

Criminalization of Pedophilia in Indonesia: A Legal Reform to Protect Children (Comparative Case of Indonesian and India)

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Abstract

The term pedophilia was coined by the American Psychiatric Association (APA) and is recognized as a mental disorder in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), specifically within the paraphilia class, characterized by an abnormal sexual attraction to minors. This research aims to compare child protection measures against pedophilic crimes in Indonesia and India, focusing on prevention, to serve as a reference for potential legal reforms in Indonesia. It utilizes a normative research methodology. The findings reveal that both countries lack specific regulations addressing pedophilic crimes. Instead, such offenses fall

under broader categories like sexual abuse of children and sexual violence against minors. However, India has taken a significant step by enacting the Protection of Children from Sexual Offenses Act in 2012 (POCSO), while Indonesia has recently implemented Law No. 1 of 2022 concerning Crimes of Sexual Violence. Importantly, pedophilia is not just a criminal act but also a mental disorder necessitating treatment. Hence, a comprehensive approach is vital for prevention. India has established a Program for Primary Prevention of Sexual Violence (PPPSV), offering support and medical intervention to individuals experiencing sexual attractions toward children, setting a valuable example for addressing this issue.

Keywords

Pedophilia, Sexual Violence, Program for Primary Prevention of Sexual Violence (PPPSV)

Introduction

Indonesia is facing a critical emergency concerning the disturbing issue of sexual violence against children, as emphasized by the Ministry of Women and Children Protection. Despite significant advancements in the realm of legal frameworks aimed at safeguarding children, the prevailing circumstances underscore a disconcerting reality: the mere existence of laws and regulations is insufficient in curbing the alarming rates of sexual violence against children. What warrants heightened attention is the unsettling fact that a considerable number of perpetrators involved in child sexual violence are individuals grappling with sexual preference disorders. Shockingly, research by Choudhry et al. in 2018 revealed that approximately 40% of sexual offenders exhibit such disorders, specifically pedophilia, which pertains to a sexual attraction towards pre-adolescent children, and hebephilia, characterized by an attraction to early pubescent children. These age groups typically encompass children aged between 10 and 14 years old.

Pedophilia derives its roots from the Greek words "*paedo*," meaning child, and "*philia*," meaning love, initially signifying a fondness for children. However, this interpretation has evolved to encompass a broader and more alarming connotation—pedophilia is now recognized as a psychosexual disorder, characterized by an

individual's abnormal and erotic attractions toward children.¹ The term "*pedophilia*" was formally introduced by the American Psychiatric Association (APA) in 1952 within the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). According to the APA, pedophilia is categorized as a mental disorder within the paraphilia group, which encompasses sexual attraction to unconventional objects or subjects. Pedophilia, as a subtype of paraphilia, typically pertains to men and is considered a chronic sexual deviation often persisting throughout an individual's lifetime.²

It is crucial to note that while pedophilic behavior is frequently associated with sexual violence against children, not all pedophiles engage in criminal acts of child sexual violence, and conversely, not all perpetrators of child sexual violence can be classified as pedophiles. As previously mentioned, a study by Choudhry et al. in 2018 found that approximately 40% of those responsible for sexual violence against children can be identified as pedophiles.³

¹ Ngr. Tini Rusmini Gorda, *Hukum Perlindungan Anak Korban Pedofilia: Perspektif Viktimologi dalam Kebijakan dan Cita Hukum Pidana* (Malang: Setara Press, 2017)

² Siti Nurbayani, *Penyimpangan Sosial Pedofilia (Upaya Pencegahan dan Penanganan)*, (Jakarta: Bintang Pustaka Madani, 2021)

³ Paraphilias, within the realm of mental health and sexual psychology, are characterized by atypical and recurrent sexual interests, fantasies, or behaviors that deviate from the norm of what is considered socially and culturally acceptable. These conditions can be complex and have attracted significant attention from researchers, clinicians, and legal systems due to their potentially harmful consequences on individuals and society as a whole. There are various types of paraphilias, each with its distinct characteristics and manifestations. Here, we will explore and elaborate on the eight primary categories of paraphilias: (1) Voyeuristic Disorder: This paraphilia involves a person deriving sexual pleasure from secretly observing others engaging in sexual activities or undressing without their consent. Voyeurs may use peeping, spying, or even technology to satisfy their voyeuristic urges. (2) Exhibitionistic Disorder: Individuals with this paraphilia become sexually aroused by exposing their genitals to unsuspecting people, often in public places. Exhibitionists typically seek the shock or surprise reaction of their victims. (3) Frotteuristic Disorder: Frotteurs find sexual gratification through non-consensual touching or rubbing against strangers, often in crowded places. They may engage in this behavior without the knowledge or consent of the person being touched. (4) Sexual Masochism Disorder: Sexual masochists derive pleasure from experiencing physical or psychological pain, humiliation, or bondage during sexual activities. They may willingly participate in these activities, seeking the sensations of discomfort or submission. (5) Sexual Sadism Disorder: In contrast to masochism, individuals with sexual sadism disorder derive sexual arousal from inflicting pain, suffering, or humiliation upon others. This behavior may or may not involve consensual acts. (6) Pedophilic Disorder: Pedophiles are attracted to prepubescent children, typically under the age of 13. This paraphilia is considered highly problematic due to the potential for serious harm to children and legal consequences. (7) Fetishistic Disorder: People with fetishistic disorder are sexually fixated on specific non-human objects or body parts, which are

A pedophile makes children as an outlet for sexual desire. Pedophilia is different from cases of child sexual abuse in general. Victims of pedophilia usually have more than one child, so these pedophiles have a deviant psyche. However, in cases of child sexual violence in general, the psychology of the perpetrators is normal but they make children the targets of their crimes because of power relations where children are easily coerced, innocent, and weak.⁴ Reza Indragiri, a forensic expert, revealed that pedophilia is different from sexual violence against children, pedophilia is a sexual deviation while sexual violence usually occurs because the perpetrator has imperfect genitals, there is no opportunity or choice to give vent to sexual desires. On the other hand, to ensure that someone has sexual deviations towards children or pedophilia, a psychological test is required.⁵

