

Legal Protection for Children as Victims of Criminal Acts of Sexual Intercourse Committed by People Who Have Family Relationships and Carried Out Continuously (Case Study of Decision Number: 49/Pid.Sus/2024/PN Mtw)

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Abstract. *The crime of sexual intercourse with a child can be classified as an immoral crime that can damage the child's future. Article 82 Paragraph (1) Jo. Article 76 E of Law 23 of 2002 concerning Child Protection regulates the Act of Sexual Intercourse Against Children. The purpose of this study is to determine and analyze legal protection for children as victims of the crime of sexual intercourse committed by people who have family ties and are carried out continuously at the Muara Teweh District Court. To determine and analyze the obstacles and solutions to legal protection for children as victims of the crime of sexual intercourse committed by people who have family ties and are carried out continuously at the Muara Teweh District Court. The method used by the researcher is a normative legal approach and the specifications in this study are descriptive analytical. The sources and types of data in this study are secondary data obtained from literature studies. The data is analyzed qualitatively using the theory of legal protection and the theory of legal effectiveness. Based on the results of the study, legal protection for child victims of sexual intercourse committed by people with ongoing family relationships in the Muara Teweh District Court is regulated in the Child Protection Law (Law Number 35 of 2014 concerning Child Protection) and related legislation. This law provides special protection through various efforts, including social rehabilitation, psychosocial assistance, and handling cases in juvenile courts. The criminal penalties imposed on the perpetrator are also increased if the act is carried out continuously or by the victim's parents. The penalties imposed for perpetrators of this crime are severe, and the juvenile justice system provides special protection to victims. Obstacles to legal protection for children as victims of sexual intercourse committed by people who have ongoing family relationships and carried out continuously in the Muara Teweh District Court are the lack of public awareness, the inability of law enforcement officers, and weak support from family and the community. Solutions include: Increasing Education and Socialization, Training of Law Enforcement Officers, Increasing Support from Family and the Community.*

Keywords: *Children; Legal Protection; Sexual Intercourse Crimes; Victims.*

1. Introduction

Child protection according to Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection considers that the Indonesian state guarantees the welfare of every citizen, including child protection which is a human right. Every child has the right to survival, growth and development and the right to protection from violence and discrimination as mandated in the 1945 Constitution of the Republic of Indonesia. The Criminal Code (KUHP) actually regulates provisions regarding criminal sanctions against perpetrators of sexual violence, but in reality this crime still occurs in many places and is hidden in society. It is not uncommon for these cases to escape the clutches of applicable law, some even stop at the level of examination by the police or prosecutor's office so that they do not reach the court process. To realize the success of law enforcement in eradicating the rampant cases of sexual violence, it is very necessary to strengthen serious coordination of cooperation between the police, prosecutors and judges in court. The decisions of judges examining cases of sexual violence in various courts vary.¹

Violent acts that occur in the community are increasingly disturbing. In resolving a conflict or problem accompanied by violent acts. In general, violent acts can be interpreted as the deliberate use of physical force or power, threats or actual violence against oneself, others, or against groups or communities, which result in injury or are likely to injure, kill, endanger the psyche, abnormal growth or loss.² The crime of sexual intercourse with a child can be classified as an immoral crime that can damage the child's future. In Article 82 Paragraph (1) Jo. Article 76 E of Law 23 of 2002 concerning Child Protection, the Act of Sexual Intercourse with a Child explains that:

"Any person who commits violence or threats of violence, forces, commits trickery, tells a series of lies, or persuades a child to commit or allow an indecent act to be committed shall be punished with imprisonment for 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 jurisdiction of the Muara Teweh District Court, there is a case that caught the author's attention, namely case number 49/Pid.Sus/2024/PN Mtw, where the perpetrator in the case was a 45-year-old middle-aged man who committed indecent acts against the victim, a 13-year-old girl. It started in August 2023 at around 19:00 WIB at the Victim's house located on Jl. Rapen, RT. 031, Kel. Lanjas, Kec. Teweh Tengah, Kab. North Barito, Central Kalimantan Province, When the Victim was sitting on the bed, the perpetrator immediately hugged the Victim's body which was then rejected by the Victim's Child but then the perpetrator hugged the Victim's body even tighter and removed all of the Victim's clothes, then the perpetrator

