

P ISSN: 2528-2638

E ISSN: 2580-5460

JJIH

JUSTISI: JURNAL ILMU HUKUM

Volume 9 No.2 September 2024



PUBLISHED BY
FACULTY OF LAW
UNIVERSITY BUANA PERJUANGAN KARAWANG

DAFTAR ISI

THE CONCEPT OF AGRARIAN REFORM ON THE WELFARE OF FARMERS (CASE STUDY IN TANGERANG REGENCY) Annisa Puspita Sari, Amiludin..... 1-15

NETIZENS' OPINIONS ON LAW ENFORCEMENT AND SOCIAL RESPONSIBILITY
Hartanto, Agus Hidayat..... 16-33

ABUSE OF AUTHORITY BY VILLAGE HEADS IN THE COMPLETE SYSTEMATIC LAND REGISTRATION PROGRAM (PTSL) (Case Study of Cikupa Village for Fiscal Year 2021) Raji Zamzami Sulthony, Ulil Albab, Amiludin 34-50

THE DISPARITY IN JUDGES' DECISIONS ON THE CRIME OF SEXUAL VIOLENCE AGAINST CHILDREN IS REVIEWED FROM LAW NUMBER 35 OF 2014 CONCERNING AMENDMENTS TO LAW NO. 23 OF 2002 CONCERNING CHILD PROTECTION (Study of Decision Number 858/Pid.Sus/2022/PN Bjm and Number 137/Pid.Sus/2023/PN Grt) Mutiara Rengganis, Gary Gagarin, Zarisnov Arafat..... 51-68

LAW ENFORCEMENT EFFORTS AGAINST LIMESTONE MINING ACTIVITIES IN TAMANSARI VILLAGE, PANGKALAN DISTRICT ARE LINKED TO LAW NUMBER 3 OF 2020 CONCERNING AMENDMENTS TO LAW NUMBER 4 OF 2009 CONCERNING MINERAL AND COAL MINING Maya Setiawathi, Anwar Hidayat, Zarisnov Arafat 69-85

LEGAL PROTECTION FOR NOTARIES IN MAKING A DEED OF STATEMENT OF MEETING RESOLUTION (PKR) BASED ON CIRCULAR DECISIONS OUTSIDE THE GENERAL MEETING OF SHAREHOLDERS (GMS) MADE BY SHAREHOLDERS (Case Study at the Office of Notary Mulyani, S.H., M.Kn) Tiyas Vironika, Muhamad Abas, Zarisnov Arafat 86-101

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

**THE DISPARITY IN JUDGES' DECISIONS ON THE CRIME OF
SEXUAL VIOLENCE AGAINST CHILDREN IS REVIEWED
FROM LAW NUMBER 35 OF 2014 CONCERNING
AMENDMENTS TO LAW NO. 23 OF 2002 CONCERNING
CHILD PROTECTION
(Study of Decision Number 858/Pid.Sus/2022/PN Bjm and
Number 137/Pid.Sus/2023/PN Grt)**

Mutiara Rengganis¹, Gary Gagarin², Zarisnov Arafat³

¹Faculty of Law, Buana Perjuangan Karawang University, Karawang.

²Faculty of Law, Buana Perjuangan Karawang University, Karawang.

³Faculty of Law, Buana Perjuangan Karawang University, Karawang.

* Correspondence email: hk20.mutiararengganis@mhs.ubpkarawang.ac.id

Abstract: Sexual violence against children is a serious violation of human rights and moral norms. This study focuses on the disparity in sentencing in two cases of sexual violence against children involving the biological father as the perpetrator, namely decision Number 858/Pid.Sus/2022/PN Bjm and Number 137/Pid.Sus/2023/PN Grt. Both are included in the category of familial abuse, where violence occurs in the family environment. Although both cases involve violations of Article 81 paragraph (3) of the Child Protection Law with a maximum penalty of 20 years in prison, there are differences in sentencing. In the first verdict, the perpetrator was sentenced to 18 years in prison and chemical castration for 2 years, while in the second verdict, the perpetrator was sentenced to 20 years in prison without chemical castration. This disparity is caused by differences in juridical and non-juridical considerations by judges, although both aim to achieve legal certainty and the prevention of future crimes.

