

## Legal Analysis of Criminal Responsibility Perpetrators of the Criminal act of Interception Towards Minors Based on Justice (Study of Decision Number 6/Pid.Sus/2023/Pn. Pwt)

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**Abstract.** *Sexual violence can occur in every community and its victims do not discriminate by gender and age. According to Law Number 35 of 2014, violence is any act against a child that results in physical, psychological, sexual, and/or neglectful misery or suffering, including threats to commit acts, coercion, or deprivation of liberty unlawfully. The purpose of this study was to determine the application of the elements of Article 81 paragraph (1) of Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law in the Banyumas District Court decision Number 6/Pid.Sus/2023/PN.Pwt, and to determine the responsibility of the perpetrators of the crime of committing violence by forcing children to have intercourse in the Banyumas District Court decision Number 6/Pid.Sus/2023/PN Pwt. The method used is the normative legal approach method. The research specification used in this study is the application of law that applies the law in abstracto to events or cases that are in concreto. The research material is the decision of the Banyumas District Court Number 6 / Pid.Sus / 2023 / PN Pwt. The data obtained were analyzed deductively with the deductive method with syllogism, where the major premise is legislation and theories, while the research results are minor premises, then a conclusion is drawn between the major and minor premises. Based on the results of the research and discussion, it can be concluded that the application of the elements of Article 81 paragraph (1) of Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law in the Decision of the Banyumas District Court Number 6/Pid.Sus/2023/PN Pwt is appropriate, where the defendant's actions have been proven legally and convincingly to have fulfilled all the elements of the article charged. The basis for the Judge's legal considerations in imposing criminal sanctions on perpetrators of criminal acts of violence by forcing children to have*

*intercourse in the Decision of the Banyumas District Court Number 6/Pid.Sus/2023/PN.Pwt is based on legal and sociological considerations.*

**Keywords:** Analysis; Children; Criminal; Sexual.

## 1. Introduction

Hans Kelsen defines law as a rule as a system of rules about human behavior. Thus, law does not accumulate in a single rule but a set of rules that have a unity so that it can be understood as a system, the consequence is that it is impossible to understand the law if you only pay attention to one rule.<sup>1</sup>Law in English "Law", Dutch "Recht", German "Recht", Italian "Dirito", French "Droit" means rules.<sup>2</sup>Terminology according to Black's Law Dictionary, law in the general sense is the entire set of rules for acting or behaving that are determined by the controlling power, and have legally binding force or law is what must be obeyed and followed by citizens with the result of sanctions or legal consequences.<sup>3</sup>

Law is a series of regulations regarding the behavior of people as members of society, and the purpose of the law is to create safety, happiness and order in society. To recreate balance in society, sanctions are imposed, namely administrative sanctions in the field of Constitutional Law, civil sanctions in the field of Civil Law, and criminal sanctions in the field of Criminal Law.<sup>4</sup>

The Unitary State of the Republic of Indonesia (NKRI) is a state based on the legal basis (rechstaat), not based on the power basis (machtstaat). This has been explained in the 1945 Constitution of the Republic of Indonesia, article 1 paragraph 3, which discusses "The State of Indonesia is a state of law."<sup>5</sup>The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) establishes the Republic of Indonesia as a state based on law (rechtsstaat).<sup>6</sup>Talking about law, there is an adage that says "where there is society, there must be law". In general, law is law that lives and develops in society, such as customs, customary law, religious law, including laws made by the ruler.<sup>7</sup>

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<sup>1</sup>Jimly Asshidiqie and Ali Safa'at, Hans Kelsen's Theory of Law, (Jakarta: Secretary General and MK-RI Clerk's Office, 2006), p. 13.

<sup>2</sup>Riduan Syahrani, (2013), Summary of the Essence of Legal Science, Bandung: PT Citra Aditya Bakti, p.19.

<sup>3</sup>Endrik Safudin, (2017), Basics of Legal Science, Malang: Setara Press, p. 2.

<sup>4</sup>Maidin Gultom, Legal Protection for Children in the Juvenile Criminal Justice System In Indonesia (Bandung, Refika Aditama, 2014), p. 3.

<sup>5</sup>Alycia Sandra Dina Andhini & Ridwan Arifin, Analysis of Legal Protection Against Violence Against Children in Indonesia, Journal of Legal Studies, Vol 3 Number 1 (2019), p. 42.

<sup>6</sup>Ramly Hutabarat, Equality Before the Law in Indonesia, Ghalia Indonesia, Jakarta, 1985, p. 11.

<sup>7</sup>Zaeni Asyhadie and Arief Rahman, Introduction to Legal Science, PT. Raja Grafindo Persada, Jakarta, 2013, p. 1.

Law obtains binding power, because it is manifested in regulations in the form of laws and is systematically arranged in certain codifications or complications. Law is created to maintain human rights and human responsibilities, with the aim of regulating social order so that the goals of life can be achieved.<sup>8</sup>In general, it can be said that the target of criminal law is to protect the interests of society and individuals from unpleasant actions resulting from a violation by someone.

The objectives of the Republic of Indonesia are clearly stated in the 1945 Constitution of the Republic of Indonesia that the State aims to protect all Indonesian people and all Indonesian territory, advance public welfare, educate the nation's life, participate in world peace efforts based on independence, eternal peace and social justice. In relation to this, it is only right that the Indonesian people receive protection in all aspects of their lives. However, the facts that occur in society are in fact the opposite of the objectives of our country. Today, various kinds of legal problems are increasingly prevalent along with the development of the era, science and technology which are increasingly rapid. This causes the pattern of people's behavior to change to become increasingly complex. There are more and more patterns of human behavior that are not in accordance with the norms that apply in society.<sup>9</sup>

Life in a society that is more or less orderly and orderly cannot be separated from the support of an order. Because with this order, life becomes orderly. So the law here with this order, life becomes orderly, the law here is an integral part of human life. The law regulates and controls humans in human life in life together. And from there, legal protection is very much needed for humans for the sake of behavior in society to provide a value of justice for society. In essence, legal protection is the protection of dignity and honor, as well as recognition of human rights that are followed by legal subjects in a state of law, based on legal provisions from arbitrariness.<sup>10</sup>

A crime means an act whose perpetrator can be subject to criminal punishment and this perpetrator can be said to be the subject of a crime. In the Criminal Code, the term *strafbaar feit* is known, while in the literature it is known as a crime. Lawmakers use the terms criminal event, criminal act and criminal act.<sup>11</sup>

One of the acts prohibited by criminal law is rape or sexual intercourse. Rape is a violation of Human Rights (HAM), especially for women. Human rights regulate the protection of human rights, so that fellow human beings are not allowed to take the rights of others and the honor of women must be protected. The crime of rape is a very disturbing act, especially for women because the effects caused by this act are very large on the victims. Women who become victims will

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<sup>8</sup>Titik Triwulan Tutik, *Introduction to Legal Science*, Prestasi Pustaka, Jakarta, 2006, p. 26.

<sup>9</sup>Emilda Firdaus, *Constitutional Law*, (Pekanbaru: Alaf Riau, 2010), p. 81.

<sup>10</sup>Philipus M. Hadjon, *Legal Protection for Indonesian Society* (Surabaya: Bina Ilmu, 1987), p. 105.

<sup>11</sup>Bambang Poernomo, *Principles of Criminal Law*, Ghalia Indonesia, Yogyakarta, 1982, p. 86.

experience prolonged trauma. Victims will experience violence both physically, psychologically and mentally. Prolonged trauma to a bad experience for life can make victims stressed to the point of wanting to commit suicide because they find something terrible and make them have no future anymore.<sup>12</sup>

If someone commits an act which violates or is regulated by law, then that person can be said to have committed a criminal act, as stated in the Principle of Legality in Article 1 paragraph (1) of the Criminal Code (KUHP) which states: "No act can be punished except by virtue of criminal rules in existing legislation, before the act is committed". A criminal act is an act which is prohibited by a legal rule, the prohibition of which is accompanied by a threat (sanction) in the form of a certain punishment, for anyone who violates the prohibition.<sup>13</sup>

Criminal law becomes a guard to keep society away from crime. Criminal law in relation to crime is worthy of being called The Guardian of Security which tries to provide guarantees so that society does not become a victim of crime.<sup>14</sup> Criminal law not only provides protection to society, but also to individuals and persons, so that balance and harmony are created.<sup>15</sup>

Victims of sexual violence are mostly children. In general, the definition of 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), providing indecent exposure of the genitals to a child, showing pornography to a child, having sexual intercourse with a child, physical contact with a child's genitals (except in certain non-sexual contexts such as medical examinations), viewing a child's genitals without physical contact (except in non-sexual contexts such as medical examinations), or using a child to produce child pornography.<sup>16</sup>

Cases of sexual violence against children are one of the cases that have increased significantly lately. Not only increasing quantitatively but also qualitatively. From time to time, the number of sexual violence against children is unstoppable and the modus operandi is increasingly inhumane. And what is even more tragic is that most of the perpetrators are from the family environment or the environment around the child, including in their own home, school, and the child's social environment.<sup>17</sup>

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<sup>12</sup>Melisa Halimatus Sa'diyah, 2021, Indonesian Journal of Criminal Law and Criminology (IJCLC) Vol. 2, Number 2, July 2021, 78 – 91, Center for Criminal Law and Criminology Studies Faculty of Law, Muhammadiyah University of Yogyakarta, p. 2.

