

Criminal Liability of Female Perpetrators of Sexual Harassment Against Minors

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Abstrak

This study aims to analyze the criminal liability of perpetrators of sexual harassment against dozens of male victims in Jambi City. The research method in this paper uses a normative juridical method that will examine the criminal liability of perpetrators of sexual harassment committed by women. In addition to this, it will also examine the role of psychiatric experts to determine the status of the ability to be responsible for the perpetrator of the crime. The results of this study indicate that it is necessary to fulfill several elements to say that the perpetrator is capable of being responsible according to the theory of criminal law and the Criminal Code. In addition, psychiatric experts play a role as expert testimony that can state whether the woman has a mental disorder or not because it is related to her ability to take responsibility. The researcher hopes that the paper can provide a better understanding of the criminal liability of female perpetrators of sexual abuse against underage boys and the role of psychiatric experts in these cases. The results of this research are expected to serve as a reference for law enforcement, child protection agencies, and the community in providing protection and justice for victims of sexual abuse, regardless of the gender of the perpetrator.

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1. Introduction

One form of sexual violence is sexual harassment, which varies in severity from mild to severe. In Indonesia, regulations prohibiting sexual harassment have been established, urging society to comply with these rules to create a community founded on the dignity and honor of its members. However, not everyone understands that sexual harassment is a reprehensible act, both legally and religiously. As a result, many individuals continue to engage in sexual harassment without realizing that such actions can lead to real legal consequences for the perpetrators.

The Ministry of Women's Empowerment and Child Protection (KemenPPPA) recorded a total of 9,645 cases of violence and criminal acts against children in Indonesia from January to May 28, 2023. Among these cases, 8,615 involved female child victims, while 1,832 cases involved male child victims. When categorized by type, sexual violence against children ranked first with 4,280 reported cases, followed by physical violence (3,152 cases) and psychological

violence (3,053 cases). Data compiled by *Media Indonesia*, based on KemenPPPA records from January to May 29, 2023, reveal the following:¹

- 1.1. Total cases: 9,645
- 1.2. Female victims: 8,615
- 1.3. Male victims: 1,832
- 1.4. Physical violence: 3,152
- 1.5. Psychological violence: 3,053
- 1.6. Sexual violence: 4,280
- 1.7. Exploitation: 112
- 1.8. Trafficking: 74
- 1.9. Neglect: 973
- 1.10. Other cases: 1,211

Recently, the public has been shocked by a sexual harassment case involving a young mother from Jambi, identified by the initials YSA, who sexually abused 17 children. This incident has caused widespread concern, as sexual harassment perpetrators are typically male. However, in this case, the offender is a woman, whereas women are usually the victims of sexual harassment committed by men.

According to news gathered by *liputan6.com*, he is the owner of a PlayStation rental in his house where children often play or rent PlayStations in his house. YSA forced the boys to touch his body including sensitive parts. Often the boys' genitals were touched²

Sexual harassment, regardless of the perpetrator's gender—whether male or female—is a serious, reprehensible, and unacceptable act in society. Although sexual harassment committed by women may appear ironic in the eyes of the public due to gender stereotypes that typically associate such offenses with male perpetrators, it is crucial to recognize that sexual harassment is an issue independent of the offender's gender.

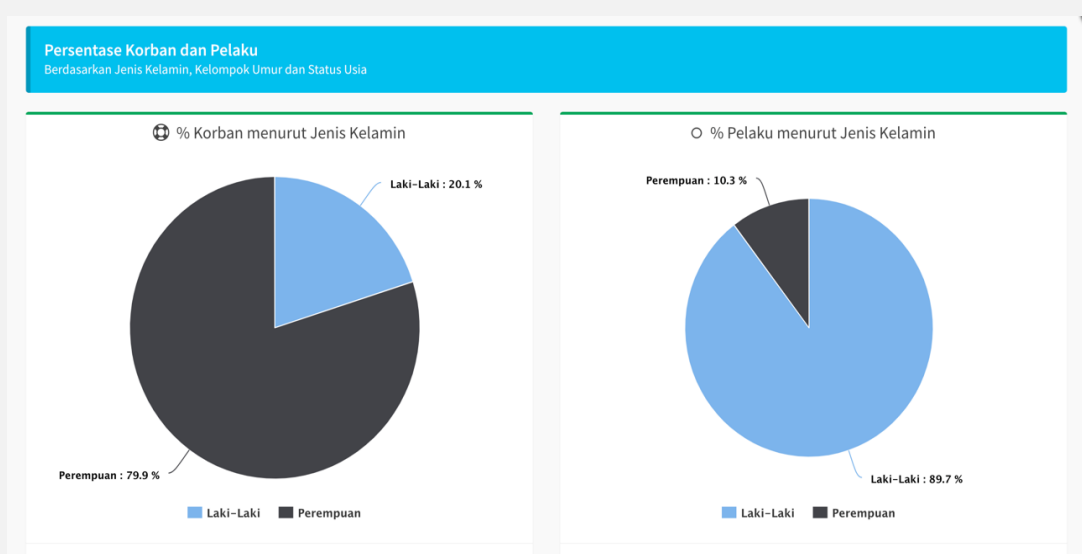
Sexual harassment, whether perpetrated by men or women, involves an abuse of power, a violation of personal boundaries, and causes emotional, psychological, and physical harm to victims. There is no justification for sexual harassment, regardless of the gender of the perpetrator. Cases of sexual

¹ *Media Indonesia*, "4.280 Kasus Kekerasan Seksual Terjadi di Indonesia Sepanjang 2023," *Media Indonesia*, 6 April 2023, <https://www.medcom.id/nasional/peristiwa/dN6wyDqb-4-280-kasus-kekerasan-seksual-terjadi-di-indonesia-sepanjang-2023>.

² Ade Nasihudin Al Ansori, "Ibu Muda di Jambi Jadi Tersangka Pelecehan Seksual pada 17 Anak, Ini Kata Kriminolog," 2023.

harassment involving female perpetrators may also reflect underlying issues such as power imbalances, misconceptions about consent, and other contributing factors.

