



Legal Considerations of Judges Regarding Criminalization of Sexual Violence by Parents Against Biological Children from the Perspective of Legal Objectives

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Abstract: Sexual violence committed by parents against their own children is considered a serious crime, with consequences that extend beyond criminal sanctions to long-term psychological trauma for the victims. In the reality of the justice system, sentencing is still dominated by imprisonment, while the mechanism for revoking guardianship rights, a form of real protection for children, is often overlooked. This study seeks to examine how judges consider imposing sanctions on parents found guilty of sexual violence. The method applied in this study is a normative juridical approach, namely by examining the provisions of laws and regulations and cases related to the problem studied. The results of the study show that the absence of additional penalties indicates a legalistic approach by judges, so that revocation of guardianship rights should be positioned as a mandatory legal consequence, not an optional one. The non-legal implications of not revoking guardianship rights for child victims include psychological trauma, a sense of insecurity, and the potential for repeated victimization. The perpetrator's status as a legal guardian prolongs the power relationship that is detrimental to the victim, thus hindering comprehensive recovery. Revocation of guardianship rights is a crucial step to end this relationship and ensure ongoing child protection.

Keywords: Sexual Violence; Children; Custody Rights; Legal Protection

Introduction

As the generation that inherits the nation's future, children hold the potential to uphold the nation's ideals and struggles in the future. Their existence plays a crucial role in the survival of the nation and state. The current condition of children will determine the direction of the nation's future. Careful treatment and a sense of security enable them to grow optimally and become the successors of this nation's civilization (Nuroniyah, 2022).

Normatively, the age limit for children has been regulated in Article 1 paragraph (1) of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which explains that "a child is a person who is not yet 18 (eighteen) years old, including children who are still in the womb."

Children are considered a vulnerable group and are prone to violence, including sexual violence, often perpetrated by those who should be protecting them, and even by their biological parents. This is a clear indication of moral degradation and a violation of noble values within society, causing severe physical and psychological suffering and impacting the mental development of the victims.

The World Health Organization (WHO) defines sexual violence as any act committed by force or threat of force, directed against a person's sexuality or sexual organs without their consent. This definition includes forced prostitution, for both men and women, as well as the trafficking of women for sexual purposes (Octavia, 2025).

Parents have a big responsibility in terms of care and protection, including ensuring that the stages of growth and development are met optimally, so that children can develop as intelligent individuals, healthy individuals, respect their parents and obey God Almighty, in line with Article 1 paragraph (12) of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which states "Children's rights are part of Human Rights which must be guaranteed, protected, and fulfilled by parents, family, society, government and the state", in reality children are still often the ones who experience sexual crimes, even though every child has a degree, value, and rights as an individual which must be looked after, appreciated, and protected as part of human rights.

Records from the Online Information System for the Protection of Women and Children (Simfoni-PPA) show that from January to June 2025, there were 13,845 cases of violence against women and children, with sexual violence being the most common type (Tim detik jateng, 2025). Most major cases of sexual violence against minors are perpetrated by perpetrators who are close to and know the victims. Approximately 30% of these cases are perpetrated by the victim's family, 60% by relatives or friends of the victim, and 10% by perpetrators who sexually abuse minors (Taqwani et al., 2022).

Indonesia is currently experiencing an increase in the number of cases of sexual violence against children, especially with the increase in rape cases where the perpetrators come from the family. Judging from the case of Decision Number 23/ Pid.Sus /2025/ PN.Lbh, it is a case of sexual violence against children, where the perpetrator is the victim's biological father. This case occurred in 2025 in West Madapolo Village, North Obi District, South Halmahera Regency, where RLA (42) committed sexual violence in the form of rape against his biological child SR (16) in an unknown number of cases from 2021 to 2025. RLA raped the victim while her biological mother was selling and threatened the victim with physical violence or death threats if the victim refused to have sex with RLA. As a result of this rape, the victim experienced changes in behavior and decreased self-confidence, and experienced Post-Traumatic Stress Disorder.

Another case is contained in Decision Number 7/Pid.Sus/2025/PN Lbh regarding the case of sexual abuse against a child committed by a biological father. The case occurred in 2024 in the Kampung Pisang Complex, Takoma Village, Central Ternate District, Ternate City, where IH (41) committed sexual violence in the form of rape against his biological child NI (16) twice. IH raped the victim while the victim was sleeping. This rape caused the victim to become quiet and lack self-confidence and suffered from psychological disorders.