Pedophilia encompasses a broad spectrum of behaviors, including those that do not involve direct sexual contact with children. This diversity within pedophilic actions poses a significant threat to the stability of social order. Pedophilia is widely regarded as a real and potential menace to established social norms and is often seen as a manifestation of social pathology.⁶

typically not inherently sexual. Common fetishes include shoes, lingerie, and specific body parts like feet or hair. (8) Transvestic Disorder (Cross-Dressing): This paraphilia involves individuals, typically males, who derive sexual arousal from wearing clothing typically associated with the opposite gender. It's important to note that not all cross-dressers have this as a paraphilia; for some, it is simply a form of self-expression. In the further context, paraphilias are often considered disorders when they cause significant distress, harm to others, or impair an individual's ability to function in daily life. Treatment approaches for paraphilias may include psychotherapy, behavioral interventions, and medication, with the goal of managing or reducing the harmful effects of these conditions. Legal and ethical considerations are also essential when addressing paraphilias, particularly when they involve non-consensual or illegal activities, such as child exploitation. It's important to approach these complex topics with sensitivity, recognizing the potential for serious harm and the need for professional intervention in many cases. *See also* Bhugra, Dinesh, Dmitri Popelyuk, and Isabel McMullen. "Paraphilias across cultures: Contexts and controversies." *Journal of Sex Research* 47, No. 2-3 (2010): 242-256; Money, John. "Paraphilias: Phenomenology and Classification." *American Journal of Psychotherapy* 38, No. 2 (1984): 164-179; Moser, Charles, and Peggy J. Kleinplatz. "Conceptualization, History, and Future of the Paraphilias." *Annual Review of Clinical Psychology* 16 (2020): 379-399.

⁴ Gorda, 2017.

⁵ Ratih Sahira and Daud Bahransyaf. "Pedofilia dan Kekerasan Seksual: Masalah dan Perlindungan Terhadap Anak". *Jurnal Sosio Informa* 1, No. 1 (2015): 29-40; Hidayati, Nur. "Perlindungan Anak Terhadap Kejahatan Kekerasan Seksual (Pedofilia)." *Ragam Jurnal Pengembangan Humaniora* 14, No. 1 (2014): 68-73; Lewoleba, Kayus Kayowuan, and Muhammad Helmi Fahrozi. "Studi Faktor-Faktor Terjadinya Tindak Kekerasan Seksual Pada Anak-Anak." *Jurnal Esensi Hukum* 2, No. 1 (2020): 27-48.

⁶ Sahira & Bahransyah, 2015.

Typically, pedophiles target vulnerable children, often those from underprivileged backgrounds, such as street children. They employ various deceptive tactics to gain access to their victims. These tactics may involve offering scholarships, posing as foster parents, or attempting to adopt children, thereby enabling the children to live with the perpetrators. It is important to recognize that pedophilia is not confined to specific countries; it is a crime that transcends borders and has developed an international network. This implies that individuals involved in pedophilic activities within one country can be interconnected with pedophiles across the world. Such international syndicates pose unique challenges for law enforcement and child protection efforts. It underscores the importance of global cooperation and the need for comprehensive measures to combat this grave issue and safeguard children from harm.⁷

Based on data from the Ministry of Child Protection, cases of sexual violence against children in Indonesia which were reported in 2022 reached 9,588 cases, whereas previously in 2022 there were 4,162 cases.⁸ Meanwhile, in India, based on the Indian National Crime Records Bureau, there were very high cases of sexual violence against children in 2020, namely approximately 28,000 cases.⁹In

⁷ In Indonesia, sanctions for pedophilia and child sexual abuse are determined by the country's legal system, primarily governed by the Indonesian Penal Code (Kitab Undang-Undang Hukum Pidana or KUHP) and related laws. These penalties can vary based on the specific circumstances of the offense, the age of the victim, and the nature of the crime. Sanctions may include prison sentences, fines, and, in some cases, chemical castration as a punitive measure. Additionally, offenders may be held civilly liable, required to provide financial compensation to victims, and subjected to community supervision or probation. It is essential to stay informed about the latest legal provisions and consult legal experts for the most current information regarding sanctions for pedophilia in Indonesia, as laws can evolve over time in response to societal concerns and priorities. *See also* Nur, Iffatin, Teguh Teguh, and Hiba Fajarwati. "Litigation and Penology of Pedophilia in the Perspective of Indonesian Conventional and Islamic Laws." *Analisis: Jurnal Studi Keislaman* 22, No. 2 (2022): 179-206; Saputra, Tri Akhmad Aji, and Eko Soponyono. "Criminology Study on Pedophilia Prevention in Indonesia." *Jurnal Hukum Novelty* 9, No. 2 (2018): 117-127; Nelvia, Yelli, Elwi Danil, and Aria Zurnetti. "Punishment Arrangement on the Action of Sexual Violence against Children in Legal Regulations of Indonesia." *International Journal of Multicultural and Multireligious Understanding* 6, No. 2 (2019): 237-245.

⁸ CNN Indonesia. "KemenPPPA: RI Darurat Kekerasan Seksual Anak, 9,588 Kasus Selama 2022". *CNN Indonesia Online*, January 28 (2023). Retrieved from <https://www.cnnindonesia.com/nasional/20230127173509-20-905780/kemenpppa-ri-darurat-kekerasan-seksual-anak-9588-kasus-selama-2022>

⁹ Megha Chaturvedi, "Child Sexual Abuse in India: Alarming statistics, lifelong impact, how to heal", *India Today*, August 4 (2023). Retrieved from <https://www.indiatoday.in/education-today/featureophilia/story/child-sexual->

terms of Indian legislation being more responsive than Indonesia, this can be seen from their response in the formation of a child protection law that has been passed since 2012, namely the Protection of Children from Sexual Offences Act in 2012 (POCSO).¹⁰ Meanwhile, Indonesia will only have a special law regarding sexual violence in 2022.