Therefore, it is essential to treat all cases of sexual harassment with seriousness and to ensure protection and justice for victims, regardless of the perpetrator's gender. According to data compiled by the Ministry of Women's Empowerment and Child Protection (KemenPPPA), the number of male victims is significantly lower than that of female victims, and the number of female perpetrators remains relatively low. This trend is illustrated in the table below:



The table above provides a basis for discussing the criminal liability of female perpetrators of sexual harassment against male victims, an issue that has received relatively little media attention compared to cases involving male perpetrators and female victims.

The article written by Rosania Paradias and Eko Soponyono, titled "*Legal Protection for Victims of Sexual Harassment*", published in the *Jurnal Pembangunan Hukum Indonesia*, Volume 4, No. 1, 2022, examines the legal protection afforded to victims of sexual harassment. The study concludes that there is an urgent need for a specialized criminal law framework to address sexual violence cases in Indonesia. This necessity arises from the increasing prevalence of sexual violence, highlighting the importance of legal provisions that ensure better protection for victims, facilitate the effective resolution of sexual violence cases, and provide adequate safeguards for survivors. Therefore, serious efforts must

be made to draft legislation that effectively addresses sexual violence while prioritizing the interests of victims.

The article authored by Christy A. I. Aleng, titled "*Legal Sanctions Against Perpetrators of Verbal Sexual Harassment*", published in *Lex Crimen*, Volume IX, No. 2, 2020, focuses on verbal sexual harassment. The study finds that legal sanctions against perpetrators of verbal sexual harassment are not specifically regulated in Indonesian legislation, as such conduct is still considered commonplace. In cases where prosecution is pursued, the applicable sanctions rely on relevant provisions in the Indonesian Penal Code (KUHP), such as Articles 289–296 (concerning acts of indecency), Article 310 (defamation), Article 315 (insult), and Article 281 (offenses against public morality).

The article by Aulia Virgistasari and Anang Dony Irawan, titled "*Sexual Harassment Against Victims from the Perspective of Ministerial Regulation No. 30 of 2021*", published in the *Jurnal Media of Law and Sharia*, analyzes sexual harassment in accordance with Ministerial Regulation No. 30 of 2021. The study concludes that the implementation of this regulation eliminates the possibility for universities to evade their responsibilities in preventing and addressing sexual violence. The regulation was enacted in response to the alarming rise in sexual harassment cases within higher education institutions. Failure to address sexual violence poses a significant threat to the future of human civilization. Universities, as key institutions of civilization, must be equipped with proper mechanisms for preventing and responding to sexual violence. Without adequate protection, justice remains difficult to achieve, and victims are often blamed rather than supported.

The article by Jeremy Chandra Sitorus, titled "*Quo Vadis: Legal Protection for Victims of Sexual Harassment on Campus*", published in *Lex Scientia Law Review*, Volume 3, No. 1, 2019, focuses on the protection of victims of sexual harassment in university settings. The study concludes that many victims of sexual violence remain silent and do not seek justice due to power imbalances and societal perceptions that normalize sexual violence on campus. Additionally, the lack of decisive action from relevant authorities allows perpetrators to continue their misconduct, leading to severe trauma and fear among victims. Investigations conducted by universities often tend to blame victims who courageously come forward to seek justice.

Upon analyzing these articles, it becomes evident that the novelty of the present study lies in its focus on the criminal liability of female perpetrators of sexual harassment against minors. The uniqueness of this article is further reflected in its second section, which explores the role of psychiatric experts in the investigation process of such cases.

The primary objective of this article is to analyze and comprehend the criminal liability of the female perpetrator. Additionally, it seeks to examine and deeply analyze the role of psychiatric experts in these cases to provide a clear and comprehensive understanding of the core issues discussed in this study.

2. Research Method

The research method employed in this study is a normative legal research method, which examines the concept of criminal liability in general and, more specifically, the criminal liability of perpetrators of sexual harassment. This analysis will be conducted using relevant theories derived from books and scholarly journals that support the discussion.³ Additionally, the study will focus on the role of psychiatric expert testimony in cases of sexual harassment, particularly in assessing the urgency of psychiatric experts in examining perpetrators during the investigation stage.⁴

3. Research Results and Discussion

3.1. Criminal Liability of Perpetrators of Sexual Harassment

To be held criminally liable, a perpetrator of sexual harassment must meet the essential requirement of being capable of taking responsibility. This means that the perpetrator must possess the capacity for accountability in accordance with legal principles.⁵ According to Simons, the ability to take responsibility can be understood as a psychological state that justifies the application of criminal punishment. A person is considered capable of

³ Kornelius Benuf, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Jurnal Gema Keadilan* 7, no. 1 (2020): 23.

⁴ David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *NUSANTARA : Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2466.

⁵ Wening Novridasati, Ridwan, dan Aliyth Parkarsa, "Pertanggungjawaban Pidana Desk Collector Fintech Ilegal Serta Perlindungan Terhadap Korban," *Jurnal Litigasi* 21, no. 2 (t.t.): 246.

taking responsibility if they have a sound mind. A sound mind is determined by the following factors:⁶

- 1) The perpetrator of sexual harassment realizes and understands that their actions contradict the applicable law.
- 2) The perpetrator of sexual harassment is able to formulate intentions and desires based on their own consciousness.

The term criminal liability is known in foreign legal terminology as criminal responsibility or *teorekenbaardheid*, which refers to the punishment of a criminal offender with the aim of determining whether they can be held accountable for the crime committed. In addition, criminal liability also considers whether the committed offense meets the legal elements of the crime as defined in applicable legislation. From the perspective of the occurrence of a crime, an individual will be held accountable for their actions if those actions violate the law and are not justified by any legal defense or grounds for eliminating the unlawful nature of the act. From the perspective of the ability to take responsibility, only individuals who possess criminal responsibility can be held liable for their offenses.⁷

Criminal liability aims to determine whether an individual who has committed a criminal act can be subjected to criminal sanctions or whether they should be exempted from various criminal charges. From this premise, the following points can be understood:⁸

- 1) If the perpetrator of sexual harassment is convicted, their actions must be proven and must possess the unlawful nature required for criminal liability. In addition, the perpetrator must have the capacity to take responsibility for their actions, meaning they can be held accountable for the offense committed.
- 2) If the perpetrator of sexual harassment is acquitted, it means that their guilt is not proven, or in other words, they still retain the capacity for responsibility but cannot be held accountable due to the absence of sufficient evidence.
- 3) To be held criminally liable, the perpetrator must be a human being, not any other entity, as only humans can be held accountable under

⁶ Suyanto Suyanto, *Hukum Acara Pidana* (Sidoarjo: Zifatama Jawara, 2018), 77.

