

Child Sexual Violence from the Perspective of Tolaki Customary Law in Kolaka Regency

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Received: 30 May 2026

Accepted: 31 August 2026

Published: 12 September 2026

Abstrak

Penelitian ini bertujuan mengkaji kedudukan kekerasan seksual terhadap anak dalam perspektif hukum adat Tolaki di Kabupaten Kolaka, mengingat literatur hukum adat Tolaki yang tersedia selama ini lebih banyak membahas delik adat kesusilaan dalam konteks perzinahan (*umoapi*) antarorang dewasa, sementara pengaturan yang secara eksplisit menyangkut kekerasan seksual terhadap anak belum banyak dikaji secara tersendiri. Penelitian ini menggunakan metode yuridis-normatif dengan pendekatan perundang-undangan, konseptual, dan kasus, melalui penelusuran bahan hukum primer, sekunder, dan tersier. Hasil kajian menunjukkan bahwa kekerasan seksual terhadap anak dalam hukum adat Tolaki tercakup dalam kategori delik adat kesusilaan secara umum dan dapat dikenakan sanksi *peohala* berupa denda adat, namun penyelesaian adat tersebut tidak dapat menggantikan proses hukum pidana nasional karena kekerasan seksual terhadap anak merupakan delik publik (*delicta publica*) yang penuntutannya menjadi domain negara. Mekanisme adat dapat berfungsi secara komplementer sebagai sarana pemulihan psikososial korban melalui pendekatan *restorative justice*, sepanjang berjalan berdampingan dengan proses hukum pidana. Penelitian ini merekomendasikan penguatan payung hukum daerah serta protokol kerja sama antara lembaga adat, dinas terkait, kepolisian, dan Kejaksaan agar penyelesaian adat tidak disalahgunakan untuk menghindarkan pelaku dari pertanggungjawaban pidana.

Kata Kunci: kekerasan seksual anak; hukum adat Tolaki; sanksi *peohala*; *restorative justice*; hukum pidana nasional.

Abstract

*This study examines the position of child sexual violence within the perspective of Tolaki customary law in Kolaka Regency, given that the existing literature on Tolaki customary law predominantly addresses moral customary offenses in the context of adultery (*umoapi*) between adults, while regulations explicitly addressing child sexual violence remain understudied. This research employs a normative-juridical method using statutory, conceptual, and case approaches, drawing on primary, secondary, and tertiary legal materials. The findings indicate that child sexual violence under Tolaki customary law falls within the general category of moral customary offenses and may be subject to the *peohala* sanction in the form of customary fines; however, such customary resolution cannot substitute the national criminal justice process, as child sexual violence constitutes a public offense (*delicta publica*) whose prosecution remains within the domain of the state. Customary mechanisms may function*

complementarily as a means of psychosocial recovery for victims through a restorative justice approach, provided they operate alongside, rather than in place of, the criminal justice process. This study recommends strengthening regional legal frameworks and formal cooperation protocols among customary institutions, relevant government agencies, the police, and the prosecutor's office in Kolaka Regency, so that customary resolution is not misused to shield perpetrators from criminal accountability.

Keywords: *child sexual violence; Tolaki customary law; peohala sanction; restorative justice; national criminal law.*

INTRODUCTION

Child sexual violence is a serious criminal offense with severe physical, psychological, social, and legal consequences. It not only causes bodily harm but also disrupts children's psychological development, social functioning, and future prospects.¹ Studies have shown that child victims may experience long-term consequences, including psychological trauma, anxiety, depression, loss of trust in adults, and impaired social relationships that can persist into adulthood.² Their vulnerability is intensified by unequal power relations between children and perpetrators, who in many cases come from the victims' immediate environment, while available data indicate a continuing increase in reported child sexual violence in Indonesia.³

Indonesia has established several positive-law instruments specifically addressing the protection of children from sexual violence, including Law Number 35 of 2014 amending Law Number 23 of 2002 on Child Protection, Law Number 12 of 2022 on Sexual Violence Crimes (the TPKS Law), and the new Criminal Code enacted through Law Number 1 of 2023. Together, these instruments create a layered protection framework that affirms the state's responsibility to prevent sexual violence, prosecute perpetrators, and restore the rights of child victims.