Keywords: Sexual Violence, Children, Familial Abuse, Disparity of Judgments

1. Introduction

The crime of sexual violence is a criminal act that violates religious norms and morals. This crime can happen to anyone, including children. The perpetrators of this criminal act of sexual violence can be committed by strangers, people trusted by the victim, or even family members.

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

Children are the golden generation that has the right and obligation to participate in the process of building the nation and state of Indonesia.¹ Children are human beings at a young age and their life journey is still relatively small, therefore, serious attention to children is very important. Ironically, however, as highly vulnerable and vulnerable social beings, children are often placed in adverse situations, deprived of the right to speak, and even become victims of violence, resulting in violations of their rights.²

The crime of sexual violence against children is a phenomenon that occurs in the community that needs more attention considering that this crime occurs quite often. Cases of sexual violence against children, both women and men in Indonesia are increasing every year. From 2019 to 2022, the total number of cases reached 31,725. Based on data from the Ministry of Women's Empowerment and Child Protection (PPPA), the details are that in 2019 there were 6,454 cases, in 2020 there were 6,980 cases, in 2021 there were 8,703 cases and in 2022 there were 9,588 children who were victims of sexual violence.³ In the data presented from January 1 to December 31, 2023 from the Ministry of Women's Empowerment and Child Protection (PPPA), there were 10,932 cases of sexual violence that occurred against children.⁴ Meanwhile, based on data on child protection cases from complaints to KPAI in 2023, there are 563 cases of complaints about special child protection cases, and from this data, 252 of them are cases of sexual violence against children.⁵

¹ Desi Nellyda. *Legal protection for children as perpetrators of sexual abuse according to Law No. 35 of 2014*. Journal of Legal Preferences, Vol. 1, September 2020, p. 62.

² *Ibid.* p. 64

³ Irfan Maulana. *Child Sexual Violence Increases Every Year, 2019-2022 There Are 31,725 Cases / National - Okezone.com (ampproject.org)*. Accessed on March 15, 2024 at 12:42 PM

⁴ SYMPHONY-PPA. *SYMPHONY-PPA (kemenpppa.go.id)*. Accessed on March 15, 2024 At 1:01 PM

⁵ *Child Protection Case Data from Complaints to KPAI in 2023 / Child Protection Data Bank*. Source: PUSDATIN KPAI. Accessed on March 15, 2024 at 20:00

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

This difference or disparity is also due to the acts committed by the perpetrator, which are included in the elements of the criminal act starting from the subjective, namely the intention or element that exists inside the perpetrator and objective, namely the elements that exist outside the perpetrator such as acts, circumstances, and consequences, even though the criminal act is the same or almost equal.

Like the case that occurred in Banjarmasin Regency which was tried at the Banjarmasin Court with case number 858/Pid.Sus/2022/PN Bjm, regarding the criminal act of "committing violence or threats of violence, forcing a child to have intercourse with him or with another person, committed by parents, guardians, caregivers, educators, or educators" as referred to in Article 81 Paragraph (3) of Law Number 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection.

At first, the victim's child stayed at the defendant's house who was the biological father of the victim's child, the victim's child's mother and the defendant had divorced. The victim's child lived with his mother, who at that time the victim's child only spent the night occasionally at the defendant's house. The incident of intercourse occurred 4 times, the first in December 2021, the second in January 2022, the third in February 2022, and the fourth in March 2022.

The case was revealed when the mother of the victim's child asked why the victim's child was no longer at the defendant's place, at first the victim's child replied that she didn't want to anymore, then the victim's child's mother persuaded the victim's child to tell the story, and the victim's child told everything to the victim's mother. Then the mother of the victim's child came to the correctional center and told the incident, then the correctional center told the victim's mother to report to the Police Station for further processing.

