where individuals who are in a relationship have difficulty controlling sexual fantasies or the desire to have sex) can generally be in the form of molestation or sexual intercourse that can be carried out by adults, adults against children, or children against children. The rampant crime of sexual intercourse, which is a form of sexual violence, especially against girls,

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<sup>1</sup> Faculty of Law, University of Lampung, Lampung, Indonesia, Email: [rini.fathonah@fh.unila.ac.id](mailto:rini.fathonah@fh.unila.ac.id), <https://orcid.org/0009-0005-5988-0705>

<sup>2</sup> Faculty of Law, University of Lampung, Lampung, Indonesia, Email: [nikmahrosidah@fh.unila.ac.id](mailto:nikmahrosidah@fh.unila.ac.id), <https://orcid.org/0009-0006-2713-9725>

<sup>3</sup> Faculty of Law, University of Lampung, Lampung, Indonesia, Email: [maroni.1960@fh.unila.ac.id](mailto:maroni.1960@fh.unila.ac.id), <https://orcid.org/0009-0005-4238-107X>

is very disturbing to many people (M. R. Labe, 2021). Girls as victims of sexual intercourse are the ones who are greatly harmed because the acts committed against them involve the deprivation of basic rights, including the right to individual safety, the right to freedom and personal security, and self-protection of one's honor and dignity as guaranteed by the constitution (Manase Kudzai Chiweshe, 2021).

Concrete steps have been taken by the government by issuing criminal provisions for sexual violence crimes by children through Law Number 35 of 2014 amending Law Number 23 of 2002 concerning Child Protection. Then the form of protection for child perpetrators, child victims, and child witnesses is also regulated in Law Number 11 of 2012 concerning the Child Criminal Justice System (Risa Damayanti, 2024). Where Law Number 11 of 2012 concerning the child justice system accommodates the resolution of sexual violence crimes committed by children by prioritizing restorative justice through restorative justice or diversion (Nani Susilowati, 2022). In addition, there are also efforts to resolve this through marriage dispensation which can be applied by the provisions contained in Article 7 paragraph (2) of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage. Marriage dispensation is an exception, in the case of marriage for both or one of the prospective bride and groom, both male or female who are still minors and are permitted to carry out a marriage with the conditions that have been determined by the applicable underage marriage dispensation procedures.

Although there have been regulations regarding the model for resolving criminal acts of sexual violence by children through the SPPA mechanism and the application for marriage dispensation, each path contradicts the interests of the parties involved, especially the best interests of the child. The issuance of the SPPA is a form of government attention to the rampant criminalization of children that is far from the aspect of benefit (Andi Satriani As, 2020). However, the reality is that many decisions from the juvenile criminal justice process impose prison sentences on children (Barry C. Feld, 2018). Meanwhile, the granting of applications for marriage dispensation carried out by religious court judges is contrary to efforts to protect children from underage marriage as regulated by the Child Protection Law (T. Jamaluddin, 2023). So the model of resolution that best prioritizes the best interests of a child has not been found. Thus, this study can provide clarity on the model for resolving criminal acts of sexual violence by children which can produce solutions that are not only legally effective but also ensure the safety, recovery, and optimal development of the children involved.

Based on the description that has been presented above, although it has been regulated regarding the model for resolving criminal acts of sexual violence by children through the SPPA mechanism or marriage dispensation application, the reality is that many decisions from the child criminal justice process impose prison sentences on children. Meanwhile, the granting of marriage dispensation applications made by religious court judges is contrary to efforts to protect children from underage marriage as regulated by the Child Protection Law. So based on this, the problem to be discussed in this study is How is the model for resolving criminal acts of sexual violence committed by children by prioritizing the best interests of the child? What are the inhibiting factors in implementing the model for resolving criminal acts of sexual violence committed by children by prioritizing the best interests of the child?

## **RESEARCH METHODS**

This essay employs normative legal research, specifically doctrinal legal research, as its research methodology. Regarding the research type—normative juridical—the methodology employed is the Indonesian legal methodology (positive law). In essence, an analysis highlights the inductive approach as a supporting work procedure and the deductive method as the primary reference. Research data for normative analysis is sourced from library materials (Rijnen et al., 2017).