At the same time, recognition of living law must be situated correctly within the hierarchy and function of legal norms. Article 18B(2) of the 1945 Constitution recognizes indigenous law communities and their traditional rights subject to constitutional requirements. Article 5(1) of Law Number 48 of 2009 requires judges to explore, follow, and understand the legal values and sense of justice living in society. Since the National Criminal Code entered into force on 2 January 2026, Article 2 of Law Number 1 of 2023 has also recognized living law within the limits determined by statute and implementing regulations.⁴ Accordingly, this article does not base the recognition of living law on Article 5(3)(b) of Law Number 48 of 2009,

¹ Ivo Noviana, "Kekerasan Seksual terhadap Anak: Dampak dan Penanganannya", *Sosio Informa*, Vol. 1, No. 1, 2015, p. 13-28.

² D. Huraira, N. Rohmah, N. Rifanda, K. Novitasari, U. Diena, dan F.L. Nuqul, "Kekerasan Seksual pada Anak: Telaah Relasi Pelaku Korban dan Kerentanan pada Anak", *Psikoislamika: Jurnal Psikologi dan Psikologi Islam*, Vol. 12, No. 2, 2015, p. 5-10.

³ R. Octaviani dan N. Nurwati, "Peningkatan Kasus Kekerasan Seksual pada Anak di Indonesia", *Jurnal Kesejahteraan Sosial*, Vol. 15, No. 2, 2021, p. 123-135.

⁴ Pasal 2 Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana; see also Manurung, "Formulasi The Living Law sebagai Pembaharuan Hukum Pidana Nasional melalui Pendekatan Antropologi Hukum", *Media Hukum Indonesia (MHI)*, 2025.

because that reference is not legally accurate.⁵ The doctrinal position is further supported by scholarship on the existence of customary law within Indonesian positive law.⁶

The Tolaki indigenous community inhabiting Southeast Sulawesi, including Kolaka Regency, has its own customary-law system known as kalosara. The term is commonly explained as combining *kalo*, a three-stranded rattan circle, and *sara*, meaning custom, rule, or legal symbol.⁷ Kalosara functions as a customary institution symbolizing law, social values, and dispute-settlement mechanisms in Tolaki communal life, including customary morality offenses involving conduct regarded as degrading the dignity of an individual or family.

The difficulty is that the identified Tolaki customary-law literature primarily discusses morality offenses and customary restoration in the context of adult relationships. The available sources are insufficient to establish a single, explicit, and uniform Tolaki rule specifically governing sexual violence against children. *Peohala* and other customary mechanisms are therefore treated in this article as analytical materials concerning social restoration, not as grounds for replacing statutory criminal elements, state criminal proceedings, or the special protection owed to children.⁸

Against this background, the study addresses the following questions: How does Tolaki customary law in Kolaka Regency regulate sexual violence against children? What forms of customary sanctions may be imposed by the Tolaki community on perpetrators of child sexual violence? What is the relationship and legal position of Tolaki customary law in relation to national criminal law, including the Criminal Code, the Child Protection Law, and the TPKS Law, in handling child sexual violence?

RESEARCH METHOD

This study employs normative legal research by examining primary legal materials, including Law Number 12 of 2022 on Sexual Violence Crimes, Law Number 1 of 2023 on the Criminal Code, Law Number 35 of 2014 on Child Protection, Law Number 48 of 2009 on Judicial Power, and relevant court decisions. The study combines statutory and conceptual approaches to examine customary morality offenses and child sexual violence, as well as case and comparative approaches to compare Tolaki customary-law practices with those of other indigenous communities in Indonesia. Secondary materials consist of books, scholarly articles, theses, and previous studies on Tolaki customary law and child

⁵ Pasal 5 ayat (3) huruf b Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman.

