

Research Article

Legal Protection for Children as Victims of Criminal Acts of Sexual or Molestation Committed by People Who Have Family Relations and Carried Out Continuously

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ORCIDRia Debora Situmeang: <https://orcid.org/0009-0004-9388-2846>**Abstract.**

Attention to children as the next generation has important relevance in the development of human civilization. The approach method used in this research is the normative legal approach method, namely research that positions law as a system of norms regarding the principles, standards, rules of statutory regulations, court decisions, agreements, and doctrines (teachings). Children are not only national assets, but also have the right to protection and be provided with basic rights as regulated in the 1945 Constitution and related regulations. With the ratification of the Convention on the Rights of the Child and the enactment of Law No. 35 of 2014, the state is committed to protecting children from various forms of violence and discrimination. However, the reality shows that children in Indonesia still face many challenges, such as being exposed to violence committed by those closest to them. Therefore, there is a need for attention and real action to create a safe environment for children in all aspects of life.

Keywords: children, protection, sexual, violence

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1. Introduction

The state upholds human rights, including children's human rights, which are marked by the guarantee of protection and fulfillment of children's rights in the 1945 Constitution of the Republic of Indonesia and several provisions of laws and regulations, both national and international. Children need protection from the negative impacts of rapid development, the flow of globalization in the field of communication and information, advances in science and technology, and changes in the lifestyle and way of life of some parents who have brought fundamental social changes in the lives of society that greatly influence the values and behavior of children. Deviations in behavior or unlawful acts committed by children are caused by factors outside the child.



Child sexual abuse is a form of child abuse in which an adult or older adolescent uses a child for sexual stimulation. Forms of child sexual abuse include asking or pressuring a child to engage in sexual activity (regardless of the outcome), indecent exposure of genitals to a child, showing pornography to a child, performing sexual acts on a child, physical contact with a child's genitals (except in certain non-sexual contexts such as a medical examination), viewing a child's genitals without physical contact (except in non-sexual contexts such as a medical examination), or using a child to produce child pornography.

Effects of child sexual abuse include depression, post-traumatic stress disorder, anxiety, a tendency to further victimization in adulthood, and physical injury to the child, among other issues. Sexual abuse by family members is a form of incest and can result in more serious consequences and long-term psychological trauma, particularly in cases of parental incest.

In North America, approximately 15% to 25% of women and 5% to 15% of men were sexually abused as children. Most perpetrators of sexual abuse are known to their victims; approximately 30% are relatives of the child, most often a brother, father, uncle, or cousin; approximately 60% are other acquaintances such as 'friends' of the family, babysitters, or neighbors; strangers are the perpetrators in approximately 10% of child sexual abuse cases. Most child sexual abuse is committed by males; studies indicate that females commit 14% to 40% of reported offenses against boys and 6% of reported offenses against girls. Most offenders who sexually abuse children before puberty are pedophiles, although some offenders do not meet the clinical diagnostic standards for pedophilia.

Under the law, "child sexual abuse" is a general term describing criminal and civil offenses in which an adult engages in sexual activity with a minor or the exploitation of a minor for the purpose of sexual gratification. The American Psychiatric Association states that "children cannot consent to sexual activity with adults," and condemns such acts by adults: "An adult who engages in sexual activity with a child is committing a criminal and immoral act that can never be considered normal or socially acceptable behavior."

2. Methods

1. Approach Method

The approach method used in this research is the normative legal approach method, namely research that positions law as a system of norms regarding the principles, norms, rules of statutory regulations, court decisions, agreements and doctrines (teachings). (Mukti Fajar ND & Yulianto Achmad, 2013). This study aims to discuss legal protection for perpetrators of criminal acts of child molestation.

2. Research Specifications

The research specification in this study is analytical descriptive, namely solving the problem investigated by describing the current state of the research object, based on the facts that appear or as they are. Descriptive research is research that aims to create a systematic picture or painting of a phenomenon that occurs in society. The research intends to describe legal protection efforts for perpetrators of child molestation.

3. Data Types and Sources

This research is a normative research, so the type of data used is secondary data. Secondary data is data that indirectly provides data to data collectors (researchers). The basic materials for normative legal research include.

a. Primary legal materials

1. The 1945 Constitution of the Republic of Indonesia
2. Criminal Code
3. Law Number 35 of 2014 concerning Child Protection.

b. Secondary legal materials

Secondary legal materials are taken from literature, books and papers relating to research problems.

c. Tertiary legal materials

Legal materials that provide guidance on primary and secondary legal materials such as dictionaries, encyclopedias and so on.).

3. Result and Discussion

3.1. Factors Causing the Emergence of Criminal Acts of Child Molestation

1. Case Position

Child Protection Crime (Committing Sexual Intercourse or Indecent Acts Against Minors) as referred to in Article 81 of the stipulation of the government regulation in lieu of Law of the Republic of Indonesia No. 1 of 2016 concerning Article 64 Paragraph (1) of the Criminal Code Concerning Continuing Acts, the incident of which occurred in a house on Jalan Rapen RT. 031, Lanjas Village, Teweh Tengah District, North Barito Regency, Central Kalimantan Province. The suspect explained that the victim who was suspected of being molested and then allegedly having sexual intercourse with the perpetrator was named Sdr. RANIA SYAKILLA AZZAHRA (victim), who was around seven years old and had an address at the barak house on Jl. Wonorejo, RT. 29, Melayu Village, Teweh Tengah District, North Barito Regency, Central Kalimantan Province. The perpetrator explained that the indecent act that the perpetrator meant was the perpetrator kissing the victim's right cheek, then the suspect groped the victim's breasts, and then the perpetrator had sexual intercourse with the victim. The perpetrator explained that the suspect still remembered that the person who had molested and had sexual intercourse with him was a woman named Ms. RENTI HAWINI alias RENTI Binti APRIANTO or who is usually called RENTI in everyday life, approximately thirteen years old, who is the perpetrator's niece.