⁷Fitri Wahyuni, *Dasar - Dasar Hukum Pidana Di Indonesia* (Tangerang Selatan: Nusantara Persada Utama, 2017), 67.

⁸Takdir Takdir, *Mengenal Hukum Pidana* (Laskar Perubahan, 2013), 53.

criminal law. The connection between the act and the liability is determined by the perpetrator's capacity for responsibility. The perpetrator of sexual harassment must:

- a. Recognize and comprehend the nature of their actions.
- b. Understand the consequences and potential harm of their actions, or at the very least, be able to foresee the harm that may result from their conduct.
- c. Possess the ability to determine whether or not they will engage in the criminal act.

The concept of criminal liability is an indispensable prerequisite for imposing criminal sanctions on perpetrators of sexual harassment. Therefore, the monodualistic legal approach (*daad en dader strafrecht*) and the due process principle require that the determination of criminal liability not only consider the interests of society but also take into account the interests of the perpetrator. The process depends on whether the necessary conditions and culpability requirements are met, thereby making it legally valid to impose punishment on the offender.⁹

It is important to note that the main issue in sexual harassment cases concerning the perpetrator's capacity for criminal responsibility lies in determining whether the perpetrator falls within the category of individuals subject to legal norms with full capacity. A sexual harassment perpetrator is presumed to have criminal responsibility based on the principle that they are accountable for their actions, unless otherwise stated by law.¹⁰ The Indonesian Criminal Code (KUHP) does not explicitly define the criteria for determining when a perpetrator possesses criminal responsibility. However, it provides regulations that guide this determination. This is stipulated in Book I, Chapter III, Article 44 of the KUHP, which states:¹¹ "Anyone who commits an act that cannot be held accountable to them due to a mental defect from birth or a mental disorder caused by illness shall not be punished."

⁹Jaholden Jaholden, *Reformulasi Hukum Pidana Indonesia* (Sumatera Utara: Bircu Publishing, 2021), 19.

¹⁰Lukman Hakim, *Asas - Asas Hukum Pidana* (Sleman: Deepublish, 2020), 35.

¹¹Efvi Rahmawati, Ni Putu Rai Yuliantini, dan Dewa Gede Sudika Mangku, "Penerapan Pertanggungjawaban Pidana Terhadap Pelaku Persetubuhan (Studi Kasus Putusan No. 23/Pid.Sus/2020/Pn.Sgr)," *Journal Komunitas Yustisia* 4, no. 1 (2021): 4.

This aligns with the view of Barda Nawawi Arief, who states that for the element of criminal responsibility to exist, it must first be clarified who can be held accountable and who the perpetrator of the criminal act is. This issue is closely related to the subject of a criminal act, which is generally defined by legislators within the provisions of the offense. However, in practice, identifying the perpetrator is often complex and challenging.

A key issue that arises after identifying the perpetrator is determining their criminal liability. Criminal responsibility represents another dimension of the subject of a criminal act, distinct from the question of who committed the act itself. In this context, the definition of the subject of a criminal act can take two forms: identifying the individual who committed the offense and determining who is legally accountable for the act. In general, criminal responsibility falls upon the person who committed the offense. However, this principle is not absolute, as it depends on the legal system and the approach taken by legislators.¹²

To establish criminal responsibility, the perpetrator of sexual harassment, as stipulated in Article 76E of Law No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection, which states: "Any person is prohibited from committing violence or threats of violence, coercion, deception, a series of lies, or persuasion against a child to engage in or allow acts of indecency to be performed," must meet certain conditions outlined in the Indonesian Criminal Code (KUHP). These conditions specify that a person cannot be held criminally responsible if they suffer from a mental defect or illness (Article 44 of the KUHP) or if they are legally classified as a minor (Article 45 of the KUHP). The conditions for establishing criminal responsibility include:¹³

¹²Jaholden, *Reformulasi Hukum Pidana Indonesia*, 20; Olivia Anggie Johar, M. Yusuf daeng, dan Tri Novitasari Manihuruk, "Pertanggungjawaban Pidana Pencemaran Dan Perusakan Lingkungan Hidup Akibat Pembakaran Hutan Dan Lahan Di Provinsi Riau," *Jurnal Hukum Respublica* 21, no. 2 (2022): 146.

¹³Haritsa dan Zohra Moha, "Analisis Hukum Pertanggungjawaban Pidana Oleh Pelaku Pencabulan Terhadap Anak Di Kota Gorontalo," *Al-Mujtahid: Journal of Islamic Family Law* 2, no. 1 (2022): 22; Devi Mardiana dan Oci Senjaya, "Pertanggungjawaban Pidana Terhadap Anak Sebagai Pelaku Tindak Pidana Persetubuhan Berdasarkan Sistem Peradilan Pidana Anak," *Jurnal Kertha Semaya* 9, no. 2 (2021): 306; Hammi Farid, Ifahda Pratama Hapsari, dan Hardian Iskandar, "Pertanggungjawaban Pidana Terhadap Pelaku Pencabulan Anak Di Bawa Umur," *Justisia* 5, no. 2 (2020): 263; Dirwansyah, Kusbianto, dan Azmiati Zuliah, "Pertanggungjawaban Pidana Dalam Tindak Pidana Pencabulan Yang Dilakukan Oleh Anak (Analisa Putusan Pengadilan Nomor 6/Pid.Sus.Anak/2018/PT.Mdn)," *Warta Dharmawangsa* 15, no. 2 (2021): 187.

1) The Existence of a Criminal Act

In principle, criminal law does not apply retroactively; it is enforced only after the law has been enacted. Simply put, legal provisions apply to incidents that occur after the law is established. In relation to determining whether an act constitutes a criminal offense under criminal law, this issue can be examined from two perspectives: the individual perspective and the societal perspective.

