

## Sexual Violence Against Biological Children and Criminal Sanctions to Perpetrators Based on the Indonesian Legal System

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**Annotation:** This study aimed to describe how the criminal law regulates sexual violence and to analyze how the penalties for perpetrators of sexual violence against biological children are regulated in Indonesian positive law. This study was conducted using normative legal research in the form of literature study using three types of legal material, namely primary legal materials, secondary legal materials, and tertiary legal materials, with qualitative descriptive research analysis. The result of the study stated that the crime of sexual violence as a whole is regulated in the Criminal Law Code (KUHP), Human Rights Law No. 39 of 1999, Domestic Violence Elimination Act No. 23 of 2004. Also, specifically against children as victims is provided in Act No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 on Child Protection. Other research findings indicated that the penalties for sexual violence against minors are set out in Article 285 of the Criminal Law Code (KUHP), which carries imprisonment for a maximum of twelve years. Whereas in the Child Protection Act, imprisonment based on Articles is five years at the shortest and fifteen years at the longest, as well as a maximum fine of Rp5,000,000,000,00. If the offence is committed by parents, guardians, caregivers of children, educators, or educational staff, then the penalty shall be one third of the penalty referred to paragraph (1).

**Keywords:** Sexual violence; Child abuse; Criminal sanctions; Perpetrator

### Background to the Study

Crime is one of the social problems that deeply disturb humans in everyday life. Crime has occupied the top spot as a target of discussion in various circles of science and legal experts. This is evidenced by the many news about various violent crimes, murder, robbery, theft, and other crimes related to decency.

Evil is a problem that happens to people from time to time. Why the crime occurred and how to eradicate it is an issue that never stops being discussed (Sabda Tuliiah, 2018). This means that evil exists and occurs or develops in the environment of human life. Meanwhile, the existence of evil becomes another picture than the existence of human life itself.

Efforts have been made to eliminate evil from the face of the earth. But this evil has never disappeared from human civilization. Evil cannot be eradicated from the face of the earth, because

it grows and develops in line with human culture and is carried out by humans as one of the sub-systems of civilization support even though evil is not desired by the community but always it will grow in society because it is committed by one of the members of the community.

1. Of the various crimes that disturb society as well as contradict the law is the criminal act of sexual violence. This crime is also called a sexual crime that is generally experienced by women and even their own biological children. Several studies related to this have been conducted, namely research entitled Forms of Sexual Violence against Minors (L.Nainggol, 2008) the results of this study are that sexual violence against children is a serious crime. This crime arises in society regardless of the social stratification of the perpetrator or victim, and can arise due to environmental influences and psychological backgrounds that affect the perpetrator in the past or because of spontaneous psychic shocks due to sexual stimulation. Research question on this article is What is the criminal regulation of sexual violence in Indonesia's Positive law?, What are the criminal sanctions for perpetrators of sexual violence in Indonesia's Positive law?

### **Statement of the research problem**

This research is normative legal research using a statutory approach, and focuses on primary legal materials, namely Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection explains that the Unitary State of the Republic of Indonesia guarantees the welfare of each citizen, including the protection of children's rights which are human rights. and Law Number 12 of 2022 concerning Sexual Violence. Collection of legal materials through literature study, processing of legal materials is carried out by examination, marking, reconstruction, and systematics. Analysis of legal materials is carried out qualitatively and systematically to provide answers to research problems.

### **Results And Discussion**

#### **A. Regulation of Sexual Violence in Indonesian Positive Law**

Sexual violence is a criminal act as stipulated in the Criminal Code, namely Article 285 which states: "Whoever by force or threat of violence forces a woman to have intercourse with him outside marriage, shall be threatened with sexual violence, with a maximum imprisonment of twelve years." In addition to being regulated in the Criminal Code, the crime of sexual violence specifically against children is specifically regulated in Law Number 23 of 2002 as amended by Law Number 35 of 2014 concerning Child Protection. Article 76D of Law Number 23 of 2002 as amended by Law Number 35 of 2014 concerning Child Protection, which states "Everyone is prohibited from committing violence or threats of violence to force children to have intercourse with him or with others." The Domestic Violence Law Number 23 of 2004 also regulates sexual violence. Article 5 states that domestic sexual violence includes:

- a. forced sexual relations committed against people living within the scope of the household;
- b. forced sexual relations between one person in his household and another person for commercial and/or specific purposes.

