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Application of the Lex Favor Reo Principle to the Offense of Child Grooming under the National Criminal Code

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Abstract: This research is motivated by developments in national criminal law following the enactment of Law Number 1 of 2023 concerning the Criminal Code, which establishes the lex favor reo principle in Article 3. This principle mandates the application of the law most favorable to the defendant in the event of changes to legislation. Meanwhile, the rise of digital sexual crimes specifically child grooming presents a legal issue, as the act is not explicitly regulated in the National Criminal Code. This situation creates a dilemma between protecting the defendant's rights via the principle of legality and the need to protect children from digital sexual exploitation. Accordingly, this research addresses two issues: (1) the regulation of the lex favor reo principle within the National Criminal Code, and (2) the application of the lex favor reo principle to the crime of child grooming under the National Criminal Code. The study employs a normative-juridical research method, utilizing statutory, conceptual, and case-based approaches. Legal materials include primary sources (legislation), secondary sources (legal books and journals), and supporting tertiary sources. The findings indicate that the lex favor reo principle in the National Criminal Code serves as a safeguard for human rights and substantive justice, requiring the application of the most lenient law to the defendant. However, applying this principle to child grooming reveals a normative gap, as child grooming is not explicitly defined as a specific criminal offense. Therefore, a reformulation of national criminal law is required one that is more adaptive to the evolution of digital sexual crimes to ensure legal certainty while providing maximum protection for children.

Keywords: Asas Lex Favor Reo, Child Grooming, Normative Gap, Digital Sexual Crimes

INTRODUCTION

Advancements in information and communication technology have brought about significant changes in patterns of social interaction, including the relationships between adults and children in the digital realm. The internet, social media, online messaging apps, and digital gaming platforms are no longer used solely for communication and entertainment; they also serve as mediums for various forms of sexual crimes against children. One type of crime that has seen a significant rise in the digital era is "child grooming"—a series of manipulative actions taken by a perpetrator to foster emotional closeness, trust, or psychological dependency in a child for the purpose of sexual exploitation. This modus operandi unfolds in stages through

intensive communication, the provision of attention and gifts, threats, and the normalization of sexual behavior, ultimately leading to sexual exploitation—whether direct or facilitated through electronic media.

The phenomenon of child grooming constitutes a serious issue due to characteristics that differ from conventional sexual offenses.² In practice, the perpetrator may not yet have committed physical sexual violence but has already engaged in stages of psychological manipulation and the exploitation of power dynamics involving the child. Yet, from a criminological perspective, child grooming represents a highly dangerous initial stage, serving as a gateway to sexual violence against children, child pornography, online sexual exploitation, and even digitally facilitated human trafficking. Consequently, the evolution of digital sexual crimes against children necessitates a criminal justice approach capable of providing more progressive protection for the best interests of the child.

In the context of Indonesian criminal law, provisions regarding the protection of children from sexual exploitation are scattered across various regulations, such as Law Number 35 of 2014 concerning Child Protection, Law Number 12 of 2022 concerning the Crime of Sexual Violence, Law Number 1 of 2024 concerning Electronic Information and Transactions, and Law Number 1 of 2023 concerning the National Criminal Code. However, to date, the term "child grooming" has not been explicitly regulated as a distinct offense within the National Criminal Code. This situation creates challenges for law enforcement, as officials must interpret various criminal provisions—ranging from those concerning public decency and the sexual exploitation of children to child pornography—in order to address grooming acts committed via digital media.

