

FACTORS CAUSE OF CRIMINAL DISPARITY OF THE CHILD SEXUAL HARRASMENT (PEDOPHILIA) VERDICT'S IN THE STATE COURT OF CLASS I A KUPANG

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ABSTRACT

Criminal disparity is a legal issue that receives considerable attention from the public in Indonesia, because the criminal disparity illustrates the failure of the judiciary to provide justice for the perpetrators of criminal acts, diminishes legal certainty and will result in undermining the authority of the judiciary. The purpose of this study is to determine the factors causing the occurrence of criminal disparity in punishment of the perpetrators of child sexual abuse (pedophilia) imposed on the Kupang District Court of Class IA. The causes of criminal disparity in Indonesia are among others due to: (1) Legal factors, namely rules of legislation provide immense freedom for judges in determining the types of criminal and the severity of criminal sanctions imposed, (2) Law enforcement factors, namely the Police have extensive discretion in handling criminal cases and the Attorney General has great freedom in determining the severity of criminal charges (requisitoir), (3) Factor of mediation culture in criminal case, that is settlement of criminal case shall be done by way of peace between victim and perpetrator party so that criminal case not continued until case examination stage in court.

Keywords: Criminal Disparity, Legal Substance, Legal Structure and Legal Culture

1. Introduction

Crime has always existed and threatened the lives of people both individually and in whole, in any society throughout the world. Many crimes exist in the community from simple to sophisticated, such as humiliation, forgery, lying test. The crimes are of course very disturbing to the public and certainly strived in terms of prevention through various means through the norms in society, such as religious norms, norms of moral, customary norms, and legal norms.⁴

Sanctions in religious norms come from God Almighty, ie every sin made by every human being will be rewarded with punishment in the fire of hell later after the offender dies. While the norm of moral sanction is derived from his own conscience that is guilty of the offense he has committed. Norms sanctions habit is in the form of an abuse of the surrounding community, sometimes also accompanied by even more tougher exclusion by the sanction of expulsion from the environment. Legal sanctions are the most severe of the sanctions of the three previous norms, more directly to tell offenders such as fines witnesses, penalties, imprisonment, even the most violent and controversial invite are capital punishment.⁵

Just as with law, when ethics becomes the source of individual behavioral standards. However, unlike law, when ethics is not enforced or imposed by external powers such as government or state. The ethical standards stem from the moral standards of the individual and are upheld by the individual concerned. Through law, the public enforces One type of criminal offense⁶.

That deeply disturbs the public and gains much of the current media attention in Indonesia is the crime of child sexual abuse. the law for all members of society. This is because the target of these crimes are minors who are innocent, who are innocent, and do not understand anything about sexuality. It is inconceivable or contemplated that they could be victims of a crime even more so of sexual harassment. Such behavior in psychology is called pedophilia, which is a sex disorder in which the patient always

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⁴ L. J. Apeldoorn, *Inleiding tot de Studie van het Nederlandse Rechts, Haarlem (edisi diterjemahkan oleh Oetariad Sadino, 1959, Pengantar Ilmu Hukum)*, Jakarta: Noordhoff-Kolff N.V., p.34

⁵ Ibid, p.40

⁶ Adi Sulistiyono dan Muh. Rustamaji, *Hukum Ekonomi Sebagai Panglima*, Masmmedia Buana Pustaka, Sidoarjo, 2009, p.48

wants to vent the sexual passion by taking children under age as the object. Symptoms of this sex deviation can be in men and women, but the most in men⁷.

Criminal acts of child sexual abuse lately occur. The location of this crime is also very wide, for example Sukabumi City with a very horrendous case in which a perpetrator sexual abuse of a child named Asep allegedly has sodomized dozens of children even suspected to tens of children. The crime of child sexual abuse also took place in Jakarta, which received national attention as it did in Jakarta International School (JIS) allegedly committed by employees at the elite school, even allegedly also performed by teachers at the school. In fact, the alleged perpetrator who is a teacher profession has become a fugitive US Bureau of Inquiry (FBI). This teacher is named William James Vahey who teaches Social Science at Junior High School and Senior High School Jakarta International School (JIS). In 1999-2002, the FBI states that William James Vahey is the most dangerous predator in the world. Throughout his life William James Vahey worked as a teacher at an international school in nine countries, including Indonesia. The action was revealed after police found a data store documenting the teacher's depraved behavior to more than a hundred children.

