



CRIMINAL LIABILITY OF PERPETRATORS OF SEXUAL INTERCOURSE WITH VIOLENCE AGAINST CHILDREN

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Abstract

This study investigates the legal foundations for the criminal responsibility of individuals who engage in violent sexual acts against children and analyzes the reasoning behind judicial considerations for sentencing in Decision Number 10/Pid. Sus/2023/PN Gdt. The methodology employed in this study is normative legal research, utilizing data gathered through a literature review, encompassing primary and secondary legal resources. The findings indicate that the defendant was legally and convincingly found guilty of committing sexual intercourse with violence against his child, who was 9 years old and became pregnant as a result of the violence. This action met the criteria outlined in Article 81, paragraph (3), in conjunction with Article 76D of Law Number 17 of 2016 on Child Protection. In delivering the verdict, the judges considered the legal, philosophical, and sociological dimensions of the victim's circumstances, leading to the imposition of the maximum sentence of 20 years of imprisonment and a fine of IDR 3,000,000,000.00, or an alternative of 3 months of imprisonment. This research focuses on a single court ruling but provides valuable insights into the development of criminal law, particularly in the application of penalties for offenders of child sexual violence. The originality of this research lies in its detailed examination of judges rationale for imposing the maximum penalty on the perpetrator, who is also the biological father of the victim, as an effort to achieve justice and strengthen legal protection for child victims of sexual violence.

Keywords: *Criminal Liability, Sexual Violence Against Children, Judicial Considerations, Maximum Penalty.*

1. Introduction

Children are gifts from God Almighty that must be protected and whose rights must be fulfilled, including the right to love, education, and protection. As God's trust, children are entitled to protection from the womb until they reach adulthood. (Meilan, 2017). In general, the term child refers to individuals who are still in the stage of growth and development towards adulthood. In a biological context, children are understood as living beings who have not yet reached their full physical and psychological maturity. The relationship between parents and children can be likened to a form of mutualistic symbiosis in which children depend on their parents to fulfill their basic needs, such as affection, education, and moral guidance. Children are a gift from God, and they have rights and dignity that must be upheld. Therefore, parents have an obligation to raise their children with love so that they grow up to be responsible adults who can make a positive contribution to society and the country. (Djamil, 2013).

Children are characterized as people who have not reached the age of 18, as stipulated in Law Number 35 of 2014 concerning Alterations to Law Number 23 of 2002 concerning Child Security. Based on Article 1, passage 1, a child may be an individual who has not reached the age of 18 (eighteen), counting those who are still within the womb. As a nation based on the rule of law, Indonesia provides legitimate assurance for children and their human nobility. In expansion, Article 1, Section 2 of Law Number 23 of 2002 emphasizes that child security incorporates all endeavors to ensure and secure the rights of children to live, develop, create, and take part ideally in agreement with their human nobility, whereas too getting assurance from all shapes of savagery and segregation. Hence, children are profitable resources of the country who must receive comprehensive assurance from the dangers and activities that may imperil their security and future.



Cases of sexual savagery in Indonesia have increased each year, with casualties not only among adults but also among children and even infants. Sexual savagery against children is progressively common and has become a global issue experienced in different nations. (Siregar, 2023) This increment isn't as it were apparent in terms of amount or number of cases, but too in terms of quality, with the shapes and impacts of savagery getting to be progressively complex. Most culprits of sexual savagery against children come from the victim's immediate environment, such as family, school, instructive teaching, or social situations where children are associated, and in a few cases, they include the natural guardians themselves. The high rate of sexual savagery against children has reached a disturbing level, so that culprits can be subject to criminal sanctions in understanding with pertinent laws.

Particularly, the criminal act of sexual intercourse with a child is directed in Article 76C of Law Number 35 of 2014 concerning Child Assurance, which states that everyone is denied from putting, permitting, committing, requesting, or taking an interest in savagery against children. Despite the fact that this direction has been sanctioned, the viability of Law No. 35 of 2014 is still considered problematic in terms of its obstruction impact, as the punishments forced on culprits of savagery against children are still considered indulgent. (Dafinaldi, Yusrizal, 2024). Sexual violence against children causes long-term traumatic effects that affect the physical, psychological, and social conditions of the victims. Children are often unaware that they are victims, while sexual coercion can cause damage to vital organs, as well as emotional and psychosocial disorders.