However, based on the ranking of world countries in handling sexual violence against children issued by The Economist Intelligence Unit (EIU) by the UK in the Out of The Shadow Index, India is a country in Asia that is ranked far above Indonesia, India is in the second quarter ranked 13th with a score of 57.6 while Indonesia was ranked 32nd out of 40 countries with a score of 47 and occupied the lowest quarter, namely the fourth quarter.¹¹ The ranking is based on children's environment, legal instruments, industry involvement, civil society and government capacity and commitment in handling cases of sexual violence against children.¹²

Sexual violence against children is an egregious crime because children, by their very nature, are legally recognized as individuals in need of protection. They are in a crucial phase of growth and development, transitioning into adulthood. Psychologically, the concept of adulthood, as described by Kohnstamm, is typically associated with reaching the age of 21 years. Until then, individuals are considered children and are deemed not to have achieved sexual maturity.¹³ Consequently, it is imperative to comprehend that children lack the cognitive maturity required for comprehensive and responsible decision-making regarding matters of sexuality.

As a result, any form of sexual contact initiated by adults with children is unequivocally considered coercive, abusive, and

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¹⁰ Juliandi, Juliandi, Putri Yasmin, and Reh Bungana. "Perlindungan Hukum terhadap Korban Pelecehan Seksual Dilihat dari Segi Hukum Internasional." *Jurnal Edukasi Nonformal* 4, No. 1 (2023): 43-51; Paminto, Saptaning Ruju, and Kori Hermawanti. "Perlindungan Korban Kekerasan Seksual dalam Hukum Positif Indonesia dan Hukum Internasional Berdasarkan Beijing Declaration." *Jurnal Dialektika Hukum* 5, No. 1 (2023); Chinkin, Christine. "Rape and Sexual Abuse of Women in International Law." *International Crimes*. (London: Routledge, 2017), pp. 227-244.

¹¹ Ian Burrows, "Indonesia Peringkat 32 dari 40 Negara dalam Penanganan Pelecehan Terhadap Anak-Anak", *ABC News*, January 16 (2019). Retrieved from <https://www.abc.net.au/indonesian/2019-01-16/peringkat-negara-dalam-penanganan-pelecehan-terhadap-anak-anak/10720442>

¹² Alifian Putri Yudianti and Ikko Anata, "10 Negara dengan Kasus Pemerksaan Tertinggi", *KOMPAS*, October 19 (2022). Retrieved from <https://www.kompas.com/tren/read/2022/10/19/220000665/10-negara-dengan-kasus-pemerksaan-tertinggi?page=all>.

¹³ Kayyis Fithri Ahjuri, *Psikologi Perkembangan Pendekatan Sepanjang Rentang Kehidupan* (Yogyakarta: Penebar Media Pustaka, 2019)

inherently violent. Such actions are rightfully categorized as criminal offenses. Building on this understanding, the author aims to conduct an in-depth examination of the legal regulations pertaining to child protection in both Indonesia and India, with a particular focus on prevention strategies. This exploration will shed light on the measures in place to safeguard children from sexual violence and exploitation, and how these two countries compare in their approaches to addressing this critical issue.

Method

According to Rahmadi, research methods encompass a body of knowledge that guides the systematic and logical exploration of data relevant to the specific problem under investigation. This process involves data retrieval, subsequent processing, rigorous analysis, and the formulation of conclusive insights.¹⁴ The research approach employed by the author is categorized as doctrinal or normative legal research. Mukti Fajar and Yulianto Achmad, drawing from Petter Mahmud Marzuki's perspective, expound that normative legal research entails the systematic quest for legal principles, rules, or doctrines that can effectively address the legal issues at hand.¹⁵

In this study, the authors adopt a comparative approach, leveraging a juxtaposition of Indonesian state law with Indian law to gain deeper insights. The sources of legal materials utilized in this research are primarily divided into two categories: primary and secondary materials. Primary legal materials, as elucidated by Petter Mahmud Marzuki, encompass statutory regulations, official treatises associated with the formulation of statutory regulations, and judicial decisions.¹⁶

Additionally, secondary legal materials, as articulated by the same authority, encompass a wide range of sources, such as legal books, theses, dissertations, legal journals, legal dictionaries, and commentaries on court decisions.¹⁷ The technique employed for the collection of these legal materials primarily involves library research, a data gathering method, as explained by M. Nazir. Library research is characterized by the comprehensive review of books, literature, notes, and reports that are pertinent to the specific research problem being investigated. This meticulous approach ensures a thorough

¹⁴ Ibid. h. 9

¹⁵ Mukti Fajar & Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*. Yogyakarta: Pustaka Pelajar, 2015)

¹⁶ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021)

¹⁷ Ibid, p. 196

and well-informed examination of the legal aspects under consideration.¹⁸

Comparison of the regulation of pedophilia crimes in Indonesia and India

India has established a special law to protect children from sexual offenses, namely the Protection of Children from Sexual Offenses Act in 2012 (POCSO), in Indonesia there is Law No. 1 of 2022 concerning Crime of Sexual Violence (UU TPKS). Based on the TPKS Law, what is meant by a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. In Indian law, a child is a person under 18 years of age.¹⁹

Basically, Indonesian and Indian law does not classify pedophilia as a separate criminal act, but pedophilia can be manifested in various forms of criminal acts, whether sexual violence or in POCSO, it is called sexual offenses of various types. POCSO as a special law created to provide protection to children from sexual offenses does not use the terms rape or sexual violence but uses the terms sexual harassment, sexual assault, aggravated sexual assault, assault), penetrative sexual assault, aggravated penetrative sexual assault. Apart from that, this law also specifically regulates child pornography.

In Indonesia there are no specific rules for protecting children from sexual violence, but there are special laws against sexual violence, namely Law No. 12 of 2012 concerning Crimes of Sexual Violence. In this law, sexual violence can be classified into 9 types of acts, namely; non-physical sexual harassment, physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence.