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

A similar case also occurred in Garut Regency which was tried at the Garut District Court with case number 137/Pid.Sus/2023/PN Grt, regarding the crime of "deliberately committing violence to force a child to have sexual intercourse committed by a parent", as charged in the first indictment, namely as stipulated in article 76 D of the *Juncto* Article 81 paragraphs (1) and (3) of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, Law No. 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection *Juncto* Article 64 of the Criminal Code (KUHP).

The case was revealed when the victim was 22 years old in 2023, the victim told the incident to the victim's friend who at that time advised the victim to report to the police, because the victim felt unbearable with what he had experienced so far and added to getting support, the victim finally reported the incident.

Paying attention to article 76 D *Juncto* article 81 paragraphs (1) and (3) of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection *Juncto* Law No. 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning *Juncto* Child Protection Article 64 of the Criminal Code (KUHP) and Law Number 8 of 1981 concerning the Criminal Procedure Law and other relevant laws and regulations, the defendant is legally and convincingly proven guilty of committing a criminal act by deliberately threatening violence, forcing a child to have sexual intercourse with him which is carried out by a parent which is carried out continuously, imposing a criminal sentence on the Defendant therefore with a prison sentence of 20 (twenty) year and a fine of Rp100,000,000 (one hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 6 (six) months.

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

The two cases above are both criminal acts of sexual violence against children, namely sexual intercourse with children. However, both were tried in two different courts, namely the Banjarmasin District Court and the Garut District Court. Both were tried for the same crime but the sentences of the two were different.

Decision Number 858/Pid.Sus/2022/PN Bjm and Number 137/Pid.Sus/2023/PN Grt involve the defendant who is the victim's biological father, where the role of a father should be to protect and take care of the victim as his child, but instead he committed a despicable act.

Based on the background mentioned above, the author is interested in conducting a research entitled Disparity of Judges' Decisions Against the Crime of Sexual Violence Against Children Reviewed from Law Number 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection (Study of Decision Number 858/Pid.Sus/2022/PN Bjm and Number 137/Pid.Sus/2023/PN Grt)

2. Method

In this study, the author uses a normative juridical approach method. The reason the author uses this method is because the main data used is secondary data, namely in the form of data obtained based on literature studies and other data related to the problem discussed by the author.

The specification in this study is descriptive analytical. The reason for choosing this specification is to provide an overview for the author of a research obtained from the data that has been collected and summarized by the author.

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

3. Analysis or Discussion

3.1. Factors Causing Sexual Violence Against Children Based on the Study of Decision Number 858/Pid.Sus/2022/Pn Bjm and Number 137/Pid.Sus/2023/Pn Grt

Sexual violence includes behavior that degrades, insults, or attacks a person's body in connection with sexual desire, sexual drive, or reproductive function, without free consent and in situations where a person is unable to give consent due to power imbalances, gender differences, or other factors. The impact of these actions can cause physical, psychological, or sexual suffering. Sexual violence against children is divided into two categories according to the identity of the perpetrator, including *Familial Abuse* and *Extra Familial Abuse*.⁶

1. *Familial Abuse*

Familial Abuse is categorized as violence that occurs within the family, where the perpetrator and the victim still have blood ties in the family, and are the nuclear family. According to Mayer, there are several categories that associate the family with the crime of sexual violence against children. The first category, namely persecution in the form of sexual harassment, aims to provide sexual stimulation to the perpetrator. The second category is rape, rape is a relationship that is carried out through the sex, oral stimulation, masturbation, and oral stimulation of the clitoris. The third category is the worst category, namely rape by force using threats of violence against the victim so that the victim becomes helpless which causes fear for the victim.

2. *Extra Familial Abuse*

⁶ Ivo Noviana, 2015, *Sexual Violence Against Children: Impact and Treatment*, Socio Informa Center for Social Welfare Research and Development, Ministry of Social Affairs of the Republic of Indonesia, Jakarta, Vol.01, No.1, January-April 2015. Page 16

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

Extra familial abuse is violence committed by other people outside the victim's family, there is no blood relation, and is not the victim's nuclear family. In this case, usually the perpetrator persuaded the victim's child who had previously built a relationship first. The persuasion is carried out with words of seduction, or giving rewards.