William James Vahey then committed suicide after his crime was successfully dismantled by the United States Federal Investigation Agency (FBI). Police in the United States suspect there are still many victims of William James Vahey who will not speak, perhaps out of embarrassment or fear of being ostracized by s The field of criminal statistics, in it known the number of dark (dark number) is the number of crimes that are not reported by the victim to law enforcement officials with a variety of considerations, for example do not want to bother, afraid of the perpetrators of crime, afraid of society ostracized, or it can also shame become victims of sexual crimes. Many criminal statistics experts argue that the darkest number in sexual crimes is highest when compared to the darker numbers in other crimes⁸.

The socio-economic background of the perpetrators of sexual crimes against children also varies greatly. Perpetrators may be educated and respected, such as elementary school teachers, teachers in international schools, employees of a company, laborers or hired workers, and so on. So, indeed the background of the perpetrators of this crime is very diverse not only cover one circle or group only. The educational background also varies greatly, ranging from low education, even the uneducated at all, to those who obtain higher education. Similarly, the economic status, classified as very varied, which has a low economy with a mediocre income to the high econ

The age of victims of sexual harassment also varies greatly, from under five years of age (toddlers) to early adolescents who are still classified as children under Indonesian laws and regulations. Generally, victims under the age of five because children of that age are very easy to become victims of crime because of their innocence, easily intimidated, easily manipulated and easily persuaded by the perpetrators of crime.omic status can also be found as perpetrators of sexual abuse of this child. Early adolescents are also often the victims of possible sexual harassment crimes because their physical growth attracts the attention of these predators. The authors found the lowest age of child sexual abuse cases was a 2-year-old girl by her own father in Oesao Village. Kupang City, East Nusa Tenggara Province⁹.

Criminal acts of child sexual abuse also sometimes occur in chains, meaning that perpetrators continuously (simultaneously) commit crimes against several minors as victims and only stopped when the crime was uncovered. However, it can also be a crime of sexual abuse of the child with a single victim only. The number of incidents of sexual harassment victims in this chain, of course very worrying because if from the beginning the act of perpetrators have been known and reported early on this will certainly be able to prevent the fall of the other victims. The disclosure of sexual assault against children is generally due to the recognition of the victim to her parents¹⁰.

The perpetrators of sexual crimes against children in general are well-known by children who are victims, such as workers where the schoolchild, housekeeper, neighbors around his house, his teacher, brother or sister even his own parents good people both biological and stepparents. It is rare to find cases where the perpetrator of a sexual offense against a child is a stranger unknown to the child. So, from the familiar circle of children he knows, there is a danger of sexual harassment, and this is certainly our concern.

Age of child sex offenders is also very diverse, from a relatively young age ranging under ten years or a dozen years to early adolescence, youth, adults and even old age. The thing that is very concerning is the perpetrators who have grown up and vent their lust in children who are still very young youth, which should and should the children are guided and guarded by adults.

⁷ Sudjono D, *Ilmu jiwa Kejahatan: Amalan Ilmu Jiwa Dalam Studi Kejahatan*, PT. Karya Nusantara, Bandung, 1977, p.54

⁸ Majalah Tempo 5-14 Mei 2014, "Menangkal Pagar Makan Tanaman", Opini, p.31

⁹ Kupang State Court Verdict Number. 353/Pid.B/2010/PN/KPG, November, 25, 2010

¹⁰ Komisi Perlindungan Anak Indonesia (Indonesian Commission to protect Children), says that Indonesian in Emergencychild sexual abuse crime, Metro TV, May, 28, 2015

The impact of such sexual abuse on children must be very severe and can lead to a traumatic event and continue to loom in the next step of the child's life. Children victims of sexual harassment generally behave uncharacteristically, for example, once cheerful and sociable, afterwards become moody and closed and withdraw from the association, and fear the presence of strangers or strangers.