From an individual standpoint, the primary concern is the protection of individuals within the state. This principle is encapsulated in the Latin maxim *Nulla Poena Sine Lege* (no punishment without law). Meanwhile, from a societal perspective, the primary objective is the protection of society from criminals or individuals who commit offenses, which is expressed through the principle of *Nullum Crimen Sine Poena* (no crime without punishment).¹⁴

These principles are known as the principle of legality. The primary objective of the principle of legality is to strengthen legal certainty. In addition to reinforcing legal certainty, this principle also aims to ensure justice and fairness for offenders while enhancing the effectiveness of penal sanctions, particularly the function of imprisonment. Equally important, the principle of legality serves to prevent the abuse of power and to uphold the rule of law. While this principle is highly effective in protecting individuals from arbitrary actions, it may be less effective for law enforcement authorities in responding to the evolving nature of criminal offenses.¹⁵

This legal principle establishes that, for an offender to be held criminally responsible for an act of sexual harassment, there must first be a legal provision regulating such an offense. An individual cannot be held accountable for an act that was not legally defined as a crime at the time it was committed. Consequently, even if the law is enacted after the crime has occurred, criminal law does not apply retroactively. This requirement has been fulfilled in the case of sexual harassment against minors, as the legal framework prohibiting such offenses was already in place before the act was committed. Therefore, this first element

¹⁴ Sudaryono Sudaryono dan Natangsa Surbakti, *Hukum Pidana : Dasar - Dasar Hukum Pidana Berdasarkan KUHP dan RUU KUHP* (Surakarta: Muhammadiyah University Press, 2017), 48.

¹⁵ Hasanul Mulkan, *Buku Ajar Kapita Selekta Hukum Pidana* (Palembang: NoerFikri, 2022), 30.

supports the imposition of criminal liability on the perpetrator of sexual harassment.¹⁶

2) The Perpetrator's Capacity for Criminal Responsibility

According to the views expressed by Kanter and Sianturi, a perpetrator of sexual harassment is considered capable of bearing criminal responsibility if:¹⁷

- a. Their mental state is not impaired by either temporary or permanent mental illness. Furthermore, their psychological development has not suffered from any defects. Additionally, the perpetrator must not be under the influence of hypnosis, shock, subconscious influence, sleepwalking, intense rage, delirium, or any similar conditions.
- b. They possess the mental capacity to comprehend the true nature of their actions and the ability to decide whether or not to carry them out. In other words, they have the capacity to exercise their will over their actions. Lastly, they must be aware that their actions are morally reprehensible.

3) The Existence of Perpetrator's Fault

The foundation of the concept of fault is the principle *Geen Straf Zonder Schuld*, which means "no punishment without fault." This principle serves as the basis for holding a perpetrator accountable when committing a criminal offense. This aligns with Article 1 of the Indonesian Penal Code (KUHP), which states:¹⁸

¹⁶ Leni Dwi Nurmala, "Studi Komparatif Tentang Asas Legalitas Berdasarkan Hukum Pidana Positif Indonesia Dan Hukum Pidana Islam," *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh* 9, no. 1 (2021): 60; Vincentius Patria Setyawan, "Asas Legalitas Dalam Perspektif Filsafat Hukum," *Justitia Et Pax* 37, no. 1 (2021): 140; Vincentius Patria Setyawan dan Hyronimus Rhiti, "Relasi Asas Legalitas Hukum Pidana Dan Pemikiran Hukum Alam," *Jurnal Ilmu Penelitian* 2, no. 12 (2022): 3814; Arista Candra Irawatu, "Politik Hukum Dalam Pembaharuan Hukum Pidana(Ruu Kuhp Asas Legalitas)," *Adil Indonesia Jurnal* 2, no. 1 (2019): 6; Ateng Sudibyso dan Aji Halim Rahman, "Dekonstruksi Asas Legalitas Dalam Hukum Pidana," *Presumption Of Law* 3, no. 1 (2021): 64.

¹⁷ Anthoni Y Oratmangun, "Kajian Hukum Terhadap Kemampuan Bertanggung Jawab Menurut Pasal 44 KUHP," *Lex et Societatis* 4 No. 5 (2016): 181; Marsel Poli, "Kajian Yuridis Tentang Psikopat Berdasarkan Pasal 44 Kitab Undang-Undang Hukum Pidana," *Lex Crimen VIII*, no. 8 (2019): 25; Muhammad Dwi Rafky, "Pertanggungjawaban Pidana Terhadap Pelaku Penganiayaan Penyandang Dissociative Identity Disorder," *UNJA Journals of Legal Studies* 1, no. 1 (2023): 313; Hana C. Kandow, Eske N. Worang, dan Deizen D. Rompas, "Pemidanaan Terhadap Pelaku Kejahatan Seksual Terhadap Anak Secara Online," *Lex Crimen IX*, no. 4 (2020): 20; Putri Awini Susanti Zamili, "Kewenangan Tni Angkatan Laut Dalam Melakukan Penyidikan Tindak Pidana Illegal Fishing (Studi Di Pangkalan Tni Al Nias)," *Jurnal Panah Hukum* 1, no. 2 (2022): 194.

¹⁸ Munajat Munajat dan Kartono Kartono, "Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Penganiayaan Yang Mengakibatkan Luka Berat . (Analisis Putusan Perkara No : I10/Pid.B/2018/PNRkb)," *RECHTSREGEL* 2 No. 2 (2019): 661; Ahda Muttaqin dkk., "Telaah

- a. *No act shall be subject to punishment unless it is based on a pre-existing provision in criminal legislation.*
- b. *If there is a change in legislation after the act has been committed, the provision most favorable to the defendant shall apply.*

To determine whether the perpetrator of sexual harassment has committed a fault, certain elements must be fulfilled, including:¹⁹

- a. The ability to be held accountable.
- b. A certain psychological connection of the perpetrator to the act, which may take the form of negligence or intent.
- c. The absence of any justification or excuse that could eliminate the perpetrator's criminal responsibility for the act.

According to Moeljatno, the assessment of fault in sexual harassment cases, particularly concerning the perpetrator's capacity to be held accountable, must be determined by various factors, including:²⁰

- a. The rationality factor, which means the perpetrator must have the ability to distinguish between good and bad actions, as well as between lawful and unlawful conduct.
- b. The emotional factor, which signifies that the perpetrator must have the capacity to act based on their own judgment of the moral value of their actions.

