

## **The Settlement of Criminal Act of Sexual Intercourse Committed by the Child Against Child**

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**Abstract:** Article 1 number 2 of the Law Number 11 of 2012 is a provision that regulate about the children who are dealing with the law, one of which is a child as a criminal. The criminal act of sexual intercourse committed by the child against child is a problem that is rife happening due to technological developments that cause children to be able to access pornographic content. Article 76D of the Law Number 35 of 2014 concerning the Amendments to the Law Number 23 of 2002 states that there is a prohibition for everyone to commit violence or threat of violence against children. The process of resolving the criminal case of child crimes is not only to protect children as victims or witnesses of criminal acts, but also to protect children as perpetrators of criminal acts, so that there is problem related to how the settlement of the criminal act of sexual intercourse committed by the child against child? and how does the legal protection for children as perpetrators and victims of criminal act of sexual intercourse? This study aims to find out the settlement and legal protection in the criminal act of sexual intercourse committed by the child against child. The research method was carried out by juridical normative and juridical empirical methods. The settlement is done through a court process because the criminal act of child sexual intercourse can not be done through the settlement of diversion, because the threat of criminal penalties on criminal act of sexual intercourse against children is over 7 (seven) years, then the child perpetrators of criminal act are entitled to get the assistance from BAPAS who play an active role in assisting and conducting research on the child's life history that become consideration in imposing penalties for children by prioritizing the legal protection.

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### **I. INTRODUCTION**

Children are assets of the nation that are part of the young generations, successor of the ideals of the nation's struggle, which have a strategic role to guarantee continuity of the existence of the nation and state in the future and the children are the successors of the ideals of the nation's struggle. In terms of the survival of a child, the international community that has agreed and promised to place that the child's position is as creature that must be given full protection of the rights that is possessed by a child.<sup>1</sup>This is in accordance with the constitutional mandate as stated in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that: "every child has the right to live, to grow up and to develop as well as the right to protection from violence and discrimination". Furthermore, it is also emphasized in Article 34 of the 1945 Constitution of the Republic of Indonesia, which states that: "Impoverished persons and abandoned children shall be taken care of by the state".

Particularly, regarding the protection of children from aspects of the law of the state has a very important and strategic role, without disregarding the protection from other aspects. The Protection of children in the legal aspect focuses more on the protection for personal self of the child both physically and psychologically. Child protection as outlined in the form of legal rules or legislation certainly has the nature to force (imperative).<sup>2</sup>

Behaviors and deviant characteristics of children who commit a criminal act are caused by factors outside the child himself. In addition, deviant behavior caused by technological advances and social development greatly affects social life for children, so that it will have an impact on the way of thinking,

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<sup>1</sup> Bambang Purnomo, Gunarto, Amin Purnawan, *Penegakan Hukum Tindak Pidana Anak Sebagai Pelaku Dalam Sistem Peradilan Pidana Anak (Studi Kasus Di Polres Tegal)*, Jurnal Hukum Khaira Ummah 13(1), 2018.

<sup>2</sup>Satjipto Rahardjo, *Masalah Penegakan Hukum, Suatu Tinjauan Sosiologis*, Sinar Baru, (Bandung, 1993) 15.

behaving, and acting in societies' life.<sup>3</sup> As a result of the development of technological science and the influence of social life will have a positive impact and a negative impact for children, if there is no guidance and supervision from parents, so that each person or child can easily access the matters related to pornography.

Juvenile Delinquency is basically caused by several causative factors that most influence the emergence of child crime, namely: environmental factors, economic / social factors, and psychological factors.<sup>4</sup> Juvenile Delinquency, if it is interpreted in legal science, is an action committed by child that is considered to be contrary to the legal provisions that is applicable in a state and by the community itself is based and interpreted as a disgraceful act.<sup>5</sup>

There are so many legal issues in the matter of the protection for children. One of the violence that is rife to happen today is the case of sexual crimes against children. The criminal act of sexual intercourse committed by children is a very extreme problem. Sexual intercourse or sexual relations in principle means that an act of copulation carried out by humans. However, in a broader sense, it also refers to other actions that is related or replace the acts of copulation, thus it is more than just referring to the meeting between the genitals of men and women.

The Law Number 35 of 2014 concerning Amendments to the Law Number 23 of 2002 concerning Child Protection, provides special protection for children who are victims of criminal offenses, which applies severe penalties for anyone who commits sexual intercourse against children. This law does not regulate about who does it, whether the perpetrator is an adult or the perpetrator is a child. However, even if the child is perpetrator of criminal act, then the rights of child are still attached to the child and this is the obligation of the state to protect the children.