In general, there are many factors that can cause sexual violence against children. The relationship or relationship between the perpetrator and the child affects these factors. The perpetrator can involve strangers, or can involve the closest people even as explained above.

There are vulnerability factors that cause sexual violence to occur according to the WHO (*World Health Organization*),⁷ namely based on gender where women are more vulnerable to becoming victims of sexual violence due to gender inequality , women are considered weaker by perpetrators and perpetrators have a sense of control or power over women, in addition, the younger the age is the more vulnerable to becoming victims of sexual violence, Usually, the age at which victims of sexual violence is under the age of 15 years, which is categorized as minors, which causes many children to become victims of sexual violence as follows:

- a. Limited Knowledge and Experience
- b. Prone to manipulation
- c. Dependence on adults
- d. Lack of communication skills
- e. Unsafe environment

⁷ Kurnia et al. *Sexual Violence*. Science Media CV. 2022. p. 46

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

Furthermore, the factors that can cause sexual violence against children are divided into two, namely internal and external factors.

1. Internal factors

Internal factors refer to factors that exist in an individual or can only be observed in the individual. Internal conditions related to sexual crimes include:

- a. Psychiatric factors
- b. Biological factors
- c. Moral Factors

2. External Factors

According to the author, after explaining the definition, the categories of perpetrators of sexual violence based on identity, factors that are vulnerable to sexual violence against children and internal and external factors that cause sexual violence against children above, in decision number 858/Pid.Sus/2022/PN Bjm and number 137/Pid.Sus/2023/PN Grt based on the identity category of perpetrators of sexual violence against children, these two decisions are included in Family Abuse where sexual violence is It was carried out by the victim's closest person and has blood ties, namely the biological father.

The internal factors that cause sexual violence against children in decision number 858/Pid.Sus/2022/PN Bjm are biological factors, in the content of the verdict in the witness statement section states that the victim's parents have divorced and separated from home, sexual activities that should be carried out with a legitimate partner but sexual desire arises and there is no proper place to distribute it, then the individual can vent it to others and even to children The incident was carried out at

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

the perpetrator's house while the victim was sleeping, then the moral factor also affects because the perpetrator easily commits sexual violence against his own biological child and the incident has taken place 4 times.

In decision number 137/Pid.Sus/2023/PN Grt, the internal factor that caused sexual violence was the moral factor because the perpetrator had no shame for the act considering that the perpetrator had sexual intercourse with his own biological child 2 times when the victim's child was 13 years old and 15 years old, and in a vulnerable time period of 9 years, namely 2014 to 2023, The perpetrator often molested the victim, in addition to the content of the verdict in the incriminating part of the matter that the perpetrator intends to marry the victim where the victim is his own biological child.

Through the discussion above, the author gets the essence of the factors that cause crimes of sexual violence against children not only due to the desire of the perpetrator, but also external factors such as an unhealthy and unsafe family environment and lack of supervision from the people around him, the power of the perpetrator who has a strong influence on the victim, namely his biological father, is also the main factor in the occurrence of the crime. supported by the biological and moral conditions of the perpetrator that support the perpetrator to commit this crime.

3.2. Legal Considerations of the Panel of Judges on Decision No. 858/Pid.Sus/2022/PN Bjm and No. 137/Pid.Sus/2023/PN Grt

In the criminal justice system, judges are given the greatest freedom to see the value of the truth in the legal events being reviewed, where the main task of judges is to adjudicate cases based on juridical so that they can also be lawmakers. Judges in carrying out their duties are also given freedom, freedom here can be considered as

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

a right to basic human values as a symbol of human dignity. The realization that freedom is a value, means demanding that any restriction on freedom must be accounted for.⁸

In terms of "juridical considerations for the perpetrators of the alleged crime" is a very important context in a judge's decision decided by the judge. In essence, juridical consideration is an effort to prove whether the actions committed by the defendant have fulfilled the elements (*benstendallen*) of a criminal act in accordance with the indictment filed by the prosecutor or public prosecutor.⁹ However, in addition to juridical considerations, non-juridical considerations also have an effect in the judge giving a decision.