Asas Geen Straf Zonder Schuld terhadap Pertanggungjawaban Pidana Penipuan melalui Modus Ritual Mistis," *University of Bengkulu Law Journal* 8, no. 1 (2023): 38; Suslianto dan Ismet Hadi, "Penerapan Asas Tiada Pidana Tanpa Kesalahan Dalam Ketentuan Pasal 78 Ayat (15) Undang-Undang Nomor 41 Tahun 1999 Tentang Kehutanan," *At - Tanwir Law Review* 2, no. 2 (2022): 166; Fiska Maulidian Nugroho dan Andika Putra Eskanugraha, "Refleksi Asas Kemanfaatan: Mengilhami Asas Tiada Pidana Tanpa Kesalahan Tiada Kesalahan Tanpa Kemanfaatan," *PUSKAPSI Law Review* 3, no. 1 (2023): 108; Anis Rifai, "Rekonstruksi Pengaturan Pertanggungjawaban Pidana Pihak yang Menggunakan Dokumen Palsu," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 3, no. 1 (2022): 40; Dames Lewansorna, Elsa Rina Maya Toule, dan Margie Sopacua, "Pertanggungjawaban Pidana Aparat Kepolisian Yang Melakukan Kekerasan Terhadap Demonstran," *Tatohi Jurnal Hukum* 2, no. 1 (2022): 85.

¹⁹ Aprianto J Muhaling, "Kelalaian Yang Mengakibatkan Matinya Orang Menurut Perundang – Undangan Yang Berlaku," *Lex Crimen* 8 No. 3 (2019): 31; Marsudi Utoyo dkk., "Sengaja Dan Tidak Sengaja Dalam Hukum Pidana Indonesia," *Lex Librum : Jurnal Ilmu Hukum* 7, no. 1 (2020): 82; Lukman Hakim, "Implementasi Teori Dualistis Hukum Pidana Di Dalam Rancangan Kitab Undang-Undang Hukum Pidana (RKUHP)," *Jurnal Krtha Bhayangkara* 13, no. 1 (2019): 4.

²⁰ Sigit Lesmonojoati, *Pertanggungjawaban Pidana Atas Perbuatan Kelalaian Pada Tindakan Medis Di Rumah Sakit* (Surabaya: Scopindo Media Pustaka, 2020), 16; Rifka Ramadhani Pawewang, Olga A. Pangkrego, dan Berlian Manopo, "Karena Salahnya Menyebabkan Orang Luka Berat Sebagai Tindak Pidana Berdasarkan Pasal 360 KUHP," *Lex Privatum* IX, no. 4 (2021): 240; Vallen Andreas Mamangkey, "Tinjauan Yuridis Terhadap Pelaku Dan Korban Prostitusi Online Berdasarkan Kuhipidana Dan Undang-Undang Nomor 19 Tahun 2016 Tentang ITE," *Lex Crimen* IX, no. 2 (2020): 18.

Moeljatno emphasizes that the ability to be held accountable must be considered alongside another crucial element – *the unlawful nature of the act*. These factors serve as absolute requirements in criminal liability. The unlawful nature of an act constitutes the prohibition of a certain action, while fault serves as an element of criminal responsibility. Consequently, the Indonesian Penal Code (KUHP) distinguishes between the elimination of punishment based on justification and the elimination of punishment due to incapacity to be held accountable.²¹

he element of fault consists of **intent (dolus)** and **negligence (culpa)**. Intent refers to the perpetrator's conscious desire and awareness of their actions. This means that when an individual acts with intent, they must deliberately wish for the action to occur and foresee the consequences that will arise from it. Meanwhile, negligence represents a lower degree of fault compared to intent. It is often regarded as the opposite of intent, as the consequences of the act were not explicitly desired. Negligence arises due to a lack of caution, leading to unintended consequences. According to Simons, negligence results from an individual's failure to exercise proper caution and their lack of attention to the foreseeable consequences of their actions.²²

²¹ Lesmonoajati, *Pertanggungjawaban Pidana Atas Perbuatan Kelalaian Pada Tindakan Medis Di Rumah Sakit*, 17; Fitri Wahyuni, Aris Irawan, dan Siti Rahmah, "Pertanggungjawaban Pidana Bagi Pelaku Penganiayaan Terhadap Tokoh Agama Di Indonesia," *JCH (Jurnal Cendekia Hukum)* 7, no. 1 (2021): 114; Fahmi Ramadhan dan H.R. Adianto Mardijono, "Kemampuan Bertanggung Jawab Orang yang Mempunyai Gangguan Jiwa Akibat Melakukan Tindak Pidana Narkotika," *Harmonization: Jurnal Ilmu Sosial, Ilmu Hukum, dan Ilmu Ekonom* 1, no. 2 (2023): 87; Kesia Milka Nelwan, Dientje Rumimpunu, dan Karel Y. Umboh, "Hukum Penerapan Sanksi Pidana Kumulatif Terhadap Perbuatan Pidana Penyalahgunaan Psikotropika Berdasarkan Undang-Undang Nomor 5 Tahun 1997 Tentang Psikotropika," *Lex Privatum IX*, no. 13 (2021): 101; Yuliana Megasari, "Penjatuhan Pidana Mati Terhadap Ms Atas Pembunuhan Berencana Dan Pemerkosaan Ditinjau Dari Kitab Undang Undang Hukum Pidana," *Al Qodiri: Jurnal Pendidikan, Sosial dan Keagamaan* 19, no. 3 (2020): 617; Yusep Mulyana, "Pertanggungjawaban Pidana Terhadap Tni Pangkat Titular Yangmelakukan Pelanggaran Hukum," *Jurnal Pendidikan Dasar Dan Sosial Humaniora* 2, no. 3 (2023): 470.

²² Tofik Yanuar Chandra, *Hukum Pidana*, ed. oleh Yasmon Putera (Jakarta: Sangir Multi Usaha, 2022), 76; Ahmad Fanani dan Pudji Astuti, "Analisis Yuridis Kesalahan Terdakwa Tindak Pidana Korupsi Dalam Putusan Kasasi Mahkamah Agung Republik Indonesia Nomor 755 K/Pid.Sus/2018," *Novum*, 2022, 7; Andrew Stefanus Ruusen, Veibe V. Sumilat, dan Roy Ronny Lembong, "Penegakan Hukum Pidana Karena Kelalaian Pengemudi Kendaraan Yang Mengakibatkan Kecelakaan Lalu Lintas," *Lex Crimen X*, no. 2 (2021): 103; Ernest Sengi, "Konsep Culpa Dalam Perkara Pidana Suatu Analisis Perbandingan Putusan Nomor 18/Pid.B/2017/PN.TOBELO," *Era Hukum* 17, no. 2 (2019): 206; Dicky W. Kinontoa, Max Sepang, dan Roy R. Lembong, "Kealpaan Yang Mengakibatkan Kematian Orang Lain Menurut Pasal 359 Kitab Undang-Undang Hukum Pidana (KUHP)," *Lex Crimen XI*, no. 1 (2022): 36.