⁶ Nabilah Apriani dan Nur Shofa Hanafiah, "Telaah Eksistensi Hukum Adat pada Hukum Positif Indonesia dalam Perspektif Aliran Sociological Jurisprudence", *Jurnal Hukum Lex Generalis*, Vol. 3, No. 3, Maret 2022, p. 231-246, <https://doi.org/10.56370/jhlg.v3i3.226>.

⁷ Kalosara secara harfiah terdiri atas dua kata: "*kalo*" berarti seutas rotan dengan tiga lilitan yang melingkar, dan "*sara*" berarti adat, aturan, atau simbol hukum. Lihat Anwar Hapide, "Falsafah Kalosara dalam Masyarakat Tolaki", dipublikasikan 8 Januari 2017, dengan mengutip Abdul Rauf Tarimana, *Kebudayaan Tolaki (Seri Etnografi Indonesia No. 3)*, Jakarta: Balai Pustaka, 1993.

⁸ Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia, "Menteri PPPA Kecam Kasus Kekerasan Seksual terhadap Anak di Kabupaten Kolaka, hingga Korban Meninggal Dunia", *Siaran Pers*; IDN Voice, "Pelaku Kekerasan Seksual terhadap Anak di Kolaka Terancam Hukuman Berat, Menteri PPPA Ajak Masyarakat Aktif Melapor", 21 Juni 2026.

sexual violence, while tertiary materials include legal dictionaries and encyclopedias. The materials are analyzed qualitatively and deductively by moving from general norms of Tolaki customary law and national criminal law toward conclusions that answer the research questions.

RESULTS AND DISCUSSION

Conceptual Framework: Child Sexual Violence and the Urgency of Protection

Studies of perpetrator-victim relationships show that perpetrators of child sexual violence often come from the victim's closest circle, including family members. This places children in an especially vulnerable position and makes resistance and reporting considerably more difficult.

Research on the consequences of sexual violence shows multidimensional psychological harm, including post-traumatic stress, prolonged anxiety, diminished self-confidence, and the possible reproduction of unhealthy relationship patterns in adulthood. The severity of those consequences varies according to the perpetrator, the type and manner of violence, disclosure by the victim, and the availability of social support.⁹ For that reason, the response to child sexual violence should not stop at sanctioning the perpetrator; it must also include sustained psychosocial recovery for the victim.¹⁰ This perspective is essential when assessing the proper role of customary mechanisms in cases involving child victims.

1. Regulation of Child Sexual Violence under Tolaki Customary Law

Tolaki communities are distributed across Kendari City, Konawe, South Konawe, North Konawe, Kolaka, North Kolaka, and East Kolaka, and place kalosara at the center of customary rules and social values.¹¹ Each area has its own customary institution responsible for maintaining and enforcing customary norms, including Tamalaki Wonua in Kolaka Regency and the Tolaki Customary Institution in Konawe, both of which may also participate in resolving family disputes and customary morality violations.¹²

Within Tolaki customary law, conduct involving sexual impropriety is generally classified as a customary morality offense, meaning conduct viewed as degrading the dignity of an individual or family. Normative research on Tolaki customary adjudication in Kendari indicates that such offenses are treated as analogous to morality offenses recognized in criminal law and may influence the considerations of both judges and customary leaders.¹³ The most extensively documented Tolaki morality offense is umoapi, or adultery. Tolaki customary law regulates this conduct more broadly than the traditional civil-law concept because

⁹ R. Rini, "Dampak Psikologis Jangka Panjang Kekerasan Seksual Anak (Komparasi Faktor: Pelaku, Tipe, Cara, Keterbukaan dan Dukungan Sosial)", *IKRA-ITH Humaniora: Jurnal Sosial dan Humaniora*, Vol. 4, No. 3, 2020, p. 1-12.