Socially, victims tend to withdraw, lose self-confidence, and are reluctant to report the crime because of fear, shame, and feelings of guilt instilled by the perpetrator. Sexual violence experienced by children can also cause various psychological and medical disorders such as depression, rape trauma syndrome (RTS), dissociation or detachment from reality, eating disorders, hypoactive sexual desire disorder, dyspareunia (pain during or after sexual intercourse), and vaginismus (unconscious tightening of the vaginal muscles) (Octaviani & Nurwati, 2021). Therefore, children who are victims of sexual violence need comprehensive protection so that they feel safe and do not experience the same trauma again

The protection of child victims of sexual violence in the criminal justice process must be a serious concern. The Indonesian criminal justice system, which consists of various subsystems, must work together to provide physical, psychological, and social protection for child victims. The government, as the policymaker, must establish regulations that guarantee protection and recovery for child victims. Victims who have reported the incident to the authorities must be handled quickly and appropriately, both medically and psychologically, so that the law enforcement process does not cause additional trauma. Support from families, communities, law enforcement officials, psychologists, social institutions, and non-governmental organizations that care for victims also plays an important role in helping children recover completely (Yustiningsih, 2020).

A key example examined in this study is a violent sexual offense against a minor, tried in the Gedong Tataan District Court under Case Number 10/Pid. Sus/2023/PN Gdt. This case concerned a father who was found guilty of committing violent sexual acts against his daughter. These actions occurred repeatedly, starting when the victim was nine years old and continuing until she was 18, eventually resulting in her pregnancy and childbirth due to the defendant's behavior. The victim testified that the defendant coerced her into sexual relations and prohibited her from disclosing the incidents to her mother. Medical evidence indicated that the victim's hymen was intact and that she showed signs of a sexually transmitted disease. The judicial panel determined that the defendant was legally and beyond doubt guilty of the crime defined in Article 81, paragraph (3), read together with Article 76D of Law Number 17 of 2016. The standard punishment for this offense is 15 years of incarceration; however, because the defendant was the victim's biological father, the sentence was increased by one-third, as per legal provisions. Consequently, the judge handed down the maximum sentence of 20 years in prison and a financial penalty of Rp3,000,000,000.00, which could be substituted with three months of additional imprisonment.

The enactment of Law Number 17 of 2016, which addresses revisions to Law Number 23 of 2002 regarding Child Protection through the establishment of Government Regulation in Lieu of Law



Number 1 of 2016, specifically outlines stringent penalties for those who commit sexual offenses against children, prescribing imprisonment ranging from a minimum of five years to a maximum of fifteen years. Nevertheless, the practical implementation of legal measures against individuals who perpetrate sexual abuse against children continues to encounter multiple obstacles, notably in relation to ensuring comprehensive justice and safeguards for those harmed. (Nurhayati & Juwita, 2023). In this instance, the bench of judges determined that the maximum punishment should be applied to the accused, which amounted to 20 years of confinement and a financial penalty of IDR 3,000,000,000.00 or an additional three months of imprisonment, because the accused was the victim's biological father (Pengadilan Negeri Gedong Tataan, 2023).

As part of the judgment rendered, the presiding judge gave attention not just to the lawful dimensions, as laid down in Article 81 (3) along with Article 76D of Law Number 17 of 2016, but also considered the overarching philosophical and societal viewpoints as the rationale for intensifying the severity of the punishment. This research delves into the legal culpability of individuals who commit forceful sexual acts with minors, alongside the rationale that informs judges' decisions to impose the harshest possible punishments on those found guilty. This study explores the extent to which the implementation of legal regulations in these specific instances mirrors the tenets of legal certainty, fairness, and practicality, as articulated by Gustav Radbruch (Rahardjo, 2014). The conclusions drawn from this research aim to offer both theoretical and practical enhancements to the bolstering of a legal framework that adeptly addresses instances of sexual assault against children while also furnishing insights for the refinement of sentencing guidelines for those who perpetrate sexual violence. This includes the potential incorporation of supplementary punitive measures, such as chemical castration, a topic that continues to spark considerable controversy in its practical application, despite its codification in law.

2. Literature Review

2.1. Criminal Offenses

The term criminal offense comes from Dutch, namely, *strafbaar feit*. In Indonesian, this term has various equivalents, such as criminal acts, criminal events, punishable acts, and criminal offenses. (Lukman Hakim, 2020) Several criminal law experts provide definitions related to criminal offenses. (Sudaryono, 2017)

- a) Moeljatno states that a criminal act is an act that is prohibited by a legal rule, accompanied by a criminal penalty for anyone who violates it. According to him, legal prohibitions are aimed at the act as a condition or event, while criminal penalties are aimed at the person who causes the event.
- b) Sudarto argues that the use of the term criminal act is more appropriate because it has been officially used in legislation and has been widely accepted by society, thus having sociological validity (*sociologische gelding*).
- c) Roeslan Saleh chooses to use the terms "criminal act" and "delicto," while Oemar Seno Adji uses the term "criminal act" together with the term "delicto," indicating that both terms can be used interchangeably in criminal law studies.
- d) Van Hamel defines criminal acts (*strafbaar feit*) as human behavior that is formulated in law, is against the law, is punishable, and is committed with a fault.
- e) Mezger views criminal acts as the overall requirement for punishment, while J. Baumann defines criminal acts as acts that fulfill the definition of a crime, are against the law, and are committed with a fault.