4) Absence of Grounds for Criminal Exemption.

The perpetrator shall not be held criminally liable if there are grounds for criminal exemption. This principle is stipulated in Chapter I, Book III of the Indonesian Penal Code (KUHP), which does not only address factors that eliminate criminal liability but also those that aggravate punishment. In the KUHP, grounds for criminal exemption originate from two sources: statutory provisions and extralegal considerations. The statutory grounds are further categorized into two types: General grounds, which are contained in the general provisions of Book I of the KUHP and apply universally to all criminal offenses. Specific grounds, which are found in certain articles and apply exclusively to specific criminal offenses.²³

In general, these grounds for criminal exemption are outlined in Book I, Chapter III of the KUHP, including the following:²⁴

- a. Article 44: Committing an act that cannot be attributed to the perpetrator.
- b. Article 48: Committing an act under duress.
- c. Article 49(1): Committing an act out of necessity for self-defense.
- d. Article 49(2): Excessive self-defense.
- e. Article 50: Committing an act in execution of a legal provision.
- f. Article 51(1): Committing an act in compliance with an official order.
- g. Article 51(2): An official order issued by an unauthorized authority does not exempt the subordinate from punishment, unless the subordinate, in good faith, believes that the order was lawfully issued by a competent authority.

²³ Aryo Fadlian, "Pertanggungjawaban Pidana Dalam Suatu Kerangka Teoritis," *Jurnal Hukum Positivum* 5 No. 2 (2020): 17; Muhamad Chanif, "Implementasi Pasal 44 Kuhp Sebagai Alasan Penghapus Pidana Dalam Proses Pemeriksaan Perkara Pidana," *MAGISTRA Law Review* 2, no. 1 (2021): 65; M. Maulana Firdaus dan Ira Alia Maerani, "Studi Perbandingan Alasan Penghapus Pidana Menurut Kitab Undang-Undang Hukum Pidana (Kuhp) Dan Hukum Pidana Islam Dalam Rangka Pembaharuan Hukum Pidana Nasional," *Jurnal Hukum Unissula* 36, no. 2 (2020): 82; Khilmatin Maulidah dan Muhammad Rizqi Hengki, "Tinjauan Yuridis Terhadap Pembelaan Terpaksa Sebagai Alasan Penghapus Pidana," *Jurnal Serambi Hukum* 16, no. 2 (2023): 92.

²⁴ Ishaq Ishaq, *Hukum Pidana* (Depok: Rajawali Press, 2017), 110; Dean Praditya Kermite, Jeany Anita Kermite, dan Fonny Tawas, "Kajian Terhadap Pembelaan Terpaksa (Noodweer) Dalam Tindak Pidana Kesusilaan Berdasarkan Pasal 49 Ayat (1) Kitab Undang-Undang Hukum Pidana," *Lex Privatum* IX, no. 4 (2021): 140; Fitria Lubis dan Syawal Amry Siregar, "Analisis Penghapusan Pidana Terhadap Perbuatan menghilangkan Nyawa Orang Lain Karena Alasan Adanya Daya Paksa (Overmacht)," *Jurnal retentum* 1, no. 2 (2020): 13; Yosua S. V. Tampi, Olga A. Pangkerego, dan Hironimus Taroreh, "Melaksanakan Ketentuan Undang - Undang Sebagai Alasan Penghapus Pidana Berdasarkan Pasal 50 KUHP," *Lex Privatum* VIII, no. 4 (2020): 137.

Criminal law also explains several aspects regarding the distinction between whether or not an act committed by the perpetrator is punishable. The elimination of criminal liability may concern both the perpetrator and the act itself. There are two types of reasons for the elimination of criminal liability, namely exculpatory reasons, also known as grounds for the elimination of culpability (*schulduitsluitings-grond, fait d'excuse, entschuldigungsgrund, Schuldausschliessungs-grund*), and justificatory reasons (*rechtvaardigingsgrond, fait justificatif, rechtfertigungs-grund*).

Exculpatory reasons relate to the personal condition of the perpetrator, meaning that they cannot be legally blamed for their actions. In other words, the perpetrator cannot be held accountable or considered guilty, even though their actions possess an unlawful nature. Therefore, in such cases, there exists a reason that eliminates the perpetrator's culpability, making it impossible to hold them responsible. Exculpatory reasons in the **KUHP** include:

- a) Article 44: where the perpetrator lacks the ability to be held accountable.
- b) Article 49 regarding *noodweer exces*: excessive self-defense.
- c) Article 51(2): good faith in executing an order from an unauthorized official.

Justificatory reasons eliminate the unlawful nature of the act committed by the perpetrator. Although the act fulfills the elements of a criminal offense as stipulated in the law, it is not considered unlawful, and therefore, punishment is not possible. Logically, such an act lacks the nature of legal wrongdoing, making criminal liability impossible.

Justificatory reasons in the **KUHP** include:

- a) Article 49(1): self-defense (*noodweer*).
- b) Article 50: executing a legal provision.
- c) Article 51(1): executing an official order.²⁵

²⁵ Sudaryono dan Surbakti, *Hukum Pidana : Dasar - Dasar Hukum Pidana Berdasarkan KUHP dan RUU KUHP*, 239; Gigih Widi Kusuma, Sunardi, dan Fitria Dewi Navisa, "Analisis Yuridis Alasan Penghapusan Pidana Terhadap Orang Kelainan Jiwa Psikopat," *Dinamika* 28, no. 12 (2022): 4900; Muhaling, "Kelalaian Yang Mengakibatkan Matinya Orang Menurut Perundang - Undangan Yang Berlaku," 41; Angelica Maureen Taroreh, Olga A. Pangkerego, dan Herry F. Tuwaidan, "Izin Pihak Korban Sebagai Dasar Peniadaan Pidana Di Luar KUHP," *Lex Crimen* IX, no. 3 (2020): 64.