In addition to the juridical and non-juridical considerations mentioned above, there are aggravating and mitigating matters in terms of the criminal imposition given by the judge to the defendant,¹⁰ but in the criminal imposition of the perpetrator, sometimes there is a difference in the criminal imposition in the judge's decision, and this difference is called disparity. What is meant by criminal *disparity* (*disparity of sentencing*) in this case is the application of a criminal offense that is not the same to the same criminal act (*same offense*) or to a criminal act that is dangerous in nature (*offense of comparable seriousness*).¹¹

The following is a summary table of the two decisions

⁸ Kelly. *Juridical efforts to minimize the disparity of the verdict*. Aggama Law Journal. Page 1120

⁹ Nimerodi Gulo, Ade Hermawan. *Disparity in Criminal Punishment*. Journal of Legal Issues. 2018. p. 221

¹⁰ Nimerodi Gulo, Ade Hermawan. *Ibid*. Hlm 222

¹¹ Muladi, Barda Nawawi. *Criminal Theories and Policies*. P.T. ALUMNI BANDUNG. Print 4. 2010. p.52

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

It	Indicator	Decision Number 858/Pid.Sus/2022/PN Bjm	Decision Number 137/Pid.Sus/2023/PN Grt
1	Factors affecting sexual violence against children	Internal Factors: Biological and Moral External Factors : Environment	Internal Factors : Moral External Factors : Environment
2	Case	The perpetrator of the victim's biological father had sexual intercourse 4 times, the victim's age was 12 years old.	The perpetrator of the victim's biological father had sexual intercourse 2 times when the victim was 13 and 15 years old, and in the vulnerable time from 2014 to 2023 the perpetrator often molested the victim.
3	Penalty	The defendant was sentenced to imprisonment for 18 (Eighteen) Years, and a fine of Rp.1,000,000,000 (one billion rupiah) with the provision that if the fine is not paid, it will be replaced	The defendant was sentenced to 20 (twenty) years in prison and a fine of Rp100,000,000 (one hundred million rupiah) with the provision that if the fine is not paid, it will be

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

		with imprisonment for 1 (one) month; Imposing an additional penalty on the defendant in the form of Chemical Castration for 2 (two) years.	replaced with imprisonment for 6 (six) months.
--	--	--	--

Based on the two decisions above, both of them equally violate article 81 paragraph (3), namely deliberately committing violence or threats of violence, forcing a child to have sexual intercourse with him or with another person, which is carried out by parents, guardians, childcaregivers, educators, or educators, in this case the punishment imposed on the perpetrator is added 1/3, so the maximum punishment that the perpetrator gets is 20 years in prison.

However, in decision number 858/Pid.Sus/2022/PN Bjm, the perpetrator was sentenced to 18 years in prison plus an additional penalty in the form of chemical castration for 2 years, while in decision number 137/Pid.Sus/2023/PN Grt, the perpetrator was sentenced to 20 years in prison. A significant difference in these two decisions is the use of the additional penalty of chemical castration, where in decision number 137/Pid.Sus/2023/PN Grt the additional penalty of chemical castration is not used.

In decision number 858/Pid.Sus/2022/PN Bjm, the perpetrator had sexual intercourse with his own biological child 4 times, namely in December 2021, January 2022, February 2022, March 2022, the background of the perpetrator's actions was that the perpetrator admitted to feeling lustful when he saw the victim's child

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

sleeping, the perpetrator also did not have a wife because he was divorced so there was no place to vent the perpetrator's sexual desires, As a result of the perpetrator's actions, namely in the content of the *visum et repertum* letter in the victim's hymen, there was a tear, the defendant's actions also caused trauma and prolonged psychological suffering for the victim. In this verdict, there are quite a lot of things that aggravate the perpetrator and there are no mitigating factors for the perpetrator.