<sup>13</sup>Moeljatno, Principles of Criminal Law, PT Rineka Cipta, Jakarta, 2008, p. 59.

<sup>14</sup>Erdianto Effendi, Indonesian Criminal Law: An Introduction, Refika Aditama, Bandung, 2011, p. 1.

<sup>15</sup>Mahrus Ali, Basics of Criminal Law, Sinar Grafika, Jakarta, 2011, p. 11.

<sup>16</sup>Abu Huraira, Violence Against Children, (Bandung: Nuansa Press, 2012), pp. 89-90.

<sup>17</sup>Abintoro Prakoso, Reform of the Juvenile Criminal Justice System, (Yogyakarta: Laksbang Graphics, 2013), p. 37.

Discussing child protection, our constitution has regulated through Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia RI which states that Every child has the right to survival, growth and development and has the right to protection from violence and discrimination. Child protection as referred to in Article 2 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and honor, and receive protection from violence and discrimination. The existence of children is so important that their rights are regulated in the Law.

The Coordinating Ministry for Human Empowerment and Culture (Kemenko PMK) said that cases of violence against children in 2024 mostly occurred in the household. The increase in cases of violence against children can be seen from data from the Women and Children Empowerment Symphony (PPA) in 2024. "Based on the location of the incident, most occurred in households, as many as 2,132 cases. This means that the perpetrators are people close to them," said the Deputy for Improving the Quality of Children, Women and Youth, Kemenko PMK, Woro Srihastuti Sulistyaningrum at the Kemenko PMK Office, Central Jakarta, Monday, April 22, 2024. Based on data from the PPA Symphony, violence against children that occurred at home was 2,132 cases, public facilities 484 cases and schools 463 cases. Then the most perpetrators were friends or boyfriends, namely 809 perpetrators, 702 parents, 285 family/siblings, and 182 teachers. "The type of violence that often occurs in educational units is bullying. The number of bullying cases in schools has also increased with the most perpetrators coming from boyfriends or friends," he said.<sup>18</sup>

A child is someone who is not yet 18 years old, including a child who is still in the womb, as stated in Article 1 paragraph (1) of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection. Children are a group that is very vulnerable to crimes of sexual violence because children are always positioned as weak or helpless figures and have a high dependence on the adults around them. This is what makes children helpless when threatened not to tell what they experienced. The perpetrator's ability to control the victim either by trickery or threats and violence makes this crime difficult to avoid. Of all cases of sexual violence against children, they are only revealed after the incident occurs, and not a few have fatal impacts.<sup>19</sup>

The definition of indecency itself according to the legal dictionary contains the meaning of a vile and dirty process or act, indecent because it violates decency and morality. From the above, we can conclude that the Criminal Act of Child

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<sup>18</sup> [Child Violence Case Report 2024 Most Occurred in Households \(metrotvnews.com\)](https://www.metrotvnews.com) accessed on May 19, 2024 at 19.40 WIB.

<sup>19</sup> Maidin Gultom, *Legal Protection for Children in the Criminal Justice System Children in Indonesia*, (Bandung: Rafika Aditama, 2013), p. 49.

Molestation is an act that meets the elements of a crime in matters that are related to decency and morality, where the victim is under 18 years of age.<sup>20</sup>Therefore, in dealing with this crime of sexual abuse, law enforcement agencies are required to provide protection to child victims.

The increasing cases of sexual violence against minors prove that this problem is not just an ordinary problem, but a serious problem that must be handled by the Government. One example of a case of sexual violence against minors that occurred in the jurisdiction of the Purwokerto Court Decision Number 6 / Pid.sus / 2023 / PN.Pwt which tried this case "committed trickery, a series of lies or persuaded the child to have intercourse with him or with someone else". That initially on a day, date and month that can no longer be remembered in 2016, at around 12.30 WIB, the victim's child NF (who was still 8 years old, based on the birth certificate excerpt Number. 19208 / TF-20 / 2011) came to the defendant's house located in Purwodadi Village RT.01 RW.01 Kembaran District, Banyumas Regency. That after being at the defendant's house, the defendant had sexual intercourse with the victim NF, namely having sexual intercourse with a minor, and when the defendant inserted his genitals into the vagina of the Victim Child NF, the Victim Child NF said "Pak Dhe lara / Pak Dhe is sick", but the defendant ignored the words of the Victim Child NF, until the defendant ejaculated, and after finishing the defendant said "just talk to anyone, be careful if you talk to anyone / don't tell anyone, be careful if you tell anyone". Then the Victim Child NF went home. and after this incident the defendant did it again to the Victim Child NF 2 (two) times on a day, date and month that can no longer be remembered in 2017. Based on the Et Repertum Visum of the Pratama Outpatient Clinic of the Banyumas Police, Number. R/54/X/2022/Bhayangkara Banyumas Clinic, dated October 19, 2022 signed by Dr. Lidya Utama, from the results of the examination, an old laceration was found at 4.6 o'clock to the base of the redness was absent. The defendant's actions are regulated and threatened with criminal sanctions under Article 81 paragraph (1) of the Republic of Indonesia 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 Number 23 of 2002 concerning Child Protection.

With the defendant proven to have committed a crime of sexual violence against a child, the defendant was legally guilty and was sentenced to 12 (twelve) years in prison, minus the time the defendant served in temporary detention and ordered the defendant to remain in detention and a fine of Rp. 100,000,000, - (one hundred million rupiah) subsidiary 6 (six) months in prison. Based on these things, the author is interested in conducting research which is stated in a Thesis entitled "JUDICIAL ANALYSIS OF CRIMINAL RESPONSIBILITY OF PERPETRATORS OF CRIMINAL ACT OF SEXUAL ACT AGAINST MINORS BASED ON JUSTICE (STUDY OF DECISION NUMBER 6 / PID.SUS / 2023 / PN.PWT)".

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<sup>20</sup>Sudarsono, Legal Dictionary, PT Rineka Citra, Jakarta, 2012, p. 64.

## 2. Research methods

In compiling a scientific work, data that can be accounted for its truth is needed. This can be done by conducting research in a certain environment or scope in order to obtain accurate and factual data in accordance with the author's desired objectives.

Method comes from the Greek word "Methodus" which means way or path.<sup>21</sup>So, the method can be interpreted as a path related to the way of working in achieving a target needed by its users, so that they can understand the target object or the purpose of solving the problem. Meanwhile, research means re-search. The search in question is the search for true knowledge (scientific), because the results of this search will be used to answer certain problems. In other words, research is a search effort that is very educational, it trains us to always be aware that in this world there is much that we do not know, and what we are trying to find, find, and know is still not absolute truth. Therefore, it still needs to be re-tested.

Thus, every research starts from ignorance and ends in doubt, and the next stage starts from doubt and ends in a hypothesis (an answer that can be temporarily considered correct until proven otherwise).<sup>22</sup>

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Legal Research is a scientific activity, based on certain methods, systematics and thoughts, which aims to study something or several certain legal phenomena, by analyzing them. In addition, an in-depth examination of the legal factors is also carried out, to then attempt a solution to the problems

## 3. Results And Discussion

### 3.1. Criminal Responsibility for Perpetrators of Sexual Intercourse with Children

#### 1. Case Position

The court decision used is the court decision numbered 6/Pid.Sus/2023/PN. PWT, the case began with the Defendant named SUDARTO Bin MUJIANTO who was born in Banyumas, May 11, 1981, and has an address in Desa Desa Purwodadi, RT 01 RW 01, Kembaran District, Banyumas Regency, Central Java Province. The victim named NF BINTI IMAM SUYUTI BINTI IMAM SUYUTI who was born at the time of the incident the victim was 8 (eight) years old based on the birth certificate extract Number. 19208/TF-20/2011).