If examined further, the act committed by the perpetrator of sexual harassment cannot be justified under any grounds for the elimination of criminal liability, as it does not fulfill the provisions outlined in the KUHP. Moreover, the act was committed with intent, meaning that the perpetrator deliberately intended to engage in sexual harassment against children. This intention was realized through action, and the correlation between intent and action is sufficient to prove that the perpetrator has no legal basis to eliminate the criminal liability for their conduct.

A perpetrator of sexual harassment may be subject to criminal sanctions if their actions are unlawful, contain elements of fault, and they can be held accountable. Fault in this context refers to the perpetrator's psychological state at the time of committing the act of sexual harassment, as well as the relationship between that state of mind and the act itself. This correlation justifies moral and legal reproach, as the perpetrator has committed a criminal offense. Therefore, fault must be considered alongside two key aspects of criminal liability. The first is the presence of a specific mental state, and the second is the causal relationship between that mental state and the perpetrated act, which justifies the imposition of blame.²⁶

3.2. The Role of Psychiatric Experts in Sexual Harassment Cases During the Investigation Process

Investigation, as defined in Article 1, point 2 (Indonesian Criminal Procedure Code), is an action carried out by law enforcement officers, particularly investigators, aimed at searching for, discovering, and collecting various pieces of evidence as well as identifying the perpetrator of the criminal act.²⁷

Based on the explanation above, it can be understood that investigation serves the following functions in criminal procedural law:²⁸

1. Searching for and collecting evidence.
2. Establishing the occurrence of a criminal act.

²⁶ Ishaq, *Hukum Pidana*, 93; Titin Apriani, "Konsep Perbuatan Melawan Hukum Dalam Tindak Pidana," *Ganec Swara* 13 No. 1 (2019): 45; Rony A. Walandouw, Pangemanan Diana. R, dan Hendrik Pondaag, "Unsur Melawan Hukum Yang Subjektif Dalam Tindak Pidana Pencurian Pasal 362 KUHP," *Lex Crimen* IX, no. 3 (2020): 249; Tresya, "Sifat Melawan Hukum Materil Dalam Perbuatan Pidana Penanganan Bencana Non-Alam Covid 19," *Jurnal Belo* 6, no. 1 (2021): 7.

²⁷ Suyanto, *Hukum Acara Pidana*, 32; Sekar Restri Fauzi dan Fery Dona, "Penyidikan Tindak Pidana Pencurian di Polres Purworejo," *Jurnal Al - Hakim* 4, no. 1 (2022): 50.

²⁸ Didik Endro Purwoleksono, *Hukum Pidana* (Surabaya: Airlangga University Press, 2014), 61.

3. Identifying the perpetrator of the criminal act.

According to Article 1 point 1 of the Indonesian Criminal Procedure Code (KUHAP) in conjunction with Article 1 point 10 of Law No. 2 of 2002 on the Indonesian National Police, an investigator is defined as an official of the Indonesian National Police or certain civil servants authorized to conduct investigations, with such authority granted by law.²⁹

Regarding the duties and authority of investigators in cases of sexual harassment committed by YSA against children, investigators have the authority based on Article 7(2) of the Indonesian Criminal Procedure Code (KUHAP), including:³⁰

1. Receiving complaints or reports from the public regarding a criminal offense.
2. Taking initial action upon arrival at the crime scene.
3. Stopping a suspected individual and conducting an identity check of the suspect.
4. Carrying out coercive measures such as arrest, detention, search, and seizure.
5. Examining and confiscating documents.
6. Taking fingerprints and photographing an individual.
7. Summoning individuals as witnesses or suspects for questioning and examination.
8. Bringing in experts when necessary in relation to the investigation of the case at hand.
9. Terminating an investigation.
10. Conducting other legally accountable actions.

In the examination of criminal cases during the investigation process, the role of witnesses is crucial, as crimes can be uncovered through their testimonies, which are based on what they have seen, heard, and personally experienced. However, it is important to note that expert testimony is also necessary in cases of sexual harassment to clarify the facts of the case. Experts can provide statements regarding whether the perpetrator suffers from a mental disorder, particularly in cases involving sexual harassment against minors. The assistance of experts with specialized knowledge required by investigators plays a vital role in the

²⁹ Yahman Yahman, *Pengantar Hukum Acara Pidana* (Pasuruan: Qiara Media, 2021), 47.

³⁰ Riadi Asra Rahmad, *Hukum Acara Pidana* (Depok: Raja Grafindo Persada, 2019), 35.

investigation process, as it helps in uncovering the material truth of a criminal case.³¹

According to the provisions of criminal procedural law in Indonesia, the request for expert assistance is regulated and explained in the Criminal Procedure Code (KUHAP). The request for expert assistance during the investigation stage is stipulated in Article 120, paragraph (1), which states: "If deemed necessary, the investigator may seek the opinion of an expert or someone with specialized expertise." Meanwhile, the request for expert testimony during the trial stage is regulated in Article 180, paragraph (1), which states: "If necessary to clarify issues arising in court proceedings, the presiding judge may request expert testimony and may also ask the relevant parties to present new evidence."³²

The role of forensic psychiatrists in assisting investigators in determining the criminal responsibility of perpetrators of sexual harassment is highly significant. A forensic psychiatrist can assess the mental state and behavior of the perpetrator, especially when investigators have suspicions or doubts regarding the individual's ability to be held criminally accountable. Forensic psychiatrists assist law enforcement in evaluating the suspect's mental condition, determining whether they suffer from a psychiatric disorder, as this is directly related to their capacity to take responsibility for their actions. It can be said that the role of forensic psychiatrists is crucial in uncovering the material truth, which aligns with the objectives and fundamental principles of criminal procedural law. If a sexual harassment perpetrator is proven to have a mental disorder, investigators have the authority to decide whether the case should proceed or not. Therefore, strong coordination between investigators and forensic psychiatrists is essential, ensuring that expert testimony serves as a reliable basis for the case.³³

³¹ Devi Indriani, Erdianto Erdianto, dan Ledy Diana, "Peranan Keterangan Ahli Kedokteran Jiwa Dalam Proses Penyidikan Di Kepolisian Resor Kota Pekanbaru," *JOM UNRI* 3 No 2 (2016): 10.