According to the author, the use of additional crimes in the form of chemical castration for 2 years, namely the judge considers the physical and psychological impact of the victim which in this case is the perpetrator's biological child, the repeated actions of the perpetrator, namely as many as 4 times, are also considered a very serious crime, damaging the future and mental health of the victim, besides that the use of this additional criminal can also be influenced by the absence of circumstances that mitigate the perpetrator, And one of the purposes of using the crime of chemical castration is to provide a deterrent effect to the perpetrator and prevent the possibility of similar crimes in the future after the perpetrator

In decision number 137/Pid.Sus/2023/PN Grt, the perpetrator had sexual intercourse with the victim's child 2 times, namely at the age of 13 years and 15 years old, then in a vulnerable period of 9 years, namely 2014 to 2023, the perpetrator often committed obscene acts against the victim, as a result of the perpetrator's actions, namely in the content of the *visum et repertum* letter On the examination of the genitals (vagina) it was found that there was an old tear in the hymen at the third o'clock direction which could result from penetration of the penis (male genitalia) or other similar blunt violence that passed through (vagina) that occurred in the past, the impact of the incident also caused trauma, sadness, disappointment, and disgust towards the perpetrator (the victim's biological father), and made the victim's

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

personality depressed, often crying, not excited and uncomfortable in the house. In this verdict, there are incriminating and mitigating matters for the perpetrators. The main criminal penalty is imprisonment.

According to the author, the two decisions already contain legal certainty even though the sentencing is different, where legal certainty itself means a guarantee for members of society that they will be treated by the state/ruler based on the rule of law and not arbitrarily, as well as (as much as possible) certainty about the content of the rule, and in these two decisions the perpetrator has been treated and given a punishment commensurate with what he has done as contained in the The applicable rules are Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection.

The criminal imposition of the two decisions is indeed different, even though the criminal acts are the same, and the difference between the two decisions is certainly based on the judge's considerations, both juridical and non-juridical, in both decisions. The judge also considers the nature and seriousness of the criminal acts committed by the defendants, the circumstances accompanying the criminal acts they committed, the age, personality, education level and environment of the defendants.¹²

Although the sentencing of the two verdicts is different, the two verdicts are the same towards the ultimate goal of criminalization, the imposition of a penalty is not just for revenge or reward for the perpetrators, but an effort to prevent the commission of criminal acts and socialize the perpetrators by encouraging coaching so that they become good and useful people in the future.¹³

¹²Moh. Zainol Arief. *Conflict of law as legal certainty and a sense of justice for victims of crime*. Journal of "Legal Window" Faculty of Law, Unija. Volume 4. 2017. p. 35

¹³ Nimerodi Gulo, Ade Hermawan. *Op.Cit* Hlm 220

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

4. Conclusion

1. Based on the identity of sexual perpetrators which are divided into two, namely *familial abuse* and *extra familial abuse*, decision number 858/Pid.Sus/2022/PN Bjm and number 137/Pid.Sus/2023/PN Grt are included in *familial abuse* because the sexual violence is committed by a blood family member who is the victim's biological father, the core of the factors causing the crime of sexual violence against children is not only caused by desire The perpetrator, but also external factors such as an unhealthy and unsafe family environment and lack of supervision from the people around him, the power of the perpetrator who has a strong influence on the victim, namely his biological father, is also the main factor in the occurrence of the crime, supported by the biological and moral conditions of the perpetrator who support the perpetrator to commit this crime.
2. Decision Number 858/Pid.Sus/2022/PN Bjm and Number 137/Pid.Sus/2023/PN Grt, both of which both violate article 81 paragraph (3), namely deliberately committing violence or threats of violence, forcing a child to have intercourse with him or with another person, committed by parents, guardians, caregivers, educators, or educators, in this case the punishment imposed on the perpetrator is added 1/3, So the maximum punishment that the perpetrator gets is 20 years in prison. However, in decision number 858/Pid.Sus/2022/PN Bjm, the perpetrator was sentenced to 18 years in prison plus an additional penalty in the form of chemical castration for 2 years, while in decision number 137/Pid.Sus/2023/PN Grt, the perpetrator was sentenced to 20 years in prison. A significant difference in these two decisions is the use of the additional penalty of chemical castration, where in decision

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

number 137/Pid.Sus/2023/PN Grt the additional penalty of chemical castration is not used. The criminal imposition of the two decisions is indeed different, even though the criminal acts are the same, and the difference between the two decisions is certainly based on the judge's considerations, both juridical and non-juridical, in both decisions. Although the sentencing of the two verdicts is different, the two verdicts are the same towards the ultimate goal of the penalty, the imposition of a penalty is not just to retaliate or reward, but an effort to prevent the commission of criminal acts in the future.