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<sup>21</sup>P. Joko Subagyo, *Research Methodology in Theory and Practice* (Jakarta: Rineka Cipta), 2004. p. 1.

<sup>22</sup>Amiruddin and H. Zainal Asikin, *Introduction to Legal Research Methods* (Jakarta: Rajawali Press, 2014), p. 19.

The crime of sexual violence (intercourse) against the child began that initially on a day, date and month that can no longer be remembered in 2016, at around 12.30 WIB, the victim's child NF BINTI IMAM SUYUTI (who was still 8 years old, based on the birth certificate extract Number. 19208/TF20/2011) came to the defendant's house located in Purwodadi Village RT. 01 RW. 01 Kembaran District, Banyumas Regency. That after being at the defendant's house, the victim's child NF BINTI IMAM SUYUTI played with R in the living room, and at around 14.00 WIB the defendant told R to take a nap. Then R slept on the bed in the living room, then the victim's child NF BINTI IMAM SUYUTI said goodbye to the defendant, then the defendant pulled her hand and covered the mouth of the victim's child NF BINTI IMAM SUYUTI, then the defendant pushed the body of the victim's child NF BINTI IMAM SUYUTI onto the bed in the living room, in a supine position, then the defendant took off the skirt and underwear worn by the victim's child NF BINTI IMAM SUYUTI, then the defendant pulled down her pants and underwear to her knees, then the defendant inserted his erect penis into the vagina of the victim's child NF BINTI IMAM SUYUTI, and when the defendant inserted his penis into the vagina of the victim's child NF BINTI IMAM SUYUTI, the victim's child NF BINTI IMAM SUYUTI said "Pak Dhe lara/Pak Dhe is sick", but the defendant ignored the words of the victim's child NF BINTI IMAM SUYUTI, until the defendant ejaculated, and after finishing the defendant said "just talk to each other "Yes, be careful, don't tell anyone, be careful if you tell anyone". Then the victim's child NF BINTI IMAM SUYUTI went home. and after this incident the defendant did it again to the victim's child NF BINTI IMAM SUYUTI 2 (two) times on a day, date and month that can no longer be remembered in 2017.

## 2. Public Prosecutor's Indictment

That the indictment used by the public prosecutor with Case Registration Number: PDM-08/PKRTO/Eoh.2/01/2023, is a Single Indictment, the contents of which are as follows:

That the defendant SUDARTO Bin MUJIANTO on Tuesday, August 23, 2022 at around 16.00 WIB or at least at a certain time which is still in August 2022 or at least still in 2022, at the defendant's house in Purwodadi Village, RT 01, RW 01, Banyumas District or at least at another place which is still included in the jurisdiction of the Purwokerto District Court which has the authority to examine and try this case, committed a criminal act of violence, forcing a child to have sexual intercourse with him or with another person, as regulated and threatened in Article 81 paragraph (1) of Law of the Republic of Indonesia No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the second amendment to Law No. 23 of 2002 concerning Child Protection for Child Victim NF BINTI IMAM SUYUTI. The defendant committed the act in the following manner:

a. That in 2016 the victim's child played with the defendant's child, then when the victim's child wanted to say goodbye to go home to the defendant, the



defendant pulled the victim's hand while gagging the victim's mouth, then pulled her to the bed next to the defendant's child (R) who was sleeping, then the defendant pushed the victim's body until she lay down, then the defendant removed the victim's skirt and underwear while gagging the victim's mouth, then the defendant pulled down his own pants and underwear to the knees, then the defendant inserted his erect penis into the victim's vagina while saying "nek lara bicara bae" (if it hurts just say it) then moved it back and forth then the victim said "PAK DHE lara" (PAK DHE hurts) and the defendant released sperm on the bed. That then the victim and the defendant wore their own underwear and pants after that the defendant said "aja bicara sapa-sapa ya" (don't tell anyone) then the victim went home, when the defendant's genitals entered the victim's vagina it felt difficult. After the incident, the victim's child felt pain when urinating/defecating while crying in fear of the defendant's threats. The second incident initially occurred on a forgotten day, month, 2017 at 13.30 WIB when the victim was playing in front of the defendant's house, then the defendant was going to buy bricks because the victim knew about it, the victim approached the defendant and wanted to join by saying "PAK DHE aku ingin melu" (PAK DHE I want to join) then the defendant answered "ya ana kondisie" (yes there are conditions) then the defendant went into the room then the victim followed the defendant behind him after arriving in the room the defendant pointed towards the wall while saying "ko mepet nang kana" (you're stuck there) That then after the victim was stuck to the wall, the defendant approached the victim then the defendant lowered the victim's pants to the knees then the defendant lowered his own pants to the knees then the defendant said "hhssttt!" (silent warning sign) then the Defendant inserted his erect penis into the victim's vagina but did not enter then the Defendant touched the victim's vagina for 1 (one) minute after that the Defendant reinserted his erect penis into the victim's vagina then moved it back and forth and released sperm outside then the victim and the Defendant put on their respective pants then the victim and the Defendant came out of the room and went to the front of the house. Then the third incident occurred on the day of the forgotten month of 2017 at 13.30 WIB in the Defendant's room which is located in Purwodadi Village RT 01 RW 01 Kembaran District, Banyumas Regency with the condition at that time R was asleep while the victim was still lying next to R then the Defendant went straight to the victim and lay down next to the victim.

b. That due to the actions of the defendant SUDARTO BIN MUJIANTO against the victim's child NF BINTI IMAM SUYUTI, an examination was carried out with the results of the examination: Visum Et Repertum as the results of the examination issued by the Bhayangkara Outpatient Clinic, Banyumas Police, Number: R/54/X/2022/Bhayangkara Clinic, dated October 19, 2022, made and signed by Dr. LYDIA UTAMA, with the conclusion of the results of the Examination: From the results of the Physical examination as well as the genitals and uterus carried out on the girl (NF BINTI IMAM SUYUTI), it was found that the hymen was torn for a long time at 4 o'clock, 6 to the base, there was no redness. The defendant's actions

are regulated and are subject to criminal penalties in Article 81 Paragraph (1) of the Republic of Indonesia 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 Number 23 of 2002 concerning Child Protection.

### 3. Proof of Elements of a Criminal Act

The article imposed on the defendant in this case of sexual intercourse with a minor with case number 6/Pid.Sus/2023/PN PWT is Article 81 Paragraph (1) of the Republic of Indonesia 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 Number 23 of 2002 concerning Child Protection.

The article explains that the criminal provisions state that anyone who commits violence or threatens violence to force a child to have sexual intercourse with him or another person shall be punished with imprisonment of at least 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah), this also applies to anyone who intentionally commits trickery, a series of lies, or persuades a child to have sexual intercourse with him or another person.

The elements in article 81 paragraph (1) are as follows:

1. Each person;
2. Committing violence or threats of violence to force a child;
3. Having sexual intercourse with him or another person.

#### Ad.1. Every person's element;

Considering, that the definition of every person is an individual or corporation. Further explained in the provisions of Article 2, Article 3, Article 4, Article 5, Article 7 and Article 8 of the Criminal Code, what is meant by an individual is every person who is subject to and can be held accountable as a subject of criminal law in Indonesia and is able to be held responsible for the actions he/she has committed legally as stated in the Public Prosecutor's Indictment and there is no Subject Error (Error in Persona) in a criminal case.

The element of every person/whoever refers to man as a legal subject. In the facts of the trial, the defendant confirmed the identity in the Indictment read by the Judge, the defendant was able to smoothly answer all questions from the Judge and the Public Prosecutor which showed that the defendant SUDARTO BIN MUJIANTO was the true person accused of committing the crime charged to him or was not the wrong person (error in persona). Thus, this element has been legally proven.