When the criminal act of intercourse occurs to a child and the perpetrator is a child, then the application of protection for children in sexual crimes both to the victim and the perpetrator is given legal protection based on Law Number 11 of 2012 concerning the Criminal Justice System of Children. The principles of legal protection for children must be in accordance with the Convention on the Rights of the Child as ratified by the government of the Republic of Indonesia with Presidential Decree No. 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child.<sup>6</sup>

That the process of the settlement of child criminal act in Article 45 and Article 46 of the Criminal Code, the judge can determine in imposing a criminal punishment against a child on a main crime the maximum reduced by one third in the interests of the welfare of the child. As referred to in the instruction of the Supreme Court of the Republic of Indonesia Number: M.A/Pem/048/1971 on January 4, 1971, principally determines that: child problems must be channeled through juvenile justice which guarantees that the examination of the court and decision are carried out for the welfare of the child and community without disregarding the implementation of justice, so that it is recommended to appoint a special judge who has knowledge, attention, and dedication on the children. The rule of law regarding juvenile justice has been specifically regulated in the Law Number 3 of 1997 concerning Juvenile Justice. In this law, there is an age restriction on children who is on trial in juvenile court that has reached the age of 8 (eight) years but have not reached the age of 18 (eighteen) years, law enforcement through a formal judicial process that is through the trial process. Thus, along with the enactment of Law Number 11 of 2012 concerning the Criminal Justice System of Children, then Law No. 3 of 1997 concerning Juvenile Justice is declared to be no longer valid. The Substances that is regulated in Law Number 11 of 2012 Concerning the Criminal Justice System of Children, including the placement of children who undergo the judicial process can be placed in the institution of Special Development of Children (LPKA).

Based on the background description mentioned above, the problems in this study are as follows:

1. How does the settlement of the criminal act of sexual intercourse committed by child against a child?
2. How does the legal protection of child as perpetrator and child as victim of the criminal act of sexual intercourse?

## II .METHODS

The type of this research is analytical description, which is to describe systematically, factually and accurately, on the population or particular area, regarding the nature, characteristics or certain factors.<sup>7</sup>

The method used in this research is normative juridical research method and juridical empirical. The normative juridical method is conducted by using library material and document studies, which are the main material in this research. In addition, empirical juridical method is also used. It is done by conducting the field

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<sup>3</sup>Salamat Widodo, *Diversi Sebagai Bentuk Perlindungan Hak Asasi Anak Yang Berhadapan Dengan Hukum*, Jurnal Kosmik Hukum, 17(1), 2017.

<sup>4</sup>Nasir Jamil, *Anak Bukan untuk Dihukum*, (Sinar Grafika, Jakarta, 2013). 45-35.

<sup>5</sup>Nashriana, *Perlindungan Hukum Pidana Bagi Anak di Indonesia*, (Rajawali Pers, Jakarta), 2012, 28-29.

<sup>6</sup>Andika Wijaya dan Wida Peace Ananta, *Darurat Kejahatan Seksual*, (Sinar Grafika, Jakarta), 2016, 94-95.

<sup>7</sup>Bambang Sunggono, *Metodologi Penelitian Hukum*, PT. Raja Grafindo Persada, Jakarta, Cetakan ke-12, 2011: 35

research on the effectiveness or failure of an application of the rule of law based on the applicable legislation in the process of the settlement of criminal act committed by child.

### **III. RESULT**

#### **A. The settlement of criminal act of sexual intercourse which is committed by the child against child**

In Law Number 11 of 2012 concerning the Criminal Justice System of Children, the process of the settlement of criminal acts committed by children before being submitted to the court then at the level of investigation, prosecution, the court is obliged to make diversion efforts. The most basic substance in this law is the strict arrangement regarding Restorative Justice and Diversion which is intended to avoid distancing from the judicial process so that it can avoid stigmatization of those who face the law and it is expected that children can return to the social environment properly.<sup>8</sup>

The process of law enforcement of criminal act committed by children includes the stages of arrest, detention, investigation, prosecution, examinations in the court hearing and correctional institutions for children in accordance with the provisions of Article 22 of the Law Number 11 of 2012 Concerning the Criminal Justice System of Children, states: "Investigators, Public Prosecutors, Judges, Community Guides, Advocates or other Legal Aid Providers, and other officers in inspecting the cases of Children, child victim, and/or Witness Children do not use toga or official attributes".

