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BETWEEN FORMAL LEGALITY AND SUBSTANTIVE JUSTICE: SENTENCING CHILDREN IN SEXUAL ACTIVITY CASES UNDER ARISTOTLE'S JUSTICE

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Abstract: *Indonesian courts continue to imprison children in cases of sexual activity between adolescents, although the Juvenile Criminal Justice System treats deprivation of liberty as a last resort. This article examines how evidentiary proof, criminal liability, and sentencing were established in two Tebing Tinggi District Court rulings (Nos. 1/Pid.Sus-Anak/2023/PN Tbt and 5/Pid.Sus-Anak/2023/PN Tbt) and evaluates the sentences through Aristotle's theory of justice. Using normative legal research with statute and case approaches, it finds that both rulings meet the formal requirements of proof and liability, but that the courts built the decisive element of persuasion from the perpetrators' affectionate statements in an almost identical way, although the victim consented in the first case and explicitly refused in the second. Neither ruling explains why imprisonment was chosen over the alternatives available under Law Number 11 of 2012. Measured against Aristotle's distinction between general and particular justice, and against the principle of ordinal proportionality, both rulings conform to general justice but fail corrective justice, because they offer the victims no restoration, and distributive justice, because the case involving refusal received the shorter sentence. The article contributes a framework for reviewing juvenile sentencing reasons and recommends judicial guidance on the threshold of persuasion.*

Keywords: Aristotle; Distributive Justice; Element of Persuasion; Juvenile Sentencing; Sexual Activity Cases

1. Introduction

A survey by the National Population and Family Planning Board (BKKBN) found that first sexual intercourse among adolescents occurs between the ages of 15 and 19 for 74% of male and 59% of female adolescents (Almira, 2024). This finding warrants close attention, because the age range falls within the legal category of children, so that sexual activity within this group may give rise to criminal consequences for perpetrators who themselves hold the legal status of a child under Article 1 paragraph (1) of Law Number 35 of 2014 on Child Protection.

Sexual activity carries implications for many aspects of adolescents' lives, including the risk of sexually transmitted infections (Helda & Muchlisa, 2021), unplanned pregnancy (Etrawati et al., 2024), early marriage, psychological effects, and legal consequences. In criminal law, these consequences bear directly on the determination of liability and on the sentence that may be imposed on a child, a matter specifically regulated by the Juvenile Criminal Justice System (*Sistem Peradilan Pidana Anak*, SPPA).

Two rulings of the Tebing Tinggi District Court illustrate the problem. The first, Ruling Number 1/Pid.Sus-Anak/2023/PN Tbt, decided on 30 March 2023, involved a 17-year-

old boy who had sexual intercourse with a 15-year-old girl within a dating relationship. The judge sentenced him to 2 years and 4 months of imprisonment at the Special Child Development Institution (*Lembaga Pembinaan Khusus Anak*, LPKA), together with one month of work training in lieu of a fine. The judge held that he had been proven legally and convincingly to have used deceit, a series of lies, or persuasion to induce the girl to have intercourse, even though her own statement indicated that the relationship was consensual.

The second, Ruling Number 5/Pid.Sus-Anak/2023/PN Tbt, decided on 3 May 2023, involved a 17-year-old boy who committed sexual abuse against a 16-year-old girl, also within a dating relationship. Unlike in the first case, the girl's statement indicated that she had refused and that the boy had continued regardless. The judge sentenced him to 2 years of imprisonment at the LPKA, together with three months of work training in lieu of a fine.

The crucial factual distinction between the two cases lies in the presence of voluntariness in the first and of explicit refusal in the second. In principle, this distinction should produce differences in the form of liability and in the severity of the sentence. Yet both cases produced punishments of a similar type and range. A similar sentencing pattern appears in several other rulings, including Gunung Sugih District Court Number 1/Pid.Sus-Anak/2025/PN Gns, Lubuk Pakam District Court Number 8/Pid.Sus-Anak/2023/PN Lbp, Gunung Sugih District Court Number 22/Pid.Sus-Anak/2024/PN Gns, and Lubuk Pakam District Court Number 69/Pid.Sus-Anak/2023/PN Lbp.