Case in Decision Number 2/Pid.Sus/2026/PN Snn, defendant KU (41) who is also the biological father. The case occurred in 2025 in Wailoba Village, Mangoli Tengah District, Sula Islands Regency, North Maluku Province, where KU (41) committed sexual violence in the form of rape against his biological child SU (17) and HU (15) five times. This rape caused the victim to experience anxiety, lack of self-confidence, fear and shame, and hate his own father.

This situation demonstrates the alarming impact of sexual violence on children, especially when the perpetrator is their biological parent. The presence of a prosecutor representing the victim during the trial certainly cannot alleviate the trauma experienced by the victim. Many child victims ultimately experience significant stress and psychological disorders due to feelings of guilt or shame over the incident.

Judges, as law enforcers in Indonesia, exercise judicial power and are responsible for ensuring substantive justice through legal considerations. Judges consider many factors, particularly the best interests of child victims, in addition to evidence of the crime. Judges' legal considerations must balance legal certainty, justice, and expediency.

The author attempts to examine and analyze how the judge's legal considerations regarding the dynamics of considerations in cases of child sexual abuse related to non-judicial aspects of not revoking guardianship rights are oriented towards the best interests of the child.

Several previous studies also discussed the legal considerations of judges in cases of sexual violence, namely:

Table 1. Studies Also Discussed The Legal Considerations of Judges In Cases of Sexual Violence

No	Author Name	Article Title	Formulation of the problem	Conclusion
1	Syahreza & Apriyani	Journal of Juridical Analysis of Judges' Considerations in Cases of Sexual Violence Against Children (Study of Decision Number 2627/pid.sus/2019/pn.sby) Volume 8 Number 2 (May-July), pp. 1118-1130	How did the judge's considerations in case number 2627/Pid.Sus/2019/PN Sby relate to the applicable sexual violence regulations	In case No. 2627/Pid.Sus/2019/PN Sby, the judge considered the aggravating and mitigating elements of the sentence by taking into account both legal and non-legal aspects, such as the defendant's condition, trial facts, and statutory regulations. The judge also exercised his prerogative in handing down the sentence. (Syahreza & Apriyani, 2025)
2	Sihotang et al., 2022	Jurnal Penerapan Peradilan Hakim dalam Putusan No.989/PID.SUS/2021/P N.Bdg Perkara atas Tuntutan Jaksa Penuntut Umum dalam Kasus Kekerasan Seksual pada Anak dalam Perspektif Peradilan Anak Jilid 5, Nomor 6, Juni2022 (1678-1689)	What is the legal basis for the panel of judges' considerations in imposing additional penalties, namely the death penalty and chemical castration in the case of sexual violence against 13 female students, and referring to the Criminal Code, Law Number 23 of 2002 concerning Child Protection which was last amended by Law Number 17 of 2016, and Government Regulation Number 70 of 2020	The rape of several Islamic boarding school students in Bandung is considered a very serious crime and has a high level of cruelty (The Most Serious Crime), considering that the act was carried out with premeditation (by design), not spontaneous acts carried out without calculation. The perpetrator, identified as HW, carried out his actions in stages, using psychological threats and confinement. The perpetrator also promised various benefits to the victims as a form of manipulation, so that the victims could slowly be influenced to comply with the perpetrator's wishes (Sihotang et al., 2022)
3	Wahyu & Taun	Journal of Basic Considerations of Judges in Sentencing Children to Death in Sexual Violence Cases (Study of Supreme Court Decision Number 5642 K/Pid.Sus/2022) Volume 3, Number 2, 2023, Pages 3211-3223	What is the legal basis used as a reference by the panel of judges in giving the death penalty to perpetrators of sexual crimes against children? Study of Supreme Court Decision Number 5642K/Pid.Sus/2022	What is the legal basis used by the panel of judges in imposing the death penalty on perpetrators of sexual crimes whose victims are children, as examined in the Supreme Court Decision Number 5642 K/Pid.Sus/2022? In making the decision, the three judges conducted a thorough examination of the case files, including documents at previous court levels, such as criminal charges from the Public Prosecutor of the Bandung District Attorney's Office, the decision of the