At the stage of investigating a child's case, it must be done by special investigators who have experience as investigators, Special Public Prosecutors for Child and Special Judges for Child who have already had special expertise about the children. In every case, when the reported party is a child, the police then have an obligation to report or do the coordination with the Correctional Institution (BAPAS) that there is a report of a crime committed by a child.

Based on the results of interviews with Women and Child Protection Investigator of Police Resort of Takengon, the stage of the settlement of child cases has been carried out in accordance with the provisions of Article 27 paragraph (1) of the Law Number 11 of 2012, by conducting the coordination in the form of a request to the Correctional Institution (BAPAS) to provide the assistance towards the child as the perpetrator of criminal act. In the case which is handled by Women and Child Protection Investigator of Police Resort of Takengon against the case of sexual intercourse committed by a child include as severe criminal act so that the consideration or advice from the Community Guide is urgently needed.

Then for children as victims in process of the settlement of children's cases the efforts made by the Women and Child Protection Investigator conduct the coordination in the form of a request to the Office of Women's and Child Empowerment. The purpose of this coordination is for the children as victims of criminal act and children as witnesses of criminal act so that they can be accompanied. Thus, the party from the office of Women Empowerment and Child Protection (DP3A) conducts social research on children.

In connection with the detention of children who have committed criminal act, several efforts have been made for children who are in conflict with the law by the mutual agreement in handling cases of children who are in conflict with the law through a Joint Decree (SKB) on December 22, 2009, among the Minister of Law and Human Rights, Minister of Women's Empowerment and Child Protection, Minister of Social Affairs, the Attorney General, National Police of the Republic of Indonesia, as well as Supreme Court concerning Handling the Children in facing with the law.

The party of Correctional Institution (BAPAS) is required to conduct research on children as perpetrators of criminal act, parents' identity of the child as perpetrators of crime, the condition of the child's house as perpetrators of criminal act, the chronology of occurrence of criminal act, and the responses from family, relatives, community, friends, teacher of the child as a criminal offender. The results of research on children as perpetrators of criminal act are one of the considerations in the process of settlement of sexual intercourse criminal act which is committed by child. As stated in the legal provisions in Article 60 of the Law Number 11 of 2012 Concerning the Criminal Justice System of Children which states that the consideration of community research is a consideration that must be considered by the judge, in which in case the judge doesn't consider the results of the research of the correctional institution party in providing a decision, thus the decision can be null and void.

Children as perpetrators of sexual intercourse that occur within the jurisdiction of the District Court of Takengon are not even 18 (eighteen) years of their age when committing a criminal act, thus the child should still be processed in juvenile court. This is based on the provisions of Article 20 of the Law Number 11 of 2012 regarding the Criminal Justice System of Children, states that: In the term of a criminal act committed by child before the age of 18 (eighteen) years old and submitted to a court after the related child exceeds the age limit of 18 (eighteen) years old, but the child has not reached the age of 21 (twenty one) years old, the child shall still be

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<sup>8</sup> Wahyu Jontah, Wencislaus Sirjon Nansi, *Penguatan Restorative Justice Melalui Pendekatan Adat Dan Kearifan Lokal Sebagai Alternatif Penyelesaian Perkara Pidana Anak*, Jurnal Ilmu Hukum, 7 (2), 2018.

submitted to the juvenile court. That in the criminal act of sexual intercourse which is committed by child against child, the settlement in the way of diversion is not made because it does not meet the provisions for a criminal act that can be done through diversion effort as stipulated in Article 7 of the Law Number 11 of 2012 concerning the Criminal Justice System of Children. Thus, the settlement process of the criminal act of sexual intercourse committed by child against child is in the court.

The criminal act of sexual intercourse committed by a child against a child includes as the criminal act that cannot be resolved by the diversion but restorative efforts shall still be made. The purpose of this restorative effort is an apology from the child as the perpetrator and the family of the child as the perpetrator to the child as the victim and the family of the child victim of a criminal act.<sup>9</sup> By the existence of the effort of apology from child as perpetrator, thus the results of apology that has been received from child as victim and family of child victim of criminal act become one of the considerations in the trial process to alleviate criminal punishment for children as perpetrators of the criminal act of sexual intercourse.