The perpetrator stated that he had committed sexual intercourse or indecent acts against the victim 2 (two) times, namely: First on a forgotten day and date around August 2023 Skj. 19.00 WIB in the house on Jalan Rapen, RT.031, Lanjas Village, Teweh Tengah District, North Barito Regency, Central Kalimantan Province. Second for the forgotten day and date around September 2023 in the house on Jalan Rapen, RT.031, Lanjas Village, Teweh Tengah District, North Barito Regency, Central Kalimantan Province. The perpetrator explained that the perpetrator's relationship with sister RENTI HAWINI alias RENTI Binti APRIANTO (victim) was as a family, namely the suspect's niece, namely the child of the suspect's sister, sister Lasawati, as far as the perpetrator knows, the status of sister RENTI HAWINI alias RENTI Binti APRIANTO until now is as a student, because she is still in 4th grade of elementary school, and has never been married and the perpetrator's status when the perpetrator committed indecent acts against

sister RENTI HAWINI alias RENTI Binti APRIANTO (victim) was a bachelor and had never been married. The perpetrator explained the method and chronology of the acts against the victim were: The first time was initially on the day and date I forgot around August 2023 Skj. 19.00 WIB when the victim was living at home alone because at that time both parents and the victim's sister were not at home, then the suspect came to the victim's house, and immediately sat on the bed, and coincidentally the victim was also sitting on the bed at that time.

After that the perpetrator immediately hugged the victim's body, but the victim had time to fight back, but could not because the perpetrator hugged the victim's body tightly. After that the perpetrator took off all the victim's clothes until they were all off, and then the perpetrator also took off the suspect's pants and underwear, after that the suspect laid the victim's body on the mattress, and at that time the victim wanted to scream but the suspect immediately covered the victim's mouth using the victim's clothes, and also the suspect held both of the victim's hands so that they did not move, and also the suspect threatened the victim by saying "WATCH OUT YOU TELL YOUR MOTHER, IF YOU TELL YOUR PARENTS, I WILL HIT YOU". Because of hearing the threat, the victim felt very scared. After that, the suspect pressed down on the victim's body from above with the victim lying face up, and the suspect forcibly inserted the perpetrator's genitals into the victim's genitals, until the victim's genitals felt very painful and the victim cried, after the suspect's genitals entered the victim's genitals, the perpetrator shook the suspect's buttocks back and forth for approximately five minutes, and not long after the suspect's sperm came out inside the victim's genitals, and after that the perpetrator removed the suspect's genitals from the victim's genitals. Then the perpetrator put on the perpetrator's pants, and the victim also put on the victim's clothes. After that, the perpetrator immediately left the victim's house.

The second one was around September 2023, the perpetrator forgot the day and date, around 19.00 WIB at the victim's parents' house, and when the victim was alone at home because at that time both parents and the victim's younger sibling were not at home, then the perpetrator came to the victim's house, and immediately entered the house, and coincidentally the victim was sweeping the floor at that time. After that the perpetrator immediately hugged the victim's body, but the victim had time to fight back, but could not because the perpetrator hugged the victim's body tightly. After that the perpetrator laid the victim's body on the bed, and then the perpetrator took off all the victim's clothes until they were all off, and then the perpetrator also took off the perpetrator's pants and underwear, and at that time the victim wanted to scream but

the perpetrator immediately covered the victim's mouth using the perpetrator's hands, and also the perpetrator held both of the victim's hands so that she didn't move, after that the perpetrator pressed down on the victim's body from above with the victim lying face up, and the perpetrator forcibly inserted the perpetrator's genitals into the victim's genitals and the victim cried, after the suspect's genitals entered the victim's genitals, the suspect shook the suspect's buttocks with a back and forth motion for approximately five minutes, and not long after the perpetrator's sperm came out of the victim's vagina, and after that the perpetrator removed the perpetrator's genitals from the victim's genitals.

Then the perpetrator put on his pants, and the victim also put on the victim's clothes. After that the suspect threatened the victim with the words "DON'T TELL YOUR PARENTS, I'LL HIT YOU" After that the perpetrator immediately left the victim's house. The perpetrator explained that when the suspect had intercourse or committed indecent acts against the victim, no one else was in the house and only the victim was alone. The perpetrator explained that when the perpetrator had intercourse or committed indecent acts against the victim, the victim was already menstruating (menstruating). The perpetrator explained that as far as the suspect knew, when I molested and then had intercourse with the victim, the victim's genitals did not bleed. The perpetrator explained that according to the suspect, the victim was willing to have intercourse or the suspect molested her because the suspect forced the victim to be molested and had intercourse and the suspect threatened the victim.

The perpetrator explained that as far as the perpetrator could remember, when the perpetrator had sexual intercourse or indecent acts against the victim, the suspect gave the victim Rp. 150,000 (one hundred and fifty thousand rupiah) for the victim's shopping needs. The perpetrator explained that when the perpetrator had sexual intercourse or indecent acts against the victim, the perpetrator had committed acts of violence against the victim by saying that if the victim did not want to, the perpetrator would beat the victim, and also had time to cover the victim's mouth with the victim's clothes so that the victim would not scream, because of the threat of violence, the victim was forced to be molested and then had sex with the perpetrator and also because the victim felt very scared. The perpetrator explained that when the suspect had sexual intercourse or indecent acts against the victim, the suspect and victim were both lying down and facing each other, the victim was lying on her back while the suspect was on top of the victim's body while hugging the victim's body. When the suspect had sexual intercourse

or indecent acts against the victim, the perpetrator did not insert his fingers into the victim's genitals (vagina).

The perpetrator explained that the suspect did not know what the victim had experienced until now due to the indecent acts and sexual intercourse that the suspect had committed against the victim. The perpetrator explained that the first time the perpetrator had sex with or molested the victim, as far as the perpetrator could remember, the victim was wearing 1 (one) pink housedress, 1 (one) white undershirt, 1 (one) pair of white shorts and 1 (one) pair of red underwear. While the second time the suspect molested and then had sex with the victim, the suspect no longer remembered what clothes the victim was wearing. The perpetrator explained that the suspect no longer remembered what clothes the suspect was wearing when he molested and then had sex with the victim the first time or the second time.