¹M. Sholeh, Sri Endah Wahyuningsih, 2017, Analysis of the Implementation of Criminal Sanctions Against Perpetrators of Child Sexual Violence in the Demak District Court, *Khaira Ummah Law Journal* Vol. 12. No. 2, Unissula

²Aan Hardiansyah, Akhmad Khisni, Jawade Hafidz, 2018, Criminal Acts of Violence in the Teaching and Learning Process Reviewed from the Perspective of Criminal Law and Law Number 14 of 2005 Concerning Teachers and Lecturers, in the Journal of Daulat Hukum Volume 1 (1), Published Master Of Law, Faculty of Law Unissula, p. 88, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2622/1972>

removed the perpetrator's pants and underwear after that laid the Victim's body on the bed. When the Victim wanted to scream, the perpetrator covered the Victim's mouth with his clothes and held the Victim's hands, then the Defendant also threatened by saying "WATCH OUT YOU TELL YOUR MOTHER, IF YOU TELL YOUR PARENTS I WILL HIT YOU" hearing the threat the Victim felt scared and resigned. Then the perpetrator pressed down on the victim's body and forcibly inserted the perpetrator's genitals into the victim's vagina and shook the perpetrator's buttocks back and forth for 5 (five) minutes. When the perpetrator's sperm came out inside the victim's vagina, the perpetrator then removed his genitals from the victim's vagina.³

Then the second incident occurred in September 2023 at around 19:00 WIB at the victim's house located on Jl. Rapen, RT. 031, Kel. Lanjas, Kec. Teweh Tengah, Kab. North Barito, Central Kalimantan Province, When the victim was sweeping the house, the perpetrator came back to the victim's house and immediately hugged the victim's body and pulled her to the bed, then the perpetrator removed the perpetrator's pants and underwear after that lay the victim's body on the bed. When the victim wanted to scream, the perpetrator covered the victim's mouth with the perpetrator's hand and pressed down on the victim's body. Then the perpetrator also threatened by saying "DON'T TELL YOUR PARENTS, I'LL HIT YOU LATER" hearing the threat, the victim felt scared and resigned. Then the perpetrator pressed down on the victim's body and forcibly inserted the perpetrator's genitals into the victim's vagina and shook the perpetrator's buttocks back and forth for 5 (five) minutes and when the perpetrator's sperm came out inside the victim's vagina, the perpetrator then removed his genitals from the victim's vagina.⁴

According to the Social Report from the Social Service, Community Empowerment and Village of the North Barito Regency Government regarding Case Disclosure Data (Crime Total) for Crime Cases Against Children in 2022 to 2024, I have attached the following Table Data:

No.	Case	2022	2023	2024
1	Child Protection	3	3	2
2	Obscene	11	12	6
3	Rape	0	0	1
4	Taking Underage Children Running	0	0	0
Total		14	15	9

2. Research Methods

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).⁵This study aims

³ Kismanto, Anis Mashdurohatur, 2017, Legal Justice for Child Victims of Sexual Violence in Kendal Regency, *Khaira Ummah Law Journal* Vol. 12. No. 1 Unissula

⁴ Arif Gosita, 1999, "Legal Aspects of Child Protection and the Convention on the Rights of the Child, Era Hukum," *Jurnal Ilmiah Hukum* 4, no. 5, p: 264–65

⁵Mukti Fajar ND and Yulianto Achmad, 2013, Dualism of Normative and Empirical Legal Research, Pustaka Pelajar, Yogyakarta, p. 34.

to discuss legal protection for children as victims of criminal acts of sexual intercourse committed by people who are related and carried out continuously.

3. Results and Discussion

3.1. Legal Protection for Children as Victims of Criminal Acts of Sexual Intercourse Committed by People Who Have Family Relationships and Carried Out Continuously at the Muara Teweh District Court

Legal protection for children is an effort to protect the various freedoms and human rights of children. Forms of legal protection for children such as assistance from community officials, shorter detention periods compared to adults, facilities by law enforcement officers specifically for children, including the separation of child prisoners from adult prisoners are one form of legal protection for children.⁶

Children who have physical and mental conditions that have not fully developed often become victims of violence, so they need protection. Child protection is all efforts made to create conditions so that every child can exercise their rights and obligations for the development and growth of children naturally, both physically, mentally and socially. Child protection is further clarified by the establishment of Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection.