The profession of perpetrators of sexual crimes against children varies greatly, for example there are those who work as laborers, farmers, entrepreneurs, teachers, businessmen, officials or prominent and distinguished public figures or even a student or student.

The background of the perpetrators of this variety of sexual harassment crimes certainly makes parents sometimes do not think that the perpetrators of sexual abuse of their children are close people they used to believe. For example, the Emon case in Sukabumi that sexually harassed about 20 children, who turned out to be their own neighbors who work as laborers and often invite children to play. There is also an occurrence of sexual harassment of children whose perpetrators are the teachers of the children, which is totally unexpected of their parents, for example the incident at JIS (Jakarta International School) which became the center of attention of mass media both printed and electronic covered nationally, even internationally.

Criminal acts of child sexual abuse are not only happening in the big cities that have been rapidly growing economically, educationally, socially and culturally. However, it can also happen in other small towns whose economic, educational and cultural development is still far behind.

Criminal acts of child sexual abuse occur also in the periphery areas, such as Sukabumi, Cirebon, Maumere, Kupang, and others. The crimes are also common in Kupang City where the perpetrators come from diverse backgrounds, both in terms of education, employment and socio-economic background. The perpetrators are those who work as farmers, laborers, civil servants or private, students, students, and some even unemployed

Below is presented the decision of PN Class I Kupang about criminal perpetrators of criminal acts of child sexual abuse

Table 1 Prosecutor's Demands and Verdict to Child Sexual Harassment Perpetrator in Clas I Kupang State Court, Kupang

No.	Decision Number	Name of the Convict	Article	Prosecutor's demand	Judge verdict
1	04/Pidsus/2015/PN.KPG	Petrus Sakan	Article. 81(1) UUPA jo 64 (1), 287, 294 KUHP	10 years and Rp.100 millions/6 months	7 years and Rp.60 millions/3 months
2	06/Pidsus/2015/PN/KPG	Yermias Isu	Article. 81(2), 82 UUPA	8 years dan Rp.100 millions/6 months	6 years and Rp.100 millions/6 months
3	11/Pid.B/2015/PN/KPG	Iqnatus Bau Atok	Article. 285, 289 KUHP	10 years and Rp.100 millions/3 months	8 years -
4	53/Pidsus/2015/PN.KPG	Dominikus Rusae	Article. 81(1), 82 UUPA jo 64 (1) KUHP	10 tahun dan Rp.100 juta/ 6 bln	9 thn dan Rp.100 juta/6 bln
5	93/Pidsus/2015/PN.KPG	Zulifli G. Menix	Article. 82 (1) UUPA	8 years and Rp. 100 juta/6 months	7 years and Rp.100 millions/3 months
6	94/Pidsus/2015/PN.KPG	Yeskiel Lona	Article. 81(1), 82 (1)	10 years and Rp.100 millions/6 months	8 years and Rp.100 millions/5 months
7	132/Pidsus/2015/PN.KPG	Salmun Adu	Article. 81(2), 82 UUPA jo 64 (1) KUHP	10 years and Rp.100 millions/6 months	8 years and Rp.100 millions/3 months
8	154/Pidsus/2015/PN.KPG	Ibrahim Mole	Article. 81(2), 82 (1) UUPA	10 years and Rp.100 millions/6 months	8 years and Rp.100 millios/3 months
					5 months

