

## Juridical Review of A Sexual Violence Criminal Offense Committed by A Step Father Against A Stepchild

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### Abstrak

*This study aims to review the deliberation process of The Panel of Judges in imposing a heavier sentence than the Prosecutor's demands for the perpetrator of sexual violence criminal offense committed by a stepfather against a stepchild in Verdict of District Court of Kefamenanu Number 3/Pid.Sus/2023/PN Kfm. In imposing a sentence, the Panel of Judges must consider juridical and non-juridical circumstances to impose a fair sentence for the defendant and the victim. This research is conducted by reviewing written norms with a case approach supported by secondary data or library materials. The data were collected through a literature study and documentation. The method of data analysis in this study is descriptive qualitative method. The results of this study indicate that in imposing a verdict to the Defendant who committed the crime of sexual violence against his stepdaughter, the Panel of Judges has considered 3 (three) aspects, namely juridical, philosophical, and sociological considerations. The Panel of Judges is convinced to heighten the criminal penalties imposed on the Defendant based on philosophical considerations. In philosophical considerations, the Panel of Judges considered that the urgency of sexual violence that is often committed against children could threaten the crucial roles of children as the next generation of the nation in the future. Therefore, the Panel of Judges believes that imposing a heavier sentence than the Prosecutor's demands for the perpetrators of sexual violence crimes is exceptional in the court. In practice, judges commonly impose less or the same punishment as the charges of the Prosecutor in other existing verdicts.*

Keywords: judges' considerations, sexual violence, criminal law, children

### A. Introduction

A criminal charge refers to an act of intentionally inflicting harm on someone else who acts under certain conditions (Takdir, 2014, p. 4).

A criminal conviction is defined as the sanctioning stage in criminal law (Ingkiriwang, 2019, p. 113).

A criminal offense refers to an unlawful act committed, whether intentional or not, by an individual who commits an act prohibited by regulation. The elements of a criminal offense can be in the form of actions and consequences. Criminal acts only point specifically to prohibited and actions that carry a potential penalty. (Marselino, 2020, p. 633).

Violence is any action that causes physical, psychological, economic, and sexual harm or suffering. Meanwhile, violence against children is any action that shows differentiation and any forms of treatment directed towards children, which results in a range of harm, including physical, psychological, economic, and sexual violence (Hudiono, 2014, p. 5).

Violence can occur anywhere and can happen to anyone, including within households, where victims are often reluctant to report what they have experienced. There are several factors behind this, namely:

1. The Perpetrator and the Victim are relatives or bound by marriage, which makes the Perpetrator resides in the same household as the Victim. Therefore, the Victim may fear to report the Perpetrator's actions.

2. The conservative mindset persists in society that deems domestic matters, including violence, as a private family matter. If the Victim wants to ask for help or if there is someone witnesses the violence and to report it to the authorities, it is often perceived as showing a family problem.
3. The community's trust for the authorized to handle such violence is decreasing, because of that the community is hesitant and uncertain whether they will escape from the perpetrators if they report the violence. (Triwanto, et al., 2020, p. 59-60).

Sexual violence is a criminal act or intimidation related to all sexual perpetrated by individual against a Victim by forcibly depriving the Victim's human rights, causing them to suffer physically, psychologically, and materially (Rusli & Martquardo, 2021, p. 102).

Anyone can be a victim or perpetrator of sexual violence, regardless of gender and age. Both Adults and children can also be the target of perpetrators of sexual violence.

In general, the definition of child sexual abuse refers to the participation of a child in the act of sexual activity committed while the Child is below the legal age of consent as defined by the Law. This activity may involve an adult or a person who is considered more capable and knowledgeable than the Child who targets him/her for sexual abuse and exploits them for sexual pleasure. (Budihastuti and Aryani, 2022, p. 3)

Children are the nation's aspirations and inheritors of its struggles, who have an essential role and unique characteristics that can ensure the nation and state's continuity in the future. Therefore, the government should protect children's rights.

Children under 18 (eighteen) years old are vulnerable to preparators, who commit their crimes through various modus operandi, such as threats, coercion, seduction, and persuasion. Because of these manipulative methods children often unwittingly consent to sexual activities.