#### Ad.2. The element of "Committing Violence or Threats of Violence to Coerce Children.

Considering, that what is meant by "committing violence" is an act committed against someone that results in physical or psychological misery or suffering to

another person. Then what is meant by "threat of violence" is making someone who is threatened afraid because there is something that will harm the threatened person where this threat can be in the form of shooting upwards, pointing a sharp weapon, to a more "polite" action such as an appeal by stating the detrimental consequences if not carried out. Therefore, this element is alternative, if one element has been fulfilled, then the other elements have also been fulfilled. Furthermore, what is meant by "forcing" is putting pressure on someone, so that the person does something against his own will. Then the person who is subject to the act or as the object of the act is a "child" who based on the provisions of Article 1 Number 1 of Law Number 35 of 2014 is a person who is not yet 18 (eighteen) years old, including a child who is still in the womb. Considering, that based on the facts revealed in the trial on a day, date and month that can no longer be remembered in 2016 at 13.30 WIB, the victim's child NF BINTI IMAM SUYUTI (who was still 8 years old, based on the birth certificate extract Number. 19208 / TF-20 / 2011) came to the defendant's house located in Purwodadi Village Rt.01 Rw.01 Kembaran District, Banyumas Regency. After being at the Defendant's house, the victim's child played with the defendant's child named R in the living room, then the Defendant told R to take a nap. When the victim's child was about to say goodbye to the Defendant to go home, then the Defendant pulled the victim's hand and covered the victim's mouth, then the Defendant pushed the victim's body onto the mattress in the living room. Then with the supine position, then the Defendant who was on top of the Child Victim removed the skirt and panties worn by the Child Victim, then the Defendant lowered his pants and panties to his knees, then the Defendant inserted his erect penis into the Child Victim's vagina. When the Defendant inserted his penis into the Child Victim's vagina, the Child Victim said to the Defendant "Pak Dhe lara / Pak Dhe is sick", but the Defendant continued his actions by inserting his penis into the Child Victim's vagina while moving it back and forth until the Defendant ejaculated outside the Child Victim's vagina. After finishing, the Defendant said "just talk to anyone, be careful if you talk to anyone / don't tell anyone, be careful if you tell anyone" Considering, that according to the facts, in order to facilitate his actions of committing sexual harassment against the Child Victim, The defendant took the opportunity to forcibly lower the victim's pants and underwear and then forcibly insert his genitals into the victim's vagina. In this incident, the victim did not want the actions carried out by the defendant with the condition that if the victim's child did not comply with the defendant's wishes, it was feared that something would happen that would threaten his safety. In fact, the victim's child who was still 8 (eight) years old at the time of the incident still had an unstable soul and was easily intimidated. Considering, that in fact there was no other opportunity or choice for the victim's child to refuse the defendant's wishes because the defendant's physical strength was far above the victim's child who was still 8 (eight) years old where the victim had a weaker physique than the defendant. The defendant knew and was aware of this so that when the defendant gagged the victim, there was

no opportunity for the victim to scream for help. In addition, the position of the Defendant committing immoral acts/sexual harassment against the Child Victim was that the Defendant was on top of the Child Victim and the Defendant's feet pressed the Victim's feet so that the Victim had no opportunity to fight back against the Defendant. Considering, that after the Defendant committed immoral acts against the Child Victim up to three times, the Child Victim became traumatized and was afraid to tell the story until six years later the Child Victim dared to tell the story. In fact, the actions committed by the Defendant against the Child Victim left deep psychological trauma or a dark memory that will always cross the mind of the Child Victim. This is evident from the fact that the Child Victim has not forgotten the incident that he experienced since six years ago and has kept it to himself until finally the Child Victim dared to reveal the incident because he could not bear to keep it in his heart. In addition, the social condition of the Child Victim as per the Child Victim's Social Report by the Social Worker on behalf of SINUNG DANA CAKRA JAYA, S.Sos dated October 18, 2022 is a quiet child and if there is a problem, he only keeps it to himself. This is what resulted in the criminal acts committed by the Defendant against the Child Victim not being immediately revealed. Moreover, in this incident, the Defendant and the Victim's Child's father have a relationship where the Victim's Child's father is the Defendant's brother-in-law. This also hinders the disclosure of the criminal act committed by a close family which of course will have an impact on the shame in society which is also a concern for the Victim's Child to reveal the sexual harassment he experienced; Considering, that according to the Defendant's statement who felt the desire to commit sexual harassment against the Victim's Child because his biological needs were not met by his wife, the fact is that the Defendant committed this crime consciously and not under the influence of alcohol or illegal drugs. So that the Defendant fully realizes and acknowledges that the actions committed against the Child Victim are prohibited by religious norms and legal norms in force in Indonesia. However, the Defendant continues to commit immoral acts against the Child Victim which cause physical and mental suffering that will leave a mark on the Child Victim's psyche until the end of his life; Considering, that the fact is that regarding the a quo crime, the response to the Defendant's actions is in the form of a certain period of imprisonment and a fine with the provision that if the fine is not paid, it will be replaced with imprisonment. If the Defendant is proven guilty and sentenced to a criminal sentence, then after the Defendant has completed his criminal sentence, the Defendant will not be held accountable for any consequences of his actions against the Child Victim. It is different with the Child Victim where due to the Defendant's actions, the Child Victim will experience suffering or psychological trauma for the rest of his life because the sexual harassment he experienced will always stick in his long-term memory which of course will affect the Child Victim's life and this cannot be cured medically but through psychological therapy which of course requires a long recovery time and a long process. Considering, that

according to these considerations, the Panel of Judges is of the opinion that the element of "committing violence" has been fulfilled, where the Defendant used his physical strength which was greater than the Child Victim with a position above the Child Victim and pressed the Child Victim's legs using the Defendant's feet so that the Child Victim had no chance to fight back while the element of "forcing the Victim" has also been fulfilled because this series of actions culminated in the act of forcing the Victim so that the Defendant could commit sexual harassment against the Victim. This was intended and realized by the perpetrator so that he could vent his lust on the Victim. The victim, who in this case was still 8 (eight) years old at the time of the criminal incident, where according to the provisions of Article 1 Number 1 of Law Number 35 of 2014, is included in the category of children. Considering, that thus the element of "committing violence to force a child" in this case has been fulfilled. It is different with the Child Victim where due to the Defendant's actions, the Child Victim will experience suffering or psychological trauma for the rest of his life because the sexual harassment he experienced will always stick in his long-term memory which of course will affect the Child Victim's life and this cannot be cured medically but through psychological therapy which of course requires a long recovery time and a long process. Considering, that according to these considerations, the Panel of Judges is of the opinion that the element of "committing violence" has been fulfilled, where the Defendant used his physical strength which was greater than the Child Victim with a position above the Child Victim and pressed the Child Victim's legs using the Defendant's feet so that the Child Victim had no chance to fight back while the element of "forcing the Victim" has also been fulfilled because this series of actions culminated in the act of forcing the Victim so that the Defendant could commit sexual harassment against the Victim. This was intended and realized by the perpetrator so that he could vent his lust on the Victim. The victim, who in this case was still 8 (eight) years old at the time of the criminal incident, where according to the provisions of Article 1 Number 1 of Law Number 35 of 2014, is included in the category of children. Considering, that thus the element of "committing violence to force a child" in this case has been fulfilled. It is different with the Child Victim where due to the Defendant's actions, the Child Victim will experience suffering or psychological trauma for the rest of his life because the sexual harassment he experienced will always stick in his long-term memory which of course will affect the Child Victim's life and this cannot be cured medically but through psychological therapy which of course requires a long recovery time and a long process. Considering, that according to these considerations, the Panel of Judges is of the opinion that the element of "committing violence" has been fulfilled, where the Defendant used his physical strength which was greater than the Child Victim with a position above the Child Victim and pressed the Child Victim's legs using the Defendant's feet so that the Child Victim had no chance to fight back while the element of "forcing the Victim" has also been fulfilled because this series of actions culminated in the act of forcing the Victim so that the

Defendant could commit sexual harassment against the Victim. This was intended and realized by the perpetrator so that he could vent his lust on the Victim. The victim, who in this case was still 8 (eight) years old at the time of the criminal incident, where according to the provisions of Article 1 Number 1 of Law Number 35 of 2014, is included in the category of children. Considering, that thus the element of "committing violence to force a child" in this case has been fulfilled.

Ad.3. Element: "having sexual intercourse with him or another person".