9	155/Pidsus/2015/PN.KPG	Gabriel Banu	Article. 81(2), 82 UUPA jo 64 (1) KUHP	6 months	-
10	159/Pidsus/2015/PN.KPG	Quido Ondri Ben	Article. 81(2) jo 64 KUHP	10 years and Rp.100 millios/6 months	8 years and Rp.100 millios/3 months
11	215/Pidsus/2015/PN.KPG	Willibrodus Lause	Article.81(2), 82 (1) jo 64 (1) KUHP	7 years and Rp. 100 millions	6 years and Rp.100 millios
12	216/Pidsus/2015/PN.KPG	Aryangga Djami	Article. 81 (2), 82(1) UUPA	12 months	10 months -
13	221/Pidsus/2015/PN.KPG	Debri Janet Amtiran	Article.81 (2), 82 (1) UUPA jo 64 (1) KUHP	8 years and Rp. 100 millios/3 months	6 years Rp.100 millios/3 months
14	236/Pidsus/2015/PN.KPG	Dominggus Talnai	Article. 81 (2) UU No.35/2014	7 years and Rp.100 millions/3 months	6 years and Rp.100 millios/3 months
15	288/Pidsus/2015/PN.KPG	Xaferius Lae Feimnasi	Article. 81 (2) UU No. 35/2014	12 years and Rp.100 juta/6 months	12 years and Rp.100 millions/3 months

Source: Clas I Kupang State Court, Kupang, 2015.

While cases of violence against women in 2016, there are 259,150 cases taken from 358 Religious Courts. From the data can be detailed that there are 5,784 cases of domestic violence where the wife experienced domestic violence. These cases lead to divorce. The data also shows 2,171 cases of violence in dating and 1,799 cases of violence against girls¹¹

In Table 1 above it can be seen that there is a very wide disparity between requisitoir (criminal charges) between child sex offenders. Some are only prosecuted for 6 (six) months in prison and some are prosecuted for 12 (twelve) years in prison. Similarly, with a verdict handed down by a judge of the Kupang District Court, there are judges who impose a penalty only for 5 months in jail, but there are also judges who impose a penalty of up to 12 (twelve) years in prison. This certainly creates a sense of unjust in society, because in the same crime and or comparable there is a considerable criminal difference between one case and another. In this article will be discussed about the factors that cause the disparity of the penal sanction.

2. Basic Theory

To answer the question of cause criminal disparity it will be used Friedmann's Theory approach which states that the legal system consists of several sub-section, namely: legal substance, legal structure and legal culture¹².

The legal substance of legal in this case is retracted in legislation, the meaning of the legal structure is the performance of legal enforcement agencies. While the legal culture is the value of values held by the society where the legal is applicable.

3. Hypothesis

The hypothesis in this study is that the cause of criminal disparity is due to the legal substance, legal structure and legal culture in Indonesia

4. Legal Factor

The handling of cases of child sexual abuse (Pedophilia) in Indonesia can come from various laws and regulations, both in the Criminal Code (KUHP) and those outside the Criminal Code. Criminal acts in the Penal Code that can be imposed on child sex offenders, among others, namely:

¹¹ W. T. Novianto, Perspektif Viktimologis Terhadap Korban Kejahatan Seksual, Makalah, Universitas Sebelas maret, Surakarta, 2017, p.1

¹² Lawrence M. Friedmann (1975), The Legal System A Social Science Perspective, Russel Sage Foundation, New York: 1975 p. 16

4.1 Article 285 of the Criminal Code

Set about rape to have intercourse, with the following formula:

Anyone with violence or the threat of force forces a woman who is not his wife to have sex with him, is punished for raping with twelve years' imprisonment.

Based on the above arrangements the judge may impose a penalty of 1 (one) day of imprisonment up to 12 (twelve) years imprisonment.

4.2. Article 286 of the Criminal Code

Article 286 of the Criminal Code states:

Whoever has sexual intercourse with a woman who is not his wife, is known, that the woman is unconscious or powerless, sentenced to nine years imprisonment.

Based on the above arrangement, the judge in Indonesia may impose a prison sentence of 1 (one) day of imprisonment up to 9 (nine) years imprisonment.