The Online Information System for the Protection of Women and Children (SIMFONI PPA) reports that the number of child victims of sexual violence from 2019 to 2022 has increased rapidly. In 2019, the number of child victims reached 6,454 cases; in 2022, it jumped to 9,588. (Maulana, 2023).

The child victim of the Perpetrator of sexual violence suffers many losses, not only outwardly or physically but also spiritually, such as psychological shocks, which can affect the Child's future (Gultom, 2013, p. 2).

A girl under 18 (eighteen) was abused and raped by an adult man, her Stepfather, who was supposed to protect his Child. As a result of her Stepfather's actions, the Victim suffered pain in her private parts and felt sad, scared, and traumatized according to the Verdict Number 3/Pid.Sus/2023/PN Kfm. This incident began in 2022, when the Victim was 14 (fourteen) years old and still in the second grade of Junior High School.

The Defendant was legally proven to have fulfilled the charges of Article 81 Paragraph (3) in connection with Article 76D of the Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law with a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp 5,000,000,000 (Five Billion Rupiah) in the Verdict of the District Court of Kefamenanu Number 3/Pid.Sus/2023/PN Kfm. The punishment is aggravated by 1/3 (one-third) of the primary punishment because the criminal offense is committed by the parent or guardian. This information was presented during the reading of the indictment by the Prosecutor, who filed a criminal charge against the Defendant with

imprisonment for 10 (ten) years and a fine of Rp 60,000,000 (Sixty Million Rupiah). If the fine is not paid, it would be replaced with 6 (six) months detention. However, the Judge applied a heavier criminal sanction to the Defendant with imprisonment for 14 (fourteen) years and a fine of Rp 60,000,000.00 (Sixty Million Rupiah) with a Subsidiary of 6 (six) months detention.

It is uncommon for Judges to decide on criminal sanctions that are more severe than the charges of the Prosecutor against perpetrators of sexual violence in court because, in other existing verdicts, Judges mostly decide to impose a lighter sentence or similar sentence as the charges of the Prosecutor.

Based on what is elaborated above, the researcher is encouraged to study how The Panel of Judges decide to impose a heavier sentence than the Prosecutor's asked for regarding the crime of sexual violence committed by a father against his stepdaughter in the Verdict of the District Court of Kefamenanu Number 3/Pid.Sus/2023/PN Kfm.

This study aims to review the Judge's consideration in determining to impose a heavier punishment than the demands of the Prosecutor on the Perpetrator of the crime of sexual violence committed by a father against his stepdaughter in Verdict Number 3/Pid.Sus/2023/PN Kfm.

## **B. Research Methods**

This study follows the objectives and the research questions, thus, it uses a method called normative legal research. This means that it examines written rules using a case-based approach and information from sources like libraries or literature (Soekanto & Mamuji, 2013, p. 13).

The research has a descriptive nature. It means that this research describes how judges make decisions to impose heavier sentences than what the Prosecutor asks for against the Perpetrator of the crime of sexual violence committed by the stepfather against a child in the Verdict of the District Court of Kefamenanu Number 3/Pid.Sus/2023/PN Kfm.

The data were collected through a literature study and documentation. The data source used in this research is secondary or literature data with a case-based approach consisting of primary, secondary, and tertiary legal materials. The primary legal materials used in this study were legal documents, primarily the Indonesian Criminal Code, Law Number 23 of 2002 concerning Child Protection, Law Number 13 of 2014 Concerning First Amendments to Law Number 23 of 2002 concerning Child Protection, Law Number 17 of 2016 concerning Second Amendments to Law Number 23 of 2002 concerning Child Protection, Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Law Number 48 of 2009 concerning Judicial Power, and the Verdict of District Court of Kefamenanu Number 3/Pid.Sus/2023/PN Kfm. Secondary legal materials include all non-official legal publications, such as textbooks and scientific articles. Tertiary legal materials that help to interpret primary and secondary sources are such as legal dictionaries, encyclopedias, and the online sources.

A qualitative analysis method is applied in this study, which includes processing and analyzing the data. This method describes the existing phenomena, sorts them into categories, and then analyzes them to obtain a conclusion. This qualitative data analysis method assesses the data indirectly and presents findings without using numbers, tables, or statistical formulas (Susilawati & Irpan, 2022, p. 7194).

