

Criminal Punishment for Perpetrators of Sexual Crimes in Indonesia as Reviewed by Law Number 12 of 2022 Concerning Criminal Acts of Sexual Violence (Study of Judgments Number 73/PID.SUS/2023/PN MDN and Number 1448/PID.B/2023/PN MDN)

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Abstract

The Law on Sexual Violence constitutes a *lex specialis* provision in relation to the Criminal Code and other statutory instruments governing offenses of a sexual nature. Sexual offenses represent a category of crime encompassing diverse manifestations and demonstrating a continuous upward trajectory annually. The promulgation of this legislation is intended both as a mechanism to instill a preventive and punitive impact upon offenders and as a safeguard to ensure the protection of individuals subjected to sexual victimization. This inquiry employs a normative-juridical mode of legal scholarship with a descriptive-analytical orientation, utilizing a legislative framework approach in conjunction with a conceptual perspective. The research techniques applied encompass a bibliographic exploration alongside an empirical dimension, the latter undertaken through direct dialogues with members of the judiciary. From the findings and deliberations presented in this thesis, it can be inferred that legal provisions governing criminal acts of sexual violence, though previously dispersed across multiple statutory instruments, are now comprehensively consolidated under Law Number 12 of 2022 concerning Crimes of Sexual Violence. The imposition of criminal liability upon offenders of sexual crimes necessitates the fulfillment of three essential elements: the presence of fault, the capacity for accountability, and the absence of exculpatory grounds, with criminal sanctions expressly guided by the aforementioned law. Furthermore, an examination of Medan District Court Decisions No. 73/Pid.Sus/2023/PN Mdn and No. 1448/Pid.B/2023/PN Mdn shows that Law No. 12 of 2022 is not yet optimally enforced, especially in sentencing, restitution, and rehabilitation.

Keywords : Criminal Impositions, Perpetrators, Sexual Crimes, Crimes of Sexual Violence.

1. Introduction

Sexual crimes, which are a long-standing issue in society, require a clear legal framework to protect the human rights of victims and deter perpetrators, thereby restoring order in communities that have been disrupted by such acts. Indonesian law also has provisions governing sexual crimes. The 1945 Constitution addresses this issue implicitly in Articles 28G and 28I (Wahyuni, 2017). Article 28G affirms that every individual is entitled to protection of their physical self, honor, and dignity, in addition to the right to security and freedom from intimidation or coercion that may compel or prevent certain actions. At the same time, Article 28I guarantees the right of every person to be safeguarded from acts of torture and to enjoy



freedom from any form of discriminatory treatment. There have been several cases of sexual violence that have attracted attention and caused outrage, including: a. The case of a man kissing a child in Gresik, which the police said was not harassment, went viral on social media with a video clip from CCTV footage showing a man kissing a minor in Gresik; b. The case of sexual abuse of a female student in Jombang, where Mas Bechi has been abusing female students since 2017; c. The case of the rape of an elementary school student in Medan by the school principal and a janitor, which caused a stir on social media regarding an elementary school student in Medan who was allegedly raped by the school principal and a janitor; d. Sexual harassment of KPI employees, which occurred within the KPI environment and went viral in September 2021.

The Ministry of Women's Empowerment and Child Protection recorded 29,883 cases of violence in Indonesia throughout 2023 and 8,782 cases from the beginning of January to the end of May 2024. Meanwhile, the number of violence cases in North Sumatra Province alone reached 550 cases, with 127 male victims and 489 female victims. Recorded instances of violence encompassed 201 cases of physical abuse, 137 cases of psychological harm, 247 cases of sexual violence, and 160 cases falling under other categories of abuse. In response to the urgency of addressing such crimes, the President of the Republic of Indonesia, Joko Widodo, promulgated Law No. 12 of 2022 concerning Sexual Violence Crimes, which was formally documented by the Minister of Law and Human Rights, Yasonna H. Laoly, in the State Gazette of the Republic of Indonesia, of 2022 No. 120, on 9 May 2022.

The Law on Sexual Violence Crimes functions as a *lex specialis* to the Criminal Code and other statutory provisions addressing sexual violence (Sukmayoga Wiweka et al., 2024). It delineates nine distinct categories of sexual violence and extends liability not only to individuals but also to corporate entities as legal subjects. In this study, the author examined Medan District Court Decisions No. 73/Pid.Sus/2023/PN Mdn and No. 1448/Pid.B/2023/PN Mdn, correlating both cases with the framework established under Law No. 12 of 2022 on Sexual Violence Crimes. The analysis sought to determine how the statutory provisions were applied in judicial practice, to assess the accountability imposed on perpetrators, and to evaluate whether law enforcement authorities have effectively enforced the new legal framework or whether the legislation has yet to produce substantial reform in the enforcement of criminal law, particularly with respect to addressing sexual violence in Indonesia.