4.3. Article 287 of the Criminal Code

Anyone who has intercourse with a woman outside of marriage, known or should be presumed to be, is not yet fifteen years old or if his age is unclear, that it is not yet time to marry, threatened with a maximum imprisonment of nine years imprisonment.

Based on the above provisions, the judge in Indonesia can impose a penalty of 1 (one) day of imprisonment up to 9 (nine) years imprisonment. (2) If the action resulted in severe injuries, a maximum imprisonment of eight years shall be imposed.

4.4. Article 288 of the Criminal Code

Article 288 of the Indonesian Criminal Code provides that:

- (1) Anyone who has intercourse with a woman in marriage, known or should be suspected that has not been able to be married, shall be liable if the offense resulted in a wound with a maximum imprisonment of four years.
- (2) If the action resulted in severe injuries, a maximum imprisonment of eight years shall be imposed.
- (3) If the result of death is imposed a maximum imprisonment of twelve years.

Based on the above provisions, the judge in Indonesia shall have the freedom to impose a jail term of 1 (one) day up to 12 (twelve) years depending on the paragraph applied in the crime.

4.5. Article 289 of the Criminal Code

Anyone with violence or the threat of violence compels a person to commit or make for obscene conduct, threatened for committing an act which attacks the honor of decency, with a maximum imprisonment of nine years.

Based on the above arrangement, the judges in Indonesia shall have the freedom to impose the imprisonment in the range between 1 (one) day of imprisonment up to 9 (nine) years imprisonment.

4.6. Article 290 of the Criminal Code

Threatened with a maximum imprisonment of seven years:

Number 1. Whoever commits a lewd act with a person is known, that the person is unconscious or powerless.

2nd. Anyone committing lewd acts with a person is known or should be suspected, that his age is not fifteen years old or if his age does not turn out, that has not been able to be married.

The 3rd. Whoever persuades a known or suspected person to be presumed, that he is not yet fifteen years old or if he is not found, that he has not been able to be married, to commit or allow obscene acts, or to have sex outside of marriage with others.

Based on the above arrangement, the judge shall have the freedom to impose the duration of imprisonment between 1 (one) day of imprisonment up to 7 (seven) years.

4.7. Article 292 of the Criminal Code

The crime of committing acts of violation of morality with a minor by the legislator has been regulated in Article 292 of the Criminal Code which is the original formulation in Dutch as follows: *De meerderjarige hij kent of redelijkerwijs moet vermoeden, ontucht pleegt, wordt gestraft met gevangenisstraf van ten hoogste vijf jaren* (An adult who commits a crime violating morality with an immature child of the same sex, who, before his maturity, knows or should reasonably be expected, is sentenced to imprisonment for a maximum of five years).

In this criminal offense the perpetrator may be sentenced by a judge between 1 (one) day of imprisonment up to a maximum of 5 (five) years imprisonment.

4.8. Article 293 of the Indonesian Criminal Code provides for:

- (1) Anyone with gifts or promises shall give money or objects by misusing the advantages arising out of existing relations or by misleading means of deliberately moving an immature person, who has no deformity, whose immaturity he knows or should

reasonably suspect, to commit acts of immorality with himself or to allow such acts with him to be punished with imprisonment for a maximum of five years.

(2) Prosecution is not made, unless there is a complaint from the person, against whom the crime has been committed.

(3) For the aforementioned complaints, the time period referred to in Article 74 of the Criminal Code is nine months and twelve months, respectively.

Based on the above arrangement, the judge in Indonesia shall have the freedom to impose a jail term of imprisonment of 1 (one) day up to 5 (five) years imprisonment.