In the Law Number 35 of 2014 concerning the Amendments to the Law Number 23 of 2002 concerning Child Protection states that the children as perpetrators of sexual intercourse against children do not have special rules to reduce the threat of criminal punishment. For the criminal act of sexual intercourse which is settled through litigation settlement, in the provisions of Law Number 11 of 2012 concerning the Criminal Justice System of Children mentions that the trial process of the child has protection for children. This is based on the provisions of Article 53 of the Law Number 11 of 2012 concerning the Criminal justice system of Children states that: (1). Children are tried in a special room for children. (2). the child's waiting room is separated from the court waiting room of adult. (3). Child's trial time takes precedence over the adult's trial time.

The settlement of the criminal act of sexual intercourse still prioritizes the efforts to protect the secrecy of the child both as the perpetrators of the criminal act and as victims of the criminal act, thus the child trial process are declared to be closed for the public. This has been stated in Article 54 of the Law Number 11 of 2012 Concerning the Criminal justice system of Children, which state that Judges inspects the cases of children in the trial which is declared to be closed for the public, except for the decision reading. The purpose of the provisions mentioned above is one of the forms to protect the survival of a child who is dealing with law, in which in the process of settlement of criminal acts committed by children, the repressive protection must be given for them which is aimed to facilitating the resolution of disputes or problems of child victims and child as perpetrator without misappropriating the natural rights of children.<sup>10</sup>

Based on the provisions of Article 55 of the Law Number 11 of 2012 Concerning the Criminal Justice System of Children, when the child trial process which is declared to be closed for the public. parties who can attend the trial process of a child include parents/guardian or a companion, advocate or other legal aid providers, and Social Counselor to accompany the children. However, if the parents / guardian to accompany is not present, then the trial will still be continued by the judge with the requirement that the advocate or legal aid provider and the community guide are required to always attend the child's trial. In case there is no companion who accompanies the child and the judge opens a trial without the child's companions, thus the trial of the child is null and void.<sup>11</sup>

In a crime of sexual intercourse committed by a child, based on the results of research in the legal jurisdiction of the Takengon District Court, not all cases are given criminal sanctions. Based on the provisions of Article 69 of the Law Number 11 of 2012 Regarding the Criminal justice system of Children, it states that: (1). Child may only be sentenced to criminal or subjected to action based on the provisions in this Law. (2) Children who has not already reached the age of 14 (fourteen) years old may only be subjected to an action. Criminal sanctions are also contained in the provisions of Article 71 of the Law Number 11 of 2012 Concerning the Criminal Justice System of Children.

The imposition of criminal punishment on criminal acts of sexual intercourse, based on the provisions of Article 81 of the Law Number 35 of 2014 concerning Amendment to the Law Number 23 of 2002 concerning Child Protection, which basically states: "Every person who commit sexual intercourse with a child is sentenced to a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years as well as a maximum fine of Rp.5,000,000,000.00 (five billion rupiah)". In its implementation, in the legal jurisdiction of the District Court of Takengon, the imposition of punishment towards the child who commit the criminal act of sexual intercourse against child, the imposition of punishment does not reach a maximum criminal threat of imprisonment of 5 (five) years.

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<sup>9</sup>RusiantoAgus, *TindakPidana dan PertanggungjawabanPidana*, Kencana, 2016, 23.

<sup>10</sup>Meily, H. Saleh Muliadi dan LembangPalipadang, *PerlindunganHukumTerhadapHakAnakPelakuTindakPidanaPemeriksaanDalamSistemPeradilanPidana*, JurnalKatalogis 5 (2), 2017.

<sup>11</sup>LihatPasal55 Undang-UndangNomor 11 Tahun 2012 TentangSistemPeradilanPidanaAnak.

Based on the provisions in Article 79 paragraph (3) of the Law Number 11 of 2012 Concerning the Criminal Justice System of Children, it states that: the minimum sentence for imprisonment does not apply to children. Then, with regard to the provisions of the article mentioned above, the judge can decide the case of criminal act of sexual intercourse committed by the child against child with a criminal decision under a minimum threat.

In Criminal decisions against the perpetrators of sexual intercourse committed by a child against a child, the Panel of Judges decided the most severe criminal decisions against the child of two years and six months. That decision of judges is decision of a half of the minimum threat as stipulated in the provision of Article 81 of the Law Number 35 of 2014 concerning Amendment to the Law Number 23 of 2002 concerning Child Protection, that is with the minimum of criminal threat of 5 (five) years imprisonment. For criminal fines in the form of confinement can be replaced by job training, this is in accordance with the provisions on the imposition of sentence to children based on Article 71 paragraph (3) of the Law Number 11 of 2012 concerning the Criminal Justice System of Children.