The purpose of this study is to examine how the imposition of penalties on perpetrators of sexual violence is regulated in Indonesian legislation before and after the enactment of Law No. 12 of 2022. Furthermore, it aims to determine the criminal liability of perpetrators of sexual violence in Indonesia and analyse the considerations that cause a conflict between the positive law that regulates it (*das sollen*) and the legal reality that occurs (*das sein*) in the imposition of penalties on perpetrators of sexual violence through court decisions.

2. Literature Review

2.1. Imposition of Criminal Penalties

The imposition of criminal penalties is the result of a punitive process (Karlan, 2003). Essentially, criminal penalties are punishments, and the process of imposing them is a process of punishment. The process of imposing criminal penalties is part of the criminal justice process, which begins with investigation, inquiry, prosecution, and the imposition of a court decision (Yogandiranjaya & Darmadi, 2023). This relates to the judge's statement in deciding the case and imposing the penalty.

2.2. Perpetrators

The perpetrator is the person who commits the criminal act in question, in the sense that the person, either intentionally or unintentionally as indicated by the law, has caused an undesirable consequence under the law, whether it be subjective or objective elements (Ambos, 2011).

2.3. Sexual Crimes

Sexual crimes, often categorized as offenses against morality, may manifest in multiple forms such as rape, sexual slavery and sex trafficking, forced pregnancy, acts of sexual violence, sexual exploitation and abuse, as well as coerced or unlawful abortion (O'Brien, 2016). Sexual crimes are categorised as follows:

- a. Non-consensual, forced physical sexual behaviour such as rape or sexual assault.
- b. Psychological forms of abuse, such as sexual harassment, human trafficking, stalking and indecent exposure but not exhibitionism.
- c. Use of a position of trust for sexual purposes, such as paedophilia and grooming, sexual violence, and incest.

2.4. Sexual Violence Crimes

Sexual Violence Crimes encompass all actions that meet the elements of a criminal offense as regulated under Law No. 12 of 2022 on Sexual Violence Crimes, along with other forms of sexual violence expressly recognized and defined within the provisions of this law (Santoso & Satria, 2023).

3. Methods

3.1. Type and Nature of Research

The research methodology adopted in this thesis is normative juridical inquiry. Such inquiry encompasses the examination of doctrinal precepts of law, the study of juridical systematization, and the analysis of concordance or harmonization within the legal order (Taekema, 2018). The normative research method is also known as doctrinal research, which is research that analyses the law as it is written in books (law as it is in the book) and the law required by judges through the judicial process (law is detected by the judge through judicial progress) (MD, 2019).

The character of the inquiry employed in this thesis is descriptive–analytical research, namely an approach that endeavors to depict and delineate the object of study based on data or samples collected in their unaltered form, without subjecting them to generalized extrapolation. Put differently, descriptive–analytical research constitutes an attempt to portray and construe phenomena, be it prevailing conditions or interrelations, emerging viewpoints, ongoing processes, as well as repercussions or ramifications—particularly in relation to the criminal liability of sexual offence perpetrators in Indonesia under the newly enacted regulations, from which conclusions are subsequently drawn (Loeb et al., 2017)

3.2. Research Approach

The inquiry within normative jurisprudence is essentially an activity of elucidating legal norms, which does not necessitate empirical data or social facts. This is because normative legal scholarship does not acknowledge sociological data as its evidentiary basis, relying solely upon legal sources and doctrinal materials. Consequently, in order to expound upon the law, ascertain its meaning, and attribute value to it, the process employs exclusively conceptual frameworks and normative methodologies.

Normative juridical inquiry constitutes a methodological process aimed at ascertaining validity through the rational architecture of jurisprudence, approached from its prescriptive standpoint (Negara, 2023). Normative inquiry consistently derives its problems from law as a normative order, serving to furnish elucidations of juridical phenomena. Such normative legal investigation is undertaken through a statutory approach in conjunction with a doctrinal-literature method, by scrutinizing prevailing theoretical discourses on penal sanctions in contemporary development.

The approaches used in this research are as follows:

1. Case approach. The case approach is based on ratio decidendi, which is the legal reasoning used by judges to reach their decisions. According to Goodheart, ratio decidendi can be found by considering the material facts. Conducting a review of the decision of the Medan District Court, which has permanent legal force.
2. Second, the statute approach is carried out by reviewing all laws and regulations related to the legal issue being addressed.
3. Third, the conceptual approach. The conceptual approach is based on the views and doctrines that have developed in legal science. Understanding these views and doctrines can serve as a basis for constructing and solving research problems.