4.9. Article 294 of the Criminal Code

The criminal offenses violate morality with their own children, with their stepchildren, with their adopted children or with a minor whose supervision, education or management is entrusted to the perpetrator by the legislator has been regulated in Article 294 of the Criminal Code, the original formulation in the language The Netherlands stated

- (1) *Hij, die ontucht pleegt met zijn minderjarig kind, stiefkind of pleegkind, zijn pupil, een aan zijne zorg, opleiding of waakzaamheid toevertrouwd minderjarige, of zijn minderjarigen bediende of ondergeschikte, wordt gestraft met gevangenisstraf van ten hoogste zeven jaren.*
- (2) *Met dezelfde straf wordt gestraft:*
 1. *de ambtenaar, die ontucht pleegt met een persoon, die ambtelijk aan hem ondergeschikt is of aan zijne waakzaamheid is toevertrouwd of aanbevolen;*
 2. *de bestuurder, geneeskundige, onderwijzer, beambte, opzichter of bediende in ene gevangenis, landswerk inrichting, opvoedings-gesticht of instelling van weldadigheid, die ontucht pleegt met een persoon daarin opgenomen*

By Lamintang translated as follows:¹³

(1) Anyone committing acts of violation of morality with his own child, with his stepson, with his foster children, with an adopted adopted child, or with an immature person whose management, education or guard has been entrusted to him, or with a maid or an immature subordinate, is sentenced to imprisonment for seven years.

(2) Sentenced to the same criminal:

1. A civil servant who commits acts of violation of morality with a person who is in the position of a subordinate or whose custody has been entrusted or handed over to him;
2. An administrator, a doctor, a teacher, an official, a supervisor or servant of a penitentiary, a state employment agency, an educational institution, an orphanage, a hospital, a psychiatric institution or a benevolent institution, committing an act of violating decency with a person put into it

Based on the above provisions, a judge in Indonesia may impose a penalty on an offender for a minimum of 1 (one) day of imprisonment up to a maximum of 7 (seven) years imprisonment

4.10. Article 81 of Law Number 1 Year 2016 regarding the Second Amendment to Law Number 23 Year 2002 regarding Child Protection

Set:

(1) Any person who deliberately violates or threatens violence to force a child to have sex with him or with another person is punished with a maximum imprisonment of 15 (fifteen) years and a minimum of 5 (five) years and a maximum fine of Rp 5,000,000,000 . (five billion rupiah).

(2) The criminal provisions referred to in paragraph (1) shall also apply to anyone who deliberately misrepresents, a series of lies or persuades a child to intercourse with him or with another person.

Based on the above provisions, the judge in Indonesia shall at the time of imposing a criminal offense against the perpetrator of the crime of child sexual abuse from a minimum of 5 (five) years imprisonment up to a maximum of 15 (fifteen) years in prison and a fine of Rp. 1 (one rupiah) up to Rp. 5,000,000,000 (five billion rupiah)

4.11. Pasal 82 of Law Number 1 Year 2016 regarding the Second Amendment to Law Number 23 Year 2002 regarding Child Protection

states:

Any person who deliberately perpetrates violence or threats of violence, forces, tricks, a series of lies, or persuades a child to commit or allow obscenity to be punished by a maximum imprisonment of 15 (fifteen) years and a minimum of 5) year and a maximum fine of Rp.5.000.000.000, - (five billion rupiah).

Based on the above provisions, the judge in Indonesia shall have the freedom to impose a criminal penalty and a fine of between 5 (five) years imprisonment and maximum of 15 (fifteen) years of imprisonment and a minimum fine of Rp. 1 (one rupiah) to a maximum of Rp. 5,000,000,000 (five billion rupiah)

4.12. Article 46 of Law Number 23 Year 2003 regarding the Elimination Domestic Violence,

¹³ Lamintang PAF, *Delik Delik Khusus Melanggar Kesusilaan*, Bandung, Mandar Maju, 1990, p. 209

Arrange:

Any person committing sexual assault as referred to in Article 8 letter a shall be punished with a maximum imprisonment of 12 (twelve) years imprisonment or a fine of not more than Rp.56.000.000, - (fifty six million rupiah).

Based on the above provisions, the judge in Indonesia shall have the freedom to impose a jail term of 1 (one) day up to a maximum of 12 (twelve) years imprisonment and a fine of not more than Rp.56.000.000 (fifty six million rupiah).