1. The indictment

Considering, that the Public Prosecutor has submitted the following letter:

1. Extract of Birth Certificate from Population and Civil Registry Office in North Barito Regency Number 6205-LT-13032017-0075, dated March 13, 2017, states that in Muara Teweh on February 4, 2010, RENTI HAWINI was born, the second child, a girl from Father APRIANTO and Mother LASAWATI, so that at the time of the incident she was still 13 (thirteen) years old;

2. Letter Visum Et Repertum Number 003/305/R.Med/I/2024, dated January 30, 2024, made and signed by Dr. Gusti Ngurah Warsita, Sp. OG, as the examining doctor at the Muara Teweh Regional General Hospital, an examination was carried out on the victim's child RENTI HAWINI with the conclusion "currently the victim is in a first-time pregnancy coma, gestational age twenty-four to twenty-five weeks, coma, single point alive";

Considering, that the Defendant at the trial has provided information which is essentially as follows:

- That the Defendant was present at this trial in connection with the issue of the Defendant having committed an indecent act against the victim's child, RENTI HAWINI, who is the Defendant's own nephew;

- That the first incident occurred on a forgotten day and date around August 2023 at around 19.00 WIB in the house of the victim's child RENTI HAWINI at Jalan Rapen, RT 031, Lanjas Village, Teweh Tengah District, North Barito Regency, Central Kalimantan Province and the second occurred on a forgotten day and date around September 2023

at around 19.00 WIB in the house of the victim's child RENTI HAWINI at Jalan Rapen, RT 031, Lanjas Village, Teweh Tengah District, North Barito Regency, Central Kalimantan Province;

- That first on a forgotten day and date around August 2023 at around 19.00 WIB in the house of the victim's child RENTI HAWINI at Jalan Rapen, RT 031, Lanjas Village, Teweh Tengah District, North Barito Regency, Central Kalimantan Province, initially when the victim's child RENTI HAWINI was living at home alone because

First at that time both parents and younger sibling were going to the funeral, then the Defendant came to the house of the Victim's Child RENTI HAWINI, and immediately sat on the bed, and coincidentally the Victim's Child RENTI HAWINI was also sitting on the bed at that time. After that the Defendant immediately hugged the body of the Victim's Child RENTI HAWINI and the Victim's Child RENTI HAWINI at that time had time to rebel, but could not because the Defendant hugged his body tightly. After that the Victim's Child RENTI HAWINI took off all his clothes until they were all off, and then the Defendant took off the Defendant's pants and underwear, at that time the Victim's Child RENTI HAWINI wanted to scream but the Defendant immediately covered his mouth using the Victim's Child RENTI HAWINI's clothes, and also the Defendant held both of the Victim's Child RENTI HAWINI's hands so that he would not move. After that, the Defendant pressed down on the body of the Victim Child RENTI HAWINI from above with the position of the Victim Child RENTI HAWINI lying face up, and the Defendant inserted the Defendant's genitals into the Victim Child RENTI HAWINI's genitals, after the Defendant's genitals entered the Victim Child RENTI HAWINI's genitals, the Defendant shook the Defendant's buttocks with a back and forth motion for approximately 5 (five) minutes until the Defendant ejaculated into the Victim Child RENTI HAWINI's genitals, and after that the Defendant removed the Defendant's genitals from the Victim Child RENTI HAWINI's genitals. Then the Defendant put on the Defendant's pants, and also the Victim Child RENTI HAWINI put on her clothes. After that, the Defendant immediately left the Victim Child RENTI HAWINI's house.

That both on the day and date forgotten around September 2023 at around 19.00 WIB in the house of the Victim's Child RENTI HAWINI at Jalan Rapen, RT 031, Lanjas Village, Teweh Tengah District, North Barito Regency, Central Kalimantan Province, initially when the Victim's Child RENTI HAWINI was alone at home because at that time both parents and younger sibling were going out of the house, then the Defendant came to the house of the Victim's Child RENTI HAWINI, and immediately entered the house, and coincidentally the Victim's Child RENTI HAWINI at that time was sweeping the floor. After

that the Defendant immediately hugged the body of the Victim's Child RENTI HAWINI and at that time the Victim's Child RENTI HAWINI had time to fight back, but could not because the Defendant hugged his body tightly. Then the Victim's Child RENTI HAWINI took off all her clothes until they were all off, and then the Defendant also took off the Defendant's pants and underwear, and also the Defendant held both of the Victim's Child RENTI HAWINI's hands so that she would not move, after that the Defendant pressed down on the Victim's Child RENTI HAWINI's body from above with the Victim's Child RENTI HAWINI lying face up, and the Defendant inserted the Defendant's genitals into the Victim's Child RENTI HAWINI's genitals, after the Defendant's genitals entered the Victim's Child RENTI HAWINI's genitals, the Defendant shook the Defendant's buttocks with a back and forth motion for approximately 5 (five) minutes until the Defendant ejaculated outside the Victim's Child RENTI HAWINI's genitals, namely on the floor, and after that the Defendant removed the Defendant's genitals from inside the Victim's Child RENTI HAWINI's genitals. Then the Defendant put on the Defendant's pants, and also the Victim's Child RENTI HAWINI put on her clothes;

That apart from the Defendant inserting the Defendant's genitals into the genitals of the Child Victim RENTI HAWINI, the Defendant also inserted the Defendant's finger into the genitals of the Child Victim RENTI HAWINI;

That the Defendant did not threaten to hit the victim's child, RENTI HAWINI;

That the Defendant's sperm fluid in the first incident was released inside the genitals of the Child Victim RENTI HAWINI, while in the second incident it was released outside the genitals of the Child Victim RENTI HAWINI, namely on the floor;

- That the Defendant does not have a wife, but the Defendant was previously married and divorced;

- That the Defendant admitted his actions and deeply regretted them;

- That the Defendant has never been convicted;

- That when committing the act the Defendant was conscious and not drunk on alcohol;

- That the Defendant is aware that the victim's child, RENTI HAWINI, is the Defendant's nephew and is still a minor;

- That the person who undressed the victim's child, RENTI HAWINI, at the time of the incident was the victim's child, RENTI HAWINI himself;

- That the Defendant has never been convicted;

- That the Defendant did not push the victim's child, RENTI HAWINI, onto the mattress;

- That the Defendant once gave a sum of money to the Child Victim RENTI HAWINI, namely after the Defendant committed the act and was received by the Child Victim RENTI HAWINI, which money was for school pocket money;