Considering, that what is meant by "intercourse" according to the Arrest-Hooge Raad (Dutch Supreme Court) dated February 15, 1912 is a combination of male and female genitals which is usually carried out to have children, so the male genitals must enter the female genitals; Considering, that based on the facts revealed in court, the Defendant had forcibly inserted his genitals into the Victim's genitals. As per the Visum Et Repertum of the examination results issued by the Bhayangkara Outpatient Clinic, Banyumas Police, Number: R/54/X/2022/Bhayangkara Clinic, dated October 19, 2022 which was made and signed by Dr. LYDIA UTAMA, with the conclusion of the examination results: From the results of the physical examination as well as the genitals and uterus carried out on the girl (NF BINTI IMAM SUYUTI) it was found that the hymen was torn for a long time at 4, 6 o'clock to the base, there was no redness; Considering, that in this incident there was a meeting between the male and female genitals which is usually done to have children, thus the element of "having intercourse with her" in this case has been fulfilled; Considering, that because all the elements of Article 81 Paragraph (1) of the Republic of Indonesia 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 Number 23 of 2002 concerning Child Protection have been fulfilled, then the Defendant must be declared to have been proven legally and convincingly to have committed the crime as charged in the Single Indictment; 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, then the Defendant must be held responsible for his actions; Considering, that because the Defendant is capable of being responsible, he must be declared guilty and sentenced to imprisonment. Considering, that in the provisions of Article 81 Paragraph (1) of the Republic of Indonesia 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 Number 23 of 2002 concerning Child Protection, in addition to containing the threat of punishment in the form of an imperative criminal penalty, it also contains the threat of a fine, therefore the Defendant, in addition to being subject to imprisonment, will also be subject to a fine with the provision that if the fine is not paid, it will be replaced with imprisonment; Considering, that in accordance with what is mandated in the Child Protection Law, the aim of child protection is to guarantee the fulfillment of children's rights so that they can live, grow, develop and participate optimally in accordance with human dignity and honor, and get protection from violence and

discrimination for the sake of realizing quality, noble and prosperous Indonesian children. Considering, that a person who is still classified as a child is seen as a weaker party compared to adults. The physical strength and thinking ability of children are still in the development stage and cannot be equated with adults. With the background of this thought, the life of a child must receive protection from adults, the goal is to be able to live happily and prosperously. As a protected person, adults must not take arbitrary actions to hurt a child, especially in this case the Defendant has treated the Victim outside the limits of religious norms and moral norms that apply in society, namely by exploiting BINTI IMAM SUYUTI the Victim as an object of lust alone. Considering, that however, without ignoring the nature and purpose of imposing a criminal sentence on the Defendant as an educational effort so that in the future the Defendant can improve his behavior, according to his faith and beliefs and in accordance with the will of the Law and also as a means of learning for the community so that they do not commit criminal acts as has been done by the Defendant. Thus, the Panel of Judges believes that the sentence that will be imposed on the Defendant is appropriate and fair in accordance with the level of the Defendant's guilt and is close to the sense of justice in society. Considering, that after the Panel of Judges studied and examined the written defense notes of the Defendant's Legal Counsel which in essence did not include arguments denying the elements of the crime charged against the Defendant, but rather focused more on the request for leniency, the Panel of Judges has its own considerations regarding the length of the sentence that will be imposed on the Defendant; Considering, that furthermore, because during the examination process at the trial, the Defendant has been arrested and detained with the type of detention at the State Detention Center, then based on the provisions of Article 22 Paragraph (4) in conjunction with Article 197 Paragraph (1) letter k of the Criminal Procedure Code, the period of arrest and detention of the Defendant will be deducted in full from the length of 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 order that the Defendant remain in detention. Considering, that based on the provisions of Article 46 Paragraph (2) of the Criminal Procedure Code in conjunction with Article 194 Paragraph (1) of the Criminal Procedure Code, the evidence presented at trial is in the form of: The physical strength and thinking ability of children are still in the development stage and cannot be equated with adults. With this background of thought, a child's life must be protected by adults, the goal is to be able to live happily and prosperously. As a protected person, adults must not take arbitrary actions to harm a child, especially in this case the Defendant has treated the Victim outside the limits of religious norms and moral norms that apply in society, namely by exploiting BINTI IMAM SUYUTI the Victim as an object of lust alone. Considering, that however, without ignoring the nature and purpose of imposing a criminal sentence on the Defendant as an educational effort so that in the future the Defendant can improve his behavior, according to his faith and beliefs and in

accordance with the will of the Law and also as a means of learning for the community so as not to commit criminal acts as has been done by the Defendant. Thus, the Panel of Judges believes that the sentence that will be imposed on the Defendant is appropriate and fair in accordance with the level of the Defendant's guilt and is close to the sense of justice in society. Considering, that after the Panel of Judges studied and examined the written defense notes of the Defendant's Legal Counsel which in essence did not include arguments denying the elements of the crime charged against the Defendant, but rather focused more on the request for leniency, the Panel of Judges has its own considerations regarding the length of the sentence that will be imposed on the Defendant; Considering, that furthermore, because during the examination process at the trial, the Defendant has been arrested and detained with the type of detention at the State Detention Center, then based on the provisions of Article 22 Paragraph (4) in conjunction with Article 197 Paragraph (1) letter k of the Criminal Procedure Code, the period of arrest and detention of the Defendant will be deducted in full from the length of 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 order that the Defendant remain in detention. Considering, that based on the provisions of Article 46 Paragraph (2) of the Criminal Procedure Code in conjunction with Article 194 Paragraph (1) of the Criminal Procedure Code, the evidence presented at trial is in the form of: The physical strength and thinking ability of children are still in the development stage and cannot be equated with adults. With this background of thought, a child's life must be protected by adults, the goal is to be able to live happily and prosperously. As a protected person, adults must not take arbitrary actions to harm a child, especially in this case the Defendant has treated the Victim outside the limits of religious norms and moral norms that apply in society, namely by exploiting BINTI IMAM SUYUTI the Victim as an object of lust alone. Considering, that however, without ignoring the nature and purpose of imposing a criminal sentence on the Defendant as an educational effort so that in the future the Defendant can improve his behavior, according to his faith and beliefs and in accordance with the will of the Law and also as a means of learning for the community so as not to commit criminal acts as has been done by the Defendant. Thus, the Panel of Judges believes that the sentence that will be imposed on the Defendant is appropriate and fair in accordance with the level of the Defendant's guilt and is close to the sense of justice in society. Considering, that after the Panel of Judges studied and examined the written defense notes of the Defendant's Legal Counsel which in essence did not include arguments denying the elements of the crime charged against the Defendant, but rather focused more on the request for leniency, the Panel of Judges has its own considerations regarding the length of the sentence that will be imposed on the Defendant; Considering, that furthermore, because during the examination process at the trial, the Defendant has been arrested and detained with the type of detention at the State Detention Center, then based on the provisions of Article



22 Paragraph (4) in conjunction with Article 197 Paragraph (1) letter k of the Criminal Procedure Code, the period of arrest and detention of the Defendant will be deducted in full from the length of 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 order that the Defendant remain in detention. Considering, that based on the provisions of Article 46 Paragraph (2) of the Criminal Procedure Code in conjunction with Article 194 Paragraph (1) of the Criminal Procedure Code, the evidence presented at trial is in the form of: namely memaNF BINTI IMAM SUYUTI exploited the Victim as an object of lust alone Considering, that however without disregarding the nature and purpose of imposing a sentence on the Defendant as an educational effort so that in the future the Defendant can improve his behavior, according to his faith and belief and in accordance with the will of the Law and also as a means of learning for the community so as not to commit criminal acts as has been done by the Defendant. Thus, the Panel of Judges believes that the sentence that will be imposed on the Defendant is quite appropriate and fair in accordance with the level of the Defendant's guilt and approaches the sense of justice in society Considering, that after the Panel of Judges studied and examined the material of the Defendant's Legal Counsel's written defense note which in essence did not include arguments denying the elements of the criminal act charged to the Defendant, but rather emphasized the request for leniency, the Panel of Judges has its own considerations regarding the length of the sentence that will be imposed on the Defendant; Considering, that furthermore, because during the examination process at the trial, the Defendant was arrested and detained as a State Detention Center, then based on the provisions of Article 22 Paragraph (4) in conjunction with Article 197 Paragraph (1) letter k of the Criminal Procedure Code, the period of arrest and detention of the Defendant will be deducted in full from the length of the sentence imposed; Considering, that because the Defendant was detained and the detention of the Defendant was based on sufficient reasons, it is necessary to order that the Defendant remain in detention. Considering, that based on the provisions of Article 46 Paragraph (2) of the Criminal Procedure Code in conjunction with Article 194 Paragraph (1) of the Criminal Procedure Code, the evidence presented at the trial is in the form of: namely memaNF BINTI IMAM SUYUTI exploited the Victim as an object of lust alone Considering, that however without disregarding the nature and purpose of imposing a sentence on the Defendant as an educational effort so that in the future the Defendant can improve his behavior, according to his faith and belief and in accordance with the will of the Law and also as a means of learning for the community so as not to commit criminal acts as has been done by the Defendant. Thus, the Panel of Judges believes that the sentence that will be imposed on the Defendant is quite appropriate and fair in accordance with the level of the Defendant's guilt and approaches the sense of justice in society Considering, that after the Panel of Judges studied and examined the material of the Defendant's Legal Counsel's