The provisions of the above criminal law legislation clearly provide immense freedom to the Judge in imposing a criminal offense against the perpetrators of the crime of child sexual abuse (pedophilia). Moreover the arrangements set forth in the Criminal Code (Criminal Code) which only recognize the general minimum criminal system as set out in Article 12 paragraph (2) of the Criminal Code which is for a minimum of 1 (one) day and maximal general as regulated in Article 12 paragraph (1) of the Criminal Code that is during lifetime. In addition, the Criminal Code also regulates the existence of the provisions of the maximum specific criminal threat, namely the maximum penalty stipulated in a particular article, such as the maximum penalty in Article 285 of the Criminal Code on Rape is for 12 (twelve) years in prison. Thus, in imposing the imprisonment on the perpetrators of rape, the judge shall not impose a prison term longer than 12 (twelve) years imprisonment.

The punishment system in the Criminal Code provides for widespread freedom to the judge in dropping the severity of the criminal, so often creates a criminal disparity. The weakness of the regulation of criminal provisions in the Criminal Code is ultimately corrected by the provision of provisions in the law outside the Criminal Code which regulates the minimum specific, for example the provisions of Article 81 paragraph (1) of Law no. 1 of 2016 on the Second Amendment to Law no. Law No. 23 Year 2002 on Child Protection, which regulates criminal penalties for perpetrators of criminal acts of child sexual abuse (pedophilia) with a minimum imprisonment of 5 (five) years. With this provision it is expected to reduce the occurrence of criminal disparity.

5. Legal Structure Factors

5.1. Stage in the Police

The police have extensive discretion in handling a case under review in the decision to proceed with the case to court or to be adequately resolved at the inquiry stage, as in the case below¹⁴.

The beginning of sexual harassment that happened to Almira Alhoro (a 4-year-old girl) started from the perpetrator on behalf of Luke Malewan often invites victims to play every day. The victim's parents (named Acassio Alhoro) have never been suspicious of the perpetrator who is a close neighbor who has also been regarded as his own family. The victim was invited to play in the perpetrator's house which is still adjacent to the victim's house. Then promised the lure of giving money to the victim by the perpetrator so that the victim would have intercourse with the perpetrator. Because of the lure of the victim is finally willing to do the intercourse. After intercourse the victim feels pain in her genitals and pain when urinating. Seeing the condition of his other child from the usual then Almira Alhoro's parents question him and not play his surprise when his son is telling the truth. Soon he reported the incident to Kupang Tengah Police, Kupang District with report number LP / K.153 / IV / 2013. However, the case with a familial approach between the perpetrator's family and the victim's family obtained an agreement to settle it peacefully with the victim's family's street revoking the police report in exchange for the victim's family receiving cash of Rp 1,500,000 (one million five hundred rupiah), a pig, tais custom men from Los Palos and one sheet of cloth. In addition, the perpetrator promised in front of the village chief, customary leaders, community leaders and police that he would not repeat his actions in the future.¹⁵

Models of mediation in cases of sexual abuse of children, especially at the level of acts of copulation of children as in the case above would cause differences of opinion among legal scholars let alone in the wider community. Is it appropriate that the perpetrator who has intercourse with the child is only required to apologize and pay the fine so that the case is not proceeded to the court. If the process of solving child sexual abuse cases done in such a way would certainly be a bad precedent.

Seeing the incident above it is seen that the Police have a very important and strategic role in efforts to eradicate the crime of sexual abuse of children, because it is the entrance case reported to him. This mediation process can arise gain and loss for the community. Any serious crime of child sexual abuse is resolved by means of peace at the police level, resulting in legal uncertainty as well as a sense of injustice among the public and reducing the deterrent and frightening effects of criminal law. While the positive effect is to reduce the conflict between the victim's family and the perpetrator's family.