The following are the provisions of POCSO regarding sexual offenses against children;

1. Penetrative sexual assault (penetrative sexual assault) chapter 2 letter A, a person is said to have committed penetrative sexual assault if;

He (he) inserts a penis into the child's vagina, mouth, urethra or anus, inserts any object or body part other than the penis, manipulates any part of the child's body so as to cause penetration into the child's vagina, mouth, urethra or anus. Using his mouth to the child's penis, vagina, urethra or anus or getting the child to do the act with him or someone else.²⁰

¹⁸ M. Nazir, *Metode Penelitian* (Jakarta: Ghalia Indonesia, 2003).

¹⁹ The Protection of Children from Sexual Abuse Act (POCSO), 2012, art. 2

²⁰ The Protection of Children from Sexual Abuse Act (POCSO), 2012, art. 3

The conviction for sexual assault is punishable by a fine and imprisonment for a minimum of 10 years and can be extended to life imprisonment. Penetrative sexual assault on a child under 16 years of age is punishable by a fine and imprisonment for a minimum of 20 years and can be extended to life imprisonment. The fine in question will be given to the victim for medical and rehabilitation costs.²¹

2. Aggravated penetrative sexual assault, chapter 2 letter B;
Penetrative sexual assault is called aggravated if it is committed by²²;
 - a) police officers, members of the armed forces, family members, trustees, members of penitentiary institutions, prisons, child protection homes, administrators of educational institutions, administrators of religious institutions, other institutional administrators or anyone who collectively (gangs) commits penetrative sexual assault on child.
 - b) Sexual assault by one or more people in a group will be held responsible for each perpetrator, as if the act was carried out alone.
 - c) Anyone who commits a penetrative sexual assault by using a lethal weapon, either fire or corrosive substance;
 - d) Sexual assault that causes serious injury, bodily injury and injury to the child's sexual organs, sexual assault that causes the child to become mentally ill, causes the child to become pregnant, causes the child to contract HIV or other infections that interfere with the child either temporarily or permanently;
 - e) Sexual assault on a child who is physically or mentally disabled, sexual assault on a child that is committed more than once or sexual assault on a child less than 12 years of age

Punishment for aggravated penetrative sexual violence is punishable by a fine and a minimum prison term of 20 years which can be extended to life imprisonment or death penalty.²³

3. Sexual assault Chapter 2 letter C;
What is meant by sexual assault is anyone who with the intention of touching the vagina, penis, anus or breast of a child or making a child touch the vagina, penis, anus or breast of that person or another person, or performs other acts with sexual intent involving physical contact without penetration. The criminal threat for sexual assault is a minimum of 3 years in

²¹ The Protection of Children from Sexual Abuse Act (POCSO), 2012, art. 4

²² The Protection of Children from Sexual Abuse Act (POCSO), 2012, art. 5

²³ The Protection of Children from Sexual Abuse Act (POCSO), 2012, art. 6

prison, which can be extended to 5 years and can be subject to a fine.²⁴

4. Aggravated sexual assault (Aggravated sexual assault) letter D; Sexual assault as mentioned in letter C is said to be aggravated if²⁵:
 - a) police officers, members of the armed forces, family members, guardians, members of correctional institutions, detention centers, child protection homes, administrators of educational institutions, administrators of religious institutions, administrators of other institutions or anyone who together (gang) commits sexual assault on children
 - b) Sexual assault by one or more people in a group will be held responsible for each perpetrator, as if the act was carried out alone.
 - c) Anyone who commits sexual assault using a deadly weapon, whether fire or corrosive substances;
 - d) Sexual assault that causes serious injury, bodily injury and injury to the child's sexual organs, sexual assault that causes the child to become mentally ill, causes the child to become pregnant, causes the child to contract HIV or other infections that interfere with the child either temporarily or permanently;
 - e) Sexual assault on a child who is physically or mentally disabled, sexual assault on a child that is committed more than once or sexual assault on a child less than 12 years of age,

Punishment for aggravated sexual assault is punishable by imprisonment for a minimum of 5 years which can be extended up to 7 years and can be fined.²⁶
5. Sexual harassment (sexual harassment) Chapter 2 letter E; Sexual harassment such as:²⁷
 - a) with sexual intent say any word or make any sound or make any movement or point any object or part of the body for the child to see;
 - b) to make a child show off his body or body parts so that others can see him
 - c) showing any objects to children in any form or media with the aim of pornography
 - d) repeatedly or continuously following or supervising or contacting a child either directly or electronically or otherwise

²⁴ The Protection of Children from Sexual Abuse Act (POCSO), 2012, articles 7-8

²⁵ The Protection of Children from Sexual Abuse Act (POCSO), 2012, article 9

²⁶ The Protection of Children from Sexual Abuse Act (POCSO), 2012, section 10

²⁷ The Protection of Children from Sexual Abuse Act (POCSO), 2012, section 11

- e) threaten to use in any form of media, real or fake images via electronic media of any part of the child's body or the child's involvement in sexual acts
 - f) soliciting a child for pornographic purposes or providing satisfaction for such purposes
6. Punishment for sexual harassment is punishable by a fine and maximum imprisonment of 3 years.²⁸

The provisions in the TPKS Law regarding sexual violence are;

1. Non-physical sexual harassment
 Non-physical sexual harassment²⁹namely any non-physical sexual act aimed at the body, sexual desires, and/or reproductive organs with the intention of degrading a person's honor and dignity based on their sexuality and/or morality. The punishment for this act is a maximum prison sentence of 9 months and a maximum fine of IDR 10,000,000.00.
2. Physical sexual harassment
 Physical sexual harassment³⁰namely any person who performs physical sexual acts aimed at the body, sexual desires and/or reproductive organs with the intention of demeaning a person's dignity based on his sexuality and/or decency. The punishment for this act is imprisonment for a maximum of 4 years and/or a maximum fine of IDR 50,000,000.00.
 If the physical sexual harassment is carried out by unlawfully utilizing his power both within and outside of marriage, then there is a weighting of punishment, namely imprisonment for a maximum of 12 years and/or a maximum fine of IDR 300,000,000.00. Intercourse or obscene acts are also included in physical sexual harassment, if an intercourse or obscene act is carried out by misusing a position, authority, forcing or by moving another person to commit or allow an intercourse or obscene act either with himself or another person, then he is punishable by imprisonment a maximum of 12 years and/or a maximum fine of IDR 300,000,000.00.
3. Contraceptive coercion
 This includes forcing contraception³¹namely forcing other people to use contraception either by force or threat of violence, abusing power, misdirection, deception, creating or taking advantage of helpless conditions that can result in temporary loss of reproductive function. The punishment for forced contraception is a maximum prison sentence of 5 years and/or a maximum fine of IDR 50,000,000.00.