3.3. Research Data

The data used in this study is secondary data, which includes:

3.3.1. Primary Legal Materials

Covering all relevant laws and regulations related to the research issues and objectives, including:

1. The 1945 Constitution of the Republic of Indonesia and its amendments;
2. The Criminal Code (KUHP);
3. Law No. 8 of 1981 on the Criminal Procedure Code;
4. Law No. 23 of 2004 on the Elimination of Domestic Violence;
5. Law No. 35 of 2014 on Amendments to Law No. 23 of 2004 on Child Protection;
6. Law Number 17 of 2016 concerning the Establishment 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;
7. Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence;

3.3.2. Secondary Legal Materials

These encompass pertinent references including monographs, symposium proceedings, juridical periodicals, bulletins, newspapers, scholarly manuscripts, and selected digital sources aligned with the subject of inquiry. Beyond secondary materials, this investigation is further substantiated by primary data in the form of antecedent studies germane to the issues under examination.

3.3.3. Tertiary Legal Materials

These constitute sources furnishing exposition on both primary and secondary juridical materials, encompassing lexicons and encyclopaedic compilations pertinent to the discourse on capital punishment.

3.4. Data Collection Techniques

In this study, data collection was conducted through library research. Written legal materials related to this issue were collected. The data obtained from this study was then systematised by selecting legal instruments relevant to the object of the study. This data was

used to obtain a theoretical basis in the form of written positive legal materials and expert opinions in formal form.

3.5. Data Collection Methods

In this study, data collection was conducted through library research. Written legal materials related to this issue were collected. The data obtained from this study was then systematised by selecting legal instruments relevant to the object of the study. This data was used to obtain a theoretical basis in the form of written positive legal materials and expert opinions in formal form.

3.6. Data Analysis

The research is based on legal logic and deductive and inductive reasoning. Deductive reasoning alone is insufficient, as it cannot lead us to form opinions. Deductive reasoning involves logical discipline. If the premises of a deduction are logically correct, then the conclusion must also be correct.

The analysis of the research data uses qualitative data analysis, which is a technique of analysing problems described based on existing facts and then linking them to other facts, in order to draw a conclusion to explain and describe the information obtained using an empirical approach, namely by describing the problem according to the data obtained in the field to produce a conclusion.

4. Results and Discussion

4.1. Legal Provisions on Criminal Offences

4.1.1. Criminal Code Criminal Code (KUHP)

The Criminal Code represents the codified statute governing substantive penal conduct within Indonesia. The KUHP is delineated into three volumes: Book I on General Provisions, Book II on Felonies, and Book III on Misdemeanours. It expressly prescribes offences contra mores, which are classified into two distinct categories of immoral criminal acts (*Misdrijven tegen de zeden*) are regulated in Chapter XIV of Book II, namely Rape (Articles 285-288), Indecent Assault, and Sexual Intercourse, while moral offences (*Overtredingen betreffende de zeden*) are regulated in Chapter VI of Book III, namely: violating morality (Article 281), disseminating, displaying, or posting in public writings, images, or objects that violate morality (Article 282). The Criminal Code (KUHP) does not recognise sexual violence.

The focus of criminal sanctions is on the wrongful acts committed by an individual through the imposition of suffering to deter the perpetrator, while the focus of corrective sanctions is more directed at efforts to assist the perpetrator in changing their behaviour. Thus, criminal sanctions emphasise the element of retribution, while corrective sanctions emphasise the protection of society and the rehabilitation or care of the perpetrator.

4.1.2. Law No. 23 of 2002 as amended by Law No. 35 of 2014 concerning Child Protection

The Child Protection Act refrains from criminalising seven other modalities of sexual violence and confines its safeguards to minors victimised by rape and sexual exploitation. Moreover, the statute omits provisions for sanctions in the form of specialised rehabilitative measures intended to reform the disposition and cognition of offenders, thereby preventing recidivism. Notably, however, pursuant to the Second Amendment to the Child Protection Act, as codified in Government Regulation in Lieu of Law (Perppu) No. 1 of 2016, the imposition of chemical castration has been instituted as a punitive modality.

4.1.3. Law No. 23 of 2004 concerning the Elimination of Domestic Violence (KDRT)

The Law on the Elimination of Domestic Violence (PKDRT Law) defines sexual violence as: ‘forced sexual intercourse, committed against a person who is a husband or wife, or a person residing in the household, or against a member of the household with another person for commercial and/or specific purposes’. This provision applies to cases of marital rape, incest, or human trafficking for sexual purposes against someone within the household. However, the Domestic Violence Act emphasises that sexual violence committed by a husband or wife is a criminal offence. In practice, law enforcement officials enforcing the PKDRT Law often request a marriage certificate as evidence of a marital relationship or household relationship. This action ultimately hinders victims of domestic violence who do not hold a marriage certificate or do not have a marriage certificate for various reasons from obtaining justice. Here, we see how the enforcement of justice is hindered by a lack of understanding on the part of law enforcement officials.