Meanwhile, Law Number 12 of 2022 concerning Sexual Violence states "sexual violence is all acts that meet the elements of criminal acts as stipulated in this Law and other acts of sexual

violence as stipulated in this Law as long as specified in this Law”. This law divides the criminal act of sexual violence into: a. nonphysical sexual harassment; b. physical sexual abuse;

Acts of sexual violence can harm others, namely the victim. In the context of a household or family, sexual violence experienced by victims is not all reported by victims to law enforcement officials, caused by several factors including victims feel ashamed, victims do not want the disgrace that befalls them to be known to others, victims feel afraid because they have been threatened with death by perpetrators, families consider the problem of domestic violence as a family matter, The family is reluctant to accept outside or community interference, the family considers the violence that befalls as a family secret and a disgrace when spread to other parties, as well as shame in receiving disgrace, avoiding negative views of society, not understanding the law, and usually the trial process is long, misleading and tiring.

The forms of sexual violence according to Law Number 12 of 2022 concerning Sexual Violence according to Article 4 paragraph (1) consist of non-physical sexual harassment and physical sexual harassment. Meanwhile, according to Mulyana W. Kusuma, among others:

a. Sadistic Rape; In this type of sexuality and aggression combine in the form of destructive violence, the perpetrator of sexual violence appears to enjoy erotic pleasure not through sex, but through horrific attacks on the victim's genitals and body.

b. Anger Rape; is sexual persecution characterized by sexuality, being a means of expressing and venting suppressed feelings of anger and anger. Here the victim's body seems to be an object against whom the perpetrator projects a solution to the frustrations, weaknesses, difficulties and disappointments of his life.

c. Domination Rape; Sexual violence occurs when the perpetrator tries to persistently resist power and superiority over the victim. The goal is sexual conquest, the perpetrator hurts the victim, but still has the desire to have sex.

d. Seductive Rape; a sexual violence that occurs in stimulating situations, created by both parties. At first the victim decides that personal intimacy should be limited not to the extent of intercourse. Perpetrators generally have beliefs that need coercion, therefore without it do not have guilt regarding sex.

e. Victim Precipitated Rape; is sexual violence that occurs (takes place) by placing the victim as the trigger.

f. Exploitation Rape; sexual violence that indicates that on every occasion having sexual intercourse obtained by the man by taking advantage is contrary to the position of the woman who depends on him economically and socially.

## **B. Criminal Sanctions Against Perpetrators of Sexual Violence**

Criminal acts of sexual violence can be committed by anyone, against whom, when and where. Therefore, lawmakers formulate sexual violence crimes in two natures, namely general sexual violence crimes and specific sexual violence crimes. The two criminal properties of sexual violence are formulated into different forms of laws and regulations and the sanctions given are different. The differences in the form of legislation and sanctions given in these laws and

regulations are certainly based on what considerations are behind them, both philosophical, sociological, juridical and others.

Sexual violence is something that women are very afraid of. There are two aspects that cause sexual violence to have a frightening meaning. These aspects can be viewed from a formal juridical and sociological perspective. These aspects greatly affect people's perception of acts called sexual violence.

Article 285 of the Criminal Code states: "Whoever by force or threat of violence forces a woman to have intercourse with him outside marriage, shall be threatened with sexual violence, with a maximum imprisonment of twelve years." In addition to being regulated in the Criminal Code, the criminal act of sexual violence is also contained in Article 8 of Law Number 23 of 2004. It is stated that sexual violence includes: a. Coercion of sexual relations committed against people who live within the scope of the household; b. Coercion of sexual relations against one person within the scope of his household with another person for commercial purposes and/or certain purposes. In Law No. 23 of 2002, it has been amended by Law No. 35 of 2014 concerning Child Protection. Article 76D states, "any person shall not commit violence or the threat of violence to compel a child to have intercourse with him or with another person." In Law Number 12 of 2022 concerning Sexual Violence; non-physical sexual harassment with a maximum imprisonment of 9 (nine) months and/or a maximum fine of Rp10,000,000.00 (ten million rupiah), physical sexual harassment with the intention of degrading one's dignity and dignity based on sexuality and/or decency with a maximum penalty of 4 (four) years and/or a maximum fine of Rp50,000,000, 00 (fifty million rupiah or), physical sexual abuse with the intention of placing someone under his power unlawfully, both inside and outside marriage with a maximum imprisonment of a 12 (twelve) years and/or a maximum fine of Rp300,000,000.00 (three hundred million rupiah).