written defense note which in essence did not include arguments denying the elements of the criminal act charged to the Defendant, but rather emphasized the request for leniency, the Panel of Judges has its own considerations regarding the length of the sentence that will be imposed on the Defendant; Considering, that furthermore, because during the examination process at the trial, the Defendant was arrested and detained as a State Detention Center, then based on the provisions of Article 22 Paragraph (4) in conjunction with Article 197 Paragraph (1) letter k of the Criminal Procedure Code, the period of arrest and detention of the Defendant will be deducted in full from the length of the sentence imposed; Considering, that because the Defendant was detained and the detention of the Defendant was based on sufficient reasons, it is necessary to order that the Defendant remain in detention. Considering, that based on the provisions of Article 46 Paragraph (2) of the Criminal Procedure Code in conjunction with Article 194 Paragraph (1) of the Criminal Procedure Code, the evidence presented at the trial is in the form of: then the Panel of Judges has its own considerations regarding the length of the sentence to be imposed on the Defendant; Considering, that furthermore, because during the examination process at the trial, the Defendant was arrested and detained with the type of detention at the State Detention Center, then based on the provisions of Article 22 Paragraph (4) in conjunction with Article 197 Paragraph (1) letter k of the Criminal Procedure Code, the period of arrest and detention of the Defendant will be deducted in full from the length of the sentence imposed; Considering, that because the Defendant was detained and the detention of the Defendant was based on sufficient reasons, it is necessary to order that the Defendant remain in detention. Considering, that based on the provisions of Article 46 Paragraph (2) of the Criminal Procedure Code in conjunction with Article 194 Paragraph (1) of the Criminal Procedure Code, the evidence presented at the trial in the form of: then the Panel of Judges has its own considerations regarding the length of the sentence to be imposed on the Defendant; Considering, that furthermore, because during the examination process at the trial, the Defendant has been arrested and detained with the type of detention in a State Detention Center, then based on the provisions of Article 22 Paragraph (4) in conjunction with Article 197 Paragraph (1) letter k of the Criminal Procedure Code, the period of arrest and detention of the Defendant will be deducted in full from the length of the sentence imposed; Considering, that because the Defendant is being detained and the detention of the Defendant is based on sufficient reasons, it is necessary to order that the Defendant remain in detention. Considering, that based on the provisions of Article 46 Paragraph (2) of the Criminal Procedure Code in conjunction with Article 194 Paragraph (1) of the Criminal Procedure Code, the evidence presented at the trial is in the form of:

- 1 (one) set of red short clothes with a picture of Thomas.
- 1 (one) piece of green underwear

Where the evidence is confiscated from the Child Victim, the Panel of Judges is of the opinion that the evidence be returned to the Child Victim; 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 violated religious norms and moral norms that apply in society;
  - The Defendant's actions have damaged the future of the victim's child who has lost her virginity;
  - As a result of the Defendant's actions, the Child Victim experienced psychological trauma that will not go away and will always remain in the Child Victim's memory for the rest of his life;
  - The Defendant's actions have caused deep sadness for the family of the victim's child who is still related by marriage to the Defendant;
  - The psychological trauma experienced by the Child Victim is evident from the lack of courage to reveal this crime immediately after the Defendant forcibly had sex with the Child Victim, but it was only revealed 6 (six) years after the incident;
- Mitigating circumstances. The Defendant has never been convicted. The Defendant admitted his actions and promised not to commit another crime.

#### 4. Author Analysis

In the indictment made by the public prosecutor, the public prosecutor has made maximum efforts in determining the articles imposed on the defendant. The determination of these articles is also followed by proof of the correct elements of the crime.

Theoretically, the form of legal protection and rights that should be given to victims of crime are given in various ways depending on the suffering and losses experienced by the victim. In Article 1 paragraph 15 and Article 4 of Law Number 23 of 2002 which has been explained above, children's rights are also regulated therein, namely there are 4 categories of children's rights:

- a) The right to survival, namely the rights to preserve and maintain life and to obtain the highest standard of health and the best possible care, is contained in the following articles: The child's right to protection from sexual exploitation and abuse, including prostitution and involvement in pornography.
- b) The right to protection is the right in the convention on the rights of the child which includes the right to protection from discrimination, violence and neglect for children. For example, the State's obligation to protect children from all forms of mistreatment by parents or others.
- c) The right to grow and develop is the child's rights in the Convention on the Rights of the Child which includes all forms of education (formal and non-formal) and the right to achieve a standard of living that is adequate for the child's physical, mental, spiritual, moral and social development.

d) The right to participate, namely children's rights which include the right to express opinions in all matters affecting children.

The suffering suffered by victims as a result of sexual violence (rape) can be divided into:

a) Physical impacts include: asthma, migraine, difficulty sleeping, pain during sexual intercourse, difficulty defecating, sores on the chin, genital infections, pelvic infections, etc.

b) Mental impacts include: very afraid of being alone, afraid of other people, nervous, hesitant (sometimes paranoid), often shocked, very worried, very careful with strangers, difficulty trusting someone, no longer trusting men, afraid of men, afraid of sex, feeling that other people do not like her, cold (emotionally), difficulty dealing with the public and her friends, hating everything, withdrawing/isolating herself, nightmares, etc.

c) Impacts on personal and social life include: being abandoned by close friends, feeling betrayed, worsening relationship with husband, not liking sex, having difficulty falling in love, having difficulty building relationships with men, being afraid to talk to men, avoiding every man, etc. Not only that, if the victim decides to report sexual violence

Children who are victims also have the right to:

a) Efforts for medical rehabilitation and also social rehabilitation, both within and outside the institution;

b) Guarantees for safety, both physical, mental and social safety;

c) Ease of obtaining information related to case developments.

To obtain the right to medical rehabilitation, social rehabilitation, and also social reintegration from institutions or agencies that handle child protection matters, it must be based on the results of Community research from Community Guidance and social reports from Professional Social Workers or Social Welfare Workers. What is meant by "medical rehabilitation" is a process of integrated treatment activities aimed at restoring the physical condition of Children, Children as Victims, and/or Children as Witnesses. What is meant by "social rehabilitation" is a process of integrated recovery activities, both physical, mental and also social, so that Children, Children as Victims, and/or Children as Witnesses can return to carrying out social functions in life in society. What is meant by "social reintegration" is a process of preparing Children, Children as Victims, and/or Children as Witnesses to be able to return to the family environment and community environment.

### **3.2. Weaknesses of Criminal Liability of Sexual Intercourse Perpetrators and Justice-Based Criminal Liability of Perpetrators in Case Number 6/Pid.Sus/2023/PN PWT.**

1. Weaknesses of Criminal Liability for Sexual Intercourse Perpetrators

Criminal liability, based on the perspective of the occurrence of a criminal act, then a person is criminally liable if his/her actions are against the law. In addition, the criminal act committed also does not have a justification or elimination of the unlawful nature. Then from the perspective of the perpetrator's ability to be responsible, then only a person who is able to be responsible and meets the requirements for the ability to be responsible can be held criminally liable for his/her actions.<sup>23</sup>

According to Mulyatno (in Tri Andrisman) the elements of criminal responsibility are:

- a) Error;
- b) Ability to take responsibility;
- c) There is no excuse.