4.1.4. Law No. 12 of 2022 on Criminal Acts of Sexual Violence

This statute prescribes measures for the prevention of all manifestations of sexual violence; the management, safeguarding, and restitution of victims’ entitlements; the coordination between central and regional authorities; as well as international collaboration to ensure the efficacious prevention and redress of sexual violence. Furthermore, it delineates the participation of society in preventive efforts and victim rehabilitation, with the objective of cultivating a milieu free from sexual predation. Salient aspects to be underscored concerning the Law on Sexual Violence Crimes include:

- a. For victims, the benefits of the enactment of the TPKS Law for victims of sexual violence include assistance for victims of sexual violence, provision of funds for victims of the TPKS Law when victims undergo case handling/civil litigation/execution of decisions, maintaining the mental health of victims, and providing protection to the families and witnesses of victims.
- b. For perpetrators, based on Law No. 12 of 2022 on TPKS, legal regulations (such as criminal sanctions, compensation payments, and public disclosure of identity) must be enforced against perpetrators, with the aim of deterring such crimes and minimising their occurrence. Perpetrators also receive rehabilitation under the supervision of the prosecutor, the Minister of Social Affairs, and the Minister of Health.

Petitions for restitution and compensation are to be submitted in written form in the Indonesian language and addressed to the Chief Justice or Presiding Judge of the competent court, either directly or by means of the LPSK, investigators, or public prosecutors. Jurisdiction over such petitions resides in the tribunal adjudicating the offender, which may comprise the district court, the human rights court, the military tribunal, the high military tribunal, or the shariah court. In cases where there are multiple requests, this provision also allows for the consolidation of requests. If there are multiple perpetrators of the criminal act and their trials are conducted separately, the President/Head of the Court may appoint the same judge to hear the case.

Procedures for Restitution Applications: To file a restitution application, the applicant must complete the data by including the applicant's identity, the victim's identity, a description of the criminal act, the defendant's/respondent's identity, a description of the losses suffered, and the amount of restitution requested. If the restitution request is submitted before the case file is transferred, the public prosecutor must include it in the indictment and incorporate it into the case file, and immediately provide a copy to the defendant or their legal

counsel. If the victim does not file a restitution request, the judge informs the victim of his/her right to obtain restitution when he/she appears in court, which can be filed before the public prosecutor files charges or after the court decision becomes final. The judge then reviews the restitution request file, evaluates the evidence submitted, and considers it in the decision. 30 (thirty) days from the date the offender receives a copy of the court decision. If the implementation of restitution to the applicant exceeds the time limit, the LPSK/applicant reports this to the Attorney General/Prosecutor/Auditor with a copy to the President/Head of the Court. The Attorney General/Prosecutor/Auditor then orders the perpetrator of the criminal act and/or Third Party to carry out the restitution no later than 14 (fourteen) days from the date the order is received.

4.2. Criminal Liability of Criminals

4.2.1. Forms of Sexual Crimes

Basically, there are fifteen types of sexual violence according to the results of identification and review of experiences in handling cases of sexual violence conducted by the National Commission on Violence Against Women and the Service Provision Forum. However, only nine types of sexual violence have subjective and objective elements that can be criminalised as criminal acts.

1. Rape, which is the coercion of sexual intercourse carried out in various ways, is not limited to the definition of sexual intercourse as regulated in existing positive law, which only covers the insertion of the penis into the vagina. Experience shows that sexual coercion can involve inserting a body part into the victim's anus or mouth.
2. Sexual intimidation, which is an act that attacks a person's sexuality to cause fear or psychological distress to the female victim.
3. Sexual harassment, which is a sexual act through physical or non-physical contact targeting the victim's sexual organs or sexuality. Such acts include whistling, flirting, sexually suggestive remarks, displaying pornographic material and sexual desires, touching or groping parts of the body, and making sexual gestures or signals that cause discomfort, offence, humiliation, and possibly even health and safety issues.
4. Sexual Exploitation, which refers to the abuse of unequal power or trust for the purpose of sexual gratification or to obtain benefits in the form of money, social, political, or other advantages.
5. Trafficking of women for sexual purposes is the act of recruiting, transporting, harbouring, sending, transferring, or receiving a person by means of threats of violence, use of violence, abduction, confinement, fraud, deception, abuse of power over a vulnerable position, debt bondage, or the giving of payments or benefits to the victim directly or to another person who controls them, for the purpose of prostitution or other forms of sexual exploitation.
6. Forced prostitution is a situation in which women are deceived, threatened or subjected to violence in order to become sex workers.
7. Sexual slavery denotes a condition wherein the perpetrator perceives dominion over the victim's body, thereby presuming entitlement to subject it to any act, including the pursuit of carnal gratification through rape or other modalities of sexual violence
8. Forced marriage, encompassing instances of suspended divorce, constitutes a form of sexual violence, insofar as coerced conjugal relations are an inherent consequence of a union imposed upon a woman against her volition.
9. Forced pregnancy signifies a circumstance wherein a woman is compelled, through violence or threats thereof, to sustain an unwanted gestation.