³² Yang Meliana, "Peranan Visum Et Repertum Psikiatrikum Guna Pertimbangan Hakim Terhadap Pelaku Tindak Pidana Yang Sakit Jiwa Dalam Proses Peradilan (Studi Di Rumah Sakit Jiwa Daerah Provinsi Kepulauan Bangka Belitung)," *Justici* 12, no. 2 (2020): 10.

³³ Ruslan Abdul Gani, "Peranan Dokter Psikiater Dalam Menentukan Status Kejiwaan Tersangka Dalam Kaitannya Dengan Pertanggungjawaban Pidana," *Lex Specialis* 14 No 1 (2011): 39.

In relation to determining the criminal responsibility of a perpetrator of sexual harassment, a forensic psychiatrist may issue a *Visum et Repertum Psychiatricum* if there are indications that the perpetrator has a mental disorder. The *Visum et Repertum Psychiatricum* contains a report on the results of a psychiatric examination, assessing the perpetrator's mental state to determine the presence or absence of a psychiatric disorder that may have contributed to the commission of the sexual harassment offense.

The forensic psychiatrist can provide clinically relevant data compiled through a structured evaluation, which serves as a valuable aid for investigators in carrying out their duties. The expert opinion provided by the forensic psychiatrist is formulated based on their specialized field of expertise, ensuring that the findings contribute to an objective and scientifically grounded legal process.³⁴

Based on its position within the field of medical science, R. Soeparmono asserts that *Visum et Repertum* has the following meaning: "Visum" can be interpreted as "seeing," while "Repertum" can be interpreted as "reporting." Therefore, *Visum et Repertum* refers to a report written by a medical expert based on findings obtained through a medical examination. This report is affirmed under oath, which is taken by the medical expert upon receiving their professional title. Similarly, R. Antang Ranoemihardja defines *Visum et Repertum* as a record of what is observed and found in an injured victim or a deceased body, documented as written facts.³⁵

A *Visum et Repertum Psychiatricum* can be used to assess the mental state of the perpetrator of sexual harassment and serves as documentary evidence (alat bukti surat) that is legally accountable because it is prepared by an expert in the field. The assistance of a forensic psychiatrist is crucial to prevent criminal proceedings that rely solely on superficial assessments, which could hinder the discovery of material truth. The issuance of a *Visum et Repertum Psychiatricum* aims to establish proof of the suspect's mental condition at the time of committing the sexual harassment offense and to determine whether they possessed the capacity for criminal

³⁴ Sari Wulandari, "Tinjauan Yuridis Peran Dokter Ahli Penyakit Jiwa Dalam Pembuktian Perkara Pidana Di Sidang Pengadilan" (Semarang, Universitas Islam Sultan Agung, 2022), 40.

³⁵ Herman, "Analisis Yuridis Alat Bukti Visum Et Repertum Psikiatrikum Kasus Tindak Pidana Perkosaan Studi Kasus Putusan (Nomor 20/Pid.B/2017/PN Mrh Jo Nomor 42/Pid/2017/Pt Bjm Jo Nomor 1246/K/Pid/2017/MA)" (Banjarmasin, Universitas Islam Kalimantan, 2022), 8.

responsibility.³⁶ In practical terms, the role of forensic psychiatry is not only limited to evidentiary purposes but also extends to safeguarding the suspect's right to mental health during legal proceedings. The provision of psychiatric assistance is essential, not only as a measure to uphold human rights but also to protect the perpetrator from potential harm to their physical and mental well-being.

A request for expert testimony must include the identity of the suspect, the reasons for the psychiatric examination, and an attached official report of the case proceedings. This request may be submitted by an investigator who, based on their assessment, suspects that the perpetrator exhibits indications of mental disorder. The forensic psychiatrist providing the expert opinion must meet specific qualifications, including:³⁷

1. Employed by an institution specializing in the care and treatment of individuals with mental disorders. Additionally, they may work for a specialized institution designated for forensic psychiatric examinations.
2. Must not have any professional or personal relationship with either the victim or the suspect.
3. Must not have any personal or professional interest in the ongoing case.

Based on the explanation above, it can be concluded that forensic psychiatrists play a crucial role in the investigative process of sexual harassment cases. Their expert testimony can be categorized into several functions, including:³⁸

1. Serving as documentary evidence (alat bukti surat) and expert testimony (keterangan ahli).
2. Providing statements that hold equivalent value to legal evidence.
3. Offering testimony that solely strengthens the judge's conviction in the case.

³⁶ Oktanti Nueke Sulistyani, "Pembuktian Menggunakan Visum Et Repertum Psychriatrium Ahli Dokter Jiwa Bagi Terdakwa Dan Pertimbangan Hakim Dalam Memutus Tindak Pidana Penyalahgunaan Narkotika Golongan I (Studi Putusan Nomor : 575/Pid.B/2013/Pn-Kis.)," *Jurnal Verstek* 9 No. 2 (2021): 385.

³⁷ Herlin Sobari dan Maharani Nurdin, "Peran Psikiatri Dalam Penegakan Hukum Sebagai VisumEt Repertum," *Jurnal Ilmiah Wahana Pendidikan* 8 No 15 (2022): 278.

³⁸ Yulia Monita dan Dheny Wahyudhi, "Peranan Dokter Forensik Dalam Pembuktian Perkara Pidana," *Inovatif* 6 No. 7 (2013): 137, <https://media.neliti.com/media/publications/43243-ID-peranan-dokter-forensik-dalam-pembuktian-perkara-pidana.pdf>.

4. Providing statements that do not serve any additional legal function.

4. Closing

4.1. Conclusions

The conclusion drawn from the discussion above is that a perpetrator of sexual harassment will be held criminally accountable if they meet certain conditions in accordance with the provisions of the **KUHP**. These conditions serve as the basis for imposing criminal liability on the perpetrator. The conditions include the commission of a criminal act, the perpetrator's capacity to be held accountable, the presence of fault, and the absence of any grounds for the elimination of criminal liability. The role of psychiatric experts in cases of sexual harassment is highly significant. These experts will provide a *Visum et Repertum Psychiatrum*, which is essential in determining whether the perpetrator suffers from a mental disorder. This document serves as expert testimony and can be used as documentary evidence to facilitate the examination of the case.

4.2. Suggestions

The recommendation that can be put forward is that society, in coordination with law enforcement authorities, should work together to combat sexual crimes, regardless of the perpetrator, so that everyone can live in peace, in accordance with the ideals of law within society.

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