Judges in making decisions must be based on or as determined by the Law. Judges may not impose a sentence lower than the minimum limit and also judges may not impose a sentence higher than the maximum limit of punishment determined by the Law. In making decisions, there are several theories that can be used by judges. According to Mackenzie, there are several theories or approaches that can be used by judges in considering the imposition of a decision in a case.<sup>24</sup> So it can be said that the weaknesses in the accountability of perpetrators of sexual intercourse with minors include:

a) The judge's decision was not optimal in its imposition, in this case where the case of sexual intercourse with a minor for which the threat of punishment is 15 years in prison, but the judge decided 12 years in prison and a fine of Rp. 100,000,000.00 (one hundred million Rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 6 (six) months.

b) The judge's room for movement is that in deciding the case the judge may not impose a sentence lower than the minimum limit and the judge may also not impose a sentence higher than the maximum sentence determined by law.

1) In sentencing, the judge does not impose the perpetrator's responsibility to the victim, considering that the victim in this case really needs responsibility and has experienced trauma throughout his life. However, judges in the course of sentencing the perpetrator often forget the perpetrator's responsibility to the victim. This makes the government based on the law to take over the responsibility. The purpose of the state taking over the authority to punish the perpetrator is to maintain legal order and so that there is no "eigenrichting" of taking the law into their own hands (judging themselves) and improving the perpetrator, compared to the perpetrator's responsibility to the victim, so it seems as if the responsibility is set aside, only focusing on punishing the perpetrator. The justice given by the state to the perpetrator of the crime of sexual intercourse with

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<sup>23</sup>Saifudien, *Criminal Responsibility*, Rineka Cipta, Jakarta, 1993, p. 1.

<sup>24</sup>Ahmad Rifai, *The Discovery of Law*, Jakarta, Sinar Grafika, 2010, p. 102

a minor must be the same as the justice that the victim must receive in accordance with the principle of equality before the law. If the state takes over the enforcement of criminal law because of the mandate of the victim as a citizen, then the state must be responsible to the victim.

In the Child Protection Law Number 35 of 2014 Article 20 it is also stated that those who are obliged and responsible for the implementation of child protection are the state, government, society, family and parents. So child protection is not the responsibility of the state or parents alone, but must be carried out jointly by the state, government, society, family and parents so that the implementation of effective, rational, positive, responsible and beneficial child protection can be achieved.

Article 13 of Law Number 35 of 2014 concerning Child Protection, states that:

- 1) Every child, while in the care of parents, guardians or any other party responsible for their care, has the right to receive protection from discrimination, economic and sexual exploitation, neglect, cruelty, violence and abuse, injustice and other mistreatment.
- 2) If a parent, guardian or child caretaker carries out any form of treatment as referred to in paragraph (1), the perpetrator shall be subject to an increased penalty.

In addition, legal protection for children as victims of sexual intercourse is the protection provided, including: provision of legal assistance; confidentiality of the victim's identity; arrest of the perpetrator with preliminary evidence; provision of other assistance in the form of health services; rehabilitation efforts.

To run the judicial system, a judge is appointed who is an official who is authorized by law to try. Judges are given the task of resolving cases or cases neutrally or impartially based on applicable regulations by prioritizing independence and freedom from the influence of the parties involved in making a decision, in the sense that judges in making decisions for each case or case faced by looking at several things including those related to legal relationships, legal values of behavior and related to the legal standing of the parties involved in a case.<sup>25</sup>

Based on the above aspects, a judge in a decision handed down to a defendant must pay attention to many perspectives such as the indictment, facts found in the trial and the state of society in the trial with consideration of the court's decision which is the judge's responsibility in carrying out the task of examining, trying and deciding the case.<sup>26</sup>

The judge's considerations can be divided into 2 categories, namely legal considerations and non-legal considerations consisting of philosophical

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<sup>25</sup>Wildan Suyuthi Mustofa, *Judges' Code of Ethics*, Second Edition, Prenadamedia Group, Jakarta, 2013, p. 74.

<sup>26</sup>Bambang Waluyo, *Crime and Criminalization*, Sinar Grafika, Jakarta, 2008, p. 80.

considerations and sociological considerations. In legal considerations, the judge in making a decision must be based on the provisions of the laws and regulations formally. In Article 183 of the Criminal Procedure Code, the judge must legally obtain the conviction that a crime actually occurred and the defendant is guilty of committing it and for that the judge may impose a sentence if there are at least 2 (two) valid pieces of evidence.

In addition, in essence the judge's considerations should also include the following matters:

- a) The main issues and things that are acknowledged or the arguments that are not denied.
- b) There is a legal analysis of the decision regarding all aspects concerning all facts/matters proven in the trial.
- c) All parts of the Plaintiff's petition must be considered/tried one by one so that the judge can draw a conclusion about whether or not the claim has been proven and whether or not the claim can be granted in the verdict.

There are many considerations for judges in making a decision on an ongoing crime, by considering several aspects, so that the decision is reasonable and can be accepted by the community, and understood by both the victim and the perpetrator. The thing that needs to be considered is that the law is not seen as separate from the community where the law applies, so judges in exercising judicial power are required to interpret the law for the sake of the community's sense of justice and find or interpret the law in accordance with the community's sense of justice, because judges are not separate from the community where they are and carry out their duties.<sup>27</sup>The judge's considerations in making a decision are divided into three categories, namely:

a.) Legal considerations

Juridical considerations are judges' considerations based on the juridical facts revealed in the trial and are stipulated by law as things that must be included in the decision. The things referred to include:

- a. The public prosecutor's indictment
- b. Defendant's statement
- c. Witness testimony
- d. Evidence items
- e. Articles in criminal law regulations

After listing the above matters, in the practice of the Judge's decision, the aggravating and mitigating factors are immediately considered. The reasons for mitigating the sentence in the Criminal Code are attempts, assisting and not being

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<sup>27</sup>Arbijoto, Freedom of Judges Critical Analysis of the Role of Judges in Carrying Out Judicial Power, (Jakarta, Diadit Media, 2010) p. 27.

an adult, while the aggravating reasons in the Criminal Code are mostly the position of office.

There are also reasons that reduce the severity of the sentence outside the Criminal Code, namely the defendant is not evasive in providing information, admits his mistake, and is a first-time offender, while the reasons that increase the severity of the sentence outside the Criminal Code are the defendant is dishonest and evasive, does not admit his mistake, does not admit the heinous and inhumane acts he has committed and denies ever having committed a crime.

#### b.) Sociological considerations

Sociological considerations are considerations that use approaches to the background, socio-economic conditions and values contained in society.

Article 5 Paragraph (1) of the Draft National Criminal Code 1999-2000, stipulates that in sentencing, judges shall consider:

- 1) The defendant's fault;
- 2) Motives and objectives for committing a crime;
- 3) How to commit a crime;
- 4) Inner attitude creates criminal acts;
- 5) Life history and socio-economic circumstances of the perpetrator;
- 6) The perpetrator's attitude and actions after committing a crime;
- 7) The impact of criminal acts on the future of the perpetrator;
- 8) Society's view of criminal acts, victims or families.

Decision considerations are adjusted to the rules, principles and beliefs that apply in society. Therefore, knowledge of sociology and psychology is necessary for a judge.

## 2. Criminal Liability for Perpetrators of Sexual Intercourse Against Children Based on Justice

The court decision used is the court decision numbered 6/Pid.Sus/2023/PN Pwt, the case began with the Defendant named SUDARTO BIN MUJIANTO who was born in Banyumas, 41 years old / May 11, 1981, and has an address in Purwodadi Village, RT 01, RW 01, Banyumas District, Central Java Province. The victim named NF Binti IMAM SUYUTI (who is still 8 years old, based on the birth certificate extract Number. 19208/TF 20/2011).

The crime of sexual violence against the child began on the day, date and month forgotten in 2016 at around 14.00 WIB when the victim was playing at home with the Defendant's child, the Defendant told his child to sleep, then after the Defendant's child fell asleep the victim intended to go home but the Defendant did not allow it, then the Defendant told the victim to sit on the bed, after sitting on the bed then the Defendant pushed the victim onto the bed and then the Defendant covered the victim's mouth and after that the Defendant took off the



victim's pants and underwear until they came off, then the Defendant pulled down his pants and underwear until his erect penis was visible, after that the Defendant inserted his erect penis into the victim's vagina and moved it back and forth for approximately 3 (three) minutes until sperm came out of the victim's vagina, then the Defendant said to the victim "aja bicara sapa-sapa, awas koeh nek bicara sapa-sapa" (don't tell anyone, be careful if you tell anyone), After that the victim left.