¹⁰ C.Z.D. Setyawan dan D. Setiawati, "Penguatan Perlindungan Hukum bagi Anak Korban Kekerasan Seksual di Indonesia", *Borobudur Law Review*, 2024, <https://doi.org/10.31603/burrev.10696>.

¹¹ Anwar Hapide, *Loc. Cit.*

¹² Irfan Maulana, dkk., "Sistem Perkawinan dan Penyelesaian Sengketa Keluarga dalam Hukum Adat Tolaki di Sulawesi Tenggara", *Jurnal PESHUM: Pendidikan, Sosial, dan Humaniora*.

¹³ Tira Agustina, *Pelaksanaan Penjatuhan Sanksi Adat "Peohala" terhadap Pelanggaran Hukum Adat Kesusilaan Tolaki di Kota Kendari*, Tesis, Program Pascasarjana Fakultas Hukum Universitas Indonesia, Depok, 2012, p. iii (Abstrak).

it may concern both married and unmarried persons, with different customary consequences depending on the classification of the violation.¹⁴

Nevertheless, the existing literature does not widely document an explicit and distinct customary category called child sexual violence, separate from adultery between adults or violations of customary marriage norms. This limitation is consistent with the broader character of customary law as predominantly unwritten law that develops through respected community practices. Its formulation is therefore often general and case-specific, depending on the customary authority's assessment of the seriousness of the affront to dignity.¹⁵

Comparison with other indigenous communities in Indonesia shows that some customary systems have developed more specific responses to morality offenses involving children. In one eastern Indonesian community, for example, sexual violence resulting in pregnancy and childbirth may trigger a specific customary obligation to provide land and a house for the child, separate from the customary fine imposed for the morality offense itself.¹⁶ Acehese customary law likewise recognizes graduated customary sanctions according to the seriousness of the offense and continues to operate alongside regional Qanun regulation.¹⁷ These comparative patterns may inform future refinement of Tolaki customary norms, particularly by expressly recognizing the heightened vulnerability of child victims.

Normatively, therefore, child sexual violence may presently be situated within the general category of Tolaki customary morality offenses and assessed through the same underlying values concerning dignity and injury to the victim and the family. Yet because children are particularly vulnerable and may suffer long-term psychological harm, any customary assessment should treat sexual violence against a child as substantially more serious than consensual or morality-related conduct between adults.

2. Forms of Customary Sanctions for Perpetrators of Child Sexual Violence

Tolaki customary law recognizes a sanctioning mechanism known as *peohala*, through which a customary morality offense may be resolved by requiring the perpetrator to pay a customary fine to the victim. The sanction is intended to restore, at least symbolically, the non-material harm arising from the degradation of the victim's and family's dignity.

Studies of the customary offense of adultery, or *umoapi*, identify classifications that lead to different customary consequences, including distinctions between *moleloi*, referring to sexual relations contrary to customary morality, and *mendia*, referring to pregnancy outside marriage resulting from such conduct. The principle

¹⁴ Handrawan, "Sanksi Adat Delik Perzinahan (Umoapi) dalam Perspektif Hukum Pidana Adat Tolaki", *Perspektif: Kajian Masalah Hukum dan Pembangunan*, Vol. 21, No. 3, September 2016, p. 199-210, <https://doi.org/10.30742/perspektif.v21i3.582>.

¹⁵ Syofyan Hadi, "Hukum Positif dan The Living Law (Eksistensi dan Keberlakuannya dalam Masyarakat)", *DiH: Jurnal Ilmu Hukum*, Vol. 13, No. 26, 2017.