- That the Defendant never watched pornographic videos on the Defendant's cell-phone because the Defendant's cellphone could only be used for making calls;

Considering, that the Defendant did not present mitigating witnesses (a de charge);

Considering, that the Public Prosecutor submitted the following evidence: following:

- 1) 1 (one) A pink daster dress;
- 2) 1 (one) Cream colored undershirt;
- 3) 1 (one) A pair of white shorts;
- 4) 1 (one) A pair of red underwear;

Considering, that based on the statements of witnesses which are in accordance with each other, the statement of the Defendant, letters and in connection with the evidence presented at the trial, the following legal facts were obtained:

1. That there was an incident of sexual intercourse committed by the Defendant with the Child Victim in August 2023 at around 19.00 WIB and in September 2023 at around 19.00 WIB in the Child Victim's house at Jalan Rapen, RT 031, Lanjas Village, Teweh Tengah District, North Barito Regency, Central Kalimantan Province;

2. That the first incident occurred in August 2023 at around 19.00 WIB in the house of the Victim's Child at Jalan Rapen, RT 031, Lanjas Village, Teweh Tengah District, North Barito Regency, Central Kalimantan Province, initially when the Victim's Child was living alone at home because at that time both parents and the Victim's Child's younger sibling were going to a funeral, then the Defendant came to the Victim's Child's house, and immediately sat on the bed, and coincidentally the Victim's Child was sitting on the bed at that time. After that the Defendant immediately hugged the Victim's Child's body and the Victim's Child at that time tried to fight back, but could not because the Defendant hugged the Victim's Child's body tightly. After that, the Defendant took off all of the victim's clothes until they were all off, and then the Defendant took off the Defendant's pants and underwear, after that the Defendant laid the victim's body on the mattress, and at that time the victim's body wanted to scream but the Defendant immediately covered the victim's mouth using the victim's clothes, and the Defendant also held both of the victim's hands so that he did not move, and the Defendant also threatened the victim's body by saying "WATCH OUT YOU TELL YOUR MOTHER, IF YOU TELL YOUR PARENTS, I WILL HIT YOU".

Because Hearing the threat, the victim's child felt very scared. After that, the defendant pressed down on the victim's body from above with the victim's position lying face up, and the defendant forcibly inserted the defendant's genitals into the victim's genitals, until the victim's genitals felt pain in the victim's genitals and at that time the victim's genitals cried, after the defendant's genitals entered the victim's genitals, the defendant shook his buttocks back and forth for approximately 5 (five) minutes, and not long after the victim's child felt a liquid entering the victim's genitals, and the victim's genitals felt very wet, and after that the defendant removed his genitals from the victim's genitals. Then the defendant put on the defendant's pants, and the victim's child also put on the victim's clothes. After that, the defendant immediately left the victim's house;

3. That the second incident in September 2023 at around 19.00 WIB in the house of the Victim's Child at Jalan Rapen, RT 031, Lanjas Village, Teweh Tengah District, North Barito Regency, Central Kalimantan Province, initially when the Victim's Child was alone at home because at that time both parents and the Victim's Child's younger sibling were going out of the house, then the Defendant came to the Victim's Child's house, and immediately went into the house, and coincidentally the Victim's Child was sweeping the floor at that time. After that the Defendant immediately hugged the Victim's Child's body and at that time the Victim's Child had time to fight back, but could not because the Defendant hugged the Victim's Child's body tightly. After that, the Defendant laid the Child Victim's body on the bed, then the Defendant took off all of the Child Victim's clothes until they were all off, and then the Defendant also took off the Defendant's pants and underwear, and also the Defendant held both of the Child Victim's hands so that he did not move, after that the Defendant pressed down on the Child Victim's body from above with the Child Victim lying facing upwards, and the Defendant forcibly inserted the Defendant's genitals into the Child Victim's genitals, until the Child Victim felt pain in the Child Victim's genitals and at that time the Child Victim cried, after the Defendant's genitals entered the Child Victim's genitals, the Defendant shook his buttocks with a back and forth motion for approximately 5 (five) minutes, and not long after the Child Victim felt a liquid entering the Child Victim's genitals, and the Child Victim's genitals felt very wet, and after that the Defendant removed his genitals from inside the Child Victim's genitals. Then the Defendant put on the Defendant's pants, and the Child Victim put on the Child Victim's clothes;

4. That as a result of the actions carried out by the Defendant, the Child Victim felt pain in the Child Victim's genitals and at the time of the incident, the Child Victim's genitals bled;

5. That as a result of the Defendant's actions, the victim's child became pregnant and at 5 (five) months of pregnancy, the victim's child gave birth, but the baby died when it was only 2 (two) days old;

6. That the first person to know about the incident was the victim's child's teacher at school, namely the victim's child MAGRID binti LISUN DULIN;

7. That it is true that the evidence in the form of 1 (one) pink housedress, 1 (one) cream-colored undershirt, 1 (one) pair of white shorts, and 1 (one) pair of red underwear are the clothes that the victim child was wearing at the time of the incident;

8. That when committing the act the Defendant was conscious and not drunk on alcohol;

9. That the Defendant is the victim's child's uncle, namely the biological brother of the victim's child's biological mother and the victim's child calls him "Uncle";

10. That based on the extract of the Birth Certificate from the Population and Civil Registry Office in North Barito Regency Number 6205-LT-13032017-0075, dated March 13, 2017, it states that in Muara Teweh on February 4, 2010, RENTI HAWINI was born, the second child, a girl from Father APRIANTO and Mother LASAWATI, so that at the time of the incident she was still 13 (thirteen) years old;

Considering, that the Panel of Judges will then consider whether based on the legal facts above, the Defendant can be declared to have committed the crime with which he is accused;

Considering that the Defendant has been charged by the Public Prosecutor with an alternative charge, so that the Panel of Judges, by paying attention to the legal facts above, will first consider the first alternative charge of Article 81 paragraph (3) in conjunction with Article 76 D of Law of the Republic of Indonesia No. 35 of 2014 concerning Amendments to Law of the Republic of Indonesia No. 23 of 2002 concerning Child Protection, as amended by Law Number 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 2002 concerning Child Protection to Become a Law in conjunction with Article 64 paragraph (1) of the Criminal Code, the elements of which are as follows:

1. Each person;

2. Intentionally committing violence or threats of violence to force a child to have sexual intercourse with him or another person;

3. Carried out by parents, guardians, people who have family ties, child caretakers, educators, education personnel, officers who handle child protection or carried out by more than one person together;

4. If between several acts, even though each is a crime or violation, there is such a connection that they must be viewed as one continuous act;

Considering, that regarding these elements the Panel of Judges considers the following: Ad.1. The element of “Every Person”;

Considering, that what is meant by Every person is a legal subject as the bearer/supporter of rights and obligations including legal subjects of individuals (natuurlijke persoon) and legal entities (rechtspersoon) who can be held criminally responsible if they commit a crime;

Subekti defines that a legal subject is a bearer of rights or a subject in law, while Sudikno Mertokusumo defines that a legal subject is something that can obtain rights and obligations from the law. In legal science, this legal subject can be an “individual” (naturelijk persoon) or a legal entity (rechtspersoon). In this case, a person is the perpetrator of a crime, and for the crime he/she has committed, the person is physically and mentally able to be responsible for his/her actions;

Considering, that in the trial it was obtained that the fact presented as the Defendant by the Public Prosecutor was the perpetrator named Wadin Bin Ajang, whose identity was in accordance with that stated in the Indictment and in the trial it was also confirmed by the witnesses and not denied by the Defendant, so that in this case there was no error in persona presented as the Defendant in the trial in trying this case;

Considering, therefore in this case there was no mistake regarding the person as the subject of the crime who was presented as the Defendant, then according to the Panel of Judges, this first element is fulfilled;

Ad.2. The element of “Intentionally committing violence or threats of violence to force a child to have sexual intercourse with him or another person”;

Considering that this element is an alternative element, meaning that if one of these elements has been proven, then this element is legally fulfilled;

Considering that the element of intention is placed at the beginning of the formulation of a crime, this means that the elements of the act as contained in the crime must be fulfilled by the elements of intention and being against the law;

Considering that the definition of intention according to *Memorie Van Toelichting* (MvT) is intention of a general nature, namely: wanting (*willens*) or knowing (*wetens*);

Considering that intentionally is basically carrying out an act which is driven by a desire to do or act which is aimed at an act as a manifestation of the will of the person who does it;

Considering, that therefore the element of intent is a subjective element which is inherent in the intention or will of the perpetrator (i.e. the Defendant) where the intention or will is a state which is truly conscious and also aware of the consequences arising from his actions;

Considering, that before the Panel of Judges further considers whether the Defendant has an element of intent or not, they will first consider whether the Defendant has been proven to have committed the material act as charged by the Public Prosecutor against the Defendant;

Considering, that the meaning of the word “force” according to the Big Indonesian Dictionary, namely 1. to treat, order, ask by force; 2. to act with violence (pressure, pressure); rape; Considering, that what is meant by intercourse according to the Big Indonesian Dictionary is the act of having intercourse or the act of having sexual intercourse, while the definition of intercourse refers to the *Arrest Hooge Raad* dated February 5, 1912, namely “a combination between the male and female genitals which is carried out to have children, so the male member must enter the female member so that semen is released”;

Considering, in order to prove whether there was a material act carried out by the Defendant, the Panel of Judges needs to consider whether the act of inserting the Defendant’s genitals into the genitals of the Child Victim was actually carried out, the Panel of Judges considers it as follows:

Considering, that based on the facts revealed in court, there was an incident of sexual intercourse committed by the Defendant with the Victim’s Child in August 2023 at around 19.00 WIB and in September 2023 at around 19.00 WIB in the Victim’s Child’s house at Jalan Rapen, RT 031, Lanjas Village, Teweh Tengah District, North Barito Regency, Central Kalimantan Province; That the first incident occurred in August 2023 at around 19.00 WIB in the Victim’s Child’s house at Jalan Rapen, RT 031, Lanjas Village, Teweh Tengah District, North Barito Regency, Central Kalimantan Province, initially when the Victim’s Child was living alone at home because at that time both parents and the Victim’s Child’s younger sibling were going to a funeral, then the Defendant came to the Victim’s

Child's house, and immediately sat on the bed, and coincidentally the Victim's Child was sitting on the bed at that time. After that, the Defendant immediately hugged the body of the Child Victim and the Child Victim at that time had time to rebel, but could not because the Defendant hugged the Child Victim's body tightly. After that, the Defendant took off all of the Child Victim's clothes until they were all off, and then the Defendant took off the Defendant's pants and underwear, after that the Defendant laid the Child Victim's body on the mattress, and at that time the Child Victim wanted to scream but the Defendant immediately covered the Child Victim's mouth using the Child Victim's clothes, and also the Defendant held both of the Child Victim's hands so that he did not move, and also the Defendant threatened the Child Victim by saying "WATCH OUT YOU TELL YOUR MOTHER, IF YOU TELL YOUR PARENTS, THE CHILD VICTIM WILL HIT YOU". Because of hearing the threat, the Child Victim felt very scared. After that, the Defendant pressed down on the body of the Child Victim from above with the Child Victim lying face up, and the Defendant forcibly inserted the Defendant's genitals into the Child Victim's genitals, until the Child Victim felt pain in the Child Victim's genitals and at that time the Child Victim cried, after the Defendant's genitals entered the Child Victim's genitals, the Defendant shook his buttocks with a back and forth motion for approximately 5 (five) minutes, and not long after the Child Victim felt a liquid entering the Child Victim's genitals, and the Child Victim's genitals felt very wet, and after that the Defendant removed his genitals from the Child Victim's genitals. Then the Defendant put on the Defendant's pants, and the Child Victim also put on the Child Victim's clothes. After that the Defendant immediately left the Child Victim's house;