### C. Results and Discussion

The formulation of the problem in this legal writing is to review the judge's deliberation in deciding a heavier verdict than the Prosecutor's initial charges regarding the criminal case of sexual violence committed by the Stepfather against the in the Verdict of the District Court of Kefamenanu Number 3/Pid.Sus/2023/PN Kfm, then to review it, the researcher elaborated the contents of the Verdict.

In the described Verdict, the Defendant or the Perpetrator of the crime of sexual violence against a stepchild named Estachius Mali alias Esta, 53 years old, male with Indonesian nationality residing in North Central Timor Regency, was legally and convincingly proven guilty of committing sexual violence committed against the Child Victim (Stepchild of the Defendant). This action is regulated and punishable by the first alternative charge, namely in Article 81 Paragraph (3) in connection with Article 76D of Law No. 17 of 2016 on the Second Amendment to the Law on Child Protection.

The researchers have done a comparison of several laws that regulate criminal acts of sexual violence against children, including the Criminal Code, Law Number 23 of 2002 concerning Child Protection, which has undergone two amendments (the first amendment with Law Number 35 of 2014 and the second amendment with Law Number 17 of 2016), and Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Comprehensively, among all these laws, the most severe sanctions are found in Law Number 17 of 2016 which constitutes the Second Amendment to Law Number 23 of 2002 concerning Child Protection with the potential for the death penalty, as well as a maximum imprisonment of 20 (twenty) years and a minimum of 5 (five) years with a maximum fine of Rp 5,000,000,000 (Five Billion Rupiah).

In addition to the Child Protection Law, Law No. 23 of 2004 on the Elimination of Domestic Violence also deals with criminal offenses like those committed by the Defendant. Article 46 jo Article 8 letter (a) of Law No. 23 of 2004 on the Elimination of Domestic Violence states that every person who commits an act of sexual violence against a person who resides within the household, can be punished with a maximum imprisonment of 12 (twelve) years or a maximum fine of Rp 36,000,000 (thirty-six million rupiah). Based on the comparison between the Child Protection Law and the Law on the Elimination of Domestic Violence, it can be concluded that the most severe criminal punishment is prescribed in the Child Protection Law.

Article 81 Paragraph (1) jo. Article 76D of Law Number 17 of 2016 states that every person who deliberately commits violence or threats for violence, forcing a child to commit sexual activities with him/her or with others, is subjected to a maximum penalty of 15 (fifteen) years of imprisonment and 5 (five) years at least and a maximum fine of Rp 5,000,000,000.00 (Five Billion Rupiah). In this case, which is a Verdict Number 3/Pid.Sus/2023/PN Kfm, the case was undertaken as an aggravating circumstance, which increased the punishment by 1/3 (one-third) of the maximum penalty to the punishment.

In this case, the Defendant forced the Victim to have sexual intercourse twice. The first incident occurred in September 2022, when the Victim was with witness Y, the Victim's younger sibling. The Victim and Witness Y were sleeping in the bedroom, and at that time, the Victim was sleeping soundly. Not long after, the Victim realized that the Defendant had pulled down the Victim's pants. The Victim saw the Defendant sitting on the bed wearing his underpants and no shirt, then the Victim kicked the Defendant, and the Defendant fell off the bed. The Defendant

got up and covered the Victim's mouth using his left hand because the Victim was about to scream. After that, the Defendant removed his underpants and climbed on the Victim's body. The Defendant's two hands opened the Victim's legs in a V shape, then inserted his genitalia into the Victim's vagina. After that, the Defendant removed his genitalia and left the Victim in the room, and the Victim went back to sleep.

The second incident occurred in October 2022, at night. The Victim was asleep and did not realize when the Defendant entered, and the Victim felt the Defendant sagging the Victim's pants. The Victim intended to scream, but the Defendant slapped the Victim in the mouth, so the Victim remained silent. At that time, the Victim saw the Defendant remove all of the Defendant's pants. The Defendant opened the Victim's legs using his two hands, and inserted his genitalia into the Victim's vagina for approximately 3 (three) minutes. The Defendant released the Victim and immediately left the Victim in the room.

The Victim also added that on the second occasion in October 2022, before the Defendant committed the act of forced coitus with the Victim, the Defendant slapped the Victim in the mouth, and the Defendant grabbed the Victim with both hands which made the Victim unable to move.