This tendency matches broader criticism of the juvenile justice system. Research by the Institute for Criminal Justice Reform shows that judges have not applied alternative sentences consistently and that rulings in juvenile cases remain dominated by imprisonment (ICJR, 2017). The pattern runs counter to the principle underlying the SPPA, which treats deprivation of liberty and imprisonment as measures of last resort, to be used sparingly and with due regard to the best interests of the child (United Nations, 1989) and to the child's growth and development, as affirmed in the relevant General Comment (Committee on the Rights of the Child, 2013).

The issue therefore concerns how a sentence of imprisonment ought to be imposed on a child, and not only whether it may be imposed. In juvenile cases, the fulfilment of the elements of an offence and the legal basis of liability do not by themselves establish whether the type and severity of the sentence suit the child's circumstances and the nature of the act. The sentencing of a child must be examined from the standpoint of justice as well as from that of legality.

To analyze this issue, the study draws on Aristotle's theory of justice, specifically the dimensions of particular justice, namely distributive and commutative (corrective) justice. Distributive justice concerns the proportional allocation of rights, duties, and rewards according to an individual's standing or contribution in society (Maghfiroh et al., 2025). Commutative justice preserves the balance of relations between individuals by providing restitution or commensurate compensation for losses arising from an act that violates another person's rights (Maghfiroh et al., 2025). Contemporary sentencing theory gives these Aristotelian categories operational content. Von Hirsch and Ashworth

(2005) develop the principle of ordinal proportionality, under which offenders whose conduct is equally blameworthy should receive equally severe sentences, while offenders whose conduct differs in blameworthiness should receive sentences ranked accordingly. The developmental literature adds a further consideration specific to juveniles: Steinberg and Scott (2003) argue that adolescents warrant mitigation because their decision-making capacity is diminished, they are less able to resist coercive influence, and their character is still forming.

The present study differs in focus from earlier research, which has generally examined judicial considerations or the conformity of criminal provisions as applied in juvenile cases. Some studies have addressed proof and criminal liability, but this study makes justice in the sentencing of children in cases of sexual activity its primary focus and uses Aristotle's theory of justice as its analytical framework.

The study addresses two questions. First, how were proof and criminal liability established in the sentencing of children in sexual activity cases in Tebing Tinggi District Court Rulings Number 1/Pid.Sus-Anak/2023/PN Tbt and Number 5/Pid.Sus-Anak/2023/PN Tbt? Second, how can the sentencing in both cases be evaluated from the perspective of Aristotle's theory of justice?

2. Method

This study is normative legal research based on library materials, drawing on statutory regulations, positive legal provisions, and theoretical perspectives relevant to the issue (Widiarty, 2024). It uses a statute approach and a case approach.

The legal materials comprise primary and secondary materials. The primary materials include Law Number 11 of 2012 on the Juvenile Criminal Justice System, Law Number 35 of 2014 on Child Protection, Law Number 17 of 2016 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection into Law, and other relevant statutory regulations. The study also examines two rulings of the Tebing Tinggi District Court, Ruling Number 1/Pid.Sus-Anak/2023/PN Tbt and Ruling Number 5/Pid.Sus-Anak/2023/PN Tbt, both concerning offences under Article 76D and/or Article 76E of Law Number 35 of 2014, as the objects of analysis for assessing the rationality of judicial sentencing of children. The case approach examines the *ratio decidendi* of each ruling, that is, the reasons on which the court relied in establishing the elements of the offence and in choosing the sentence. Because the two rulings come from the same court, were decided within five weeks of each other, and involve perpetrators of the same age charged under closely related provisions, they allow a controlled comparison in which the principal factual variable is the presence of consent or refusal. The analysis does not claim that these two rulings represent all juvenile sentencing in Indonesia; it uses them to examine whether the reasons given by the courts can sustain the outcomes they reached.