That the second incident in September 2023 at around 19.00 WIB in the house of the Victim's Child at Jalan Rapen, RT 031, Lanjas Village, Teweh Tengah District, North Barito Regency, Central Kalimantan Province, initially when the Victim's Child was alone at home because at that time both parents and the Victim's Child's younger sibling were going out of the house, then the Defendant came to the Victim's Child's house, and immediately went into the house, and coincidentally the Victim's Child was sweeping the floor at that time. After that the Defendant immediately hugged the Victim's Child's body and at that time the Victim's Child had time to fight back, but could not because the Defendant hugged the Victim's Child's body tightly. After that, the Defendant laid the Child Victim's body on the bed, then the Defendant took off all of the Child Victim's clothes until they were all off, and then the Defendant also took off the Defendant's pants and underwear, and also the Defendant held both of the Child Victim's hands so that he did not move, after that the Defendant pressed down on the Child Victim's body from

above with the Child Victim lying facing upwards, and the Defendant forcibly inserted the Defendant's genitals into the Child Victim's genitals, until the Child Victim felt pain in the Child Victim's genitals and at that time the Child Victim cried, after the Defendant's genitals entered the Child Victim's genitals, the Defendant shook his buttocks with a back and forth motion for approximately 5 (five) minutes, and not long after the Child Victim felt a liquid entering the Child Victim's genitals, and the Child Victim's genitals felt very wet, and after that the Defendant removed his genitals from inside the Child Victim's genitals. Then the Defendant put on the Defendant's pants, and the Child Victim put on the Child Victim's clothes;

Considering, that based on the legal facts, the Defendant's actions in August 2023 who came to the Victim Child when she was alone at home and forced the Victim Child to have sexual intercourse with him by saying "WATCH OUT YOU TELL YOUR MOTHER, IF YOU TELL YOUR PARENTS, THE VICTIM CHILD WILL HIT YOU" so that the Victim Child obeyed the Defendant's wishes because she was afraid, then the Defendant repeated the act again in September 2023 when the Victim Child was already afraid to fight the Defendant, was the Defendant's actions which made threats of violence to force the Child to have sexual intercourse with him;

Considering, that based on the Visum Et Repertum Letter Number 003/305/R.Med/I/2024, dated January 30, 2024 made and signed by Dr. Gusti Ngurah Warsita, Sp. OG, as the examining doctor at the Muara Teweh Regional General Hospital, an examination was carried out on the Child Victim RENTI HAWINI with the conclusion "currently the victim is in a first pregnancy coma, gestational age twenty-four to twenty-five weeks, coma single alive period", which convinced the Panel of Judges that there had been an act of sexual intercourse committed by the Defendant against the Child Victim;

Considering, that based on the provisions of Article 1 number 1 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which states: "A child is a person who is not yet 18 (eighteen) years old, including a child who is still in the womb" and is connected with the Birth Certificate Extract from the Population and Civil Registry Office in North Barito Regency Number 6205-LT-13032017-0075, dated March 13, 2017, stating that in Muara Teweh on February 4, 2010, RENTI HAWINI was born, the second child, a girl from Father APRIANTO and Mother LASAWATI, so that at the time of the incident she was still 13 (thirteen) years old and was categorized as a Child;

Considering, that furthermore from the fact that at the time the sexual intercourse occurred, the Defendant was conscious and knew the consequences of his actions but still carried out his actions against the Child Victim, then the element of intent was present in the Defendant;

Considering, that from the considerations above, if the element of “making threats of violence to force a child to have sexual intercourse with him/her” is fulfilled, then what is desired by this element as a whole is fulfilled;

Ad.3.Element “Performed by parents, guardians, people who have family ties, child caretakers, educators, education personnel, officers who handle child protection or carried out by more than one person together”;

Considering that what will be proven in this element refers to the subject of the perpetrator of the crime, the understanding of these subjects from several sources of literature is as follows:

- personparent means biological father and/or mother, or father and/or stepmother, or adoptive father and/or mother;
- a guardian is a person or body that in reality exercises parental authority over a child;
- family is the smallest unit in society consisting of husband and wife, or husband, wife and child, or father and child, or mother and child, or blood relatives in a straight line up or down to the third degree;
- a child care provider is any person who is given the obligation to care for a child, whether for remuneration or not;
- educators are qualified educational personnel as teachers/lecturers/counselors/tutors/student guides/instructors/facilitators, or other titles who participate in organizing education;
- educational staff are members of the community who dedicate themselves and are appointed to support the provision of education;
- apparatus in charge of child protection is any apparatus that is given obligations regarding the implementation of child protection;
- carried out by more than one person together is an event that involves more than one person;

Considering, that based on legal facts, the Defendant is the uncle of the victim's child, namely the biological brother of the victim's child's biological mother and the victim's child calls him “Uncle”, then the Defendant's position at the time the sexual intercourse occurred was the family of the victim's child;

Considering, that based on the description above, the Panel of Judges believes that the element of “carried out by people who have family ties” has been fulfilled so that this third element has been fulfilled in its entirety;

Ad.4The element “If between several acts, even though each is a crime or violation, there is a connection in such a way that it must be viewed as one continuing act”;

Considering, that based on the previous considerations, the Defendant had sexual intercourse with the Child Victim 2 (two) times, namely in August 2023 and in September 2023;

Considering, that the time period between one act and another committed by the Defendant above, it can be seen that the Defendant’s criminal act of having sexual intercourse with the Child Victim was carried out within a time/period that was not too long apart and the events/incidents are related in such a way that the event/incident of the Defendant having sexual intercourse with the Child Victim must be viewed as a continuing act;

Considering, that based on the considerations above, thus the element “If between several acts, even though each is a crime or violation, there is a connection in such a way that it must be viewed as a continuing act” has been proven legally and convincingly according to the law; Considering, that because all the elements of Article 81 paragraph (3) in conjunction with

Article 76 D of the Republic of Indonesia Law No. 35 of 2014 concerning Amendments to the Republic of Indonesia Law No. 23 of 2002 concerning Child Protection, as amended by Law Number 17 of 2016

Regarding the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016, Regarding the Second Amendment to Law No. 23 of 2002 Concerning Child Protection to Become Law in conjunction with Article 64 paragraph (1) of the Criminal Code has been fulfilled, then the Defendant must be declared to have been proven legally and convincingly to have committed the crime as charged in the first alternative charge;

Considering, that regarding the defense note submitted by the Defendant’s Legal Counsel, in which the Defendant’s Legal Counsel essentially agrees with the Public Prosecutor’s construction in his charges, but does not agree regarding the length of the sentence demanded by the Public Prosecutor against the Defendant, and requests a reduction in sentence for the Defendant from the Panel of Judges, the Panel of Judges will consider as will be stated regarding the length of the Defendant’s sentence in the verdict;