2.1.1 Elements of Criminal Acts

Criminal acts have objective and subjective elements: (Putri, 2019)

- a) Objective Elements: Related to the circumstances and actions of the perpetrator, such as the act, resulting consequences, and certain accompanying conditions (e.g., acts in public).
- b) Subjective Elements: Attached to the perpetrator, including intent (*dolus*), negligence (*culpa*), purpose, planning, and fear.



2.1.2 Fault and Criminal Responsibility

Fault (schuld) indicates the perpetrator's state of mind when committing a criminal act. Only individuals who can be held responsible can be blamed for this. If a person is of unsound mind, they cannot be punished (Article 44 of the Criminal Code). The main principle of criminal law is that "There is no crime without fault."

2.2. The Purpose of Punishment and the Theory of Punishment

Punishment is the stage of determining and imposing sanctions in the criminal law. In general, the term "criminal" is defined as law, while "punishment" means sentencing. The purpose of punishment is twofold: the protection of society and spiritual aspects based on the values of Pancasila. The protection of society is carried out through the rehabilitation and resocialization of convicts and the restoration of balance resulting from criminal acts so that conflicts can be resolved. Meanwhile, the spiritual aspect emphasizes that punishment is not intended to cause suffering or demean human dignity. (Rivanie et al., 2022)

According to Wirjono Prodjodikoro, the purpose of punishment is to deter people from committing crimes, either by deterring the general public (general preventie) or specific individuals who have committed crimes from repeating their actions (speciale preventie), as well as to educate and reform criminals so that they become better people and contribute to society. Criminal law policy argues that the purpose of punishment should be to protect society to achieve welfare, balance, and harmony in society by considering the interests of society or the state, victims, and criminals. (Shafira et al., 2022) The objectives of punishment can be classified into three main categories, namely the theory of retribution, the theory of purpose, and the combined theory. (Wahyuni, 2017)

- a) The theory of retribution (absolute theory) justifies punishment because a person has committed a crime. The perpetrator of a crime must be punished. The consequences of punishment for the convicted persons are not questioned. The only consideration for punishment is the past, namely when the crime occurred, while the future, which aims to reform the perpetrator, is not considered.
- b) Relative theory (goal theory) justifies punishment based on its purpose: to protect society and prevent crime. In this theory, punishment is viewed from the purpose of punishment itself as a means of achieving societal order.
- c) The combined theory is a blend of retribution and purpose theories. The combined theory emerged because both the absolute and relative theories have weaknesses, necessitating a concept that combines the elements of retribution and the purpose of punishment in a balanced manner.

2.3. Sexual violence

Sexual abuse constitutes a grave breach of fundamental human rights, as it undermines an individual's sense of self-worth and physical wholeness, with particularly devastating consequences for populations at risk, such as women and minors. Sexual abuse encompasses any action of a sexual kind that is carried out by force, by putting someone in fear, by tricking or misleading them, by exploiting or taking advantage of them, or by misusing one's authority, which causes bodily, mental, and community harm to the person who is abused. (Bagenda et al., 2024) Such actions disregard not only what is legally permissible, but also run counter to deeply held moral principles, religious tenets, and a feeling of fairness that is shared by the community. Within the Indonesian legal framework, rules and laws regarding sexual abuse have been improved by the passage of Law Number 12 of 2022, also known as the Law on Criminal Acts of Sexual Abuse (TPKS Law). This legal statute provides regulations for different manifestations of sexual abuse, including unwanted sexual attention, non-consensual sexual acts, using someone for sexual purposes, keeping someone in sexual servitude, and other kinds of sexual wrongdoing. (Hehanussa & Salamor, n.d.) The fact that this law is in place shows how dedicated the government is to strengthening the legal protections for victims and offering a more thorough groundwork for bringing those who commit these crimes to justice. (Octaviani & Nurwati, 2021)

Engaging in sexual activity with a minor represents one of the gravest forms of sexual abuse. This offense is uniquely characterized by the fact that the targeted individuals lack the physical maturity, emotional development, and legal capacity required to provide legitimate consent to sexual activity. As



legal entities, children are entitled to specific safeguards against all forms of abuse, including sexual offenses. Thus, sexual activity involving a child is not merely an offense against an individual but also jeopardizes the well-being of future generations and society. The legal framework addressing sexual interactions with minors is distinctly outlined in Law No. 35 of 2014, which amends Law No. 23 of 2002 concerning Child Protection, and is further reinforced by Law No. 17 of 2016, enhancing the severity of criminal sanctions for those committing sexual offenses against children. These regulations underscore that any instance of sexual relations with a child, irrespective of whether it involves force, intimidation, deceit, or enticement, constitutes a significant criminal infraction, meriting stringent punitive measures.