10. Forced abortion refers to the termination of pregnancy induced by coercion, threats, or undue pressure exerted by another party.
11. Forced contraception and sterilisation denote the imposition of contraceptive devices and/or the execution of sterilisation procedures absent the woman's informed and voluntary consent, either owing to incomplete disclosure of information or a legal determination of incompetence to provide consent.
12. Sexual torture constitutes a deliberate act directed against a woman's sexual organs and sexuality, intentionally inflicting acute physical, psychological, or sexual pain and suffering.
13. Inhumane and sexually-oriented punishment encompasses penal measures that inflict suffering, pain, fear, or profound humiliation, thereby falling within the ambit of torture.
14. Traditional practices with a sexual connotation that are harmful or discriminatory towards women, i.e. societal customs with a sexual connotation that can cause physical, psychological, or sexual harm to women.
15. Sexual control, encompassing discriminatory regulations grounded in morality or religion, denotes acts of violence or threats thereof, whether direct or indirect, intended to compel women to internalise and conform to symbolic prescriptions with which they do not concur.

The Sexual Violence Criminal Law in Article 4 paragraph 1 only recognizes nine types of sexual violence crimes, including: non-physical sexual harassment; physical sexual harassment; forced contraception; forced sterilization; forced marriage; sexual torture; sexual exploitation; sexual slavery; and electronic-based sexual violence.

4.2.2. Criminal Liability of Perpetrators of Sexual Crimes and Elements of Criminal Liability

Criminal liability is, first and foremost, a condition that exists within the perpetrator when committing a criminal act. Criminal responsibility also means linking the perpetrator's condition with the act and the appropriate punishment to be imposed. Criminal liability, according to Roeslan Saleh, is the criminal accountability of an individual who commits a criminal act or offence, which is understood as an objective condemnation inherent in the criminal act and subjectively meets the criteria for criminal punishment due to the act itself. The definition of objective blame is that the act committed by a person is indeed a prohibited act. The indicator is that the act is against the law, both in the sense of being against formal law and against substantive law, while the meaning of subjective blame refers to the legal subject or person suspected of committing the prohibited act as mentioned in the substantive law.

In order to declare that a person is guilty of committing a criminal act, several conditions must be met. These conditions are as follows:

- a. Has committed a criminal act, an act that is against the law;
- b. Is capable of being held responsible;
- c. Committed the act intentionally or through negligence;
- d. There are no extenuating circumstances.

As for the elements of criminal liability can be outlined as follows:

A. Mistakes

Criminal law recognises two forms of fault in this regard, namely intent (*dolus*) and negligence/carelessness (*culpa*).

1) Intent (*dolus*)

In this case, *dolus* has a closer relationship with a criminal act than *culpa*. In criminal law, almost all criminal acts involve an element of intent rather than negligence, because it is usually those who commit a criminal act intentionally who deserve to be punished. There are three forms of intent recognised in criminal law, namely:

a) Intentionality as intent (*opzet als oogmerk*)

In such circumstances, the offender directs his conduct toward producing the proscribed consequence; in other words, the perpetrator possesses the deliberate intent to realise the very outcome that constitutes the principal ground for penal sanction.

b) Conscious intentionality of certainty (*opzet met zekerheidsbewustzijn or noodzakelijkheidbewustzijn*)

Conscious certainty is when the perpetrator does not intend to achieve the consequences that form the basis of the criminal act.

c) Conscious intent (*dolus eventualis* atau *voorwaardelijk-opzet*)

Intentionality with possibility means that when an action is carried out or a desired outcome occurs, it is recognised that other outcomes may arise. In this case, there are certain circumstances that may have been possible but actually occurred.

2) Negligence (*culpa*)

Negligence is a form of error that arises when the perpetrator fails to meet the standards of conduct stipulated by law, and such negligence occurs due to the person's own behaviour.

1. Conscious negligence (*bewuste schuld*) is negligence that occurs when the offender is aware that his actions may result in consequences that are prohibited by law, but he mistakenly believes that those consequences will not occur or that he is able to prevent them.

2. Unconscious negligence occurs when the perpetrator is aware of the possibility of a consequence occurring, but due to their personal qualities, they should have been and could have been aware of that possibility.

a. Able to take responsibility

According to Van Hamel, the concept of responsibility is a state of psychological normality and maturity (intelligence) that encompasses three abilities, namely (a) the ability to understand the consequences of one's own actions, (b) the ability to realise that one's actions are not permitted by society, (c) the ability to determine one's will regarding one's actions.

b. Excuses

The reason for forgiveness relates to the perpetrator's personal circumstances, in the sense that this person cannot be blamed (according to the law); in other words, he is not guilty or cannot be held responsible, even though his actions are against the law. So, here there is a reason that eliminates the perpetrator's guilt, making it impossible to prosecute him.