Based on the consistent testimonies provided by the witnesses, the Defendant's statement, written evidence, and their connection with the presented trial evidence, the following legal facts can be seen as follows:

1. The Defendant inserted his genitalia into the Victim's vagina twice, the first incident occurred in September 2022, and the second occurred in October 2022. Both incidents occurred in the middle of the night in the Victim's bedroom, who resides in the North Central Timor District.
2. That the first incident started when the Victim and her younger sibling, Y, were sleeping in the room. The Victim Child woke up when the Defendant opened the Victim Child's pants, at that time the Defendant was sitting on the bed wearing only underwear, immediately the Victim Child kicked the Defendant and the Defendant fell off the bed, then the Defendant got up and covered the Victim Child's mouth with a blanket and grabbed the Victim Child by the neck while saying, "If you scream I will choke you," then the Defendant removed his underwear and spread the Victim Child's legs in a V shape and inserted his genitalia into the Victim Child's vagina, Not long after the Defendant pulled out his genitalia, a white liquid came out of the Defendant's genitalia and was wiped by the Defendant using his shirt while the Defendant said, "If you tell your mother, I will kill you both," then the Defendant left the Victim, at that time there was blood on the Victim's pants, then the Victim went back to sleep. The second incident occurred when the Victim Child and her younger sibling, Y, were sleeping in the room, the Victim Child woke up when the Defendant stripped down the Victim Child's pants. At that time, the Victim Child immediately got out of bed but was immediately pulled by the Defendant, and the Defendant immediately slapped the Victim Child in the mouth asking the Victim Child to be quiet, then the Defendant strongly hugged the Victim Child with both hands until the Victim Child could not move, Then the Defendant removed his pants and inserted his genitalia into the Victim's vagina. About 3 (three) minutes later the Defendant got off of the Victim, at that time a white liquid came out of the Defendant's penis and

- was wiped by the Defendant using his shirt while the Defendant said, "It is okay, you will not get pregnant," then the Defendant left the room.
3. Due to the Defendant's actions, the Victim suffered pain in her private part and felt sad, afraid, and traumatized.
  4. That the Victim did not immediately report the Defendant's actions to Witness II (the Victim's biological mother) because the Victim was afraid of the Defendant's threats.
  5. That the Victim Child was born in Oekoro in 2008.
  6. That the Defendant is the stepfather of the Victim Child, where initially Witness II had been married to the biological father of the Victim Child, the late B, who passed away on December 4, 2013. From that marriage, Witness II had 2 (two) children, the Victim Child and her younger sibling, Y. Later, Witness II married the Defendant on a Catholic ceremony in Fatuoni in 2018, but the marriage had not been officially registered. Witness II and the Defendant have 2 (two) children, A and T.
  7. The Defendant, Witness II, and the Child Victim have lived together in the same house since 2014.
  8. That Defendant did not admit his actions.

The Prosecutor charged the Defendant based on alternative charges. Hence, considering the legal facts above, the Panel of Judges chose the first alternative charge in Article 81 Paragraph (3) in connection with Article 76D of Law Number 17 of 2016 concerning the Second Amendment to the Child Protection Law, the elements of which are:

1. Everyone;
2. Having sexual intercourse with her or with another person;
3. Use violence or threat of violence to force the Child;
4. Committed by parents, guardians, people with a family relationship, child caregivers, educators, education personnel, officials who handle child protection, or committed by more than one person and committed jointly.

In the Judge's Verdict, the Defendant has been legally and convincingly proven guilty according to the Law of of child's sexual abuse criminal offense by parents or guardians. The Defendant is sentenced to 14 (fourteen) years and a fine of Rp. 60,000,000.00 (sixty million rupiah) Subsidiary of 6 (six) months detention. With the verdict, The Panel of Judges decided to impose a heavier sentence than the Prosecutor's had requested, which was 10 (ten) years imprisonment and a fine of Rp 60,000,000 (sixty million rupiah) subsidiary of 6 (six) months detention. The decision to impose a heavier penalty than the Prosecutor's request is uncommon in court proceedings Usually. Judges impose less or the equal punishment as the Prosecutor requested in other existing verdicts.