In reality, the sexual exploitation of children frequently arises within imbalanced power dynamics, where the perpetrator occupies a position of close association or authority over the victim, such as a parent, family member, or guardian. This dynamic renders the victim extremely susceptible and impedes their ability to report the crime, contributing to its characterization as a concealed offense. Furthermore, this power disparity intensifies the psychological repercussions endured by victims due to violations of trust and safety within their immediate surroundings.

The impact of sexual violence and sexual intercourse with children is not only physical but also psychological and social. Victims can experience deep trauma, anxiety disorders, depression, long-term fear, and difficulties in building healthy social relationships. In addition, victims often face stigma and discrimination from their social environment, which worsens their recovery process. Therefore, combating sexual violence and sexual intercourse against children cannot rely solely on criminal punishments. A comprehensive approach is needed, involving preventive, repressive, and rehabilitative efforts. The protection of victims must be a priority through the provision of health services, psychological counseling, legal assistance, and social rehabilitation programs. Thus, the main objective of law enforcement in cases of sexual violence and sexual intercourse against children is not only to punish perpetrators but also to restore the dignity of victims and maintain order and harmony in society.

2.4. General Overview of Children

The term “child” is defined in many ways, and its regulation falls under different laws and rules that establish how children are legally viewed and handled in the country. These variations in regulation highlight that the age considered to define a child can differ based on the specific legal area, whether related to civil matters, criminal issues, or social safety laws. Article 330, Section (1), of the Civil Code (KUHPerdata) specifies that an individual is considered a minor if they are under 21 years old and have not been married. This description stresses the maturity of a person in the context of civil interactions. Law Number 4 of 1979, which deals with Child Welfare, contains a closely related clause, defining a child as someone who is under 21 years old and has never entered into marriage. (Rista & Yunus, 2025)

In contrast, the definition of “child” is more limited in laws designed to protect them. According to Article 1, Section 1 of Law Number 35 from 2014, which deals with Child Protection, a child is defined as anyone who has not yet turned 18, including those who are not yet born. This aligns with Article 1, Section 5 of Law Number 39 from 1999, which discusses Human Rights and specifies that a child is someone under 18 who is not married, and this can also include unborn children if it serves their best interests. When it comes to the legal system for criminal cases, specific rules for children are laid out in Law Number 11 of 2012, which is about the Criminal Justice System for Children. According to Article 1, Section 2 of this law, children are divided into three groups: those who have broken the law, those who have been harmed by a crime, and those who have witnessed a crime. (Widodo et al., 2016) This categorization is intended to ensure that children are treated differently based on their role and legal rights during legal proceedings. Additionally, Law Number 22 of 2022, which pertains to corrections, offers a more precise explanation of children who have broken the law, identifying them as those between the ages of 12 and 18 who are suspected of having committed a crime. (Hidayah & Slamet, 2022)



Thus, children who commit criminal acts, including sexual crimes, are categorized as children in conflict with the law and are treated in accordance with the principle of special protection in the juvenile justice system. Based on the various provisions of these laws and regulations, the definition of a child in the legal context in Indonesia is not singular but varies depending on the regulatory interests. However, in general, children are viewed as individuals who have not yet reached adulthood and require special legal protection to ensure their optimal physical, mental, and social development.

3. Methodology

This study employs a normative legal method, emphasizing an investigation into established legal concepts, theories, and specific rules and statutes pertinent to the issue under investigation. (Yusuf, 2014) The strategy implemented is a case-based method, concentrating predominantly on the ruling issued by the Gedong Tataan District Court under case number 10/Pid. Sus/2023/PN Gdt. This study aimed to examine the accountability of individuals committing sexual acts with force against children, along with the judge's reasons for deciding to enforce the highest possible legal punishment. This study aims to scrutinize the shape of the perpetrators' criminal accountability for sexual activity involving violence with children and to illustrate the underlying reasoning of the judge when giving the maximum punishment, as portrayed in Ruling Number 10/Pid. Sus/2023/PN Gdt. Through the execution of this examination, this study endeavors to determine whether the judicial sentence adequately demonstrates the ideals of legal sureness, fairness, and advantage, in addition to aiding the advancement of criminal law that prioritizes the welfare of children. The information utilized in this research was compiled from first-, second-, and third-hand legal resources. Legislation such as the Criminal Code (KUHP), Law Number 17 from 2016 pertaining to safeguarding children, and official court rulings that form the basis of this study are examples of essential legal resources in Indonesia. Scholarly legal publications, academic periodicals, findings from earlier studies, and perspectives from professionals pertinent to the subject matter constitute secondary legal resources. Reference books on law and comprehensive collections of legal knowledge serve as third-level materials to add depth to the definition of legal terminology. (Nurhayati & Juwita, 2023)