5.2. Stage of Prosecution

The right of public prosecutor which is also very important and not owned by the police is to determine the size of the criminal charges to the defendant who is declared to have been valid and convinced of a crime. This authority is very important because the provisions in the criminal law only provide a very wide limitation of criminal sizes with only regulate the minimum and

¹⁴ Nuno da Costa, "Perlindungan Hukum Hak-Hak Korban Kekerasan Seksual Melalui Mediasi di Polres Kupang", Skripsi, Tidak dipublikasikan, Fakultas Hukum, Universitas Nusa Cendana (UNDANA), Kupang, 2015, p.46

¹⁵ Nuno da Costa, "Perlindungan Hukum Hak Hak Korban Kekerasan Seksual Melalui Mediasi di Polres Kupang", Skripsi, Tidak dipublikasikan, Fakultas Hukum, Universitas Nusa Cendana, Kupang 2015, hlm. 46

maximum penal provisions only. In fact, in the Criminal Code (Criminal Code) only known general minimum criminal threat that is only 1 (one) day only (vide Article 12 paragraph 2 of the Criminal Code) and the maximum specific criminal penalty regulated in the articles of the crime. For example, in the provisions of Article 285 of the Criminal Code concerning rape, the perpetrator of a crime shall be punishable by maximum imprisonment for 12 years in prison. Thus, the public prosecutor has the right to set a length of 1 (12) This vast authority must bring great responsibility to the public prosecutor in order to provide criminal prosecution in accordance with a sense of community justice.

The vast authority of the prosecutor in determining the severity of the criminal charges leads to the disparity of criminal charges which ultimately leads to a criminal disparity of judicial convictions by the judge.

6. Legal Culture namely Cultural Mediation Factors in Criminal Cases.

Civil cases concerning individual or interpersonal relationships are advisable in settling cases or disputes arising between the parties should be made by non-litigation or settlement outside the Court, for example by means of mediation. A mediation settlement in a civil case is deemed to be much more beneficial to the disputing parties because it will be more quickly resolved, the cost is much cheaper and the relationship of the disputing parties will be good again because the result is a win-win solution without any win or lose.

Mediation in criminal cases is also known and often done, for example in minor cases or criminal offenses with elements of accident. Cases of traffic accidents that result in heavy casualties or even death are also often done by means of mediation, in a way that is guilty of paying medical expenses, care and compensation to the victim's family. A mediated settlement of minor criminal cases or unlawful crimes may be accepted and understood by the public, as the resources of the law enforcement authorities are very limited and the number of cases handled also increases over time. The number of child sexual abuse cases reported to the Kupang Kota District Police during January to October 2015 was 15 (fifteen) cases and continued to investigation and filing of cases amounted to 3 (three) cases or 1/5 or 20% of all cases.

However, the mediation culture in solving serious criminal cases, such as rape, murder or theft by violence, can not be accepted by the public, because it inflicts a sense of justice, legal certainty and deterrent efforts against the crime. Perpetrators who have committed serious and serious criminal offenses should still be prosecuted and if convicted of a criminal offense in order to prevent another perpetrator from committing a crime.

6. Conclusion

Based on the above description it can be concluded that the cause of the disparity of crime in Indonesia is partly due to: (1) Legal substance factors, namely the rules of legislation provide widespread freedom for judges in determining the types of criminal and the severity of criminal sanctions imposed, (2) Legal structure factors namely legal enforcement factors, ie Police have wide discretion in handling criminal cases and Attorney General has great freedom in determining the severity of criminal demand (requisitoir), (3) Legal culture factors namely mediation culture in criminal case, that is settlement of criminal case done by way of peace between the victim and the perpetrator so that the criminal case is not continued until the court examination stage.

Criminal disparity has disastrous consequences for society in general and convicted in particular because of the feeling of unfair treatment and the absence of legal certainty. Thus efforts to minimize criminal disparities should be pursued by persistent and ongoing efforts.

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Legislation:

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Law Number 1 Year 2016 regarding the Second Amendment to Law Number 23 Year 2002 regarding Child Protection
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