The imposition of criminal sentences for child namely imprisonment is the last option of sentence for child. In the imposition of imprisonment for child, the child can be sentenced to imprisonment below the sentence of minimum criminal threat. Even for sentencing that is below the minimum threat of punishment that has been set in the provisions of the Law, that is on the crime of sexual intercourse against children, then the minimum penalty is 5 (five) years and fines. In the implementation of child protection, as the perpetrator of criminal act, the child who is serving a criminal sentence has a leniency of the sentence. This is based on the provisions of Article 81 paragraph (4) of the Law Number 11 of 2012 concerning the Criminal Justice System of Children, which mentions that "a child, who has served ½ (one-half) of his coaching time in the institution of Special Development of Children (LPKA) and has good behavior, are entitled to parole. This provision is one of leniency of the sentence for children as perpetrators of criminal act". The implementation of job training is a punishment for children to substitute criminal punishment of fines. The implementation of job training to substitute fines can be carried out at industrial vocational training centers (*BalaiLatihanKerja*), at the institution of Special Development of Children (LPKA), and at Correctional Institution. Job training for children will be adjusted to the talents and interests of the child.

## **B. Legal Protection for Child as Perpetrator and Victim of the criminal act of Sexual Intercourse**

In the Constitution of the Republic of Indonesia in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it states that "every child has the right to live, to grow up and to develop as well as the right to protection from violence and discrimination". Thus, the protection of children's rights listed in the constitution is further explained in more specific rules. When we are talking about the criminal act of child, both child as victim, child as witness and child as perpetrator is included in the category of child who are in conflict with the law, that child is more prioritized legal protection against him during the process of resolving criminal acts. In Law Number 11 of 2012 Regarding Criminal Justice System of Children, it regulates about how the legal protection that must be enforced by each party who is involved in the settlement process of criminal act of child, including in the Criminal justice system of children, there are 4 (four) parts of the form of legal protection for children who are dealing with the law during the settlement process which is special and different from the criminal settlement process of the adult. The 4 (four) parts of the form of legal protection are carried out in the litigation process, non-litigation process, the process of law enforcement officers (who have special expertise of children) and in the process of assisting children who are dealing with the law.<sup>12</sup>

The protection of children from violence and discrimination is very specific protection. The definition of child protection, based on Article 1 number 2 of the Law Number 35 of 2014 concerning Amendments to the Law Number 23 of 2002 concerning Child Protection, states that: "Child protection is all activities to guarantee and protect children and their rights so that they can live and develop, and participate optimally in accordance with human dignity and values, as well as obtain the protection from violence and discrimination".

The importance of the rights protection guarantee, both to the child as the victim and to the child as the perpetrator in the criminal act of sexual intercourse, is actually located at the stage of adjudication in court, because each party has the same level in which victim is represented by public prosecutor and defendant / perpetrator can provide his defense in front of the trial in court.

The law of juvenile criminal justice not only protects a child as a victim or witness of a criminal act, but also protects a child as a perpetrator of criminal act who is considered as a child who is in conflict with the law. In the juvenile justice system, it is determined about the age of the child who is considered in conflict with the law. This is confirmed in Article 1 number 3 of the Law Number 11 of 2012 concerning the Criminal Justice

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<sup>12</sup>Analiansyah dan SyarifahRahmatillah, *PerlindunganHukumTerhadapAnak Yang BerhadapanDenganHukum (StudiTerhadapUndang-undangPeradilanAnak Indonesia Dan PeradilanAdat Aceh*, Gender Equality: International Journal Of Child And Gender Studies 1 (1), 2015, 56-57

System of Children which mentions that “child who is in conflict with the law, hereinafter referred to as child, is the child who is 12 (twelve) years old but has not already reached the age of 18 (eighteen) years old who is suspected of committing criminal act”. Thus, legal protection is not only given to child as victim of criminal act and child as witness of the criminal act, but also to child as perpetrator of crime. The child as the perpetrator must also be considered by the State in the settlement of a criminal act that is committed by child.