The methods for gathering information involved reviewing written works, including scrutinizing different official papers, statutes, rules, legal rulings, and scholarly publications. The gathered information was then subjected to a qualitative examination process, which involved explaining, understanding, and judging the information based on relevant legal standards. The examination followed a top-down approach, beginning with broad legal concepts and moving towards how they are used in specific real-world situations. Furthermore, this study employed Gustav Radbruch's legal purpose theory, which emphasizes the three key principles of law: predictability, fairness, and practicality, and used these as the foundation for assessing the judge's reasoning. (Muslih, 2013)

The study took place within the legal area covered by the Gedong Tataan District Court because the cases examined in the study were resolved there. Using this strategy, the study aims to offer a thorough understanding of how criminal law is applied to individuals who commit sexual offenses against minors, in addition to making both theoretical and practical contributions to the advancement of criminal law that is equitable and focused on safeguarding children. (Miles. Et al., 2014)

4. Results and Discussion

4.1. Criminal Responsibility Of Perpetrators Of Criminal Acts Of Sexual Assault Against Children (Study Of Decision Number 10/Pid.Sus/2023/PN.Gdt)

Criminal liability is a form of legal responsibility for a person's criminal acts. In criminal law, this concept is known as criminal responsibility or toerekenbaarheid, which is a situation in which a person can be held responsible because their actions fulfill the elements of a criminal act and are carried out with full awareness of the legal consequences. (Saefudien, 2001) Moeljatno argues that a person can only be punished if they fulfill three main elements: the existence of a criminal act that is regulated and punishable by law, the existence of a perpetrator who is capable of being held responsible, and the



existence of fault in the form of intent (*dolus*) or negligence (*culpa*). This principle is in line with the principle of *geen straf zonder schuld*, which means no punishment without fault. (Moeljatno, 1983)

In the Indonesian criminal law system, criminal liability is based on two fundamental principles, namely the principle of legality and the principle of fault. The principle of legality is stated in Article 1, paragraph (1) of the Criminal Code (KUHP), which states that no act can be punished unless it is based on the force of criminal law in existing legislation. This principle guarantees legal certainty so that no one is punished without a clear legal basis. Meanwhile, the principle of fault emphasizes that punishment can only be imposed if a person is proven legally and convincingly to have committed an act with free will and consciousness. (Bunadi Hidayat, 2010)

According to Van Hamel, a person can be held criminally responsible if they have the capacity to be responsible, which includes three important abilities (Fitri Wahyuni, 2017)

- 1) The ability to understand the meaning of their actions and the consequences they cause
- 2) The ability to realize that their actions are against the law
- 3) The ability to consciously determine their will.
- 4)

If the perpetrator possesses all three abilities, they can be held fully responsible for their actions. In case No. 10/Pid. In Sus/2023/PN Gdt, the panel of judges stated that the defendant, Komarudin bin Ajid (deceased), was in good physical and mental health and fully conscious when he committed the crime against the victim. Thus, the defendant was deemed capable of being held responsible for his/her actions.

Based on the facts of the trial, the defendant was proven legally and convincingly to have committed the crime of sexual intercourse with violence against his own biological child, as stipulated in Article 81, paragraph (3), in conjunction with Article 76D of Law Number 17 of 2016 concerning Child Protection. The Public Prosecutor charged the defendant with a subsidiary charge, and from all the evidence presented at the trial, including the victim's testimony, witness testimony, medical examination results, and the defendant's confession, it was proven that the defendant had committed these acts repeatedly from the time the victim was nine years old until she was eighteen years old. As a result of the defendant's actions, the victim suffered deep psychological trauma and even became pregnant due to the relationship.

The defendant's actions were proven to constitute violence and threats of violence as referred to in Article 76D: "Everyone is prohibited from committing violence or threats of violence to force a child to have sexual intercourse with him or her or with another person." And is punishable by criminal penalties as stipulated in Article 81, paragraph (3): "In the event that the criminal act referred to in paragraph (1) is committed by a parent, guardian, caregiver, educator, educational staff, or child protection officer, or committed by more than one person jointly, the perpetrator shall be punished with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah). (Kasenda, 2024) "Thus, the subjective element of intent and the objective element of sexual intercourse with violence have been fully proven. There are no justifying or exculpatory reasons that can eliminate the defendant's criminal liability, as stipulated in Articles 44 to 51 of the Criminal Code.