²⁸ The Protection of Children from Sexual Abuse Act (POCSO), 2012, article 12

²⁹ Law No. 1 of 2022 concerning Crimes of Sexual Violence, article 5

³⁰ Law No. 1 of 2022 concerning Crimes of Sexual Violence, article 6

³¹ Law No. 1 of 2022 concerning Crimes of Sexual Violence, article 8

4. **Forced sterilization**
This includes forced sterilization³²namely, every person who forces another person to use contraception either by force or threat of violence, abuses power, misdirection, deception, creates or takes advantage of helpless conditions that can result in permanent loss of reproductive function. The punishment for forced sterilization is a maximum prison sentence of 9 years and/or a maximum fine of IDR 200,000,000.00.
5. **Marriage coercion**
Forced child marriage³³including those in the name of cultural practices or forced marriages between victims and perpetrators of rape, are punishable by a maximum imprisonment of 9 years and/or a maximum fine of Rp. 200,000,000.00.
6. **Sexual torture**
Sexual torture such as sexual violence against a person committed by an official or with the knowledge of the official with the aim of intimidating them to obtain information or confessions from him or a third party, executing or imposing punishment on him because of his suspected or committed actions, humiliating or degrading his dignity due to discrimination and/or sexual violence in all its forms. Sexual torture is punishable by a maximum imprisonment of 12 years and/or a maximum fine of Rp. 300,000,000.00.³⁴
7. **Sexual exploitation**
Sexual exploitation as a form of sexual violence that is more serious than sexual torture, including sexual exploitation, i.e. anyone using violence or threats of violence or abusing one's position, authority, trust, possession arising from deception or relationship to circumstances, vulnerability, inequality, powerlessness, dependence on someone , debt bondage or giving payments or benefits with the intention of obtaining profit, or using sexual organs or other organs of that person aimed at sexual desire with him or with other people. The punishment for sexual exploitation is a maximum prison sentence of 15 years in prison and/or a fine of 1,000,000,000.00.³⁵
8. **Sexual slavery**
Sexual slavery recognized as all acts committed unlawfully place a person under their authority or another person and render them powerless with the aim of sexually exploiting them. The

³² Law No. 1 of 2022 concerning Crimes of Sexual Violence, article 9

³³ Law No. 1 of 2022 concerning Crimes of Sexual Violence, article 10

³⁴ Law No. 1 of 2022 concerning Crimes of Sexual Violence, article 11

³⁵ Law No. 1 of 2022 concerning Crimes of Sexual Violence, article 12

punishment for sexual slavery is a maximum imprisonment of 15 years and/or a maximum fine of 1,000,000,000.00.³⁶

9. Electronic-based sexual violence

Sexual violence is generally recognized as a crime if it is committed physically, but there is a breakthrough in this law, namely the recognition of electronic-based sexual violence as a crime. What is meant by electronic-based sexual violence is any act without the right to record and/or take pictures or screenshots with sexual content against the will or without the consent of the person who is the object of the recording, picture or screenshot.³⁷

In addition, electronic-based sexual violence also includes the act of transmitting electronic information and/or electronic documents with sexual content against the will of the recipient with the intent of sexual desire. Electronic-based sexual violence is punishable by a maximum prison sentence of 4 years and/or a maximum fine of 200,000,000.00.

Against the 9 types of sexual violence above there is a burden if it is committed against children, carried out by people within the family sphere, educators, officials, other professionals, carried out more than once, carried out in groups, resulting in serious injuries until the victim dies so that sexual violence except for electronic-based sexual violence committed against children, the penalty is increased by 1/3.

Based on the above, to clarify the comparison between the POCSO Law and the TPKS Law, a comparison table has been created as follows;

Table 1. Comparison of TPKS & POCSO Laws

TPKS Act			POCSO	
No.	Violence sexual	Criminal Threats	sexual offences	Criminal Threats
1.	Non-physical sexual harassment	The maximum fine and/or imprisonment is 9 months For children: plus 1/3	Penetrative sexual assault	a minimum fine and imprisonment of 10 years can be extended to life imprisonment Severity: fine and imprisonment

³⁶ Law No. 1 of 2022 concerning Crimes of Sexual Violence, article 13

³⁷ Law No. 1 of 2022 concerning Crimes of Sexual Violence, article 14

TPKS Act			POCSO	
				of at least 20 years, which can be extended to life imprisonment.
2.	sexual harassment physique	- Maximum fine and/or imprisonment of 12 years For children: plus 1/3	aggravated penetrative sexual assault	Fines and imprisonment of at least 20 years can be extended to life imprisonment or death penalty.
3.	coercion contraception	Fine and/or imprisonment for a maximum of 5 years For children: plus 1/3	Sexual assault (Sexual assault)	Fines, minimum imprisonment of 3 years can be extended to a maximum of 5 years
4.	forced sterilization, forced marriage	Fine and/or imprisonment for a maximum of 9 years For children: plus 1/3	Aggravated sexual assault	Fine, imprisonment of at least 5 years and a maximum of 7 years
5.	sexual torture	Fine and/or imprisonment for a maximum of 12 years For children: plus 1/3	sexual harassment	Fine and maximum imprisonment of 3 years
6.	sexual exploitation, sexual slavery	Fine and/or imprisonment for a maximum of 15 years For children: plus 1/3	-	-
7.	Sexual violence electronics based	Fine and/or imprisonment for a maximum of 4 years	-	-

The TPKS Law broadly regulates sexual violence in 9 forms, including non-physical sexual harassment, physical sexual

harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and even regulates electronic-based sexual violence. POCSO regulates sexual violence as sexual offenses in the form of sexual harassment, sexual assault, aggravated sexual assault, penetrative sexual assault, aggravated sexual assault. assault penetrative) apart from that POCSO also specifically regulates child pornography.