The data sources in this study are data obtained directly from the community (field) and data obtained from library materials (secondary data). Given that the main data sources in qualitative research are words and actions, the rest are additional data such as documents and other library materials. The primary data sources in this study are religious court officials and the Tanjung Karang district court related to the Model of Settlement of Sexual Violence Crimes Committed by Children. While secondary data comes from primary legal materials and secondary legal materials. Primary legal materials are Law Number 35 of 2014 amending Law Number 23 of

2002 concerning Child Protection, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage, and secondary legal materials are books, journals, papers, and dissertations. Data analysis in this study was carried out descriptively and qualitatively by describing data obtained from literature studies according to the main topics in this study. By the qualitative research method, the data analysis used in this study is qualitative research method analysis models.

## **RESULTS AND DISCUSSION**

### **Inhibiting Factors in Implementing the Model for Resolving Sexual Violence Crimes Committed by Children**

Protection and law enforcement in Indonesia, in reality, often face things that are the opposite of what they should be. The protection and law enforcement provided by the state cannot necessarily run smoothly as the parties concerned want and what should be implemented (Zuliyah, 2019). The resolution of sexual violence crimes committed by children is also inseparable from inhibiting factors in its implementation. Soerjono Soekanto explained that several factors influence law enforcement/legal protection, namely (Soerjono Soekanto, 2019):

Legal factors, namely disturbances originating from laws.

Law enforcement factors, namely parties who form or implement laws.

Factors of facilities or facilities that support law enforcement.

Community factors, namely the environment in which the law applies or is implemented.

Cultural factors, namely as a result of work, creativity, and feelings based on human will in social life.

First, from the legal aspect, there has been comprehensive protection for child victims and perpetrators ranging from assistance to rehabilitation. The existing law has also provided a clear and detailed framework to protect the rights of child perpetrators and victims of criminal acts, making it easier for the police and related stakeholders to act according to existing rules and regulations. Second, from the aspect of law enforcement officers, the success of legal protection for victims is highly dependent on the capability and availability of adequate personnel among law enforcement officers. This factor includes all parties involved in the formation and implementation of the law. All of these elements are part of the law enforcement officers who can provide certainty, justice, and legal benefits in a balanced manner (Romdoni et al., 2023).

Third, in terms of facilities and infrastructure, law enforcement involves support from various components, including educated and skilled human resources, efficient organizational structures, adequate equipment, and sufficient finances. The inhibiting factors mainly lie in the lack of adequate facilities and infrastructure. Operational limitations, health care costs, and the lack of special rooms for child victims and perpetrators of criminal acts are dominant obstacles in providing legal protection and security. The success of legal enforcement and protection is highly dependent on the availability and quality of adequate facilities and infrastructure, and the lack of support in this regard is a major challenge faced by law enforcement officers.

Fourth, cultural factors, related to law enforcement, the police explained that the balance between laws and regulations and the cultural values of the community is the key to success (El-Khatib et al., 2021). In the context of handling sexual violence crimes committed by children, they detailed that adjusting regulations to local culture is a crucial step in gaining community support and understanding of legal enforcement and protection efforts. In this case, collaboration between law enforcement and child protection agencies with the local community is important to ensure that the approach taken is by local wisdom and receives mutual support. Adjusting regulations to local culture is considered a strategic step in creating a strong foundation for enforcing the law and providing maximum protection to child perpetrators and victims.

Fourth, community factors have a significant role in the implementation of legal settlement and protection. Because legal enforcement and protection come from the community and aim to achieve goals in the community environment. A key aspect in determining the success of law enforcement is the level of legal

awareness of the community (Sunarno, 2019). The higher the legal awareness of the community, the greater the desire to have effective law enforcement and good legal protection. Public awareness and attention, even from the parents of the victims themselves, to report suspected cases of sexual violence to the authorities is still very lacking, because they think that they do not want to interfere with the case that is happening and the family will be embarrassed because of the stigma of the community that will receive social sanctions from the surrounding community, so they seem to be unaware of the existence of sexual violence involving children as perpetrators or victims. The role of the community in implementing legal protection is very much needed. This statement illustrates that the success of law enforcement is highly dependent on public legal awareness (Sulistyaningsih, 2022). A high level of legal awareness is considered the key to achieving effective law enforcement and optimal legal protection. Public awareness and attention, including parents of victims, to report suspected cases of sexual violence are still low. This is due to social stigma and concerns about social sanctions from the surrounding community (Winters et al., 2020). Therefore, efforts to increase public awareness need to be accompanied by an understanding and overcoming of social factors that can hinder their active participation in fighting sexual violence involving children.