				Bandung District Court of first instance, the decision of the Bandung High Court of appeal, the cassation application deed, the cassation memorandum from the defendant's legal counsel and the Public Prosecutor, and other related documents, as regulated in the Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure Law Article 253 paragraph (1) letter c and paragraph (2) (Diningrum & Taun, 2023)
4	Frans A. Kabnani, Karolus KopongMe dan dan Rudepel Petrus Leo	Journal of Basic Considerations for Judges in Sentencing Perpetrators of the Crime of Child Sexual Intercourse by Mutual Consensus from a Justice Perspective Volume 6, Number 1, January 2025	How ethical and moral considerations influence judges' decisions in cases of sexual assault against children, as reflected in Decision Number 147/Pid.Sus/2023/PN Kpg. This case occurred because both the perpetrator and the victim were minors, and the sexual intercourse occurred consensual. Nevertheless, the act remains categorized as a criminal offense under Indonesian law.	The judge still ruled against the perpetrator of sexual acts against a child despite an agreement between the parties, and the perpetrator was still considered a minor. Criminal law essentially provides special protection to child victims without considering the victim's consent. The victim's family also rejected the alternative peaceful resolution proposed by the panel of judges. Furthermore, the judge was deemed to have failed to pay attention to the provisions of the juvenile criminal justice system, which emphasizes the development process and a restorative justice approach. From a social perspective, the panel of judges has determined the provisions of the articles imposed on the defendant and the magnitude of the potential criminal penalties, with the aim of creating a deterrent effect while providing benefits to the defendant and society, especially the victim and her family (Kabrani et al., 2025)

Based on the background outlined above, this research focuses on examining judges' considerations in sentencing parents who commit sexual violence under the old and new Criminal Codes. Furthermore, this research examines how the revocation of guardianship rights should be implemented to ensure the principle of justice and provide optimal legal protection for child victims. This research also examines the non-legal implications that may arise if guardianship rights are not revoked, particularly regarding the psychological well-being of child victims of sexual violence.

Research Methods

This research uses a normative legal approach or a literature review conducted through a review of primary, secondary, and tertiary data sources. This normative legal method is carried out using a statute approach, namely a study of laws, and a conceptual approach intended to analyze various legal concepts related to the problem that is the focus of the research. All collected data is processed and analyzed qualitatively, namely analysis in the form of words that are observed by the researcher.

Results and Discussion

Judges' Considerations in Sentencing Parents Who Perpetrate Sexual Violence Based on the Old and New Criminal Codes

The enactment of Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code) is a milestone in the reform of the Indonesian criminal justice system, providing a new framework for assessing judges' considerations, especially in crimes of sexual relations with biological children. This shift from legal heritage to national law is not only textual, but also represents a paradigm transformation from retributive justice (retribution) to justice with a healing dimension (restoration) (Thani et al., 2025) and victim protection. In the Dutch colonial criminal law system (Wetboek van Strafrecht or Old Criminal Code), crimes of sexual violence against children were not specifically regulated based on power relations, but were included in the general chapter on crimes against morality, namely in Article 287 paragraph (1), which views this crime solely as a moral and normative violation (Murdiana et al., 2025).

Dogmatically, Raden Soesilo (1980) in his view stated that intercourse can occur due to the meeting between the male genitals and the female genitals accompanied by the release of semen, the point of proof in the Old Criminal Code Article 287 of the Criminal Code regulates the crime of sexual relations committed against a woman outside of marriage, whose age has not reached 15 years, with the threat of punishment in the form of a maximum prison sentence of 9 years. This regulation has a normative weakness because it does not provide guidelines that explicitly regulate the aggravation of the criminal penalty for perpetrators who have a relationship as the biological father or legal guardian of the victim (Dewi et al., 2019)

As a result of the absence of specific aggravating norms in the Old Criminal Code, judges' considerations in deciding cases often tend to impose sanctions that are oriented towards retributive aspects (Anis & Fitriani, 2023), without proportionally considering the fact that the perpetrator had abused the trust of his guardianship. Prof. Moeljatno emphasized that criminal law must be based on the principle of legality (Low.com, 2022), An act must not only be written down in law, but its punishment must also reflect the justice prevailing in society. The case of a father having sexual intercourse with his biological daughter requires a harsher sanction due to the violation of trust within the family, so substantive justice must be firmly upheld.

These various shortcomings were corrected through the New Criminal Code. Article 413 of the New Criminal Code explicitly provides an instrument for judges to impose more progressive sentences for the crime of incest. Any individual who has sexual relations with someone who he knows is part of the nuclear family, can be sentenced to a maximum of 10 (ten) years in prison, as regulated in Article 437 paragraph (2) letter b which states "any person who by violence or threat of violence forces another party to have sexual relations with him, is punished as a perpetrator of rape with a maximum prison sentence of 12 (twelve) years if the act is committed against a child." This change in the New Criminal Code creates a more comprehensive child protection framework, where judges are directed to consider blood family relationships as an aggravating factor.