In his consideration, the judge stated that as a father, the defendant should have been a protector and guardian of his child, not a perpetrator of sexual violence who destroyed the child's future. The defendant's actions not only violated positive law but also violated the moral values, religion, and social norms of society. Therefore, the judge sentenced the defendant to 20 years in prison and a fine of Rp3,000,000,000.00, which is the maximum penalty under Article 81, paragraph (3) of the Child Protection Law.

This maximum penalty is a form of substantive and protective justice because, in sexual crimes against children, the victim is in a very vulnerable position. The state, through law enforcement agencies, is obliged to provide maximum protection to child victims. The judge also emphasized that the application of the provisions in the Child Protection Law is a form of implementing the principle of *lex specialis derogat legi generali*, whereby special legal provisions (the Child Protection Law) override the general



provisions in the Criminal Code to impose heavier sanctions on perpetrators.(Yohana et al., 2024) Aggravating factors for the defendant include the fact that the acts were committed against his own biological child, were committed repeatedly over a long period of time, caused psychological trauma and pregnancy to the victim, and had a significant social impact on the family and community. The only mitigating factors were the defendant's confession in court and remorse for his actions. However, this was insufficient to reduce the severity of the punishment, given the serious impact of the act.

The application of criminal liability to the perpetrator in this case shows that the Indonesian criminal justice system emphasizes not only retribution but also victim protection and the prevention of similar crimes. This verdict illustrates the judiciary's commitment to achieving a balance between legal certainty, utility, and justice, as outlined in Gustav Radbruch's theory of the purpose of law.(Iin Pahliani, 2024) The judge upheld the principle of legality by basing the verdict on applicable laws, upheld the principle of justice by imposing a punishment commensurate with the crime committed, and upheld the principle of benefit by providing protection to children as the group most vulnerable to sexual violence.(Alamsyah, 2023) The criminal liability imposed on the defendant in this case is in accordance with positive law and the values of justice that exist in society. The maximum sentence reflects that the state is present to protect the dignity of children and deter perpetrators from committing similar crimes in the future. The defendant's actions were not only a violation of the law but also a betrayal of human values and the moral responsibility of a father towards his child. Therefore, the criminal liability imposed in the form of a 20-year prison sentence and a fine of billions of rupiah is appropriate and in line with the spirit of Law Number 17 of 2016, which emphasizes the importance of maximum legal protection for children who are victims of sexual violence.

4.2. The Judge's Considerations for Imposing the Maximum Sentence in Decision 10/Pid. Sus/2023/PN. Gdt

4.2.1 Case Details

This criminal case was tried by the Gedong Tataan District Court and involved the defendant Komarudin bin Ajid (deceased), a 42-year-old farm worker, as the defendant. The defendant was charged with engaging in sexual intercourse and committing sexual violence against his biological child (the victim). The facts revealed during the trial showed that the defendant committed these prohibited acts repeatedly over a very long period, from when the victim was nine years old until she reached the age of 18. These heinous acts were committed within the household and were accompanied by threats and violence. As a result of the defendant's actions, the victim became pregnant and later gave birth to a child.

The Public Prosecutor (JPU) charged the Defendant with subsidiary charges, whereby the primary charges that were proven and used as the basis for sentencing were Article 81, paragraph (3), in conjunction with Article 76D of Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the second amendment to Law No. 23 of 2022 concerning Child Protection. Article 81, paragraph (3) contains aggravating factors because the perpetrator is the biological parent.

Based on these facts and evidence, the Panel of Judges at the Gedong Tataan District Court imposed the maximum criminal sentence of 20 (twenty) years imprisonment and a fine of Rp3,000,000,000.00 (three billion rupiah).

4.2.2 Legal Analysis of the Judges' Considerations in Imposing the Maximum Sentence

The judges' considerations in imposing a sentence on the perpetrator of sexual intercourse with a child under aggravating circumstances (Article 81, paragraph 3 of Law 17/2016) is the core of the second issue in this study. The imposition of a maximum sentence of 20 years of imprisonment and a fine of 3 billion rupiah in Decision Number 10/Pid. Sus/2023/PN.Gdt reflects the application of three pillars of legal consideration: juridical, philosophical, and sociological.

1. Juridical Considerations (Legal Basis and Evidence)



Legal considerations are the main basis that refers to positive legal provisions and facts that have been legally proven in court.