On the other hand, the enactment of the National Criminal Code via Law Number 1 of 2023 introduces a new paradigm to Indonesia's criminal justice system, notably by reinforcing the principle of human rights protection and the principle of balancing legal certainty, justice, and utility. In this context, the **lex favor reo** principle is significant because it essentially mandates that criminal law provisions be interpreted or applied in the manner most favorable to the defendant in cases of doubt, conflicting norms, or ambiguity within criminal law regulations. This principle evolved as part of human rights protections in modern criminal justice systems to prevent excessive punishment and ensure the prudent application of criminal law.⁵

Doctrinally, the **lex favor reo** principle is rooted in the concept of protecting individuals within criminal law, positioning the defendant as a party requiring protection against the risk of erroneous sentencing resulting from ambiguous legal norms. This principle is closely linked to the principle of legality (**nullum delictum nulla poena sine lege**) and the presumption of innocence.⁶ In practice, when faced with two differing legal provisions or ambiguous criminal norms, a judge must select the interpretation that is most lenient and most favorable to the defendant. The **ratio legis** (underlying rationale) of this principle is to uphold legal certainty while simultaneously preventing the abuse of state power in the imposition of criminal penalties.

Issues arise when the principle of **lex favor reo** is applied to the offense of child grooming—fundamentally a form of sexual crime against children that possesses novel characteristics and evolves through digital technology. On one hand, child protection mandates the progressive and repressive application of criminal law against perpetrators of child sexual exploitation. On the other hand, the absence of explicit regulations regarding child grooming in the National Criminal Code (KUHP) creates uncertainty in defining the boundaries of criminalization and the framework for criminal liability. This situation risks an application of the **lex favor reo** principle that ultimately benefits the perpetrator, owing to a legislative gap or ambiguous interpretations of the criminal elements used to prosecute grooming acts.

Furthermore, applying the **lex favor reo** principle to child grooming offenses creates a dilemma between protecting the rights of the accused and protecting the child victim. From a modern criminal law perspective, children constitute a vulnerable group entitled to special state protection. However, an overly broad application of criminal law lacking a clear normative basis risks conflicting with the principles of legality and legal certainty.⁸ Therefore, a balance must be struck between protecting the rights of the child victim and protecting the rights of the suspect or defendant, in accordance with the principle of due process of law.

Furthermore, research on the **lex favor reo** principle has predominantly focused on the conflict of criminal norms, legal interpretation, and the general application of the principle of legality, whereas studies regarding its application to the crime of child grooming under the National Criminal Code remain relatively limited. Yet, the evolution of digital sexual crimes against children demonstrates that criminal law faces new challenges in defining the boundaries of criminalization, structuring criminal liability, and upholding human rights during law enforcement.

METHOD

This type of research is normative-juridical research—specifically, normative legal research—defined as research conducted by examining library materials or secondary data. Normative legal research focuses on the study of positive legal norms from the perspective of legal dogmatics, legal theory, and legal philosophy. "The concept of thinking is a deductive method, namely a way of thinking in drawing conclusions about something general that has been proven to be true and that conclusion is aimed at something specific.

This study employs a normative-juridical research method, focusing on the analysis of primary and secondary legal materials by viewing law as a set of norms operating within the legislative system.³⁰ This approach is utilized to examine the application of diversion in cases of theft with violence committed by children within the juvenile criminal justice system. Normative legal research fundamentally aims to identify legal rules, principles, and doctrines to address the legal issues at hand.³¹ Furthermore, this study serves to formulate rational and systematic legal arguments. The research focuses on a normative analysis of the legal provisions governing the juvenile criminal justice system, which is essential for providing a comprehensive understanding of the legal issue under investigation.

Given that this study employs a normative legal research methodology, it is necessary to utilize two approaches: the statutory approach and the conceptual approach. The statutory approach involves examining various laws and regulations related to the juvenile criminal justice system—specifically Law Number 11 of 2012 concerning the Juvenile Criminal Justice System—as well as provisions in the Criminal Code governing the crime of theft with violence.³² Meanwhile, the conceptual approach is used to analyze the concepts of diversion, restorative justice, and the best interests of the child within the context of criminal law. This approach is essential for gaining a deep and comprehensive understanding of legal concepts. Furthermore, it aids in constructing a systematic legal argument. Thus, the two approaches complement each other in the research analysis.