The judge's considerations are further strengthened by the hierarchical harmonization between the New Criminal Code and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Article 81 paragraph (3) of the Child Protection Law imperatively and non-negotiably orders the judge to increase the maximum criminal penalty by one third if the perpetrator is a parent, guardian, or caretaker of the child. The function of criminal law as an ultimum remedium must

be optimized to limit the capacity of perpetrators of domestic violence (Rahmawati, 2013). Legal certainty, as proposed by Gustav Radbruch, provides space for judges to interpret the law contextually, not just to implement the text of the law rigidly (Ave, 2025). A comparison between the Old Criminal Code and the New Criminal Code shows a shift in the orientation of judges' considerations from being rigid to being more focused on efforts to protect children and ending exploitative power relations.

Implementation of Revocation of Guardianship Rights to Ensure the Principles of Justice and Child Protection

The construction of modern criminal law should not merely be corporal punishment, but rather should have a progressive and long-term reach, namely addressing the root of the problem to protect victims sustainably in the future. An analysis of this guarantee of justice and child protection can be seen through the anatomical analysis of three first-instance court decisions, all of which implicated biological fathers as the primary perpetrators of sexual violence.

First, in Decision Number 23/Pid.Sus/2025/PN.Lbh, the Defendant with the initials RLA was legally and convincingly proven to have raped his biological child, SR, who was still 16 years old. This crime was committed repeatedly over a very long period of time, namely from 2021 to 2025. The trial facts revealed that the Defendant used his power relations to sexually exploit the victim while his wife (the victim's mother) was selling, even accompanying it with threats of physical murder if the victim refused to satisfy his lust.

Second, in Decision Number 7/Pid.Sus/2025/PN Lbh, Defendant IH was proven to have committed the same sexual crime, raping his biological child, NI (16 years old), twice in 2024 by taking advantage of the victim's carelessness who was fast asleep in the house which should have been the safest place for him.

Third, Decision Number 2/Pid.Sus/2026/PN Snn, defendant KU (41) who also carried out a power relationship with his biological child SU (17) twice and HU (15) five times accompanied by threats. These actions have had a serious impact on the psychological condition and development of the child.

In the three case studies, all defendants were sentenced to prison terms. When examined from a comprehensive legal protection perspective, there is a legal gap in the application of the law in these decisions because the panel of judges did not impose an additional penalty in the form of revocation of guardianship rights.

The prison sentences in these three decisions are considered suboptimal if the perpetrator's guardianship is not revoked by the state. In its deliberations, the Panel of Judges tended to focus the sentencing on sanctions that involve the deprivation of physical liberty alone. This approach does not fully accommodate the long-term interests of the victim. Legally, Article 86(e) of the National Criminal Code authorizes judges to impose additional sanctions in the form of revocation of the right to exercise paternal authority, the right to act as a guardian, or the right to care for one's own children.

The provisions of Article 86, letter e, of the New Criminal Code should be implemented by judges as a systemic response to power-based crimes. This additional penalty serves to limit the perpetrator's civil authority, which could potentially harm the victim in the future. Furthermore, this measure is supported by Article 49 of Law Number 1 of 1974 concerning Marriage, which stipulates that parental authority can be revoked through the courts if the person in question behaves badly.

Sexual intercourse by a biological father without revocation of guardianship rights is a crucial protection instrument. Without a decision to revoke these rights, the perpetrator remains legally and formally the victim's legal guardian. The neglect of implementing additional penalties reflects a practice that is still oriented towards formal legalism, an approach that has previously been criticized by the court. The overly sharp separation between civil and criminal matters in the courtroom can hinder the achievement of the child's best interests.

Philipus M. Hadjon is of the opinion that legal protection must be preventive and sustainable (Wasiati, 2020). The absence of revocation of guardianship rights in criminal court decisions can be

viewed as a form of administrative impunity. Even though the biological father is serving a prison sentence, he legally retains authority over educational approvals, population administration, and even his position as marriage guardian (Adicahya, 2020). Farig stated that judges should optimize judicial activism by integrating the sanctions of Article 86 letter e of the New Criminal Code into criminal decisions in order to break the chain of victims' vulnerability (Farig, 2025) .