Demands Based on the description referred to, the public prosecutor in this case, taking into account the provisions of the relevant laws, demands:

So that the panel of judges at the Purwekerto District Court who examined and tried this case decides:

- 1) Declaring the defendant SUDARTO BIN MUJIANTO guilty of committing the crime "Any person who intentionally commits violence by forcing a child to have sexual intercourse with him or with another person. As regulated and threatened with criminal penalties in Article 81 Paragraph (1) of the Republic of Indonesia 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 Number 23 of 2002 concerning Child Protection in the Public Prosecutor's indictment;
- 2) Sentencing the defendant SUDARTO BIN MUJIANTO to 12 (twelve) years imprisonment and a fine of Rp. 100,000,000.00 (one hundred million Rupiah) with the provision that if the fine is not paid it will be replaced with 6 (six) months imprisonment.
- 3) Determine the evidence in the form of:
  - 1 (one) set of red short clothes with a picture of Thomas.
  - 1 (one) piece of green underwear
- 4) Determine that the defendant be charged with court costs of Rp. 5,000,- (five thousand rupiah).

The decision is, Taking into account, Article 81 Paragraph (1) of the Republic of Indonesia 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 Number 23 of 2002 concerning Child Protection; Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 8 of 1981 concerning Criminal Procedure Law PERMA Number 4 of 2020 concerning Electronic Administration and Trials and other relevant laws and regulations. TO JUDGE:

- 1) Declaring that the Defendant has been proven legally and convincingly guilty of committing the crime of "committing violence by forcing a child to have sexual intercourse with him" as stated in the Single Charge.
- 2) Sentencing the Defendant to imprisonment for 12 (twelve) years and a fine of Rp. 100,000,000.00 (one hundred million Rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 6 (six) months.

- 3) Determining that the period of arrest and detention that the Defendant has undergone is deducted in full from the sentence imposed.
- 4) Ordering the Defendant to remain in custody
- 5) Determine that the evidence is in the form of:
  - 1 (one) set of red short clothes with a picture of Thomas
  - 1 (one) piece of green underwear

Returned to the Child Victims of NF BINTI IMAM SUYUTI

- 6) Charge the Defendant with paying court costs amounting to Rp. 5,000.00 (five thousand rupiah).

From the results of the author's analysis A court decision is a judge's statement made in an open court session, which can be in the form of a criminal sentence, acquittal or release from all legal charges in the case and according to the method regulated in the Law. The decision issued by the judge is intended to end or resolve the case submitted to him. To decide a criminal case, the judge must first examine the case. In making a decision and imposing criminal sanctions on the defendant, the judge must have legal and non-legal considerations.

Legal considerations consist of the Public Prosecutor's indictment, witness statements, defendant statements, evidence and articles violated. While non-legal considerations consist of the background of the defendant's actions, the defendant's condition at the time of committing the crime, the consequences of the defendant's actions, and other things that are included in the circle of criminal acts committed by the defendant. Judges are required to have confidence by linking that confidence with legitimate methods and evidence so that they can create laws based on justice which of course do not conflict with the source of all sources of law, namely Pancasila. The judge's decision must fulfill a sense of justice for all parties. Therefore, before making a decision, the judge must pay attention to aspects of justice, namely from the perspective of the perpetrator, the victim (impact on the victim) and the interests of society in general.

In a case, a judge must consider things like the testimony of witnesses, the defendant, the indictment, the demands of the Public Prosecutor and so on. The judge's considerations are based on legal, sociological, psychological, philosophical considerations and the age of the perpetrator, although not all of them are immediately stated in the decision. All of this requires attention and requires insight in exploring the facts so that the judge can obtain a decision that is close to a sense of justice for all parties. The judge has his own point of view, namely deciding a case can only be reviewed from a case-by-case basis, cannot see in general, let alone only based on opinion and discourse alone.

Referring to the decision of case number 6/Pid.Sus/2023/PN PWT which was studied by the author based on the facts revealed in the trial accompanied by valid evidence such as witness statements, the defendant's statement, written evidence, namely Visum Et Repertum obtained during the trial, it was decided that

the defendant SUDARTO BIN MUJIANTO has been proven legally and convincingly guilty of committing a crime of sexual violence against the child victim NF BINTI IMAM SUYUTI who is still a minor.

According to the author, various legal considerations of the Banyumas District Court judge who examined and tried this case, were less than optimal in sentencing. Based on the supporting trial facts in the trial, and clearly referring to the public prosecutor's indictment. Based on the public prosecutor's indictment, the defendant SUDARTO BIN MUJIANTO was guilty of committing a crime "Any person who intentionally commits violence by forcing a child to have sexual intercourse with him or with another person". As regulated and threatened with criminal penalties in Article 81 Paragraph (1) of the Republic of Indonesia 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 Number 23 of 2002 concerning Child Protection. in the Public Prosecutor's indictment.

Based on the trial facts, evidence and instruments of evidence, the judge imposed a sentence greater than the demands read out by the public prosecutor during the trial, namely imposing a sentence on the defendant SUDARTO BIN MUJIANTO with a prison sentence of 12 (twelve) years and a fine of Rp. 100,000,000.00 (one hundred million Rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 6 (six) months.

Based on the decision of case number 6/Pid.Sus/2023/PN Pwt. it is explained that the things that aggravate the defendant are:

- the actions committed by the defendant can cause trauma and can destroy the future of the victim's child;
- the victim's child and his family suffered disgrace and shame because of the defendant's actions;

In order to create justice, the judge must consider the mitigating and aggravating factors for the accused, so that the accused can be sentenced according to his actions.

According to the author, the judge's consideration in imposing a heavier sentence than that demanded by the public prosecutor was because the victim was still a minor, namely 8 (eight) years old when the first incident occurred and made threats of violence to have intercourse with him or with others. This can be seen from the conclusion of the results of the victim's *Visum Et Repertum* from the Bhayangkara Hospital, Banyumas Forensic Medicine Installation, but in my opinion, the imposition of 12 years is still not optimal, it is possible that the judge should have imposed a sentence of more than 12 years and a fine more than that which has been imposed.

This certainly brings consequences of negative assessment in social interactions of the community towards the victim and the victim's family, a fixed price that cannot be replaced with any punishment, even money cannot replace it. The

psychological and mental impact that brings lifelong trauma to the victim is inestimable, no one knows when it will end. Because every time you see a man, the image of the incident will be repeated, especially the shame that the victim must face in his environment.

The Judge's legal considerations are attempted to show a sense of justice for all parties as much as possible. The Judge in sentencing the defendant has considered the losses experienced by the victim both physically and psychologically, indicating that the Judge has upheld the side of justice for the perpetrator of the crime of sexual violence against minors.

However, on the other hand, justice for the victim is still very lacking, considering that the victim experienced trauma throughout his life, which is why the judge should be able to consider the perpetrator's responsibility towards the victim, for example compensation for accumulated education costs up to college, rehabilitation until he gets better or the perpetrator's responsibility towards other victims.

#### **4. Conclusion**

The form of legal protection and rights that should be given to victims of crime are given in various ways depending on the suffering and losses experienced by the victim. However, this panel of judges did not provide restitution, compensation and rehabilitation in its decision. Although restitution compensation can be submitted separately. In Articles 81 and 82 of the Law on Child Protection, it is stipulated that perpetrators of sexual harassment against children are subject to a maximum prison sentence of 15 years. In my opinion, 15 years in prison is not comparable to what the victim experienced. Considering that this incident can have a very big impact on the victim, starting from physical disorders to psychological disorders that will be suffered for life. The legal considerations by the judge in imposing a sentence for the crime of sexual intercourse with a child in the decision case number: 6/Pid.Sus/2023/PN.PWT prioritize self-improvement of the defendant, as seen in the provision of the lightest sentence based on Article 81 Paragraph (1) of the Republic of Indonesia 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 Number 23 of 2002 concerning Child Protection should receive the maximum punishment as regulated in the article, but due to various considerations, the judge gave the defendant the opportunity to not repeat the unlawful acts in the future.

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