The secondary materials consist of relevant literature, journal articles, and books, collected through library research (Solikin, 2021). The materials were analyzed qualitatively using techniques of legal interpretation to examine legal norms, patterns

of judicial reasoning, and the coherence between judicial practice and the relevant legal principles.

3. Analysis and Discussion

3.1. Evidentiary Proof and Criminal Liability

In criminal proceedings, proof aims to establish a clear account of the truth of an event so that a logical conclusion can be drawn from it (Lawra et al., 2024). The judge must ascertain the material truth, which means that the criminal event must be proven beyond reasonable doubt. Under the theory of negative statutory proof (*negatief wettelijk*), a criminal sentence requires two forms of proof: conformity with the evidence recognized by statute, and the judge's conviction grounded in that valid evidence (Cahyani, 2023), with a minimum of two valid pieces of evidence. The key points of each case show how the courts established the sexual activity between the children.

3.1.1. Tebing Tinggi District Court Ruling Number 1/Pid.Sus-Anak/2023/PN Tbt

The boy, aged 17 and a student, was in a dating relationship with a 15-year-old girl. The prosecutor charged him under the primary indictment of Article 81 paragraph (2) in conjunction with Article 76D of Law Number 17 of 2016 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection into Law, in conjunction with Article 64 paragraph (1) of the Criminal Code and Law Number 11 of 2012, and demanded 3 years and 6 months of imprisonment at the LPKA, less the period of pretrial detention, together with two months of work training in lieu of a fine. The evidence submitted consisted of a black long-sleeved T-shirt and *visum et repertum* (forensic medical examination report) Number 50/VER/I/2023/RSBTT dated 25 January 2023. According to the girl's testimony, the relationship was mutually consensual and free of coercion.

The court held that the boy had fulfilled the element of intent by using deceit, a series of lies, or persuasion to induce the girl to have intercourse with him on two occasions, and that he had intentionally deceived her by seducing her, expressing affection, and promising to take responsibility for her. As an aggravating circumstance, it found that his act had caused public unrest and damaged the girl's future; as mitigating circumstances, it noted that he had behaved courteously at trial, admitted the act, promised not to repeat it, and had no prior record. The court also took into account the community research report of the Correctional Supervisor, which recommended "that a lenient sentence be imposed, with placement at LPKA Medan, and that any work training be carried out outside of LPKA." It sentenced the boy to 2 years and 4 months of imprisonment at the LPKA, together with one month of work training to be carried out outside the LPKA. The ruling contains no specific reasoning explaining the choice of imprisonment as the form of sentence.

3.1.2. Tebing Tinggi District Court Ruling Number 5/Pid.Sus-Anak/2023/PN Tbt

The boy, aged 17 and working as a coconut milk producer, was in a dating relationship with a 16-year-old girl. The prosecutor's charge stated that he had been proven legally

and convincingly guilty of "persuading a child to commit or allow an indecent act to be committed." He was charged under Article 82 paragraph (1) in conjunction with Article 76E of Law Number 17 of 2016, and the prosecutor demanded 2 years of imprisonment at the LPKA, less the period of pretrial detention, together with three months of work training in lieu of a fine. The evidence included a black long-sleeved T-shirt, a pair of brown trousers, and a white bra. According to the boy's own statement, the girl had refused, but he proceeded regardless.

The panel held that the boy had intentionally deceived the girl by seducing her and expressing affection so that she agreed to intimate contact, and that he was proven legally and convincingly guilty of intentionally persuading her to commit an indecent act with him. It applied the same aggravating circumstance, that the act had caused public unrest and damaged the girl's future, and the same mitigating circumstances of courteous conduct at trial, admission, a promise not to repeat the act, and the absence of a prior record. It took into account the Correctional Supervisor's recommendation of a lenient sentence with placement at LPKA Medan and work training outside the LPKA. The court sentenced the boy to 2 years of imprisonment at the LPKA and three months of work training in lieu of a fine. As in the first ruling, it gave no specific reasoning for choosing imprisonment as the form of sentence.