¹⁶ *Jurnal Hukum dan Bisnis (JHB)*, "Perlindungan Hukum Adat dan Hukum Positif terhadap Anak Korban Kekerasan Seksual", yang mengidentifikasi sanksi adat berupa "Bahar Pitu Lasong Ha" serta kewajiban penyediaan tanah dan bangunan rumah bagi anak hasil kekerasan seksual pada salah satu masyarakat adat di kawasan timur Indonesia.

¹⁷ E.F. Hidayat, M.D. Irsyad, A.H. Kamal, dan B. Tamam, "Eksistensi Penerapan Sanksi Adat Bertingkat dalam Peradilan Adat Aceh: Relasi Hukum Adat dengan Qanun Aceh", *Journal Presumption of Law*, Vol. 7, No. 2, 2025, p. 106-122.

of differentiating sanctions according to seriousness may provide an analytical analogy for child sexual violence, although violence against a child should be placed at a substantially higher level of gravity because of the victim's vulnerability and the coercive character of the conduct.

Literature on *kalosara* also records that serious customary violations were historically associated with severe social sanctions, including communal exclusion and other extreme measures practiced in earlier periods.¹⁸ Such sanctions cannot be revived or applied to contemporary child sexual violence. They would conflict with the rule of law, human rights, and the principle of legality, under which criminal punishment is imposed by the state through lawful judicial proceedings.

Viewed through restorative justice, *peohala* has certain features consistent with restoring relationships among the perpetrator, victim, and community. Research in Magetan Regency indicates that restorative approaches may contribute to justice and fulfillment of children's rights when the best interests of the child remain central.¹⁹ Conversely, research concerning the Tenganan Pegringsingan community in Bali finds that customary sanctions for morality offenses involving children have not fully incorporated victim-centered psychosocial restoration.²⁰ The comparison is important for Tolaki customary law: *peohala* should not end with a material payment, but should be accompanied by measures aimed at the victim's real psychosocial recovery.

Other studies likewise suggest that customary law can support restorative justice for vulnerable groups when it is aligned with the rule of law and victim protection.²¹ The TPKS Law, however, strictly limits settlement outside formal proceedings: such a route is available only where the perpetrator of the sexual-violence offense is a child, while adult perpetrators remain subject to criminal proceedings.²² This limitation is consistent with the broader preference for diversion in juvenile justice. A comparative study of child-perpetrated sexual-violence cases in Kolaka and South Konawe and youth justice in Norway finds that diversion in Indonesia remains only partially restorative and is legally constrained, while Norway applies a more institutionalized youth-punishment model and treats

¹⁸ Anwar Hapide, Op. Cit. Sumber ini mencatat bahwa secara historis pelanggaran berat terhadap ketentuan *kalosara* dalam konteks perkawinan dapat dikenakan sanksi sosial yang keras. Sanksi-sanksi ekstrem semacam ini perlu dibaca sebagai catatan historis-antropologis, bukan sebagai norma yang masih berlaku dan dapat dibenarkan dalam kerangka negara hukum modern yang menjunjung tinggi hak asasi manusia dan asas legalitas.

¹⁹ R. Caesari, "Penerapan Restorative Justice dalam Penyelesaian Tindak Pidana Kekerasan Seksual terhadap Anak di Kabupaten Magetan", *Recidive: Jurnal Hukum Pidana dan Penanggulangan Kejahatan*, 2022.

²⁰ N.M.D. Antari, "Pemenuhan Hak Anak yang Mengalami Kekerasan Seksual Berbasis Restorative Justice pada Masyarakat Tenganan Pegringsingan, Karangasem, Bali", *Jurnal HAM*, Vol. 12, No. 1, 2021.

²¹ *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah dan Hukum UIN Alauddin Makassar*, "Restorative Justice: Customary Law Protecting Women's Rights and Upholding the Law", 2023.