On the other hand, the differences between the two laws can also be seen from how the two countries stipulate crimes for sexual violence, the POCSO Law imposes minimum penalties, for example in the case of penetrative sexual assault, the minimum prison is 10 years and the maximum is life imprisonment. If committed against a child under 16 years, he is threatened with a minimum of 20 years in prison and can be extended to life imprisonment. The imposition of a minimum prison sentence will of course reduce the number of persons who play unfairly in court so that decisions on penetrative sexual assault will protect the rights of the victim's child and avoid individuals who pass judgments that are light and disproportionate to their actions. Meanwhile, the TPKS Law only stipulates a maximum penalty so that it tends to provide opportunities for games in court and there are many disparities in decisions, even decisions that are very short in terms of punishment and are not proportional to the consequences of actions. For example, the crime of sexual intercourse by abusing one's authority is punishable by 12 years in prison and if it is committed on a child, it is made worse by 1/3, meaning that the maximum prison sentence that can be imposed is 16 years, so the prison sentence can be between 1-16 years. Quoting what was conveyed by Barda Nawawi Arief that the existence of a special minimum sentence is an exception to offenses that are considered very detrimental or dangerous with a quantitative measure of serious offenses or classified as dangerous, namely those that are punishable by imprisonment for more than 7 years. Apart from that, there is a special minimum penalty aimed at the following matters:³⁸

1. Avoiding striking criminal disparities even though the offenses embodied have the same quality. In this case, if there is a disparity in the judge's decision even though the quality of the offense embodied is the same, it will have an impact on the low respect of the community for the court as well as the perpetrators of criminal acts who will look down on the judiciary.³⁹

³⁸ Constitutional Court Decision No.39/PUU-X/2012

³⁹ Muladi. *Kapita Selektta Sistem Peradilan Pidana* (Semarang: Badan Penerbit Undip, 1995)

2. Effective general prevention, especially against offenses that are dangerous and cause unrest in society.
3. It is appropriate that if in certain cases there is a maximum penalty, either general or specific, then the minimum sentence should also be aggravated in certain cases.

Another difference between the two laws above can also be seen in the subject of perpetrators of sexual violence, POCSO only recognizes that the subjects of sexual violence are people, but in the TPKS Law the subject of perpetrators of sexual violence can also be carried out by corporations. Article 18 of the TPKS Law states that if a corporation commits a criminal act of sexual violence then the crime can be imposed on the management, giver of orders, control holder, beneficial owner of the corporation and/or the corporation itself. The crime in question is a minimum fine of 5 billion rupiah and a maximum of 15 billion rupiah. Apart from that, corporations involved in these acts can be dissolved, closed all or part of the corporation, frozen all or part of the corporation, revocation of permits, confiscation of assets obtained from sexual violence.

Alternatives to Prevent the Rise of Pedophilia in India: Program for Primary Prevention of Sexual Violence (PPPSV)

With regard to prevention, India imposes a penalty when it does not report a case of sexual violence which is regulated in chapter 5 of the POCSO. In this law, there is an obligation for media, studios or photographic facilities to report to the local police if they find sexual harassment, pornography or anything that makes an obscene representation of children they know.⁴⁰

Another noteworthy preventive measure in India, which could serve as a valuable model for other countries, is the Program for Primary Prevention of Sexual Violence (PPPSV). This initiative has been in place in India since 2015 and specifically targets individuals who recognize that they have a sexual interest in children. Notably, PPPSV is a pilot program that India has adopted from Germany, which has a proven track record in preventing pedophilia through counseling and treatment efforts.

India's collaboration with Germany in implementing PPPSV exemplifies India's commitment to pioneering innovative approaches in this field. Germany's analogous program, known as Berliner Dissexualitätstherapie or Berlin dissexuality therapy (BEDIT), includes various therapeutic interventions. One of the

⁴⁰ The Protection of Children from Sexual Abuse Act (POCSO), 2012, art. 20

noteworthy therapies within BEDIT involves pharmacotherapy, which employs medication to block receptors for the hormone testosterone. Clinical trials have shown that this approach can be effective in enhancing behavioral control.

This collaborative effort between India and Germany in implementing PPSV underscores the importance of international cooperation and knowledge exchange in the development of effective strategies to prevent child sexual abuse. It not only demonstrates a proactive stance in addressing the issue but also highlights the significance of evidence-based practices and innovative solutions in safeguarding vulnerable populations.⁴¹

Referred to as primary prevention as the nature of this service intends to prevent unwanted actions before they occur, namely sexual violence against children. The Primary Prevention Program for Sexual Violence in India is a collaborative program between Bayer in India with King Edward Memorial Hospital Research Center (KEMHRC), Pune Institute of Sexology and Sexual Medicine, Charite University Clinic of Berlin. PPSV as a collaboration between Germany and India focuses on 3 efforts to prevent sexual violence, namely research, treatment and prevention.⁴²

Service efforts can also be accessed online by accessing the "trouble desire" web,⁴³ which has been initiated since 2017. This service is free and confidential for anyone who feels they have a sexual interest in children. As part of the service, direct, confidential and free counseling and treatment can be obtained at KEHMRC. This online service will help with assessments by confirming a person's sexual preferences starting from gender, age, body type, orgasm fantasies and so on. Then questions will be asked regarding the client's possible paraphilia. To find out this, each client will receive 100-280 questions after which a self-assessment will appear. Within 30 months, from 25 October 2017 to 25 April 2020, there were 7496 users from 87 countries, 4161 of whom underwent a full diagnosis and 80% had pedophilic and/or hebephilic sexual preferences.⁴⁴

Continuation of the self-assessment, the client will obtain self-management services provided through modules on psychoeducation, self-acceptance of sexual preferences, treatment motivation, perceptions, emotions, fantasies and sexual behavior,

⁴¹ Wittström, Felix, et al. "Risk factors for sexual offending in self-referred men with pedophilic disorder: A Swedish case-control study." *Frontiers in Psychology* 11 (2020): 571775.