- a) Fulfillment of Criminal Elements: The basis for the judge's legal considerations is based on the facts of the trial, including witness testimony, medical examinations and reports, and the defendant's confession. The defendant was found guilty because he was legally and convincingly proven to have fulfilled the elements of Article 81, Paragraph (3) of Law No. 17 of 2016 concerning Child Protection. The aggravating factor (the perpetrator is the biological parent) was proven to have been fulfilled, which automatically increased the penalty.
- b) Repeated Acts and Fatal Consequences: The judge considered that the defendant had repeatedly raped his biological child from the age of 9 to 18, an act that showed a pattern of planned and continuous crime. The culmination of these acts was that the victim became pregnant and gave birth, which was legally and morally very aggravating for the defendant.
- c) Aggravating Circumstances: In their legal considerations, the judges listed aggravating circumstances, namely that the defendant's actions destroyed the victim's future, caused deep physical and psychological trauma, and were committed by someone who should have protected her (her biological father). The violence committed by the defendant also justified the use of the maximum penalty.

2. Philosophical Considerations (Values of Justice and the Purpose of Punishment)

The philosophical aspect relates to the purpose of punishment itself and the extent to which the verdict can realize the values of justice that exist in society.

- a) Deterrence Effect: The 20-year prison sentence and fine of IDR 3,000,000,000.00 (three billion rupiah) imposed are considered to have an optimal deterrent effect on the defendant. This verdict sends a message that crimes against children, especially those committed by parents, are serious and cannot be tolerated.
- b) Reflecting the Value of Justice: Philosophically, this maximum sentence reflects both restorative and retributive justice principles. Justice must be served to compensate for the invaluable loss and suffering experienced by victims. This severe punishment serves as a counterbalance to the severe human rights violations committed by the defendant within the privacy of the family.

3. Sociological Considerations (Social Impact and Benefits to Society)

Sociological considerations take into account the defendant's background, the social impact on the victim and her family, and the benefits of the verdict for public order.

- a) Background of the Perpetrator as the Biological Father: From sociological perspective, the judge strongly considered the defendant's background as the biological father who had betrayed his trust and social function as a protector. This serious violation of family and moral norms became the main sociological justification for imposing the highest penalty on the perpetrators.
- b) Psychological and Social Impact on the Victim: The judge considered the severe psychological and social impact on the victim. The defendant's actions not only caused trauma but also deeply stigmatized the victim and her child. This verdict aims to protect the victim's interests to the maximum extent possible.
- c) Social Benefits: This verdict benefits society by preventing the recurrence of similar crimes (general prevention). This firm decision serves as a form of social control and affirms the state's stance on protecting children from sexual crimes, especially incest.

5. Conclusion

5.1. Conclusion

Based on the results of the analysis of Decision Number 10/Pid. Sus/2023/PN Gdt, it can be concluded that the objectives of this study have been successfully achieved. This study successfully examined the



form of criminal liability of perpetrators of sexual intercourse with sexual violence against children, particularly in the context of perpetrators who are the biological fathers of victims. The defendant was proven legally and convincingly to have fulfilled the elements of Article 81 (3) in conjunction with Article 76D of Law Number 17 of 2016 concerning Child Protection, so that he could be held fully criminally responsible. In addition, this study succeeded in identifying and analyzing the basis for the judge's consideration in imposing the maximum penalty. The judges used comprehensive considerations covering legal, philosophical, and sociological aspects, which were reflected in the evaluation of the trial facts, the psychological impact on the victim, the power relationship between the perpetrator and the victim, and the importance of child protection in society. Thus, the sentence of 20 years of imprisonment and a fine of IDR 3,000,000,000.00 is considered to be in line with the objectives of criminal punishment and legal protection of children.

5.2. Limitation

This study had several limitations that should be considered. First, this study focuses only on one court decision, namely Decision Number 10/Pid. Sus/2023/PN Gdt. Therefore, the results of the analysis cannot yet fully describe the pattern of judges' considerations in similar cases in various courts. Second, this study is limited to normative legal analysis and does not involve direct interviews with judges, prosecutors, or other parties involved in the judicial process; therefore, practical and empirical perspectives have not been optimally explored. Third, limited access to psychological data on victims also limits a more comprehensive analysis of social and psychological impacts.

5.3. Suggestion

Based on these limitations, future research should analyze several court decisions related to sexual violence against children, especially those involving perpetrators with positions of authority, such as parents or guardians. It is also recommended that future research use an empirical approach through interviews with law enforcement officials, psychologists, and child protection agencies to obtain a more comprehensive picture of the problem. In addition, future research can focus on the effectiveness of criminal punishment in providing protection and recovery for victims, including evaluating psychological rehabilitation policies for victims of sexual violence.

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References

Book

- Bunadi Hidayat. (2010). *Criminalization of Minors*. Alumni.
- Djamil, M. N. (2013). *Children Are Not to Be Punished*. Sinar Grafika.
- Fitri Wahyuni. (2017). *Fundamentals of Criminal Law in Indonesia*. PT Nusantara Persada Utama.
- Lukman Hakim. (2020). *Principles of Criminal Law*. DEEPUBLISH.
- Moeljatno. (1983). *Principles of Criminal Law*. PT Bina Aksara.
- Rahardjo, S. (2014). *Legal Science*. Citra Aditya Bakti.
- Saefudien. (2001). *A Collection of Criminal Law Policies*. Citra Aditya Bakti.
- Shafira, M., Achmad, D., Tamza, F. B., & Ghiffary, H. M. (2022). *Correctional Law and Penitentiary*. Pusaka Media.