### **Model for Settlement of Sexual Violence Crimes Committed by Children by Prioritizing the Best Interests of the Child**

According to Law Number 35 of 2014 concerning Child Protection, children are the golden generation, whose actions now have a significant impact on how a country will develop in the future. For children to naturally and fully develop physically, spiritually, and socially, they must be given every chance to reach their full potential (Anwar & Wijaya, 2020). Children must be protected by the nation and state. Based on Article 1 point 1 of the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection as amended by the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely "A child is a person who is not yet 18 (eighteen) years old, including a child who is still in the womb". Article 1 paragraph (3) of the Republic of Indonesia Law Number 11 of 2012 concerning the Child Criminal Justice System also explains children in conflict with the law, namely "A child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime".

The Republic of Indonesia's 1945 Constitution guarantees children's rights, particularly in Article 28B paragraph (2), which also obligates the state to uphold the rights of children who are in conflict with the law in order to ensure their life, development, and future. Every child is required to receive formal education such as school and is also required to receive moral education so that they can grow into figures who are useful to the Indonesian nation (Suryanto et al., 2023). Three stages are typically included in the process of a child's character development: childhood (the first phase), childhood (the second phase), and adolescence/puberty (the third phase).

In the case of children who become perpetrators of crimes, it is a special concern for law enforcement officers in dealing with it, therefore prevention efforts for handling children in conflict with the law need to get great attention. Children who break the law or commonly called children in conflict with the law (ABH) in Indonesia tend to increase, which lately often occurs in cases of theft accompanied by violence, rape/preset, and abuse (Hidayat et al., 2022). These things are the government's concern in handling cases of children in carrying out prevention to reduce cases of children breaking the law. The humanistic and social nature of crime necessitates an all-encompassing approach to crime prevention initiatives.

The increasingly complex development of society has resulted in life becoming increasingly unfriendly to child development. Children, who are an integral part of community life, cannot be separated from interactions with other members of society (Ciek Julyati Hisyam, 2021). This can cause friction of interests that have the potential to trigger conflict, given the inevitable interaction with the community. In fact, conflicts involving children as an inseparable part of society cannot be excluded. Conflicts involving children receive special treatment in their resolution efforts, in contrast to conflict resolution carried out by adults. The Convention on the Rights of the Child, which the Republic of Indonesian government accepted with Presidential Decree Number 36 of 1990, must be the foundation for the legal protection of children (Kurniasi et al., 2022). After the ratification of the

Convention on the Rights of the Child by the Government of Indonesia through Presidential Decree Number 36 of 1990.

The settlement of criminal acts, especially sexual violence crimes involving children, has implemented various approaches, both legal and non-legal, with the main goal of maintaining and protecting the interests of the child's future (Fajri et al., 2024). Children cannot be considered as miniatures of adults so in every conflict situation involving them, they are often the most disadvantaged party. Although a child may commit a crime, they are actually also victims of the heterogeneity of society. Many factors cause children to commit crimes that violate the law, and even quite a few minors are imprisoned. Managing criminal cases involving minors differs from managing instances involving adults. The rules governing it specify how criminal cases involving minors are to be handled. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System; Law No. 35 of 2014 concerning Amendments to the Government Regulation in lieu of Law (Perppu) No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law; Government Regulation (PP) No. 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children under 12 years of age; Supreme Court Regulation No. 4 of 2014 concerning the Implementation of Diversion in the Juvenile Criminal Justice System; and Attorney General Regulation No. 06/A J.A/04/2015 concerning Guidelines for the Implementation of Diversion are among the provisions that govern the handling of children in conflict with the law.

There are rules about how children who commit crimes are treated. For example, every kid has the right to remain with their parents unless there are good reasons and laws indicating that doing so is in the child's best interests. The law still protects the child's right to meet with their parents face-to-face and to maintain frequent personal contact (Turisno et al., 2021). Children also have the right to be protected against maltreatment, torture, and cruel punishment. Furthermore, criminals who commit crimes while still minors are not eligible to receive the death sentence or life in prison. Only appropriate laws may be used to carry out the arrest, detention, or incarceration of minors, and even then, only as a last option. Ultimately, any kid who is deprived of their freedom has the right to be treated with compassion, having their age-appropriate personal development taken into consideration, and being kept apart from adults unless it serves their best interests. There are two procedures used in the settlement model or flow to resolve sexual assault offenses committed by minors against minors: the marriage dispensation application process and the child criminal justice system (SPPA). Here's a more thorough explanation:

#### Settlement through the Juvenile Criminal Justice System (SPPA)

The mechanism for resolving the crime of sexual intercourse with a child (the child as the perpetrator and the child as the victim) based on the SPPA Law begins when the crime occurs and is reported to the police. After the report is received, the special child investigator will conduct an investigation by taking into account the best interests of the child and prioritizing a restorative justice approach (Article 26 paragraph 1 and paragraph 2). After the offense is reported, the investigator must seek the community guidance officer for guidance or consideration. A legal advisor, a community guidance officer, and parents or guardians must accompany the inquiry process and conduct it in a family-like setting (Article 27 paragraphs 1 and 2). Should it be required, a kid may be detained for up to 24 hours in order to conduct the inquiry. Only when a kid is 14 years of age or older and is accused of committing a felony carrying a minimum 7-year jail term can detention be implemented (Article 30 and Article 32 paragraph 2).

After the investigation process is complete, the Child Public Prosecutor will refer the case to the court by attaching the examination report and the community research report from the Community Guidance Officer (Article 41 paragraph 1). At this stage, the Prosecutor can also carry out diversion (transfer of case settlement) if the crime is threatened with imprisonment of less than 7 years and is not a repeat of the crime (Article 42 paragraph 2). Furthermore, the Juvenile Trial will be conducted by a special Juvenile Judge in a special Juvenile courtroom and must be accompanied by parents/guardians, Legal Counsel, and Community Guidance (Article 55 paragraph 1 and paragraph 2). After listening to witness statements, examining evidence, and considering the results of the community research report, the Judge will read out his/her verdict in an open trial for the public while still having to keep the Child's Identity confidential (Article 61 paragraph 1 and paragraph 2). The

Judge can determine sanctions for the child by the provisions of the SPPA Law, namely being sentenced to principal and/or additional penalties (Article 71 paragraph 1 and paragraph 2) or being subject to action (Article 82 paragraph 1). Regarding court decisions regarding children's cases, guidance, supervision, and supervision will be carried out by the Public Prosecutor, Community Guidance, and Social Worker (Article 65 and Article 68 paragraph 1). The SPPA Law also regulates the rights of children as victims of criminal acts, such as the right to protection from institutions and medical, and psychosocial assistance, as well as compensation (restitution) (Article 89 and Article 90).

#### Settlement through submission of marriage dispensation at the Religious Court

The flow of the marriage dispensation application process mechanism based on PERMA Number 5 of 2019 begins with the party entitled to submit the application, namely the parents (Article 6 paragraph 1). If the parents are divorced, the application can be submitted by both parents or one parent who has custody based on a court decision (Article 6 paragraph 2). If one of the parents has died or his whereabouts are unknown, the application can be submitted by one of the remaining parents (Article 6 paragraph 3). If both parents have died or their authority has been revoked, the application can be submitted by the child's guardian (Article 6 paragraph 4). After submitting the application, the clerk will check the completeness of the administrative requirements, such as the application letter, photocopies of identity documents, and photocopies of diplomas or certificates of still in school (Article 5 paragraph 1). If the requirements are incomplete, the clerk will return the application to the applicant to be completed (Article 9 paragraph 3). However, if the requirements are complete, the clerk will record the application in the register after the applicant pays the down payment for court costs (Article 9 paragraph 4). Furthermore, on the day of the first hearing, the applicant is required to present their children, prospective husband/wife, and parents/guardians of the prospective husband/wife (Article 10 paragraph 1).

The judge in the trial will listen to the statements of the parties (Article 13 paragraph 1). In addition, the judge must also provide advice to the parties regarding the risks of child marriage, such as the possibility of stopping education, reproductive organs not being ready, and economic, social, and psychological impacts (Article 12 paragraph 1 and paragraph 2). The judge can also ask for recommendations from related parties, such as psychologists, doctors/midwives, professional social workers, or child protection agencies (Article 15 letter d). The protection and best interests of the child, as well as any international conventions or agreements pertaining to child protection, must be taken into account by the judge while deciding whether to grant the marriage dispensation application (Article 17 letters a and b). The judge who tries the application for marriage dispensation must also meet certain requirements, such as having a certificate or experience in trying cases involving children (Article 20 letter a). Only a cassation can be filed against the determination of marriage dispensation (Article 19). Children's rights must always be prioritized in addition to all responsibilities they receive due to their actions, behavior, and actions. This is a shared responsibility of stakeholders in fulfilling the rights of children, whether they are victims or perpetrators of the crime of sexual intercourse.