⁴² <https://troubled-desire.com>. Retrieved 20 March 2023

⁴³ <https://troubled-desire.com/en/>. Retrieved 20 March 2023

⁴⁴ Paralikar, Vasudeo, et al. "Primary Prevention of Sexual Violence Using Innovative Technologies." *Innovations in Global Mental Health*. (Cham: Springer International Publishing, 2021), pp. 601-616.

empathy, curriculum and schemes, problem solving, social relations, intimacy and trust, future goals, protection (Paralikar, Beier, et al 2021:9-10). In 2018, the “No” application was also launched which functions as an emergency call tool if threatened or facing sexual harassment through group calls that navigate directly to where the user is, the group is made from contacts in the application. This application is also connected 24/7 with a call center which will directly connect with the local police.⁴⁵

PPPSV in India has strong obstacles, with culture in India still considering it taboo and it is better to remain silent about issues of sexuality, especially sexual harassment, even treatment for this is considered unacceptable.⁴⁶ PPPSV as India's first program tries to create awareness of pedophilia and prevention efforts to help them control their sexual attraction to children. This program tries to provide service and treatment space for those whose very sharp societal stigma rejects its existence.

The program is a form of effort to alleviate the suffering experienced by those who have pedophilic tendencies and can ultimately prevent the possibility of sexual violence against children. Sexual interest in children is a deviation of sexual orientation and can threaten the safety of children if the sufferer fails to prevent himself. Klaus M. Beier revealed that no one can determine their sexual orientation because sexual preference in any form has actually been determined and not a choice.⁴⁷ PPPSV in its program provides space for people with pedophilic tendencies, or have even committed pedophilic acts, as well as providing space for the public to avoid pedophilia. For people who do not or have not committed pedophilia in all its forms, they can access psychological and medical treatment at KEHMRC, but for those who have committed acts against children, they do not have the right to access treatment, but can access online services from Troubledesire.com. This is because Indian law determines mandatory reporting for doctors who know that their client has committed sexual violence. On the other hand, the public can also access the "NO" application as a precaution if faced with possible sexual violence.

Prevention alternatives that India has should be used by Indonesia as a reference in handling sexual violence against children. The increasing prevalence of cases of sexual violence against children deserves to be reconsidered regarding prevention as an approach to solving these problems. The TPKS Law mandates

⁴⁵ <https://troubled-desire.com>. Retrieved 20 March 2023

⁴⁶ Paralikar, Vasudeo, Varsha Tol, and Laila Garda. "Making Culture and Mental Health Count: Contributions of the King Edward Memorial Hospital Research Centre, Pune: Contributions of the King Edward Memorial Hospital Research Centre, Pune." *Innovations in Global Mental Health* (2021): 89-101.

⁴⁷ <https://troubled-desire.com/en/>. Retrieved 20 March 2023

that prevention is fast, integrated, and integrated both through information technology and public facilities and infrastructure.⁴⁸ Therefore PPPSV as a program that is integrated with medical and technology should be considered as prevention.

Prevention does not only focus on educating the public not to become victims but also pays attention to them not to become perpetrators of crimes. According to Barda Nawawi Arief, the law provides protection to the public not to become victims of crime.⁴⁹ Thus preventing the emergence of victims of criminal acts can also be done by preventing someone from committing the crime itself. In this case, Indonesia should be able to carry out legal reforms by considering preventing society from becoming perpetrators of crimes of sexual violence, namely by viewing those who suffer from pedophilia as human beings by humanizing themselves through medical and psychological services. Of course, we all realize that no human being is born with the desire to carry abnormalities within him, therefore those who have a sexual interest in children need space to be directed and prevent themselves from becoming perpetrators of sexual violence against children.

Conclusion

This study concluded that the crime of pedophilia, in its various manifestations, is not explicitly delineated as a distinct offense in Indian law. Instead, pedophilia, encompassing all its forms, is integrated into the legal framework under the broader categories of sexual violence against children or sexual offenses against children. India, through the Protection of Children from Sexual Offences Act (POCSO), addresses these offenses, classifying them into categories such as sexual harassment, sexual assault, aggravated sexual assault, penetrative sexual assault, and aggravated penetrative sexual assault. Pedophilia is recognized as a mental disorder or a paraphilic sexual deviation. The alarming increase in cases of pedophilia, encompassing both sexual violence and violations, necessitates innovative and novel approaches to combat this issue. India, grappling with a high incidence of child sexual abuse, has partnered with Germany to implement the Program for Primary Prevention of Sexual Violence (PPPSV). This program leverages online services and treatment to assist individuals with a sexual interest in children.

PPPSV in India focuses on online services accessible through troubledesire.com, offers walk-in support at the KEHMRC, and

⁴⁸ Law No. 12 of 2022 concerning Crimes of Sexual Violence article 79

⁴⁹ Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*. (Jakarta: Kencana, 2007)

employs a dedicated app. A notable shift in India's legal paradigm is evident: prevention of pedophilia emphasizes awareness that individuals with a sexual interest in children require consultation or treatment rather than social ostracization or waiting for a criminal act to occur. While pedophilia remains unjustifiable, it is acknowledged that seeking help to manage this attraction is essential in preventing sexual violence against children. This progressive approach demonstrates the potential for Indonesia to adopt a similar paradigm in its legal reform efforts to prevent child sexual violence. By harnessing medical and technological resources, Indonesia can move toward a more proactive stance in safeguarding its vulnerable population against such crimes.