### **1. Legal Protection for Child as the Perpetrator of Criminal Act**

In general, efforts to protect children as perpetrators or children in conflict with the law by guaranteeing their rights are still fulfilled by the State, the basic reference of the protection of children is in the provisions of the Law No. 11/2012 which prioritizes the diversion efforts in the settlement of criminal act of child with the aim to more protect the rights of the child in the form of restorative justice. However, this diversion efforts can only be done against cases which has the criminal act with the threat of criminal sentence under 7 (seven) years of in prison, then for the threat of a criminal sentence of 7 (seven) years above, it is not mandatory for diversion effort. In this case, the criminal threat for criminal act of sexual intercourse committed by a child can not be given the efforts of diversion because the criminal threat exceeds to above 7 (seven) years in the provisions of the Law Number 35 of 2014 concerning Amendments to the Law Number 23 of 2002 Concerning Child Protection .

Therefore, the crime of sexual intercourse that can not be made through diversion efforts which is one of the rights of children that must be fulfilled by the State, however for children who are in conflict with the law (the perpetrators of criminal acts) are still entitled to their other rights when following the process settlement of criminal act. As stipulated in Article 3 of Law Number 11 of 2012 regarding the Criminal Justice System for Children, every child in the criminal justice process has special rights that are not possessed by adults. One of the children's rights in the criminal justice process at the investigation stage until the trial process are: First: Not arrested, detained, or imprisoned, except as a last efforts and in the shortest time. The head of Criminal Investigation Unit of Takengon Resort Police said that the arrest of child is carried out by paying full attention that the perpetrator is a child. When there were reports from the victim and the victim's family, the police first will find out who the child that is reported as perpetrator is, the child's family, where the child lived, the school of the child, playing, this is to facilitate the police when the police pick up a child as perpetrator of criminal act, When the child as the perpetrator has been arrested, the police have contacted and showed the arrest warrant to the family of child who become as the perpetrator of criminal act or guardian. However, there is a reason why the police do not detain a child as a perpetrator of the criminal act of sexual intercourse; it is due to (1). Children get guarantees from their parents and (2). Children must obtain education.

Regarding the right of children to education that must be fulfilled by the State, in this case, in addition to the police who must consider the suspension of child detention, the institution of Special Development of Children (LPKA) must also fulfill the education of children who are in conflict with the law, because the right to education for children as the perpetrator of criminal act is the basic rights of human rights mandated by the 1945 Constitution of the Republic of Indonesia. For the institution of Special Development of Children (LPKA), in the implementation of fulfillment of education for children who commit crimes, especially for children who have become students of the institution of Special Development of Children (LPKA), the implementation carried out ideally without the nature of discriminatory which is without discriminating the status of the child, even though the child is a student at the institution of Special Development of Children (LPKA) for committing a criminal act and the child as the perpetrator of the criminal act is also entitled to get education as in public school.

Second, separated from adults, the separation between child perpetrators of criminal act with adults is one of the implementation of the Child protection for the child as the perpetrator of criminal act. The separation from adults does not only apply at the police office level, but at the level of the prosecutor's office, the judicial process and until undergoing court decisions. Children as perpetrator of criminal act must be separated from adults. This is an obligation of law enforcers to fulfill the rights of children and to prioritize legal protection for children who is the perpetrator of criminal acts. As stipulated in Article 20 of the Law Number 12 of 1995 concerning correctional institution which states that: In order to the child coahing in Correctional Institution (LAPAS), the child is classified according to: (a). age (b). gender (c). the length of the criminal punishment that is imposed (d). type of crime and (e). other criteria in accordance with the needs or the development of coaching. Additionally, third, obtaining the legal assistance and / or get the assistance from parents / guardians and person who is trusted by children and fourth, Obtaining Education, Social Advocacy and Personal Life.

### **2. Legal Protection for Child as the Victim of Criminal Act**

In order to realize the protection for child victims and welfare, the legislation and institutional relations that play an active role in advocating for children's rights are needed. Special protection for children who are dealing with the law is regulated based on the provisions of Article 59 paragraph (2) letter b "children in conflict

with the law" and in letter j "child victims of sexual crimes" of the Law Number 35 of 2014 concerning Amendments to the Law Number 23 of 2002 concerning Child Protection. In Article 1 number 1 of the Law Number 11 of 2012 concerning the Criminal Justice System of Children, it states that the Criminal Justice System of Children is the whole process of resolving the cases of child who is dealing with the law, from the investigation stage to the guidance stage after undergoing a criminal punishment.