4.2.3. Criminal Liability of Perpetrators of Sexual Crimes in Law Number 12 of 2022

Sexual offenders in Indonesia can be held criminally liable if they have fulfilled the elements of criminal liability. First, there must be fault, which can be interpreted as something that can be blamed on someone. Thus, a person can be considered a perpetrator of sexual crimes if they have committed sexual crimes as defined in Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS Law). In terms of fault, a person may be held liable whether the criminal act was intentional (*dolus*) or negligent (*culpa*). Second, a perpetrator of a sexual crime may be held criminally liable if they have the capacity to be held liable. The

capacity to be held liable means that their mental state allows them to be held accountable for their actions.

The ability to be held responsible essentially means being able to know or realise that their actions are contrary to the law and being able to determine their will in accordance with that awareness. Third, perpetrators of sexual crimes can be held accountable if there are no grounds for criminal exemption in the perpetrator, either justifying or exculpatory grounds.

However, it should be noted that not all individuals who commit sexual violence can be subject to criminal sanctions, even if they have been proven to have committed sexual violence. This is related to the perpetrator's condition at the time of committing sexual violence, also known as the perpetrator's criminal responsibility. The perpetrator's criminal responsibility is an important matter to consider and discuss before the perpetrator is sentenced. This is because criminal responsibility is related to the perpetrator's guilt. As in the concept of justice, it is not only the victim who receives justice, but the perpetrator also deserves justice, namely by being sentenced in accordance with the guilt they have committed. Therefore, the Criminal Code itself regulates cases where a person cannot be sentenced or where the sentence is waived, namely through exculpatory and justifying grounds. Exculpatory grounds are regulated in Articles 44 and 45 of the Criminal Code, namely if the perpetrator was in a state of severe mental distress when committing the criminal act, then they cannot be held responsible for their actions. This is because, in essence, perpetrators who cannot be held responsible for their criminal acts are those who commit sexual violence unconsciously, so that they are unable to control their abilities and unable to understand that their actions constitute a crime against the law.

The Sexual Violence Law also contains provisions regarding criminal sanctions for criminal acts committed by corporations. Article 18(2) of this law states that such criminal sanctions may be imposed on the directors, those who give orders, those who exercise control, the beneficial owners of the corporation, and/or the corporation itself. This statute further prescribes supplementary penal sanctions applicable to corporations, in addition to those enumerated within the Criminal Code. As articulated in Article 18(4), such ancillary sanctions encompass: (a) confiscation of proceeds and/or assets derived from sexual violence offences; (b) revocation of specified licences; (c) publication of judicial determinations; (d) permanent interdiction from engaging in certain activities; (e) suspension of all or part of the corporation's operations; (f) closure of business premises, whether in whole or in part; and/or (g) dissolution of the corporate entity. These punitive measures parallel the regime of corporate liability as delineated under the Environmental Protection Law. Basis for the Judge's Consideration in the Medan District Court Decisions No. 73/PID.SUS/2023/PN MDN and No. 1448/PID.B/2023 PN MDN

1. First Case

A. Chronologies

The defendant is Lesman Sebayang, a physical education teacher at SMP Negeri 31 Medan, who between September 2021 and November 2022 at SMP Negeri 31 Medan committed indecent acts against several students at the school where he taught, namely the victim Qeisyia Zinovia, the victim Diva Alvani, the victim Khailila Anggraeni, the victim Vifoy Trifosa, the victim Ade Cantika Citra Ginting Suka, the victim Suci Berwi Rahmadani Br. Tarigan, and the victim Salsalina Br. Sinuraya.

B. Analysis of the Public Prosecutor's Indictment

The indictment filed by the Public Prosecutor is very important because it serves as a guideline or direction for the examination in court. According to the author's analysis, the

public prosecutor's indictment does not yet fulfil the sense of justice, certainty, and benefit to the defendant, making it insufficiently precise, clear, and comprehensive. The indictment should be drafted cumulatively, as the defendant not only committed physical abuse but also non-physical abuse against the victim, who is a minor, as stipulated in Article 5 of Law No. 12 of 2021 on Sexual Violence Crimes.