**Table 1. Application for dispensation for child marriage at the Tanjung Karang Religious Court**

Years	Number of Cases Incoming	Granted	Not Granted
2020	32	27	5
2021	38	33	5
2022	37	33	4
2023	39	31	8
<b>Amount</b>	<b>146</b>	<b>124</b>	<b>22</b>

Source: Tanjung Karang Religious Court

The statistical data above shows that cases of sexual violence between children are very common in Bandar Lampung. The data above is a request for marriage dispensation submitted to the Tanjung Karang Religious Court. The data presented from 2020 to 2023 shows no decrease in requests for marriage dispensation as one of the mechanisms for resolving sexual violence crimes committed by children. Settlement through the Juvenile Criminal Justice System (SPPA) and through marriage dispensation have their own advantages and disadvantages in terms of the effectiveness of their resolution (Pakpahan et al., 2022). Settlement through SPPA aims to provide special protection for children in conflict with the law, including in cases of child-on-child sexual intercourse (Manahan & Krisna2, 2023). However, there are challenges in determining accountability

and providing fair punishment. This is due to the element of willingness from the child victim in some cases, as well as other factors such as the influence of intoxicating drinks or a dating relationship that preceded the crime. Although legally it is still considered sexual intercourse, this aspect of willingness can influence the judge's perception and decision in making a verdict. On the other hand, settlement through marriage dispensation is often proposed as an effort to overcome this problem. However, underage marriage can hinder the process of education and child development and has the potential to eliminate the child's future rights (Nailah Hikmatal Ulya, 2023). Marriage dispensation may be taken into consideration in emergency cases, such as pregnancy, but it must still take into account the child's best interests and the parents' willingness to provide for their requirements.

Both of these settlement mechanisms have their own advantages and disadvantages. The SPPA does provide special protection for child perpetrators, but there are challenges in determining accountability and appropriate punishment. Meanwhile, marriage dispensation can be a solution in cases of pregnancy but has the potential to eliminate children's rights in the future (Imran et al., 2024). In addition, another challenge in resolving this case is the gap between applicable law and the social reality that occurs. Although legally the act of sexual intercourse with a child is considered a criminal act of sexual intercourse, in practice there are cases where there is an element of consent or a relationship that precedes the crime. This shows a gap between legal norms and community behavior, especially among adolescents (Salam et al., 2022).

Comprehensive efforts are needed to address this issue. Increasing legal awareness and sexual education for adolescents is very important so that they can understand the consequences and impacts of sexual intercourse. In addition, the role of parents and the community in protecting and supervising children is also crucial to prevent this crime from occurring. Firm and consistent law enforcement is also needed, while still considering aspects of justice and the best interests of the child (Philip Selznick, 2020). In this case, the judge has a very important role in providing a fair and wise decision, by considering various factors and conditions surrounding the case. Overall, resolving the crime of sexual intercourse with children requires a comprehensive approach and involves various parties, such as law enforcement agencies, educational institutions, parents, and the community. The government must also take a more active role in providing adequate facilities and infrastructure to support efforts to handle this problem (Fanggi & Manuain, 2024). Thus, the model for resolving the crime of sexual intercourse committed by children by prioritizing the best interests of the child does not only depend on the SPPA mechanism or marriage dispensation alone, but also requires an approach that includes aspects of prevention, protection, handling, and empowerment for the children involved. Only with comprehensive efforts and involving all stakeholders can this problem be resolved effectively in protecting and fulfilling children's rights in the future.

## **CONCLUSION**

Obstacles in implementing the child sexual violence crime resolution model, this problem is that regulations or laws are quite complete in regulating sexual violence. Then, the obstacles are the lack of adequate facilities and infrastructure, special rooms for children, operational costs, and the lack of law enforcement officers in terms of quantity. There are two processes used in the settlement model or flow to resolve criminal acts of sexual assault perpetrated by minors against minors: the juvenile criminal justice system (SPPA) and the marriage dispensation application procedure. The flow of the mechanism for resolving criminal acts of sexual intercourse with children (children as perpetrators and children as victims) based on the SPPA Law begins when the criminal act occurs and is reported to the police. Then the flow of the mechanism for the process of submitting a marriage dispensation application based on PERMA Number 5 of 2019 begins with the party entitled to submit the application, namely the parents. Comprehensive efforts are needed to overcome this problem. Increasing legal awareness and sexual education for adolescents is very important so that they can understand the consequences and impacts of acts of sexual intercourse. In addition, the role of parents and the community in protecting and supervising children is also very crucial to prevent this crime from occurring. Strict and consistent law enforcement is also needed, while still considering aspects of justice and the best interests of the child.

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