The Efforts to provide education about reproductive health, religious values and moral values are the forms of special protection for child victims of sexual crimes. In addition, special protection for child, child victims of sexual crime is entitled to get social rehabilitation efforts both from psychology and social workers who always provide psychosocial assistance and trauma recovery for the child and the efforts to always be accompanied when the settlement process by law enforcers are also needed for the child. This must be highly considered by the State as instructed in Article 69A of Law Number 35 of 2014 concerning the Amendments to the Law Number 23 of 2002 concerning Child Protection. Legal protection for child victims is a form of protection for the community and for other children that is provided through restitution and compensation for the victim.

In addition to children as victims of criminal act of sexual intercourse who must be given special protection, the rights of the child as victim that must be truly protected by all parties both law enforcers and society. This is based on the provisions in Article 5 of the Law Number 31 of 2014 concerning Amendments to the Law Number 13 of 2006 concerning Witness and Victim Protection. In essence, protecting children is protecting the family, protecting the community and also protecting the next generation of the nation, therefore, child victims of sexual crimes are very important to protect and to fulfill their rights. Legal protection for victims in the criminal law system was originally stated in the Indonesian Criminal Procedure Code (KUHAP) Article 98 and Article 101. Legal protection for children in addition to referring to the Indonesian Criminal Procedure Code (KUHAP), it has also been specifically regulated in the Law Number 11 of 2012 concerning the Criminal Justice System of Children and the Law Number 35 of 2014 on amendments to the Law Number 23 of 2002 concerning child protection.

In the criminal justice process, children as victims are entitled to the protection of their identities which must be kept confidential from the print media reporting or electronic media, the names of the parents of child victim of criminal act even is also required to be kept confidential from the public. The child's identity can only be published using the initials and without the image of the child as a victim. This is in accordance with the provisions of Article 19 paragraph (1) and (2) of the Law Number 11 of 2012 concerning the Criminal Justice System of Children.

Child as the victim also have the right to be accompanied by parents and / or persons trusted by the child victim and / or child witness, or social workers at every level of examinations of the court. At the level of examination in the court, the child as victim is given the opportunity by the judge to express his opinion regarding to the related case. Based on Article 90 paragraph (1) of Law Number 11 of 2012 concerning the Criminal Justice System of Children, it states that the child as victim is also entitled to: a. medical rehabilitation and social rehabilitation efforts, both inside the institution and outside the institution b. the guarantee for safety, both physical, mental, and social safety and c. the easiness to get information related to development of the case.

Child as victim of criminal act really needs social rehabilitation, thus the assistance is also conducted by social workers during the trial process in court. Based on the results of interviews with social workers in Aceh Tengah (Central Aceh regency) stated that the assistance is provided in the trial if it is allowed by the judge to enter the courtroom. In its implementation, the assistance to child victims of criminal act in the trial process, there are still judges who do not give permission to social workers to assist and provide emotional reinforcement. One of the tasks of social workers, based on the provisions in Article 68 paragraph (1) letter a of the Law Number 11 of 2012 concerning the Criminal Justice System of Children, states that "Guiding, helping, protecting and assisting the children by conducting social consultations and restoration of Child's confidence".

#### **IV .CONCLUSION**

The settlement of a criminal act of sexual intercourse committed by a child is regulated based on the provisions of the law concerning the Criminal Justice System of Children. In the criminal act, the efforts of diversion cannot be carried out because the criminal act of sexual intercourse committed against child has threat of criminal punishment over 7 (seven) years. In each level of examination, children who are in conflict with the law have the right to be given legal assistance by the advocate and accompanied by social counselors, social workers and their parents / guardians. Judges in making decisions have considered the results of community research from BAPAS. The decision of Criminal act of sexual intercourse committed by a child against a child is in the form of a criminal sentence under the threat of a minimum sentence and the implementation of additional penalties against a child is replaced with job training, this is in accordance with the law.

The Legal protection for child as perpetrator and victim of criminal act of sexual intercourse has been carried out at every level, namely investigation, prosecution and trial process. The legal protection towards the

child as perpetrators of criminal act has been carried out by the police starting from the process of arrest, investigation, trial of the juvenile court, the child is required to be accompanied by parents / guardians, advocates, social workers with the short time of court's investigation. The legal protection of child as victims of crime has been carried out by the police starting from the process of investigation until court trial. The child is required to be accompanied by parents / guardians, social workers. However, in its implementation, there are the obstacles due to lack of personnel, operational and supporting facilities.

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