3.1.3. The Element of Persuasion and the Problem of a Vague Norm

Formally, both rulings meet the minimum evidentiary requirements of the negative theory of proof. Ruling Number 1 rests on clothing, witness testimony, the forensic medical report, the defendant's statement, and the testimony of the victim's older sibling. Ruling Number 5 rests on clothing, witness testimony, the defendant's statement, and the testimony of the victim's mother. This evidence conforms formally to the indictments. Satisfying the formal requirement, however, does not resolve the substantive question of the element of "persuasion", an essential element of the charged provisions.

The *Kamus Besar Bahasa Indonesia* (Great Dictionary of the Indonesian Language) defines *membujuk* ("to persuade") as an attempt to convince someone that what one says is true, whether to win their affection, to deceive them, or the like, or to entice (Kamus Besar Bahasa Indonesia, 2026). In criminal law, *membujuk* means inducing another person to commit an offence by giving or promising something, abusing power or standing, using violence, deceiving, or providing opportunity, means, or information, as provided in Article 20 letter d of the Criminal Code (Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, 2023). Supreme Court Circular Letter (SEMA) Number 5 of 2014 broadens this construction by including acts intended to arouse a victim's sexual desire as a form of persuasion (Surat Edaran Mahkamah Agung Nomor 5 Tahun 2014 Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2014 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan, 2014).

In both rulings, the judges built the element of persuasion from the perpetrator's affectionate statements: "I love you and will take responsibility" in the first ruling and "I love you" in the second. Measured against the definitions above, both statements could

be read as attempts to convince the girl to engage in sexual activity. The same statements could equally be read as expressions of affection within a dating relationship, without any manipulative intent directed at harming the victim. The ambiguity deepens when linked to the category of acts “arousing sexual desire”, since neither ruling explains how such affectionate statements satisfy that category.

Such ambiguity indicates a vague norm, which invites multiple interpretations and subjective application and diminishes legal predictability (Wiji & Mahardhika, n.d.). Endicott (2000) shows that vagueness is a pervasive feature of legal language and cannot be eliminated by drafting alone; what the rule of law requires is that officials who apply vague standards give reasons that show how the standard was applied to the facts before them. The rulings fail this requirement most clearly in Ruling Number 1, where the girl’s statement indicated a consensual relationship, yet the court treated the boy as the sole culpable party through the same construction of persuasion that it applied in Ruling Number 5, a case involving the victim’s explicit refusal. This inconsistency shows that the proof of persuasion did not take adequate account of the significant factual differences between the two cases.

The adolescent context sharpens the problem. Steinberg and Scott (2003) observe that adolescents are more susceptible to peer influence and less able to weigh long-term consequences than adults. These characteristics apply to both participants in a dating relationship between a 17-year-old and a 15-year-old. When a court reads the older adolescent’s expression of affection as manipulation, it attributes to him an instrumental capacity that the developmental literature questions, while it treats the younger adolescent’s stated consent as legally irrelevant. The law may legitimately protect children below a certain age from sexual activity regardless of their consent, but it cannot, without explanation, treat consent and refusal as indistinguishable for the purpose of assessing the perpetrator’s culpability.

Notwithstanding this ambiguity, the other elements of criminal liability raised little dispute (Wati & Fatah, 2020). Both the perpetrator and the victim held the legal status of a child under Article 1 paragraph (3) of Law Number 11 of 2012, which satisfies the age requirement. The courts found no grounds for excluding criminal liability (Rosyadi, 2022), since the act was not committed in self-defence and each child’s mental condition was found to be sound. The element that is substantively most problematic and most decisive for the sentencing outcome is therefore the element of persuasion itself, which the courts constructed in a similar manner across two cases with markedly different facts.