Considering that in the trial, the Panel of Judges did not find anything that could eliminate criminal responsibility, either as a justification and/or excuse, and the Defendant was able to take responsibility, the Defendant must be declared guilty and sentenced to a criminal penalty;

Considering that because the criminal threat of the proven Article is cumulative (imprisonment and fine), the Defendant is not only sentenced to imprisonment but also to a fine with the provision that if the fine is not paid, it will be replaced with imprisonment;

Considering that in this case the Defendant has been subject to lawful arrest and detention, the period of arrest and detention must be deducted in full from the sentence imposed;

Considering, that because the Defendant is being detained and the detention of the Defendant is based on sufficient grounds, it is necessary to determine that the Defendant remains in detention;

Considering, that the evidence presented at the trial will be further considered as follows:

Considering, that the evidence is in the form of:

- 1) 1 (one) A pink daster dress;
- 2) 1 (one) Cream colored undershirt;
- 3) 1 (one) A pair of white shorts;
- 4) 1 (one) A pair of red underwear;

Which has been used to commit a crime and it is feared that it will be used to repeat the crime, then it is necessary to determine that the evidence be destroyed;

Considering, that in order to impose a criminal penalty on the Defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant;

Aggravating circumstances:

- The Defendant's actions have damaged the future of the Victim's Child;
- Child Victim experiencing pregnancy; Extenuating circumstances:
- The defendant openly admitted his actions;

Considering, that because the Defendant has been sentenced to a criminal penalty, he must be burdened with paying court costs;

Considering, Article 81 paragraph (3) in conjunction with Article 76 D of Law of the Republic of Indonesia No. 35 of 2014 concerning Amendments to Law of the Republic

of Indonesia No. 23 of 2002 concerning Child Protection, as amended by Law Number 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 2002 concerning Child Protection to Become Law in conjunction with Article 64 paragraph (1) of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations;

1. Judge's Decision

Judge: Declare the Defendant Wadin Bin Ajang above, proven legally and convincingly guilty of committing the crime of “Intentionally Making Threats of Violence to Force a Child to Have Sexual Intercourse with Him which is carried out by People Who Have Family Relationships which are Carried Out Continuously” as in the first alternative charge; Sentence the Defendant therefore to a prison sentence of 17 (seventeen) years and a fine of Rp5,000,000,000.00 (five billion rupiah) with the provision that if the fine is not paid it will be replaced with a prison sentence of 6 (six) months; Determine that the period of arrest and detention that has been served by the Defendant is deducted entirely from the sentence imposed; Determine that the Defendant remains detained; Determine that the evidence in the form of: 1 (one) Pink daster dress; 1 (one) Cream colored undershirt; 1 (one) White shorts; 1 (one) Red underwear; destroyed; Charge the Defendant to pay court costs of Rp5,000.00 (five thousand rupiah). Thus it was decided in the deliberation of the Panel of Judges of the Muara Teweh District Court, on Monday, July 15, 2024, by Ahkam Ronny Faridhotullah, SH, MH, as Chief Justice, Edi Rahmad, SH, M.Kn., and M. Iskandar Muda, SH, each as Member Justices, which was pronounced in an open hearing for the public on Tuesday, July 16, 2024 by the Chief Justice accompanied by the Member Justices, assisted by Richard Rinaldy Sampiterson Petrus, SH, Substitute Clerk, and attended by Nelsa Nurfitriani Pratama, SH, Public Prosecutor and the Defendant accompanied by his Legal Counsel.

2. Researcher Analysis

In imposing a criminal sentence, the judge must base it on two valid pieces of evidence, then the judge obtains the conviction that the crime charged actually occurred and that the defendant committed it. This is regulated in Article 189 of the Criminal Code.

Court decision number 54/Pid.Sus/2022/PN.Mtw the decision-making process taken by the Panel of Judges according to the author is in accordance with applicable legal regulations as explained by the author previously, namely based on two valid pieces of evidence, where in this case the evidence used by the judge is witness testimony,

defendant's testimony, Visum Et Revertum Report, and evidence presented by the Public Prosecutor which was used by the Defendant to commit indecent acts.

Then later considering criminal responsibility, in this case the Panel of Judges based on the facts that emerged in the trial considered that the defendant could be held responsible for the actions committed by considering that at the time of committing his actions, the defendant was aware of the consequences. The defendant in committing his actions was in a healthy condition and was capable of considering his actions. In addition to the above, the Judge also saw the existence of justification or excuse reasons that could reduce the punishment for the actions committed by the defendant. The Panel of Judges also saw aggravating factors.

In making a verdict, the considerations made by the judge are appropriate, because every criminal act committed by a person must always consider things that can alleviate and aggravate the defendant. The judge should have given a lighter sentence to the defendant.

Based on the decision of the Panel of Judges above, the author considers that the decision handed down by the Judge is appropriate, with the punishment where the Defendant was sentenced to 10 years in prison and a fine of Rp. 60,000,000.00 (six tens of million rupiah) with the provision that if the fine is paid it will be replaced with imprisonment for 2 (two) months.

In relation to Legal Protection for Children as Victims of Criminal Acts of Indecent Acts in Court, based on Law Number 11 of 2012 concerning the Child Criminal Justice System, protection is regulated regarding guarantees for the safety of children who are witnesses in Article 90 Paragraph (1) point (b) which states "guarantees of safety, both physical, mental and social"

As explained regarding the regulation of child molestation crimes in the Criminal Code and also regarding continuing acts in Articles 64-71 of the Criminal Code, now in Law Number 11 of 2012 concerning the Child Criminal Justice System, the rights of children as victims of criminal acts are also regulated. The category of children as victims in the juvenile justice system is contained in Article 1 Number 4 which reads:

"Children who are victims of criminal acts, hereinafter referred to as children who are under 18 (eighteen) years of age who experience physical, mental and/or economic suffering caused by criminal acts."