C. Analysis of Claims

The indictments advanced by the Public Prosecutor may be essentially delineated as follows:

- a. Declares that the defendant Lesman Sebayang has been proven legally and convincingly guilty of committing a criminal offence as regulated and punishable under Article 6 letter C of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence.
- b. Imposing a sentence on the defendant Lesman Sebayang of 4 (four) years' imprisonment, reduced by time served, and a fine of Rp. 60,000,000, with an alternative of 3 (three) months' imprisonment.
- c. Establish the evidence in the form of: 3 (three) pairs of SMP N31 sports uniforms and 1 (one) pair of SMP N31 batik uniforms to be confiscated and destroyed.
- d. Establish that the defendant pay court costs of Rp. 5,000 (five thousand rupiah).

D. Trial Facts

Based on the evidence and exhibits presented, the following legal facts were established:

a. Witnesses

There were several witnesses, including the child witness of the victim Qeisyia Zinovia, the child witness of Suci Berwi Rahmadani Br Tarigan, the witness Marissa Agustina, who is the mother of the child witness Qiesya Zinova Harahap, the child witness of the victim Khailila Anggraeni, the child witness of the victim Diva Alvani, the child witness of Evi, the child of the victim's witness Vifoy Trifosa Purba, the child of the witness Ade Cantika Citra Ginting Suka, the child of the witness Olivia Bregi Sitepu, the child of the witness Salsalina Br. Sinuraya, the child of the witness MARGARET, the child of the witness KEZIA D, the child of the witness Khaylila Anggraeini, and the child of the witness Gea Vanesa.

b. Letters

Official letters/authentic letters submitted and read out in court proceedings constitute documentary evidence, whereas ordinary letters have evidentiary value as circumstantial evidence if their contents are consistent with valid evidence. The Psychological Evaluation Report from the Psychologist of the Department of Women's Empowerment, Child Protection, and Community Development, Ika Wahyu Fitri, S.Psi, Psychologist (Examining Psychologist), dated 9 December 2022, regarding each child victim: Qeisyia Zinovia, Gea Vanesa, Diva Alvani Perangin-angin, and Ade Cantika Citra Ginting.

c. Instructions

From the evidence presented, as corroborated by the testimony of the witnesses and the child in court, it was concluded that there was consistency between the various pieces of evidence, pointing to and confirming the fact that the defendant had committed the criminal act of indecent assault.

The Defendant's statement: The Defendant is a physical education teacher at SMP Negeri 31 Medan on Jalan Jamin Ginting, Lau Cih Village, Medan Tuntungan District, Medan City, since 2018. In his statement, he confirmed all the statements made by the victim and the witnesses in court. The children witnesses felt afraid and traumatised by the Defendant's actions as described above, and the parents of the children witnesses have reached a

settlement with the Defendant, who has expressed regret for his actions and promised not to repeat them.

d. **Basis for the Judge's Consideration**

All constituent elements of Article 6(c) of Law No. 12 of 2022 on Sexual Violence Crimes are deemed satisfied; accordingly, the Defendant must be adjudged legally and convincingly proven to have perpetrated the offence as charged under the second subsidiary indictment. In determining the appropriate sanction, it is incumbent upon the court to first weigh both the aggravating and extenuating circumstances pertaining to the Defendant..

e. **Judgment Analysis**

The author believes that the panel of judges was incorrect in imposing the sentence on the perpetrator because, under Article 15(1)(b), (e), and (g) of Law No. 12 of 2022 on Sexual Violence Crimes against educators who commit crimes as referred to in Article 6, the sentence should be increased by one-third (1/3). , while the court only imposed a sentence of 2 (two) years. This decision was based on the author's interview with the court, which stated that the perpetrator had been dismissed from his position as an educator, a settlement had been reached, and the defendant's actions did not constitute rape. Therefore, the sentence imposed was only 2 (two) years' imprisonment and a fine of Rp.60,000,000.00 (sixty million rupiah).

2. **Second Case**

A. **Chronology**

The defendant, Agus Yatim alias Andy Syaputra, committed his first offence on Monday, 8 May 2023, at approximately 8:00 a.m. and his last offence on Sunday, 21 May 2023, at approximately 9:00 p.m. at a boarding house on Jalan PWS, Kelurahan Sei Putih Timur II, Kecamatan Medan Petisah, Kota Medan. The defendant and the victim met in February 2023, where the defendant became acquainted with the victim, Indah Syahfitri, who worked selling Kentucky fried chicken, while the defendant worked as a parking attendant alongside the victim's business.

B. **Analysis of the Public Prosecutor's Indictment**

In the proceedings against the accused, Agus Yatim alias Andy Syaputra, the indictment was predicated upon Article 293(1) of the Criminal Code, alternatively Article 6(c) of Law No. 12 of 2022 on Sexual Violence Crimes.