Beyond criminal liability, the sentencing itself requires analysis. The children received 2 years and 4 months and 2 years of imprisonment respectively, together with work training in lieu of a fine. These sentences are consistent with the substantive provisions governing violations of Article 76D and/or Article 76E of Law Number 35 of 2014, under which a fine may be replaced with work training pursuant to Article 71 paragraph (3) (Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak, 2012). Neither ruling, however, explains the choice of imprisonment over the other types of sentence available under Law Number 11 of 2012, and neither considers the child’s growth, development, or best interests.

The absence of such considerations is problematic, since the principle of restorative justice embodied in the SPPA emphasizes the restoration of relationships among the perpetrator, the victim, and the community (Supyadi & Prayuti, 2025) through diversion. The severity of the punishment threatened for this offence, however, rendered diversion unavailable (Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak, 2012). The unavailability of diversion does not remove the judge's obligation under Article 70 of the SPPA to consider justice and humanity (Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak, 2012), including alternative principal sentences such as a warning, a conditional sentence with supervision outside an institution, community service, probation, work training, and institutional guidance, as well as additional sentences in the form of the confiscation of profits derived from the offence and the fulfilment of customary obligations under Article 71 (Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak, 2012). In both rulings, the sentencing emphasizes the fulfilment of the elements of substantive law over the child's individual circumstances, the nature of the offence, the background of the act, and the repair of the harm suffered by the victim. The Correctional Supervisor's community research report, which the law requires precisely so that the court can individualize the sentence, illustrates the point. In both cases the report recommended a lenient sentence, and in both cases the court recorded the recommendation without explaining how it had influenced the outcome or why it had not been followed further. A sentencing decision that cites the report but does not engage with it complies with the procedure of individualization while leaving its substance unrealized. The omission matters for appellate review as well, since a higher court cannot assess whether a sentence is proportionate when the first-instance court has not stated the factors it weighed.

3.2. The Sentencing of Children under Aristotle's Theory of Justice

The sentencing of children in cases of sexual activity cannot be separated from the question of justice. In Book V of the *Nicomachean Ethics*, Aristotle distinguishes general justice from particular justice (Aristotle, 2009). General justice means acting in accordance with law ("whatever is lawful is in some way just") (Keladu, 2023), on the assumption that law is enacted by legislators who know what is good or just and what is not (Keladu, 2023). Justice is also a practice of virtue that involves a relation to others: the person who acts unjustly acts for his own advantage at the expense of another (Chroust & Osborn, 1942). General justice is thus realized when a person's conduct conforms to law and also brings good to others within the fabric of social relations.

The prohibition of sexual activity between children rests in the first place on positive law currently in force, the *ius constitutum* (Taufiq, 2021). The prohibition appears in several instruments, including the Criminal Code, the Law on Sexual Violence Crimes, and the Child Protection Law. Because the sexual activity in question occurred between two children, the principle of *lex specialis* applies and points to Article 76D and/or Article 76E of Law Number 35 of 2014. At the level of normative formulation, this provision reflects general justice, since it aims to protect the broader interests of children. General justice in Aristotle's sense is directed to the common good of the political community, and the

protection of children from sexual exploitation is a clear instance of such a good. The provision's legitimacy at this level is therefore not in question. What the following analysis examines is whether the courts applied it in a manner that preserved the good it was meant to secure, for both the children whose interests it protects and the children it renders liable.

Formal conformity with law does not settle the question of justice. As the preceding section showed, the element of persuasion remains ambiguous and open to subjective application. If general justice requires that law be formulated by those who understand what is just, the unclear formulation of this element becomes a problem in its own right before any question of particular justice arises, because a vague norm can diminish the quality of general justice at the level of application even when the provision is formally valid and in force.