RESULT AND DISCUSSION

The Regulation of the **Lex Favor Reo** Principle in the National General Criminal Law Code

The principle of **lex favor reo** is fundamentally a cornerstone of criminal law, requiring that legal provisions be applied in the manner most favorable to the defendant in instances of legislative change, conflicts of norms, or ambiguity in the interpretation of criminal law. This principle stems from the concept that criminal law serves not merely as an instrument of punishment but also as a means of safeguarding human rights against the potential abuse of

state power. Consequently, the **lex favor reo** principle plays a vital role in achieving substantive justice within modern criminal justice systems.³⁴

The philosophical foundation of Article 3 of Law Number 1 of 2023 is the **lex favor reo** principle; this means that in the event of a change in legislation, the rule most lenient to the defendant is applied. Such legislative changes encompass not only criminal law regulations themselves but also regulations outside the realm of criminal law that are nonetheless linked to it. In criminal law, the non-retroactivity principle is indeed recognized as a fundamental tenet, yet it is not absolute. Exceptions to this principle arise precisely to safeguard individual rights against the application of harsher laws. Consequently, the normative significance of Article 3, Paragraph (1) of the National Criminal Code must be interpreted within the framework of human rights protection, the principle of justice, and the rule of law.

In the context of the transition toward the implementation of the National Criminal Code and the new Criminal Procedure Code, Article 3, Paragraph (1) must be viewed as an instrument to guard against potential structural injustice. For cases that have been referred to court but remain undecided, this provision serves as a bridge to justice, ensuring that an individual is not punished under a superseded legal system if the new legal system affords greater protection for their rights.

Normatively and philosophically, Article 3, Paragraph (1) must be construed as a mandatory directive requiring judges to consistently evaluate and apply the legal provisions most favorable to the defendant. Within the Indonesian criminal justice system, the normative basis of the **lex favor reo** principle is explicitly reflected in Article 3 of Law Number 1 of 2023 concerning the Criminal Code. This provision stipulates that in the event of a change in legislation following the commission of a criminal offense, the rule most favorable to the perpetrator shall apply.

Philosophically, this regulation is rooted in the principles of justice and the protection of individual rights within a state governed by the rule of law. While the principle of non-retroactivity is indeed crucial in criminal law, it is not absolute; exceptions are permissible when a change in the law actually benefits the defendant. In this context, the principle of **lex favor reo** embodies the principle of humanity in criminal law, as the state is deemed unjustified in maintaining the application of a harsher norm when the legislature itself has shifted its penal orientation toward a more lenient or humane approach.

Furthermore, the **lex favor reo** principle is closely linked to the principle of legality—as enshrined in Article 1 paragraph (1) of Law Number 1 of 2023—which affirms that no act is punishable except based on pre-existing criminal provisions (**nullum delictum nulla poena sine lege**). The principle of legality serves not only to limit the state's authority to impose punishment but also to guarantee legal certainty and protection against arbitrary, repressive actions. Consequently, in instances of ambiguity regarding criminal norms or conflicting interpretations, legal interpretation must favor the meaning most beneficial to the defendant, thereby upholding human rights and the principle of due process of law.

This provision affirms that a person may only be criminally liable if proven to have committed a criminal act intentionally or through negligence. This demonstrates that national criminal law does not countenance objective liability—imposing punishment without proof of actual culpability. Consequently, in instances of doubt regarding the element of fault, the construction of the offense, or the application of criminal norms, judges are obliged to prioritize the interpretation most favorable to the defendant to uphold substantive justice.

In the context of the transition to the National Criminal Code and the reform of Indonesia's criminal justice system, Article 3 of Law Number 1 of 2023 serves as a crucial instrument for safeguarding against potential structural injustice. This provision acts as a bridge to justice for cases still under examination or lacking a final, binding judgment at the time of a

change in criminal law. Thus, an individual is no longer compelled to submit to an abandoned legal system if the new law affords greater protection for their rights.