C. **Analysis of Requirements**

Criminal charges filed by the Public Prosecutor, which are essentially as follows:

- a. Finding the defendant Agus Yatim, alias Andy Saputra, proven guilty beyond a reasonable doubt of committing the criminal offence of abusing the influence arising from a relationship or intentionally deceiving someone into committing an indecent act with him, as provided for and punishable under Article 293(1) of the Criminal Code in the first charge;
- b. Sentencing the defendant Agus Yatim alias Andy Saputra to 3 (three) years and 6 (six) months imprisonment, minus the period of temporary detention already served by the defendant, with the order that the defendant remain in detention;
- c. Evidence: Nil
- d. Establish that the defendant pay court costs of Rp. 5,000.00 (five thousand rupiah);

D. **Trial Facts**

Based on the evidence and exhibits presented, the following legal facts were established:

- a. Witnesses

There were several witnesses, namely the victim Indah Syahfitri, Fahrizal Siregar, SP, and Muhammad Syamsudin.

b. Letter

Based on the Visum Et Repertum from Dr. Pirngadi Regional General Hospital Number: 175/VER/OBG/BPDRM/2023 dated 24 May 2023, prepared by the examining doctor, Dr. Elvira Muthia Sungkar, M. Ked (OG), SpOG.

c. Instructions

Pursuant to Article 188(2) of the Criminal Procedure Code, 'evidence' is deemed admissible solely when derived from witness testimony, documentary instruments, and the statements of the accused, further corroborated by expert opinion. From the evidence presented, as consistent with the witness statements and court proceedings, it is concluded that there is consistency between the various pieces of evidence, pointing to and confirming the fact that the defendant committed the criminal act of indecent assault.

According to the Defendant's own testimony, the initial act occurred on Sunday, 7 May 2023, at approximately 03:00 a.m., when the Defendant, together with the victim-witness, Indah Sayhfitri, was in search of a boarding house. On the following day, Monday at around 07:00 a.m., the Defendant and the victim-witness located a room situated on Jalan PWS, Sei Putih Timur II Village, Medan Petisah District, Medan City, for which the victim-witness, Indah Sayhfitri, remitted payment of Rp. 350,000.00 (three hundred and fifty thousand rupiah) for a one-month rental.

d. Basis for the Judge's Consideration

Given that all constituent elements of Article 293(1) of the Criminal Code are satisfied, the Defendant must accordingly be adjudged legally and convincingly proven to have committed the offence as charged in the primary indictment. The aggravating circumstances comprise: the Defendant's conduct engendering public unease, particularly among parents; the detrimental impact upon the victim's future; and the Defendant's prior criminal conviction. Conversely, the mitigating circumstances include the Defendant's candid admission, which served to expedite the judicial process.

e. Judgment Analysis

The author argues that the imposition of criminal penalties under the Criminal Code is no longer relevant today because there is now Law No. 12 of 2022 on Sexual Violence Crimes as a Lex Specialist of the General Provisions of the Criminal Code. Law enforcement authorities must embody a unified perception and orientation in the enforcement of laws pertaining to sexual offences, namely the primacy of the victim's best interests. In this context, the 'best interests' principle is realised through the application of Law No. 12 of 2022 on Sexual Violence Crimes, which mandates that law enforcement adopt a gender-sensitive perspective and refrain from secondary victimisation throughout the procedural stages of investigation, examination, prosecution, and adjudication. The nature of this law is evident in the maximum penalties imposed on perpetrators, including imprisonment, fines, and providing protection to victims through restitution.

5. Conclusion

From the findings of this study, it may be inferred that the regulation of sexual violence offences in Indonesia is dispersed across multiple legal instruments, including the Criminal Code (KUHP), the Child Protection Act, the Domestic Violence Eradication Act, and Law No. 12 of 2022 on Sexual Violence Crimes (TPKS), which operates as the *lex specialis*. The promulgation of the TPKS Law affords a more comprehensive framework, encompassing

classifications of offences, legal subjects, and the safeguarding of victims' rights through mechanisms of restitution and compensation. Nonetheless, an examination of Medan District Court Decisions No. 73/Pid.Sus/2023/PN Mdn and No. 1448/Pid.B/2023/PN Mdn reveals persisting inconsistencies in the application of law by enforcement authorities. In the first decision, the judge did use the TPKS Law as the basis for legal consideration, but the sanctions imposed were still light and restitution was not given to the victim. Meanwhile, in the second decision, the judge again used the Criminal Code as the legal basis even though the indictment had included the TPKS Law.

This reflects the lack of a complete, consistent, and uniform understanding among law enforcement officials in applying the TPKS Law. This situation implies that the existence of legal norms is merely formal and does not fully support the spirit of protecting victims. Therefore, it is necessary to strengthen the capacity of law enforcement officials through special training, clarify legislation regarding the revocation of KUHP provisions related to sexual violence crimes to avoid legal overlap, and educate the public so that society understands the forms of sexual violence and victims' rights to restitution. Thus, the implementation of the TPKS Law can run optimally in accordance with its objectives, namely to provide maximum protection for victims while ensuring fair law enforcement.

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