Sanctions are sufferings given to a person after a violation, crime and wrongdoing. Sanctions are also interpreted as a punitive action to force someone to obey the rules or regulations. There are two terms related to the word "sanction", namely: criminal sanctions and action sanctions. Criminal sanctions are sanctions related to the idea of imposing sanctions on perpetrators for an act, while action sanctions are related to the idea of protection provided by society.

Indonesian positive law is a collection of written and unwritten legal principles and rules that are currently in force and binding in general or specifically and are enforced by or through the Indonesian government or government. Law is also defined as a law made by man, obliging or establishing an action. The term also describes the assignment of certain rights to an individual or group.

Sexual violence is divided into two, namely:

1. Severe sexual violence, in the form of sexual harassment with physical contact, such as touching, touching sexual organs, forcibly kissing, embracing and other acts that cause disgust, terror, humiliation and feeling controlled. Coercion of sexual intercourse without the victim's consent or when the victim does not want to. Coercion of sexual relations in an unwelcome, degrading and/or hurtful way, Coercion of sexual relations with others for the purpose of prostitution and / or certain purposes, The occurrence of sexual relations where the perpetrator

takes advantage of the victim's position of dependence that should be protected, Sexual acts with physical violence with or without the help of tools that cause pain, injury, or injury.

2. Minor sexual violence; In the form of verbal sexual harassment such as verbal comments, pornographic jokes, whistling, ridicule and nicknames and / or non-verbally, such as facial expressions, body movements or other actions that ask for unwanted sexual attention the victim is harassing and or insulting to the victim. Repitting mild sexual violence can be included in the type of severe sexual violence.

There are several Indonesian Laws No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law) containing the definition of domestic violence and regulations containing prohibitions to criminal sanctions for perpetrators of domestic violence and Child Protection Law Number 35 of 2014, Amendments to Law Number 23 of 2002, and Law Number 12 of 2022 concerning Sexual Violence.

The provision of criminal sanctions to perpetrators of criminal acts in this case is a criminal act of sexual violence is by entangling in articles on sexual violence in the Criminal Code such as Article 285, Article 286, Article 287, Article 288.

If the criminal act of sexual violence does not meet the elements in the articles on sexual violence in the Criminal Code, then the perpetrator can be applied with other legal regulations outside the Criminal Code such as Law Number 23 of 2004 concerning the Elimination of Domestic Violence, and specifically for victims of immature women can be applied Child Protection Law Number 35 of 2014, amendments to Law Number 23 of 2002 concerning Child Protection.

As for criminal sanctions for perpetrators of sexual violence in the Criminal Code against minors, it is formulated in KUHP Article 285, which can be charged with a maximum of twelve years in prison. In Child Protection Law Number 35 of 2014, amendments to Law Number 23 of 2002 perpetrators can be imprisoned based on Article for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah). In the event that a criminal act is committed by a parent, guardian, babysitter, educator, or education staff, then the crime is added to 1/3 (one-third) of the criminal threat as referred to in paragraph (1).

### Conclusion

1. The criminal act of sexual violence as a whole is regulated in the Criminal Code (KUHP) no 12 of 2022 concerning the criminal act of sexual violence, Human Rights Law Number 39 of 1999, Law on the Elimination of Violence in the House Number 23 of 2004. And specifically for children as victims, regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection explains that the Unitary State of the Republic of Indonesia guarantees the welfare of each citizen, including the protection of children's rights which are human rights<sup>12</sup>. Children as buds, potentials, and the next generation of young people who succeed in the ideals of the nation's struggle have a strategic role, characteristics, and special characteristics so that they must be protected from all forms of inhuman treatment that result in human rights violations, and Law Number 12 of 2022 concerning Sexual Violence.



2. Criminal sanctions for perpetrators of sexual violence against minors are regulated in Article 285 of the Criminal Code. Perpetrators of sexual violence against minors can be sentenced to a maximum of twelve years imprisonment, while in the Child Protection Law, imprisonment under Articles 81 and 82 is a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah). In the event that a criminal act is committed by a parent, guardian, babysitter, educator, or education staff, then the crime is added to 1/3 (one-third) of the criminal threat as referred to in paragraph (1). In Law Number 12 of 2022 concerning Sexual Violence, imprisonment based on Article 5 (non-physical sexual acts) for a maximum of 9 (nine) months and/or a maximum fine of Rp10,000,000.00 (ten million rupiah), as well as Article 6 (physical sexual acts) for a maximum of 12 (twelve) years and/or a maximum fine of Rp300,000,000.00 (three hundred million rupiah).

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