Based on the foregoing, the incorporation of the **lex favor reo** principle into the National Criminal Code is understood not merely as a technical rule regarding legislative amendments, but as a manifestation of a modern criminal law orientation that prioritizes the protection of human rights, legal certainty, and justice. Therefore, Article 3 of Law Number 1 of 2023 must be construed as a mandatory directive for judges to consistently evaluate and apply the legal provisions most favorable to the defendant in the event of changes to criminal law or ambiguity in the application of legal norms.

Application of the **Lex Favor Reo Principle to the Crime of Child Grooming under the National Criminal Code**

The application of the **lex favor reo** principle to the crime of child grooming within the National Criminal Code presents a complex issue, as it lies at the intersection of protecting the defendant's rights—via the principle of legality—and the state's obligation to provide maximum protection for children as a vulnerable group. Advancements in information and communication technology have given rise to new forms of sexual crime that cannot always be directly addressed by conventional criminal law frameworks. One such crime is child grooming: a process of psychological manipulation employed by a perpetrator to cultivate emotional closeness, trust, and dependency in a child, with the ultimate aim of future sexual exploitation. This practice typically unfolds via digital channels such as social media, instant messaging apps, online games, and other electronic communication platforms.

Conceptually, child grooming is not a standalone physical act but rather a series of incremental actions carried out systematically by the perpetrator. Perpetrators usually begin by establishing seemingly normal communication—offering emotional attention, gifts, or psychological support to the child—before gradually steering the relationship toward sexual conversations, the exchange of pornographic content, requests for intimate images, and, eventually, direct or online sexual exploitation.

From a modern criminological perspective, child grooming is viewed as a form of predatory sexual behavior that has serious psychological impacts on the child. According to David Finkelhor, sexual offenses against children are fundamentally rooted in an unequal power dynamic between the perpetrator and the victim, wherein the perpetrator exploits the child's psychological vulnerabilities, emotional immaturity, and dependency to gain sexual control. Finkelhor explains that the manipulation process preceding sexual exploitation is an integral part of the sexual offense itself, as the perpetrator consciously creates conditions that strip the child of the ability to refuse or comprehend the danger they face. Therefore, child grooming must be understood not merely as a preparatory stage, but as a distinct form of psychological and sexual abuse.

A similar view is expressed by Catherine Knibbs, who characterizes child grooming as a form of "coercive psychological conditioning" inflicted upon the child. She argues that perpetrators gradually normalize sexual behavior through emotional manipulation and the cultivation of trust, leaving the child unaware that they are being victimized. In this context, the primary danger of child grooming lies in the erosion of the child's psychological boundaries prior to the occurrence of physical sexual abuse. Consequently, criminal law approaches that focus exclusively on the act of sexual intercourse or concrete sexual exploitation are no longer adequate to address the evolution of modern digital sexual offenses.

Under such circumstances, the principle of **lex favor reo** plays a crucial role as an instrument for protecting the rights of the accused. This principle dictates that in cases of ambiguity regarding legal norms, vagueness in the elements of an offense, or changes in legislation, the judge is obliged to apply the provision most favorable to the accused. This

principle aligns with Article 3 of Law Number 1 of 2023, which stipulates that if there is a change in legislation after an act has been committed, the rule most favorable to the perpetrator shall apply. In the context of child grooming, this provision is significant due to the possibility of future changes in criminal law formulations that might specifically classify child grooming as a distinct offense.

Furthermore, the **lex favor reo** principle is closely linked to the principle of legality—as enshrined in Article 1 paragraph (1) of Law Number 1 of 2023—which asserts that no act may be punished unless based on pre-existing criminal provisions. Fundamentally, the principle of legality requires that the definition of an offense be clear (**lex certa**), written (**lex scripta**), and not subject to interpretation by analogy (**lex stricta**). Therefore, if an act of child grooming has not yet been clearly ...fulfills the elements of a specific criminal offense as defined by statute, a judge must not arbitrarily expand the interpretation of criminal law solely to satisfy a sense of justice. In such situations, the principle of **lex favor reo** dictates that legal interpretation must prioritize the protection of the defendant's rights to avoid criminalization that exceeds the bounds of legality.