Aristotle anticipated this problem and offered a remedy in his account of equity (*epieikeia*) in Book V, Chapter 10 of the *Nicomachean Ethics*. Law, he observes, speaks in universal terms, and there are cases that a universal statement cannot address correctly. When a case arises that the law does not fit, it is right for the judge to correct the omission by saying what the legislator would have said had he been present and would have provided had he known (Aristotle, 2009). Equity on this account does not oppose law but completes it, by adjusting a general rule to the particular facts that its authors could not foresee. The provisions on persuasion in Articles 76D and 76E of Law Number 35 of 2014 were framed to protect children from adults and from manipulative older persons. Their application to two adolescents in a dating relationship is precisely the kind of case in which the universal formulation of the law may not fit the facts, and in which Aristotle would expect the judge to reason about what the law's protective purpose requires. Neither ruling engages in such reasoning. Both apply the formula of persuasion as if its universal terms settled the particular case, which is the error that equity exists to correct.

The Indonesian legal framework already contains the means for such correction. Article 70 of Law Number 11 of 2012 allows the judge to take into account the lightness of the act, the personal circumstances of the child, and the circumstances at the time of the act or afterwards as grounds for not imposing a criminal sentence or for imposing a measure (*tindakan*) instead, with due regard to justice and humanity, and Article 71 offers a range of non-custodial sentences. These provisions are the statutory form of Aristotelian equity in juvenile cases. The failure of the two rulings therefore lies in the judges' omission to use the tools of individualization that the law provides, rather than in any absence of legal authority to individualize.

Aristotle divides particular justice into corrective and distributive justice. Particular justice concerns the proper disposition toward the goods of others: the just person takes only what is fair or equal in relation to another's goods (Collins, 2002). An unjust act by one party may cause loss to another (Keladu, 2023). Corrective justice concerns the restoration of balance between two parties in an unequal relationship created by a harmful act: the party who suffered harm is entitled to be restored to his or her original position, and the party who caused the harm bears responsibility for that restoration.

Weinrib (2012) clarifies the structure of this idea. In his reading of Aristotle, corrective justice is correlative: it links a particular doer to a particular sufferer, so that the remedy must address the same relationship that the wrong disturbed. This structure explains why a criminal sentence, which runs between the state and the offender, cannot by itself satisfy corrective justice toward the victim. In both rulings, the sentences of imprisonment and work training in lieu of a fine are consistent with the punishment threatened under Article 81 paragraph (2) and/or Article 82 paragraph (1) of Law Number 17 of 2016. Neither ruling, however, provides any concrete restoration for the child victim, whether restitution, compensation, or psychological rehabilitation. Imprisonment is retributive toward the perpetrator and offers nothing restorative to the victim. Even though the sentences fall within the applicable range, corrective justice in the sense of restoring the harmed party to her original position has not been achieved in either ruling. Braithwaite (2002) makes the same point from the standpoint of restorative justice, which measures a response to wrongdoing by the extent to which it repairs harm to victims and relationships rather than by the quantity of pain imposed on the offender.

The study places greater emphasis on distributive justice, because the central issue in both rulings concerns how the burden of punishment is distributed in proportion to each perpetrator's degree of culpability. Three ethical frameworks govern a just distribution: the principle of utility, which emphasizes the usefulness of the goods distributed; the principle of egalitarianism, which emphasizes equality; and the principle of libertarianism, which emphasizes the right to the fruits of one's own labour (Sandel, 2009). These principles concern the distribution of honour, wealth, and other goods commonly attainable in society. Setting aside "mathematical proof", Aristotle had in mind the distribution of wealth and other valued goods according to the values prevailing among citizens, so that a just distribution corresponds to the value of the good involved, that is, its value to society (Suheri, 2018).

Distributive justice requires that every individual, regardless of status, be accorded equal rights. This corresponds to the principle of equality before the law, under which all persons stand equal within and before the law (Chaidar, 2020), regardless of social status, including differences in the occupational or educational status of the children involved.