Children who are victims of sexual violence receive special protection efforts as regulated in Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection in Article 69A, namely that children who are victims of sexual violence will receive education on reproductive health, religious values, and moral values, social rehabilitation, psychosocial assistance during treatment until recovery and provision of protection and assistance at every level of examination starting from investigation, prosecution, to examination in court.⁷

In addition, child protection is also a government commitment, namely by issuing Perpu No. 1 of 2016 concerning the Second Amendment to Law of the Republic of Indonesia Number 2 of 2002 concerning Child Protection. The Perpu regulates, among other things, aggravating criminal penalties, additional criminal penalties, and other actions for perpetrators. The aggravating criminal penalty is in the form of an additional criminal penalty of one third of the minimum prison sentence of 10 years and a maximum of 20 years. In addition, the threat of life imprisonment and the death penalty are also included in the aggravating criminal penalties. Meanwhile, the additional alternative criminal penalties that are regulated are the

⁶Robertus David Mahendra Saputra, Jawade Hafidz and Denny Suwondo, 2022, The Legal Protection for Children as Criminal Actors, *Law Development Journal* ISSN : 2747-2604 Volume 4 Issue 3, Unissula, p. 462

⁷Tasmo and Rahmat Bowo Suharto, 2019, The Legal Consequence Of The Judge Decision In The Case Of Children Criminal Justice Which Is Not Based On Society Research From Society Supervisor (Studies on Settlement Case of Children Crime In State Court of Cirebon), *Journal of Daulat Hukum* Volume 2 Issue 4. Unissula, p. 565

announcement of the perpetrator's identity, chemical castration, and the installation of electronic detection devices.

Providing protection for child victims of sexual crimes, especially in the form of fulfilling compensation, either through compensation and/or restitution, should receive attention from policy makers. Regarding compensation and restitution, Stephen Schafer,⁸ In his book "The Victim and His Criminal", he puts forward 5 (five) systems for providing compensation and restitution to victims of crime, namely:

- (1) civil compensation, provided through a civil legal process, separate from the criminal legal process;
- (2) civil compensation, awarded through criminal proceedings;
- (3) restitution which is civil in nature and mixed with criminal in nature, is given through criminal process;
- (4) civil compensation, provided through criminal proceedings and supported by state revenue sources;
- (5) Neutral compensation is provided through special procedures.

In addition to restitution, victims of criminal acts, in this case children who are also witnesses to the criminal acts they experience, also receive rehabilitation assistance as regulated in Article 6 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, namely:

- (1) Victims of serious human rights violations, victims of terrorism, victims of human trafficking, victims of torture, victims of sexual violence and victims of serious abuse, in addition to the rights referred to in Article 5, are also entitled to:

- a. medical assistance; and
- b. psychosocial and psychological rehabilitation assistance.

- (2) Assistance as referred to in paragraph (1) is provided based on the LPSK Decision

In addition to the threat of punishment for the perpetrator, there are also regulations regarding legal protection for child victims of crimes against morality, namely Law No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely Article 69A, that Special Protection for child victims of sexual crimes is carried out through efforts:

⁸Stephen Schafer, 1968, The Victim and His Criminal, Random House, New York, p. 105

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- a. education about reproductive health, religious values, and moral values;
- b. social rehabilitation;
- c. psychosocial support during treatment until recovery; and
- d. providing protection and assistance at every level of examination, starting from investigation, prosecution, to examination in court.

The case that occurred in the Muara Teweh District Court was a Child Protection Crime (Committing Sexual Intercourse Against a Minor) as referred to in Article 82 Paragraph (2) Jo Article 76E of the Republic of Indonesia Law Number 35 of 2014 Concerning Amendments to the Republic of Indonesia Law 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 of the Republic of Indonesia Number 1 of 2016, Concerning the Second Amendment to the Republic of Indonesia Law Number 23 of 2002 Concerning Child Protection to Become a Law in conjunction with Article 64 paragraph (1) of the Criminal Code.⁹

That the defendant was charged based on the Public Prosecutor's indictment Number: PDM – 04/O.2.13/Eku.2/04/2024 dated April 30, 2024 as follows:

First

That the defendant W, in August 2023 at around 19:00 and in September 2023 at around 19:00 WIB or at least at a certain time in August 2023 and September 2023, at the house of the victim's child RH located in Central Kalimantan Province, or at least in another place that is still included in the jurisdiction of the Muara Teweh District Court, has committed the act of "Intentionally Committing Violence or Threats of Violence to Force a Child to Have Sexual Intercourse with Him or with Another Person, Which is Committed by People Who Have Family Relationships,

It started in August 2023 at around 19:00 WIB at the house of the Victim's Child RH located in Central Kalimantan Province, when the Victim's Child RH was sitting on the bed, the defendant immediately hugged the Victim's Child RH's body which was then rejected by the Victim's Child RH but then the Defendant hugged the Victim's Child RH's body even tighter and took off all of the Victim's Child RH's clothes, then the Defendant took off the Defendant's pants and underwear after that laid the Victim's Child RH's body on the bed. When the Victim's Child RH wanted to scream, the Defendant covered the Victim's Child RH's mouth with his clothes and held the Victim's Child RH's hands, then the Defendant also threatened by saying "WATCH OUT YOU TELL YOUR MOTHER, IF YOU TELL YOUR PARENTS I WILL HIT YOU" hearing the threat, the Victim's Child RH felt scared and resigned. Then the Defendant pressed down on the body of the Child Victim RH and forcibly inserted the Defendant's genitals into the Child Victim RH's vagina and shook the Defendant's buttocks back and forth for 5 (five) minutes and

⁹ Rahmat Hakim, 2010, Islamic Criminal Law (Fiqh Jinayah), Pustaka Setia, Bandung

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when the Defendant's sperm came out inside the Child Victim RH's vagina, the Defendant then removed his genitals from the victim's vagina.¹⁰

Then in September 2023 at around 19:00 WIB at the house of the Victim's Child RH located in Central Kalimantan Province, when the Victim's Child RH was sweeping the house, the Defendant came back to the victim's house and immediately hugged the Victim's Child RH's body and pulled him to the bed, then the Defendant took off the Defendant's pants and underwear after that laid the Victim's Child RH's body on the bed. When the Victim's Child RH wanted to scream, the Defendant covered the Victim's Child RH's mouth with the defendant's hand and pressed down on the Victim's Child RH's body. Then the Defendant also threatened by saying "DON'T TELL YOUR PARENTS, I'LL HIT YOU LATER" hearing the threat, the Victim's Child RH felt scared and resigned. Then the Defendant pressed down on the body of the Child Victim RH and forcibly inserted the Defendant's genitals into the Child Victim RH's vagina and shook the Defendant's buttocks back and forth for 5 (five) minutes and when the Defendant's sperm came out inside the Child Victim RH's vagina, the Defendant then removed his genitals from the victim's vagina.¹¹

That the Defendant is the uncle of the victim's child RH, namely the biological brother of the mother of the victim's child RH.

That based on the Birth Certificate Extract Number 6205-LT-13032017-0075 dated March 13, 2017, it states that in Muara Teweh on February 4, 2010, RH, the second child, a girl, was born to Father A and Mother L. Therefore, at the time of the sexual intercourse and/or molestation of the victim child RH, the person concerned was still 13 (thirteen) years old.

That based on the Visum et Repertum Report Number: 003/305/R.Med/I/2024, dated January 30, 2024 signed by Dr. Gusti Ngurah Warsita, Sp.OG with the conclusion "currently the first pregnant victim is in a coma, twenty-four to twenty-five weeks of gestation, single coma, alive, full stop".

The Defendant's actions are as regulated and threatened with Criminal Law in 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 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 Number 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.

Second

That the defendant W, in August 2023 at around 19:00 and in September 2023 at around 19:00 WIB or at least at a certain time in August 2023 and September 2023, at the house of

¹⁰ PAF Lamintang, 1997, Basics of Indonesian Criminal Law, Citra Aditya Bakti, Bandung

¹¹ Schafer, Stephen, 1968, The Victim and His Criminal a Study In Functional Responsibility, Random House, Ltd. Canada

the victim's child RH located in Central Kalimantan Province, or at least in another place that is still included in the jurisdiction of the Muara Teweh District Court, has committed the act of "Committing Violence or Threats of Violence, Coercing, Committing Deception, Communicating a Series of Lies, or Persuading Children to Commit or Allow Obscene Acts to be Committed, Committed by People Who Have Family Relationships, Where Between Several Acts Although Each is a Crime or Violation There is a Relationship in Such a Way That It Must Be Viewed as One Continuing Act", which was committed by the Defendant in the following manner:

It started in August 2023 at around 19:00 WIB at the house of the Victim's Child RH located in Central Kalimantan Province, when the Victim's Child RH was sitting on the bed, the defendant immediately hugged the Victim's Child RH's body which was then rejected by the Victim's Child RH but then the Defendant hugged the Victim's Child RH's body even tighter and took off all of the Victim's Child RH's clothes, then the Defendant took off the Defendant's pants and underwear after that laid the Victim's Child RH's body on the bed. When the Victim's Child RH wanted to scream, the Defendant covered the Victim's Child RH's mouth with his clothes and held the Victim's Child RH's hands, then the Defendant also threatened by saying "WATCH OUT YOU TELL YOUR MOTHER, IF YOU TELL YOUR PARENTS I WILL HIT YOU" hearing the threat, the Victim's Child RH felt scared and resigned. Then the Defendant pressed down on the body of the Child Victim RH and forcibly inserted the Defendant's genitals into the Child Victim RH's vagina and shook the Defendant's buttocks back and forth for 5 (five) minutes and when the Defendant's sperm came out inside the Child Victim RH's vagina, the Defendant then removed his genitals from the victim's vagina.

Then in September 2023 at around 19:00 WIB at the house of the Victim's Child RH located in Central Kalimantan Province, when the Victim's Child RH was sweeping the house, the Defendant came back to the victim's house and immediately hugged the Victim's Child RH's body and pulled him to the bed, then the Defendant took off the Defendant's pants and underwear after that laid the Victim's Child RH's body on the bed. When the Victim's Child RH wanted to scream, the Defendant covered the Victim's Child RH's mouth with the defendant's hand and pressed down on the Victim's Child RH's body. Then the Defendant also threatened by saying "DON'T TELL YOUR PARENTS, I'LL HIT YOU LATER" hearing the threat, the Victim's Child RH felt scared and resigned. Then the Defendant pressed down on the body of the Child Victim RH and forcibly inserted the Defendant's genitals into the Child Victim RH's vagina and shook the Defendant's buttocks back and forth for 5 (five) minutes and when the Defendant's sperm came out inside the Child Victim RH's vagina, the Defendant then removed his genitals from the victim's vagina.¹²

That the Defendant is the uncle of the victim's child RH, namely the biological brother of the mother of the victim's child RH.

That based on the Birth Certificate Extract Number 6205-LT-13032017-0075 dated March 13, 2017, it states that in Muara Teweh on February 4, 2010, RH, the second child, a girl, was born

¹² Tunggal Setia Hadi, 2015, Law of the Republic of Indonesia, Number 11 of 2012 Concerning the Juvenile Criminal Justice System, Harvarindo, Jakarta,

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to Father A and Mother L. Therefore, at the time of the sexual intercourse and/or molestation of the victim child RH, the person concerned was still 13 (thirteen) years old.

That based on the Visum et Repertum Report Number: 003/305/R.Med/I/2024, dated January 30, 2024 signed by Dr. Gusti Ngurah Warsita, Sp.OG with the conclusion "currently the first pregnant victim is in a coma, twenty-four to twenty-five weeks of gestation, single coma, alive, full stop".

The Defendant's actions are as regulated and threatened with criminal penalties in Article 82 Paragraph (2) Jo Article 76E 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 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 jo. Article 64 paragraph (1) of the Criminal Code;

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, RH was born, the second child, a girl from Father A and Mother L, so that at the time of the incident she was still 13 (thirteen) years old;
2. 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 RH 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:

1. 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, RH, who is the Defendant's own nephew;
2. 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 RH with an address in 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 RH with an address on Jalan Provinsi Kalimantan Tengah;
3. That first on a forgotten day and date around August 2023 at around 19.00 WIB in the house of the victim's child RH at the address Jalan Provinsi Kalimantan Tengah, initially when the victim's child RH was living at home alone because Considering, that the Defendant did not present mitigating witnesses (a de charge);

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Considering, that the Public Prosecutor submitted the following evidence:

- 1) 1 (one) Pink housedress;
- 2) 1 (one) Cream colored undershirt;
- 3) 1 (one) pair of white shorts;
- 4) 1 (one) 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 with an address in Central Kalimantan Province, initially when the Victim's Child was living at home alone 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 of 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;¹³