²² *Jurnal Halo Oleo Legal Research*, "Kajian Yuridis Penggunaan Restorative Justice pada Tindak Pidana Kekerasan Seksual (Studi terhadap Pasal 23 UU TPKS)", Vol. 6, No. 2, Agustus 2024; bandingkan dengan Pasal 23 Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual.

detention as a last resort.²³ Both systems nevertheless limit diversion in serious sexual-violence cases in order to protect victims.

Child sexual offending cannot be separated from family parenting patterns. Criminological research on Generation Z juvenile delinquency shows that permissive and neglectful parenting is associated with an increased risk of deviant behavior, whereas responsive parenting combined with active parental involvement is associated with better social behavior.²⁴ For Tolaki communities, strengthening parenting education and broader community involvement can therefore form part of upstream prevention, alongside stronger cooperation among customary institutions, families, and local government.

On that basis, the customary response that may conceptually be associated with child sexual violence in Tolaki society consists of *peohala* as a customary fine, together with social measures such as a customary apology and restoration of the victim's good name. Such measures should operate only as a complementary restorative process, not as a substitute for the national criminal process, and should ideally include professional psychosocial support for the child victim.

3. The Relationship between Tolaki Customary Law and National Criminal Law

Indonesian national criminal law regulates child sexual violence through overlapping and increasingly specific protections. Law Number 12 of 2022 on Sexual Violence Crimes, for example, provides criminal sanctions for sexual violence committed against children and allows aggravation in defined circumstances, including conduct within family relationships and conduct causing severe consequences. The new Criminal Code under Law Number 1 of 2023 also criminalizes sexual intercourse with children and provides substantial imprisonment and fines. Article 23 of the TPKS Law further confirms that settlement outside the formal legal process is available only where the perpetrator is a child, and therefore cannot generally replace criminal proceedings against an adult perpetrator.²⁵

National law also recognizes living law. Earlier judicial practice acknowledged the relevance of customary offenses, as illustrated by Supreme Court Decision Number 1644 K/Pid/1988 of 15 May 1991.²⁶ That recognition now has a more explicit statutory basis in Article 2 of the new Criminal Code, which recognizes living law subject to the limitations laid down by national law and its implementing

²³ Irabiah Junus et al., "Diversion in Child Sexual Violence Cases: A Comparative Study of Indonesia and Norway", *Indonesian Journal of Criminal Law Studies* 11, no. 1 (2026): 83-126, <https://doi.org/10.15294/ijcls.v11i1.33389>. Kajian ini menemukan bahwa praktik diversi di Kolaka dan Konawe Selatan, Sulawesi Tenggara, masih bersifat "semi-restoratif", yakni secara formal mengadopsi prinsip restorative justice namun belum sepenuhnya mencerminkan keadilan substantif bagi korban, sementara Norwegia menerapkan model youth punishment yang lebih terlembaga dengan menempatkan penahanan anak sebagai upaya terakhir, meskipun tetap dibatasi hanya pada pelaku anak dan tidak diterapkan pada kekerasan seksual yang serius.

²⁴ Irabiah Junus, Muhammad As Ari. AM, dan Yahyanto, "Criminological Review of Juvenile Delinquency in Society Due to Parenting in the Gen Z Era", *Journal of Law and Legal Reform* 6, no. 1 (2025): 481-498, <https://doi.org/10.15294/jllr.v6i1.14467>.

²⁵ Pasal 23 Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual.

²⁶ Putusan Mahkamah Agung Republik Indonesia Nomor 1644 K/Pid/1988 tanggal 15 Mei 1991; lihat juga Tira Agustina, Op. Cit., p. iii-iv, yang menyarankan perlunya rumusan hukum yang lebih kuat mengenai pengakuan putusan hukum adat di dalam undang-undang, mengingat yurisprudensi tidak bersifat mengikat dalam sistem hukum Indonesia yang menganut civil law.

framework.²⁷ This recognition is part of the broader reform of Indonesian criminal law, but it does not create an autonomous customary jurisdiction capable of displacing statutory child-protection offenses.