Distributive justice also requires that individuals receive their due according to their respective contributions and needs. "Proportional" does not always mean equal division, but a fair allocation adjusted to what each individual deserves (Najah & Arifah, 2024). The two rulings involve significantly different facts. In Ruling Number 1, the intercourse occurred on a mutually consensual basis, without coercion, according to the victim's own statement; in Ruling Number 5, the victim explicitly refused, and the perpetrator disregarded her refusal and proceeded. Within the framework of distributive justice, this difference should produce a proportional difference in culpability and in the severity of the sentence, since the perpetrator in Ruling Number 5 continued despite knowing of the victim's refusal, which reflects a qualitatively higher degree of culpability than in Ruling Number 1.

Both children nevertheless received substantially similar terms of imprisonment, 2 years and 4 months under Ruling Number 1 and 2 years under Ruling Number 5, without any reasoning that linked the factual difference to a difference in severity. Both rulings construct the element of persuasion from the perpetrator's affectionate statements without distinguishing the evidentiary weight of a situation grounded in consent from one grounded in disregarded refusal. The distribution of the punitive burden in the two rulings therefore fails to reflect the principle of proportionality inherent in Aristotle's distributive justice, since factually unequal circumstances were treated as roughly equal.

The principle of ordinal proportionality developed by von Hirsch and Ashworth (2005) makes the failure more precise. Ordinal proportionality has three requirements: parity, under which equally blameworthy conduct receives equally severe sentences; rank-ordering, under which more blameworthy conduct receives a more severe sentence than less blameworthy conduct; and spacing, under which the gaps between sentences reflect the gaps in blameworthiness. The two Tebing Tinggi rulings do more than fail the requirement of spacing. They invert the rank order, since the perpetrator who proceeded despite the victim's refusal received the shorter term of imprisonment, while the perpetrator in the consensual relationship received the longer one. Even allowing for differences in the charged provisions, the courts gave no reasons that could justify this inversion. Read together with Steinberg and Scott's (2003) argument for developmentally informed mitigation, the inversion shows that the sentencing reasons neither tracked the perpetrators' culpability nor took account of their status as adolescents.

In Book V, Chapter 5 of the *Nicomachean Ethics*, Aristotle discusses five conditions under which a judicial ruling embodies legal justice: the violation of a right that ought to have been enjoyed, an effort at rectification, harm that can be assessed as commensurate, a rectification of the right that can be observed, and proportionality between the violation and its rectification (Najah & Arifah, 2024). Measured against these conditions, the first three are formally satisfied in both rulings: a right of the child victim was violated, the sentence represents an effort at rectification, and the harm can be identified. The last two conditions, observable rectification and proportionality, are not fully satisfied, since neither ruling provides concrete restoration for the child victim, as the discussion of corrective justice showed, and neither establishes a clear proportion between the difference in the perpetrators' culpability and the difference in the severity of their sentences, as the discussion of distributive justice showed.

The sentencing in both rulings is therefore formally consistent with general justice, because it rests on the applicable criminal provisions, but it does not satisfy particular justice in either its corrective or its distributive dimension.

3.3. Protection, Consent, and the Best Interests of Both Children

The two rulings expose a tension that runs through the law on sexual activity between children. The Child Protection Law aims to protect children from sexual exploitation, and for that purpose it treats a child's consent as legally insufficient to make sexual activity lawful. This protective rationale is legitimate, and nothing in the analysis above questions it. The difficulty arises when both participants are children. The same law that

protects the younger child also governs the older child as a perpetrator, and the Juvenile Criminal Justice System requires that the older child, too, be treated in accordance with his best interests, with imprisonment as a last resort.

The Committee on the Rights of the Child (2013) insists that the best interests of the child are a primary consideration in all actions concerning children, including judicial decisions, and that decision-makers must explain how they assessed and weighed those interests. When both the perpetrator and the victim are children, the court must therefore weigh two sets of best interests: the victim's interest in protection and restoration, and the perpetrator's interest in development and reintegration. A sentence that imprisons the perpetrator without restoring the victim serves neither interest well. The victim receives no repair of the harm she suffered, and the perpetrator, who in the first case was in a consensual relationship with a girl two years younger, spends more than two years in an institution during a formative period of his development.