References

Book:

- Abdullah Sulaiman. *Introduction to Law*. UIN Jakarta with the Jakarta Education and Human Resources Development Foundation. Print 2. 2019
- Andi Hamzah. *Criminal Procedure Law*. Sinar Grafika. 2021
- Andri Priyatna, *Let's End Bullying: Understanding, Preventing and Overcoming Bullying*, PT. Elex Media Komputindo, Jakarta 2010
- Fransiska Novita Eleanora,. *Textbook on Child and Women's Protection Law*. Malang: Madza Media. 2021
- I Ketut Mertha. *Law Textbooks*. Faculty of Law, Udayana University. 2016
- John Kenedi. *Criminal Law Policy (Penal Policy) in the Law Enforcement System in Indonesia*. Bengkulu. 2017
- Joko Sriwidodo. *Indonesia Criminal Law Review: Theory and Practice*. Kepel Press. Yogyakarta Publisher. 2019
- Kurnia, Lisnawati, Veryudha. *Sexual Violence*. CV Media Sains Indonesia. 2022
- Marlina. *Penitentiary Law*. PT Refika Aditama. 2011

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

Meri Neherta. *Intervention Module for the Prevention of Sexual Violence Against Children*. Faculty of Public Health, Andalas University. 2017

Muamal, Jamaluddin, and Hasriany. "*Synergizing in Providing Protection to Children to Prevent and Overcome Child Sexual Violence*". Literacy Institute. 2019

Muladi, Barda Nawawi. *Criminal Theories and Policies*. P.T. ALUMNI BANDUNG. Print 4. 2010.

R.Soesilo. "*The Criminal Code (KUHP) and its commentaries are complete article by article*" (Bogor: Politea, 1995).

Suhendar, Aris Santoso, and Yoga Brahma. *Legal Theory An Introduction*. Pustakabarupress. 2022

Tofik Yanuar Chandra. "*Criminal Law*". Jakarta : PT. Sangir Multi Business. 2022

Journal Article:

Desi Nellyda. *Legal protection for children as perpetrators of sexual abuse according to Law No. 35 of 2014*. Journal of Legal Preference, Vol. 1, September 2020

Ivo Noviana, 2015, *Sexual Violence Against Children: Impact and Treatment*, Socio Informa Center for Social Welfare Research and Development, Ministry of Social Affairs of the Republic of Indonesia, Jakarta, Vol.01, No.1, January-April 2015

Kelly. *Juridical efforts to minimize the disparity of the verdict*. Aggama Law Journal.

Moh. Zainol Arief. *Conflict of law as legal certainty and a sense of justice for victims of crime*. Journal of "Legal Window" Faculty of Law, Unija. Volume 4. 2017

Nimerodi Gulo, Ade Hermawan. *Disparity in Criminal Punishment*. Journal of Legal Issues. 2018.

Legislation:

Criminal Code (KUHP)

Buana Perjuangan Karawang University

Vol. 9 No. 2 (2024)

Submit: 2-Sep-2024

Revised: 5-Sep-2024

Published: 10-Sep-2024

Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection,

Law Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law (Perppu) No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection,

Government Regulation of the Republic of Indonesia Number 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation, and Announcement of the Identity of Perpetrators of Sexual Violence Against Children.

Other Resources:

Child Protection Case Data from Complaints to KPAI in 2023 | Child Protection Data Bank. Source: PUSDATIN KPAI. Accessed on March 15, 2024 at 20:00

Irfan Maulana. *Child Sexual Violence Increases Every Year, 2019-2022 There Are 31,725 Cases | National - Okezone.com (ampproject.org).* Accessed on March 15, 2024 at 12:42 PM

SYMPHONY-PPA. *SYMPHONY-PPA (kemenpppa.go.id).* Accessed on March 15, 2024 At 1:01 PM