In determining a verdict with a heavier criminal penalty than the Prosecutor's Charge, the Judge must consider consistent theories and research findings, so that they can impose a Verdict that aligns with the objectives of punishment. The Judge's consideration consists of juridical, philosophical, and sociological considerations. After the Judge considered juridical factors, such as the Prosecutor's charges, witness testimonies, Defendant's statements, evidence, and relevant legal articles, non-juridical factor came into consideration. This factor was in the form of philosophical and sociological considerations, in This case, the Judge's philosophical considerations

played crucial role in justifying the Judge’s decision to increase the criminal sanctions against the Defendant.

The researcher believes that The Verdict of the District Court of Kefamenanu Number 3/Pid.Sus/2023/PN Kfm is considered to be a wise Verdict and has provided a sense of fairness. The Panel of Judges charged the Defendant with sexual violence against his stepdaughter by considering the juridical and non-juridical factors. Therefore, the Judge concluded that the Defendant is legally and convincingly guilty according to the Article 81 Paragraph (3) in connection with Article 76D of Law of the Republic of Indonesia Number 17 of 2016 concerning the Second Amendment to the Child Protection Law. This conclusion is based on the careful examination of trial evidence, including witness testimonies, evidence in the form of a Visum Et Repertum letter, evidence of instructions (the result of the Judge's assessment of the consistency between witness testimonies, and Defendant's testimony), and evidence of the Defendant's own statement, that led the Panel of Judges to establish that a criminal offense has been committed.

The Panel of Judges has examined the theories related to the case and has considered the values of justice (philosophical considerations) the values of life in society (sociological considerations), the considerations in increasing the criminal penalty against the Defendant, and taking into account the considerations in the Child Protection Law, which states the urgency of children so that it threatens the role of children’s role as the nation’s aspirations and inheritors of its struggles, who have an essential role and unique characteristics that can ensure the nation and state’s continuity.

From the above juridical, philosophical, and sociological considerations, the Panel of Judges aggravated the criminal penalty against the Defendant with 14 (fourteen) years imprisonment and a fine of Rp. 60,000,000.00 (sixty million rupiah). If the fine is not paid, it can be replaced with 6 (six) months detention. In the sociological consideration, the Panel of Judges paid attention to the values of life in society, where the increased punishment for the Defendant is not merely intended to degrade the dignity of the Defendant as a human being, but it is expected to bring about a sense of remorse and wary as a result of the actions committed, so that when the Defendant returned to the society, he can become a better and more helpful person for the society.

#### **D. Conclusion**

In the Verdict of the District Court of Kefamenanu Number 3/Pidsus/2023/PN Kfm, the Defendant has been proven legally and convincingly guilty according to the law of child’s sexual abuse criminal offense committed by parents or guardians. The Panel of Judges sentenced heavier punishment to the Defendant to 14 (fourteen) years imprisonment and a fine of Rp 60,000,000.00 (sixty million rupiah) subsidiary of 6 (six) months detention. This sentence is heavier than what the Prosecutor had requested, which was an imprisonment for 10 (ten) years and a fine of Rp. 60,000,000.00 (sixty million rupiah) subsidiary 6 (six) months detention. This decision was an unusual occurrence in court. The Panel of Judges’s consideration in handing down the Verdict of the District Court of Kefamenanu Number 3/PidSus/2023/PN Kfm regarding the case of a Stepfather who committed a sexual crime against his stepchild consisted of several considerations, namely juridical, sociological, and philosophical considerations. In juridical considerations, the Defendant's actions clearly satisfy the criteria outlined in the charge presented by the Prosecutors. Specifically, they align with the first alternative charge as regulated in Article 81 Paragraph (3) in connection with Article 76D of Law Number 17 of 2016 concerning the Second Amendment to the Child Protection Law. In the sociological

consideration, the Judge paid attention to the values of life in society. The decision to heightened the Defendant's penalty is not merely intended to degrade the dignity of the Defendant as a human being, but it is expected to bring about a sense of remorse and wary as a result of the actions committed so that when the Defendant returned to the society, they can become a better and more helpful person to the society. The Judges' philosophical consideration in determining the punishment to the Defendant is considered the preamble of the Child Protection Law. This decision saw the urgency of sexual violence that often occurs to children, which poses a big threat to the essential role of children as a generation that will continue the future of the nation and state. Therefore, based on this philosophical consideration, the Judge was convinced to aggravate the criminal punishment against the Defendant, where it is an unusual event in court proceedings. Because, usually the Judge tend to impose less or equal punishment as the Prosecutor's charges in other existing verdicts.



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