Recognizing this tension does not require the law to treat consent as a defence. It requires the law to treat consent and refusal as relevant to culpability and therefore to sentence. A boy who continues after a girl has refused him acts with a disregard for her will that a boy in a consensual relationship does not display, and the difference in moral blameworthiness between the two is independent of the law's choice to deny legal effect to consent below a certain age. Steinberg and Scott (2003) argue that the developmental immaturity of adolescents mitigates their culpability without excusing it. Applied to these cases, their argument suggests that both perpetrators deserve some mitigation on account of their age, but that the perpetrator who overrode an explicit refusal deserves less mitigation than the perpetrator in the consensual relationship. The Tebing Tinggi rulings reversed this order.

This analysis also clarifies the role of the element of persuasion. Because the law denies legal effect to the younger child's consent, the element of persuasion serves to identify the conduct that the law treats as wrongful when consent is formally present. It therefore carries the full weight of the distinction between exploitative and non-exploitative relationships between adolescents. When courts satisfy this element with expressions of affection that are common in adolescent relationships, they erase the distinction it is meant to draw, and the protective rationale of the law turns into a rule that criminalizes adolescent relationships as such. A clearer threshold for persuasion, requiring evidence of deceit, pressure, or exploitation beyond ordinary affection, would restore the distinction and allow sentencing to respond to the actual wrong in each case.

4. Conclusion

On the first question, the analysis shows that both rulings met the minimum requirements of proof and criminal liability, including those concerning age and mental capacity, but that the courts established the decisive element of persuasion by reading the perpetrators' affectionate statements as manipulation, without reasons that distinguish manipulation from ordinary affection within a dating relationship. They applied this construction almost identically in a case of consent and in a case of explicit refusal, and neither ruling explained the choice of imprisonment over the alternatives

available under Law Number 11 of 2012 or considered the child's growth, development, or best interests.

On the second question, the rulings conform to general justice but fail both dimensions of particular justice. Corrective justice fails because neither ruling offers the victim any restoration, so that the punishment remains retributive toward the perpetrator and offers the victim nothing. Distributive justice fails because the sentences do not track the difference in culpability, and the principle of ordinal proportionality reveals that the case involving refusal received the shorter term. The vague construction of persuasion and the absence of individualized sentencing reasons thus express a single problem: a sentencing practice that treats compliance with the elements of the offence as a substitute for reasoning about the child's culpability, the child's development, and the victim's harm.

The analysis also shows that Indonesian law already provides the means of correction that Aristotle called equity: Articles 70 and 71 of Law Number 11 of 2012 allow judges to individualize sentences, and the failure of the rulings lies in the omission to use them. The article contributes to the literature on juvenile sentencing in Indonesia by joining Aristotle's categories with the operational principle of ordinal proportionality and with developmental evidence on adolescent culpability, which together provide a standard against which the reasons of juvenile sentencing decisions can be reviewed. On this basis, it recommends that judges give explicit reasons when sentencing children in sexual activity cases, both in establishing persuasion, by distinguishing manipulative intent from affectionate expression, and in determining the type and severity of punishment, by linking the sentence to the child's culpability, individual circumstances, and best interests. Sentences should also attend to the restoration of the victim through restitution, compensation, or other forms of recovery, in keeping with the restorative aims of the Juvenile Criminal Justice System. The threshold of the element of persuasion in cases involving children should be clarified through a Supreme Court Circular Letter or judicial guideline or, more fundamentally, through revision of the Juvenile Criminal Justice System Law and/or the Child Protection Law. Further research could test these findings against a larger set of rulings, including those of the Gunung Sugih and Lubuk Pakam District Courts noted in the introduction.

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