The child victim in this case is a child who has rights and obligations as a legal subject in the Child Justice Act, which means that the child victim has the right to have

the opportunity to obtain justice through judicial bodies. Child victims in the juvenile justice system are likely to be positioned as child witnesses, therefore they can provide useful information for the purposes of investigation, prosecution and examination in court based on their own hearing, experience, and vision (child victims). Article 23 Paragraph (2) of the Juvenile Justice Law stipulates that in providing testimony in the court system, a child victim or child witness must be accompanied by a parent or guardian trusted by the child victim or child witness, in addition to that in providing information, child victims and/or child witnesses are allowed to provide information outside the court with consideration to avoid anything that affects the soul of the child victim and/or child witness. In this case, it shows that the child victim's condition and traumatic feelings as a victim of a criminal act are taken into account. In Law Number 11 of 2012 concerning the Juvenile Justice System, Article 89 stipulates that "Child Victims and/or Child Witnesses have the right to all protection and rights regulated in the provisions of laws and regulations." In addition to the rights stipulated in the legislation, child victims and child witnesses have the right to medical rehabilitation and social rehabilitation, as well as guarantees safety and ease of obtaining information regarding case developments.

Safety assurance is needed as a child who is a witness or victim in a criminal trial. As one whose statement becomes evidence, there is a tendency that the testimony given by the child will be detrimental to the perpetrator or beneficial to the victim. Therefore, the existence of the witness can be threatened by other parties who feel disadvantaged by the testimony. In this case, testimony is one of the evidence in a trial so that the disappearance of the witness also means the loss or obstruction of evidence to be used as evidence in a criminal trial.

As a real form of protection for the safety or security of children, Law Number 11 of 2012 concerning the Child Criminal Justice System provides freedom for children to provide testimony required in the trial process. Article 58 of Law Number 11 of 2012:

1) When examining the Child Victim and/or Child Witness, the Judge may order that the Child be taken out of the courtroom.

2) During the examination of the Child Victim and/or Child Witness as referred to in paragraph (1), the parents/guardian, advocate or other legal aid provider, and community counselor must be present. In the event that the Child Victim and/or Child Witness cannot be present to provide information in court, the judge may order that the Child Victim and/or Child Witness' statement be heard:

a. outside the court hearing through electronic recording carried out by the Community Guidance Officer in the local jurisdiction in the presence of the Investigator or Public Prosecutor and Advocate or other legal aid provider; or

b. through direct remote examination using audiovisual communication tools accompanied by parents/guardians, community mentors or other companions

The trial process in the juvenile criminal justice system does not require that child victims and/or child witnesses always be present in the courtroom. If the judge sees a separation of interests

Child protection is intended to protect and provide for children who are in conflict with the law so that children can...

facing their long future and giving children the opportunity to gain their identity through coaching to become independent, responsible, and useful human beings for themselves, their families, their communities, their nations, and their countries. Child protection also includes activities that are direct and indirect from actions that endanger children physically and/or psychologically.

According to Law Number 11 of 2012 concerning the Child Criminal Justice System Article (1) Paragraph (5) it is stated that a child witness is a person with an age limit under 18 years who can provide information for the purposes of investigation, prosecution, and examination in court regarding a criminal case that he/she has heard, seen, and/or experienced himself/herself. Psychologically, children will experience pressure both in their position as witnesses, victims and perpetrators of crimes. So that in the Child Protection Law, it is regulated regarding children who need special protection, including children who are in conflict with the law. Some of the children's rights related to children who need special protection in the legal field include:

A. Psychological Protection in the form of Assistance Law Number 11 of 2012 concerning the Juvenile Criminal Justice System provides protection and comfort to

Children who become witnesses in juvenile criminal trials. Article 18 states that: In handling cases involving children, child victims, and/or child witnesses, community counselors, professional social workers and social welfare workers, investigators, public prosecutors, judges, and advocates or other legal aid providers must pay attention to the best interests of the child and ensure that a family atmosphere is maintained. This article shows that children have psychological rights. Children can be accompanied by an expert of their choice. Experts in the field of legal handling such as community counselors, professional social workers and social welfare workers can actively accompany

a child who becomes a witness when undergoing the testimony process for criminal justice purposes.

B. Children are free to choose a companion they trust. Apart from that, the right to be accompanied is also guaranteed by the law in Article (23) Paragraph (2) which states “At every level of examination, Child Victims or Child Witnesses must be accompanied by parents and/or someone trusted by the Child Victim and/or Child Witness, or a Social Worker.”

In the explanation of the article, it is explained that what is meant by “other legal aid providers” are paralegals, lecturers, and law faculty students in accordance with the Law on Legal Aid. A family atmosphere, for example, an atmosphere that makes children comfortable, is child-friendly, and does not cause fear and pressure.

C. The process of taking testimony is carried out in a non-formal situation. Special protection in the criminal justice system for children above is then strengthened by other forms of protection in Article (22) which states “Investigators, Public Prosecutors, Judges, Community Counselors, Advocates or other legal aid providers, and other officers in examining cases of Children, Child Victims, and/or Child Witnesses do not wear togas or official attributes”. The obligation to remove the official uniform when carrying out the judicial process for children as witnesses is for the sake of protecting children from a psychological perspective so that children do not feel tense because they feel they are facing law enforcement officers. The question and answer atmosphere is carried out in a family manner, so that children feel safe and not afraid, and must use language that children understand.

4. Conclusion

From the description of the discussion of Legal Protection for Children as Victims of Criminal Acts of Molestation in Court, the following conclusions can be drawn:

Legal protection for children as victims of sexual abuse committed by people who have family ties and are carried out continuously in the Muara Teweh District Court, namely the crime of child sexual abuse which is a crime that is contrary to and violates a person's decency and morality and which is related to the genitals or other body parts that can stimulate sexual desire. Proven in Pidsus Number 54 of 2022, the Muara Teweh District Court, stated that the perpetrator was charged with Law Article 81 paragraph (3) in conjunction with. Article 76 D of Law of the Republic of Indonesia Number 35

of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, as amended by Law Number 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 2002 concerning Child Protection into Law in conjunction with. Article 64 paragraph (1) of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations. Sentencing the Defendant to a prison sentence of 17 (seventeen) years and a fine of Rp. 5,000,000,000.00 (five billion rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence of 6 (six) months.

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