References

- Ahjuri, Kayyis Fithri. *Psikologi Perkembangan Pendekatan Sepanjang Rentang Kehidupan* (Yogyakarta: Penebar Media Pustaka, 2019).
- Arief, Barda Nawawi. *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*. (Jakarta: Kencana, 2007)
- Bhugra, Dinesh, Dmitri Popelyuk, and Isabel McMullen. "Paraphilias across cultures: Contexts and controversies." *Journal of Sex Research* 47, No. 2-3 (2010): 242-256.
- Burrows, Ian. "Indonesia Peringkat 32 dari 40 Negara dalam Penanganan Pelecehan Terhadap Anak-Anak", *ABC News*, January 16 (2019). Retrieved from <https://www.abc.net.au/indonesian/2019-01-16/peringkat-negara-dalam-penanganan-pelecehan-terhadap-anak-anak/10720442>
- Chaturvedi, Megha. "Child Sexual Abuse in India: Alarming statistics, lifelong impact, how to heal", *India Today*, August 4 (2023). Retrieved from <https://www.indiatoday.in/education-today/featurephilia/story/child-sexual-abuse-in-india-alarming-statistics-lifelong-impact-how-to-heal-2416285-2023-08-04>
- Chinkin, Christine. "Rape and Sexual Abuse of Women in International Law." *International Crimes*. (London: Routledge, 2017), pp. 227-244.

- CNN Indonesia. "KemenPPPA: RI Darurat Kekerasan Seksual Anak, 9.588 Kasus Selama 2022". *CNN Indonesia Online*, January 28 (2023). Retrieved from <https://www.cnnindonesia.com/nasional/20230127173509-20-905780/kemenpppa-ri-darurat-kekerasan-seksual-anak-9588-kasus-selama-2022>
- Constitutional Court Decision No.39/PUU-X/2012
- Fajar, Mukti & Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*. Yogyakarta: Pustaka Pelajar, 2015)
- Gorda, Ngr. Tini Rusmini. *Hukum Perlindungan Anak Korban Pedofilia: Perspektif Viktimologi dalam Kebijakan dan Cita Hukum Pidana* (Malang: Setara Press, 2017).
- Hidayati, Nur. "Perlindungan Anak Terhadap Kejahatan Kekerasan Seksual (Pedofilia)." *Ragam Jurnal Pengembangan Humaniora* 14, No. 1 (2014): 68-73.
- Juliandi, Juliandi, Putri Yasmin, and Reh Bungana. "Perlindungan Hukum terhadap Korban Pelecehan Seksual Dilihat dari Segi Hukum Internasional." *Jurnal Edukasi Nonformal* 4, No. 1 (2023): 43-51.
- Law No. 1 of 2022 concerning Crimes of Sexual Violence.
- Law No. 12 of 2022 concerning Crimes of Sexual Violence article 79
- Lewoleba, Kayus Kayowuan, and Muhammad Helmi Fahrozi. "Studi Faktor-Faktor Terjadinya Tindak Kekerasan Seksual Pada Anak-Anak." *Jurnal Esensi Hukum* 2, No. 1 (2020): 27-48.
- Marzuki, Peter Mahmud. *Penelitian Hukum* (Jakarta: Kencana, 2021)
- Money, John. "Paraphilias: Phenomenology and Classification." *American Journal of Psychotherapy* 38, No. 2 (1984): 164-179.
- Moser, Charles, and Peggy J. Kleinplatz. "Conceptualization, History, and Future of the Paraphilias." *Annual Review of Clinical Psychology* 16 (2020): 379-399.
- Muladi, Muladi. *Kapita Selekta Sistem Peradilan Pidana* (Semarang: Badan Penerbit Undip, 1995)
- Nazir, M. *Metode Penelitian*. (Jakarta: Ghalia Indonesia, 2003).
- Nelvia, Yelli, Elwi Danil, and Aria Zurnetti. "Punishment Arrangement on the Action of Sexual Violence against Children in Legal Regulations of

- Indonesia." *International Journal of Multicultural and Multireligious Understanding* 6, No. 2 (2019): 237-245.
- Nur, Iffatin, Teguh Teguh, and Hiba Fajarwati. "Litigation and Penology of Pedophilia in the Perspective of Indonesian Conventional and Islamic Laws." *Analisis: Jurnal Studi Keislaman* 22, No. 2 (2022): 179-206.
- Nurbayani, Siti. *Penyimpangan Sosial Pedofilia (Upaya Pencegahan dan Penanganan)*, (Jakarta: Bintang Pustaka Madani, 2021).
- Paminto, Saptaning Ruju, and Kori Hermawanti. "Perlindungan Korban Kekerasan Seksual dalam Hukum Positif Indonesia dan Hukum Internasional Berdasarkan Beijing Declaration." *Jurnal Dialektika Hukum* 5, No. 1 (2023).
- Paralihar, Vasudeo, et al. "Primary Prevention of Sexual Violence Using Innovative Technologies." *Innovations in Global Mental Health*. (Cham: Springer International Publishing, 2021), pp. 601-616.
- Paralihar, Vasudeo, Varsha Tol, and Laila Garda. "Making Culture and Mental Health Count: Contributions of the King Edward Memorial Hospital Research Centre, Pune: Contributions of the King Edward Memorial Hospital Research Centre, Pune." *Innovations in Global Mental Health* (2021): 89-101.
- Sahira, Ratih and Daud Bahransyaf. "Pedofilia dan Kekerasan Seksual: Masalah dan Perlindungan Terhadap Anak". *Jurnal Sosio Informa* 1, No. 1 (2015): 29-40.
- Saputra, Tri Akhmad Aji, and Eko Soponyono. "Criminology Study on Pedophilia Prevention in Indonesia." *Jurnal Hukum Novelty* 9, No. 2 (2018): 117-127.
- The Protection of Children from Sexual Abuse Act (POCSO), 2012.
- Wittström, Felix, et al. "Risk factors for sexual offending in self-referred men with pedophilic disorder: A Swedish case-control study." *Frontiers in Psychology* 11 (2020): 571775.
- Yudanti, Alifian Putri, and Ikko Anata, "10 Negara dengan Kasus Pemerkosaan Tertinggi", *KOMPAS*, October 19 (2022). Retrieved from <https://www.kompas.com/tren/read/2022/10/19/220000665/10-negara-dengan-kasus-pemerkosaan-tertinggi?page=all>.

*The initial trauma of a
young child may go
underground but it will
return to haunt us.*

James Garbarino

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