However, applying the **lex favor reo** principle to the offense of child grooming cannot be divorced from the principle of child protection as a fundamental human right. Children constitute a vulnerable group constitutionally entitled to protection against all forms of violence and sexual exploitation. This is affirmed in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that every child has the right to survival, growth, and development, as well as the right to protection from violence and discrimination. This protection is further elaborated in Law Number 35 of 2014 concerning Child Protection, which mandates that the state, government, society, and parents protect children from sexual crimes, including electronic-based sexual exploitation.

Furthermore, regulations regarding the protection of children from sexual violence have been reinforced by Law Number 12 of 2022 concerning Sexual Violence Crimes, which recognizes various forms of electronic-based sexual violence as criminal offenses. Although the law does not explicitly use the term "child grooming," the substance of its protective measures acknowledges that sexual violence can occur through processes involving psychological manipulation and digital technology. Thus, the evolution of national law is shifting toward recognizing modern forms of sexual crime that do not necessarily involve direct physical contact.

In addition to the CRC, there is the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, which Indonesia ratified via Law Number 10 of 2012. This instrument expands state obligations regarding the prevention of technology-based sexual exploitation of children, including the distribution of child pornography via electronic media. Internationally, the concept of "child grooming" is recognized as a serious threat to child safety in the digital realm, as it serves as a preliminary stage to the online sexual exploitation of children.

In this context, the application of the **lex favor reo** principle to cases of child grooming requires a proportional balance between protecting the rights of the accused and protecting the rights of the child as a potential victim. Judges must uphold the principle of legality and refrain from expansive interpretations of criminal law that exceed statutory limits. However, they must also consider the principle of the "best interests of the child"—a fundamental tenet of child protection law—which mandates that the child's best interests be the primary consideration in all policies and law enforcement actions concerning children.

According to Satjipto Rahardjo, law should not be understood rigidly as merely normative text; rather, it must be viewed as a means to protect individuals and achieve social justice. In the context of child grooming, a progressive legal approach is relevant because the evolution of digital sexual crimes often outpaces the development of regulations. Nevertheless,

this progressive approach must remain within the confines of the principle of legality to avoid arbitrary sentencing. Consequently, balancing child protection with the protection of the defendant's rights lies at the heart of applying the **lex favor reo** principle in child grooming cases.

The application of the **lex favor reo** principle to child grooming offenses reveals that Indonesia's national criminal justice system still faces a normative gap in responding to the increasingly complex evolution of digital sexual crimes. This situation creates a dilemma between the need to provide maximum protection for children—a vulnerable group—and the state's obligation to uphold the principle of legality and protect the defendant's human rights. In law enforcement practice, officials are often compelled to rely on general statutory provisions—such as those concerning public decency, child pornography, child sexual exploitation, or electronic crimes—to prosecute perpetrators of child grooming. However, employing such an interpretive approach risks creating legal uncertainty, as the elements of child grooming differ fundamentally from conventional sexual offenses, which typically require actual physical contact or tangible sexual exploitation.

CONCLUSION

1. The **lex favor reo** principle is enshrined in Article 3 of Law Number 1 of 2023 (the National Criminal Code), which stipulates that if there is a change in legislation after a criminal offense has been committed, the provisions most favorable to the perpetrator shall apply. This principle serves as a safeguard for human rights, legal certainty, and substantive justice within the national criminal justice system; it is closely linked to the principle of legality and the principle of protecting the accused from the application of harsher penalties.
2. Applying the **lex favor reo** principle to the offense of child grooming reveals a gap in national criminal law, as child grooming is not yet explicitly defined as a specific criminal offense within the National Criminal Code. This situation creates a dilemma between upholding the rights of the accused—based on the principle of legality—and the need to protect children from digital sexual exploitation. Consequently, a more specific and adaptive reformulation of criminal law is required to ensure that law enforcement actions against child grooming rest on a clear basis for criminalization without violating the principle of legality.

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