A normative analysis nevertheless reveals a fundamental coordination problem. Scholarship on the absorption of customary norms by formal courts identifies recurring difficulties in synchronizing legal certainty, consistency of judgments, and the respective authority of customary institutions and state courts.²⁸ Broader studies of Indonesian customary criminal law likewise emphasize the need to harmonize customary principles, norms, theory, procedure, and national criminal law so that recognition of living law does not produce legal uncertainty or unequal treatment among communities.²⁹

A further difficulty arises from the different juridical character of the two systems. *Peohala* is essentially restorative and compensatory, aimed at repairing social relations and providing a customary payment. Child sexual violence under national law, by contrast, is a public offense whose prosecution cannot depend solely on the victim's or family's wishes and cannot be extinguished by customary settlement. Scholarship on customary criminal-law reform similarly stresses that recognition of customary offenses is intended to enrich the values of justice informing national criminal law, not to replace the state's authority to enforce criminal responsibility.³⁰

Experience from other customary-law regions reinforces the need for caution. Research on child sexual violence in Boalemo, Gorontalo, identifies the risk that a case may effectively end at the customary-settlement stage without adequate continuation through the criminal process, particularly where the victim is especially vulnerable.³¹ At the same time, constitutional recognition of indigenous communities must be balanced against the individual constitutional rights of victims, especially children, to obtain justice through the state legal system.³²

The position of Tolaki customary law in child sexual-violence cases may therefore be formulated in three propositions. First, *peohala* and other customary mechanisms do not eliminate the obligation to pursue criminal proceedings where the Criminal Code or the TPKS Law requires them, because child sexual violence is

²⁷ Wijayanto, "Politik Hukum Living Law dan Hak Asasi Manusia terhadap Rancangan Perda Tindak Pidana Adat dalam KUHP", *Jurnal Legislasi Indonesia*, 2023.

²⁸ B. Suhariyanto, "Problema Penyerapan Adat oleh Pengadilan dan Pengaruhnya bagi Pembaruan Hukum Pidana Nasional", *Mimbar Hukum*, Fakultas Hukum Universitas Gadjah Mada, Vol. 30, 2018, hlm. 421.

²⁹ Lilik Mulyadi, "Eksistensi Hukum Pidana Adat di Indonesia: Pengkajian Asas, Norma, Teori, Praktik dan Prosedurnya", *Jurnal Hukum dan Peradilan*, Vol. 2, 2013, p. 225.

³⁰ S. Sukirno, "Revitalisasi dan Aktualisasi Hukum Adat sebagai Sumber Hukum Pidana Positif", *Diponegoro Private Law Review*, Vol. 2, 2018.; N.S.P. Jaya, "Hukum (Sanksi) Pidana Adat dalam Pembaharuan Hukum Pidana Nasional", *Masalah-Masalah Hukum*, Vol. 45, 2016, p. 123.; E. Hasibuan, "Eksistensi Pidana Adat dalam Kerangka Pembaharuan Hukum Pidana Nasional (Analisis Konsepsi Rancangan KUHP)", *Lex Crimen*, Vol. 10, 2021, p. 403.; S.B. Kalengkongan, "Kajian Hukum Pidana Adat dalam Sistem Hukum Pidana Indonesia", *Lex Crimen*, Vol. 6, 2017, p. 70.

³¹ R. Huruji, M.R.U. Puluhalawa, dan M.H. Muhtar, "Penegakan Hukum Kekerasan Seksual Terhadap Anak di Polres Boalemo (Studi Kasus di Wilayah Kepolisian Resor Boalemo)", *SINERGI: Jurnal Riset Ilmiah*, Vol. 1, No. 5, 2024, p. 282-293.