The revocation of guardianship rights in cases of sexual intercourse by the biological father cannot be positioned as an optional choice, but rather as an inherent legal consequence or absolute requirement (*conditio sine qua non*). Without a ruling revoking these rights by the panel of judges, the perpetrator remains legally, formally, and administratively the victim's legal guardian in the eyes of the state. The judges in these three decisions have proven to have separated the criminal and civil spheres in a very rigid and textual manner. Satjipto Rahardjo (2009) (Lubis, 2025) states that law enforcement must not merely be a mouthpiece or machine of the law (*la bouche de la loi*) that ignores the urgency of real victim recovery in the field. The rigid separation between the civil realm (custody/guardianship) and the criminal realm (corporal punishment) in the courtroom can hinder the achievement of the best interests of children, so they must be integrated harmoniously for a single, complementary goal (Seroja, 2020).

Gultom (2020) argues that child protection must be preventative and sustainable. The absence of revocation of guardianship rights in criminal court decisions can be seen as a form of administrative impunity. Even though the biological father is serving a prison sentence, he legally retains authority over educational approvals, population administration, and his position as guardian (Kompas.tv, 2025). Judges should further optimize judicial activism, by integrating the sanctions of Article 86 letter e of the New Criminal Code into criminal decisions in order to break the chain of victims' vulnerability (Putra, 2025)

Non-legal Implications of Not Revoking the Guardianship Rights of Child Victims

The impact of not implementing the revocation of guardianship rights has the potential to worsen the child's psychosocial condition in the long term (Adinda et al., 2025). Arif Gosita (1989) (Lalata, 2012) In theory, he states that the harm suffered by victims of crime is not only physical, which can heal with time, but also touches a deeper psychological dimension, where the child loses a sense of security within their environment. When the perpetrator retains legal legitimacy as a guardian, the non-legal implications for the child include a vulnerability to ongoing psychological stress and symptoms of depression.

This situation aligns with the trial facts regarding victim SR, who clinically suffers from Post-Traumatic Stress Disorder (PTSD), as well as victim NI, who has experienced a drastic decline in social interaction, and HU, who is ashamed of his surroundings and afraid. Child victims of incestuous sexual violence are vulnerable to anxiety because they are still legally bound to the individual who perpetrated the violence against them. Every bureaucratic process during their development still potentially requires the involvement of the perpetrator's father. This situation represents a structural crisis of trust (Suriadi, 2012), where the administrative system indirectly requires the victim to continue dealing with the perpetrator.

In his study, Hikmayah explains that trauma resulting from incest has exponential destructive power (Hikimayah et al., 2023). This will destroy the very foundation of a child's mental development if the power relations are not completely and forcibly severed by repressive state instruments. Allowing this guardianship status to persist is inconsistent with the spirit of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which requires guarantees of physical and psychological recovery for children.

Putri and Sugama are of the view that the law enforcement process needs to pay attention to efforts to prevent secondary victimization (Putri & Sugama, 2025). Victims of sexual crimes have non-derogable human rights (Sinambela & Melatyugra, 2025). If guardianship is not revoked through the authority of Article 86, letter e of the New Criminal Code, the perpetrator has the potential to abuse this status as a

means to maintain their dominance over the victim. Violence against children is often difficult to resolve because it is constrained by the hierarchy of parental authority that has not been explicitly delimited by judicial decisions.

Conclusion and Suggestions

Conclusion

The considerations used by judges when issuing criminal sentences to perpetrators of sexual violence under the old and new Criminal Codes indicate a shift from the formalistic and retributive nature of the Old Criminal Code to the New Criminal Code, which is more oriented towards child protection and substantive justice. Revocation of guardianship rights should be implemented to ensure the principles of justice and child protection. The lack of application of revocation of guardianship rights in court decisions impacts the guarantee of child protection. Revocation of guardianship rights, as an effort to ensure the principles of justice and child protection, should be implemented maximally. The absence of the application of additional penalties indicates a legalistic approach by judges, so that revocation of guardianship rights should be positioned as a mandatory legal consequence, not an optional one. The non-legal implications of not revoking guardianship rights for child victims include psychological trauma, a sense of insecurity, and the potential for repeated victimization. The perpetrator's status as a legal guardian prolongs the power relationship that is detrimental to the victim, thus hindering comprehensive recovery. Revocation of guardianship rights is a crucial step in severing this relationship and ensuring ongoing child protection.

Suggestion

Judges need to optimize the application of additional penalties, such as revoking guardianship rights for parents who commit sexual violence, to ensure the protection and best interests of child victims. Clearer guidelines are needed in judicial practice to ensure consistent revocation of guardianship rights for perpetrators who are biological fathers. The government also needs to strengthen psychological support and rehabilitation for child victims to support their comprehensive recovery process.

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