- Sudaryono. (2017). *Criminal Law: Fundamentals of Criminal Law Based on the Criminal Code and the Criminal Code Bill*. Muhammadiyah University Press.
- Wahyuni, F. (2017). *Fundamentals of Criminal Law in Indonesia*. Nusantara Persada Utama.
- Yusuf, M. (2014). *Research Methods*. Kencana.

Journals and Articles

- Alamsyah, M. S. (2023). Comparison of Certain Criminal Acts in Law Number 1 of 1946 with Law Number 1 of 2023 Reviewed with Gustav Radbruch's Theory of Legal Purpose. *Journal De Jure Muhammadiyah Cirebon*, 7(1), 24–37.
- Bagenda, C., Alberta, M., Quintarti, L., Ayu, H., & Budianto, H. (2024). *Legal Protection for Victims of Sexual Violence*. 7(9), 3502–3506.
- Dafinaldi, Yusrizal, dan J. (2024). Criminal Acts of Sexual Intercourse Between Father and Child in the Perspective of Criminology. *Journal Unimal*, VII(4), 1–27.
- Hehanussa, D. J. A., & Salamor, Y. B. (n.d.). *Building Legal Awareness of Women and Children Regarding Sexual Offenses*. 292–297.
- Hidayah, U., & Slamet, S. (2022). Legal Protection for Children Who Commit Sexual Crimes (Legal Protection for Child Actors Sexual Offenses According to Law No. 35 of 2014 Regarding Child Protection). *Legal Protection for Children..* 4(2).
- Iin Pahliani. (2024). Application of the Non-Retroactive Principle in Court Decisions: A Criminal Law Perspective. *YUDHISTIRA: Journal of Jurisprudence, Law, and Justice*, 2(3), 11–17.
- Kasenda, V. D. (2024). Criminalization of Acts of Inducing Children to Engage in Sexual Intercourse According to Law Number 17 of 2016 Concerning the Stipulation of Perpu Number 1 of 2016 Concerning the Second Amendment to Law Number 23 of 2002 Concerning Child Protection into Law (T. *Journal of the Faculty of Law, Unsrat*, 13(04).
- Meilan, L. (2017). Children's Right to Protection Based on Legislation. *UIR Law Review*, 02, 21–22.
- Muslih, M. (2013). The Indonesian Rule of Law from the Perspective of Gustav Radbruch's Legal Theory. *Legality*, 4(1), 130–152.
- Nurhayati, & Juwita. (2023). Sexual Violence Against Children (Case Study of Decision Number 832 / PID . SUS / 2023 / PN JKT . BRT). *IBLAM Law Review*, 832.
- Octaviani, F., & Nurwati, N. (2021). Analysis of Factors and Impacts of Sexual Violence Against Children. *HUMANITAS Journal of Social Welfare*, 3(II), 56–60.
- Gedong Tataan District Court. (2023)*
- Putri, R. P. (2019). *Vol. 1 No.2 Juni 2019* <http://jurnal.ensiklopediaku.org> *Encyclopedia of Social Review*. 1(2), 129–134.
- Rista, A. U., & Yunus, A. (2025). *Accountability in Sexual Violence Crimes Committed by Children Based on Law Number 17 of 2016 concerning Child Protection (Study of Decision Number 8 / Pid. Sus-. 3(April)*, 4–12.
- Rivanie, S. S., Muchtar, S., Muin, A. M., Prasetya, A. M. D., & Rizky, A. (2022). *Development of Theories of the Purpose of Punishment*. 6(2), 176–188.
- Siregar, F. R. (2023). Criminal Responsibility for Perpetrators of Sexual Violence Against Children. *Seminar of Social Sciences Engineering & Humanities SCENARIO 2023*, 241–2493.
- Widodo, G., Fakultas, D., Universitas, H., Pidana, S. P., & Anak, P. (2016). *Surya Kencana Dua Journal: Dynamics of Legal Issues and Justice Vol. 6 No.1, Maret 2016* 58. 6(1), 58–82.
- Yohana, D., Damanik, P., & Fikri, R. A. (2024). *Sexual Intercourse With Children*. 9(2), 553–566.
- Yustiningsih, I. (2020). Legal Protection of Child Victims of Sexual Violence from Revictimization in the Criminal Justice System. *LEX Renaissance*, 5(2), 287–306.