³² Lisnawaty W. Badu, Julisa Aprilia Kaluku, dan Abas Kaluku, "Perlindungan Hak-Hak Konstitusional Masyarakat Adat di Kabupaten Boalemo dalam Penerapan Sanksi Adat", *Jurnal Konstitusi*, Vol. 18, No. 1, Mei 2021, p. 219-239.

a public offense. Second, customary mechanisms may complement the criminal process by supporting psychosocial recovery of the victim and family, but may not substitute for criminal accountability. Third, regional legal frameworks and law-enforcement policies in Kolaka should clearly regulate this complementary role so that customary settlement is not used to shield perpetrators, while still respecting legitimate Tolaki values as part of Indonesia's living legal heritage.

Critical Analysis and Recommendations

Several points require emphasis. First, the absence of an explicit Tolaki rule specifically naming child sexual violence does not mean that the conduct falls entirely outside customary law; rather, it reflects the case-specific and general character of customary norms. Second, transforming peohala into a genuinely restorative mechanism oriented toward the psychosocial recovery of child victims requires professional participation, including psychologists and social workers, because the psychological effects of child sexual violence are long-term and multidimensional.³³

Third, Kolaka Regency should establish a formal cooperation protocol among kalosara institutions, the local office responsible for women's empowerment and child protection, the police, and the prosecutor's office. The objective is to ensure that customary settlement operates only as a complement and does not obstruct criminal proceedings, consistently with Article 23 of the TPKS Law.³⁴ Comparative findings from child-diversion practice in Southeast Sulawesi likewise support clearer diversion guidelines, stronger professional capacity among law-enforcement officers, and more comprehensive victim protection and recovery. Fourth, the national attention given to child sexual-violence cases in Kolaka provides an opportunity to formulate regional rules that expressly recognize, but also limit, customary involvement in such cases within the framework of the new Criminal Code.

Normative Limits of Living Law and Child Protection

Government Regulation Number 55 of 2025 clarifies the implementation of Article 2 of the National Criminal Code. Where a customary act has elements identical or equivalent to an offense already formulated in the Criminal Code, enforcement proceeds under the Criminal Code. Recognition of living law therefore does not create a legal space for disregarding existing positive-law offenses protecting child victims, including the special regimes governing child protection and sexual violence.

Peohala may be analyzed as a mechanism for restoring social relations within Tolaki society to the extent that its existence and function can be demonstrated through authoritative sources. However, analogy from customary settlement of adult morality offenses cannot establish that child sexual violence constitutes a distinct Tolaki customary offense without adequate normative or empirical evidence. The contribution of this article is therefore prescriptive: customary law may contribute restorative values and community participation, while the definition

³³ Pasal 473 ayat (3) huruf c dan ayat (4) Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

³⁴ Pasal 23 Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual.

of criminal offenses, the perpetrator's criminal responsibility, and the protection of children remain governed by national law.

Any restorative mechanism involving children must prioritize the best interests of the child, remain free from pressure to reconcile, protect the victim's confidentiality and safety, prevent secondary victimization, and never be used to terminate criminal proceedings where legislation requires prosecution. Because this is a normative study and did not include interviews with Tolaki customary institutions or an audit of concrete cases, its statements concerning customary practice should not be read as empirical generalizations applicable to every Tolaki community.

CONCLUSION

The analysis demonstrates a significant research gap concerning child sexual violence from the perspective of Tolaki customary law in Kolaka Regency. Most of the available literature concerns customary morality offenses generally and adult adultery, or *umoapi*, rather than child sexual violence specifically. Normatively, child sexual violence may be located within the broader Tolaki category of customary morality offenses and may be associated with *peohala*, but a customary response cannot replace national criminal proceedings because the conduct is a public offense.

Future research should therefore deepen the analysis through further normative investigation of customary texts, records of Sarano Tolaki legal-unification workshops, and regional legal instruments in Kolaka, as well as through empirical interviews with local customary leaders. Such work is needed to establish more precisely how child sexual-violence cases are handled within Tolaki communities and to measure whether restorative-justice principles are, or are not, realized in local customary practice.

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