¹³ Wirjono Prodjodikoro, 2003, Principles of Criminal Law in Indonesia, Refika Aditama, Bandung

1. 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;
2. 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;
3. 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;
4. That the first person to know about the incident was the victim's child's teacher at school, namely victim's child M;
5. 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;
6. That when committing the act the Defendant was conscious and not drunk on alcohol;
7. 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";
8. 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, RH was born, the second child, a girl from Father A and Mother L, 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 the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to the Republic of Indonesia Law 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 Number 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 with regard to these elements, the Panel of Judges considered the following:

“Everyone” element;

Considering, that what is meant by Every person is a legal subject as the bearer/suporter 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 W, 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

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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;¹⁴

3.2. Element of “Intentionally Committing Violence or Threat 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 the trial, there was an incident of sexual intercourse committed by the Defendant with the Victim Child in August 2023 at around 19.00 WIB and in September 2023 at around 19.00 WIB in the Victim Child's house with an address in Central Kalimantan Province; That the first incident occurred in August 2023 at around 19.00 WIB in the Victim Child's house with an address in Central Kalimantan Province, initially

¹⁴ Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP).

when the Victim Child was living alone at home because at that time both parents and the Victim Child's younger sibling were going to a funeral, then the Defendant came to the Victim Child's house, and immediately sat on the bed, and coincidentally the Victim Child was sitting on the bed at that time. After that the Defendant immediately hugged the Victim Child's body and the Victim Child at that time tried to fight back, but could not because the Defendant hugged the Victim 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 wanted to scream but the Defendant immediately covered the victim's mouth using the victim's clothes, and also the Defendant held both of the victim's hands so that he did not move, and also the Defendant threatened the victim with the words "WATCH OUT YOU TELL YOUR MOTHER, IF YOU TELL YOUR PARENTS, THE VICTIM'S CHILD WILL HIT YOU". Because of hearing the threat, the victim's child 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;¹⁵

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

¹⁵ 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 Stipulation of Government Regulation in Lieu of Law Number One of 2016 Concerning Second Amendment to Law Number 23 of 2002 Concerning Child Protection to Become Law

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 RH 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 linked to 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, RH was born, a second child, a girl from Father A and Mother L, 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;¹⁶

3.3. The element "Performed by parents, guardians, people who have family relationships, child care providers, educators, educational staff, officials 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:

- a. parents are biological father and/or mother, or father and/or stepmother, or adoptive

¹⁶ The 1945 Constitution of the Republic of Indonesia

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- father and/or mother;
- b. a guardian is a person or body that in reality exercises parental authority over a child;
 - c. 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;
 - d. a child care provider is any person who is given the obligation to care for a child, whether for remuneration or not;
 - e. educators are qualified educational personnel as teachers/lecturers/counselors/tutors/student guides/instructors/facilitators, or other titles who participate in organizing education;
 - f. educational staff are members of the community who dedicate themselves and are appointed to support the provision of education;
 - g. apparatus in charge of child protection is any apparatus that is given obligations regarding the implementation of child protection;
 - h. 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;¹⁷

4. Conclusion

Legal protection for child victims of sexual intercourse committed by people with ongoing family relationships in the Muara Teweh District Court is regulated in the Child Protection Law (Law Number 35 of 2014 concerning Child Protection) and related legislation. This law provides special protection through various efforts, including social rehabilitation, psychosocial assistance, and handling cases in juvenile courts. The criminal penalties imposed on the perpetrator are also increased if the act is committed continuously or by the victim's parents. The penalties imposed on perpetrators of this crime are severe, and the juvenile justice system provides special protection to victims. Obstacles to legal protection for children

¹⁷ Arini Fauziah Al haq, Santoso Tri Raharjo, and Hery Wibowo, 2015, "Sexual Violence Against Children in Indonesia," *Proceedings of Research and Community Service* 2, no. 1, p. 33.

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as victims of sexual intercourse crimes committed by people who have family relationships and are carried out continuously in the Muara Teweh District Court are the lack of public awareness, the incompetence of law enforcement officers, and weak support from families and the community. Solutions include: Increasing Education and Socialization, Law Enforcement Officer Training, Increasing Family and Community Support.

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