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Judges' Legal Considerations in Cases of Sexual Violence Against Children

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Abstract

This study aims to analyze the judges' legal considerations in adjudicating criminal cases of sexual violence against children in Decision Number 17/Pid.Sus/2023/PN Cbn and Decision Number 343/Pid.Sus/2025/PN Sbr. This study is a normative or doctrinal legal research. The legal materials used consist of primary and secondary legal materials. The legal materials were collected through library research and subsequently analyzed qualitatively using a prescriptive approach and presented descriptively. The results indicate that although both cases applied the same statutory provisions, there is a significant difference in the criminal penalties imposed by the judges. In the first decision, the sentence imposed was more severe than the prosecutor's demand. This can be justified because the defendant's conduct was not limited to engaging in sexual intercourse with a child but also involved trafficking the victim for sexual purposes, from which the defendant gained financial benefits. Conversely, in the second decision, the sentence imposed was more lenient despite the victim becoming pregnant as a serious consequence of the offense. These differences were influenced by both juridical and non juridical considerations, as well as the judges' orientation toward the objectives of sentencing. Nevertheless, the imposition of a lighter sentence in a case involving severe harm to the victim has the potential to undermine justice and create disparities in the level of legal protection afforded to child victims.

Introduction

Sexual violence is defined as any form of act related to sexual activity that is carried out through violence, coercion, or without the victim's consent.[1] Such acts encompass various forms of conduct, such as rape, sexual harassment, and sexual exploitation.[2] Essentially, sexual violence occurs due to the presence of coercion or when the victim is unable to give informed consent—

[1] Nurini Aprilianda, Mufatikhatul Farikhah, and Liza Agnesta Krisna, "Critical Review Selecting a Proper Law to Resolve Sexual Violence Against Children," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (December 31, 2022): 954, https://doi.org/10.22373/sjhk.v6i2.9050.

[2] Charistina Bagenda et al., "Perlindungan Hukum Terhadap Korban Kekerasan Seksual," *Jurnal Kolaboratif Sains* 7, no. 9 (2024): 3502–6, https://doi.org/10.56338/jks.v7i9.6099.

as is often the case in incidents of sexual violence against children. All forms of sexual violence against children constitute crimes that can be categorized as serious violations of human rights, given that their impact is not only physically harmful but also causes long-term psychological trauma for the victims.[3] This situation demonstrates that sexual violence does not merely have a temporary impact but also has the potential to comprehensively undermine a child's development and future.[4]

Children are among the most vulnerable groups and therefore require maximum protection from the state.[5] Constitutionally, children's fundamental rights regarding protection from violence and discrimination are enshrined in Article 28B, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This provision affirms that every child has the right to live, grow, and develop, as well as to receive adequate protection.[6] In this context, the state has an obligation to guarantee and protect children from various forms of deviant behavior and acts of violence that could endanger their development. This obligation stems from the state's commitment to the Constitution, as reflected in the Preamble to the 1945 Constitution, which is further regulated in legislation, including the Child Protection Act.[7]

With regard to legal protection for children who are victims of sexual violence, the relevant provisions are set forth in the Child Protection Law and its amendments.[8] Article 76D of Law No. 35 of 2014 Amending Law of the Republic of Indonesia No. 23 of 2002 on Child Protection prohibits any person from committing acts of violence or making threats of violence to coerce a child into sexual intercourse. Criminal penalties for violations of these provisions are set forth in Article 81 of Law No. 17 of 2016 on the Enactment of Government Regulation in Lieu of Law No. 1 of 2016 on the Second Amendment to Law of the Republic of Indonesia No. 23 of 2002 on Child Protection into Law. These provisions affirm the imposition of harsher criminal penalties for perpetrators of sexual violence against children and provide more detailed provisions regarding the application of criminal sanctions, including the subjects to whom harsher penalties may be imposed and the possibility of additional penalties being imposed.[9]

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3 Setyo Utomo et al., "Pidana Bagi Pelaku Kejahatan Seksual Anak : Analisis Undang-Undang Nomor 12 Tahun 2022," *Jurnal Kolaboratif Sains* 7, no. 12 (2024): 4527–32, https://doi.org/10.56338/jks.v7i12.6458.

4 Risqi A'maludin, "Analysis of the Judge's Decision on Sexual Crimes Against Children (Study of the Decision of the Purwokerto District Court Number: 16/Pid.Sus-Child/2022/PN Pwt)," *Proceedings Series on Social Sciences & Humanities* 14, no. SE-Articles (November 16, 2023): 304–8, https://doi.org/10.30595/pssh.v14i.1054.

5 Novita Cahyaningrum and Gelar Ali Ahmad, "Issue of Judicial Consideration in Acquittal (Vrijspraak) : Cases of Sexual Violence Against Children," *Veteran Law Review* 8, no. 2 (December 11, 2025): 193–212, https://doi.org/10.35586/velrev.v8i2.12669.

6 Afrisyal Chandra Permana and Asmak Ul Hosnah, "Perlindungan Anak Sebagai Subjek Hukum : Tinjauan Terhadap Tanggung Jawab Negara Dalam Perfektif Ham," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 6 (2025): 9935–46, https://doi.org/https://doi.org/10.61104/alz.v3i5.2716.

7 Waluyadi and Ratu Mawar, "Kontribusi Penelitian Kemasyaratan Balai Pemasyarakatan (BAPAS) Untuk Mewujudkan Putusan Hakim Yang Berpihak Pada Anak," *Pandecta* 16, no. 2 (2021): 250–65, https://doi.org/http://dx.doi.org/10.15294/pandecta.v16i2.30697.

8 Muhammad Bukhori Setiawan, "THE JUDGE'S CONSIDERATION OF THE CHILD AS THE PERPETRATOR OF SEXUAL VIOLENCE THAT RESULTED IN THE VICTIM'S DEATH: AN ANALYSIS OF DECISION NUMBER 50/PID. SUS-ANAK/2024/PN PLG & 51/PID. SUS-ANAK/2024/PN PLG," *Ta'zir: Jurnal Hukum Pidana* 9, no. 2 (n.d.): 107–16, https://doi.org/10.19109/tazir.v9i2.28734.

9 Ela Nur Syiyam, "Dasar Pertimbangan Hukum Hakim Dalam Menjatuhkan Pidana Mati Terhadap Pelaku Tindak Pidana Kekerasan Seksual Terhadap Anak (Studi Analisis Putusan Nomor: 86/Pid.Sus/2022/PT.Bdg.)" (Universitas Islam Negeri Prof. K. H. Saifuddin Zuhri Purwokerto, 2023).

Although there are clear regulations regarding prohibitions and criminal penalties for perpetrators of sexual violence against children[10], law enforcement practices are inextricably linked to the role of judges as the parties with the authority to issue rulings.[11] During the examination and adjudication of criminal cases, judges have the discretion to assess the case based on their convictions and legal considerations to determine the defendant's guilt and to set the severity of the sentence imposed. This assessment is based on the facts revealed during the trial, the evidence presented, and the aggravating and mitigating circumstances of the defendant. Given this authority, it is not uncommon to find court rulings that apply the same statutory provisions to cases of sexual violence against children but result in differing sentences imposed on the perpetrators. This situation indicates variations in judicial discretion, leading to differing rulings among judges when adjudicating such cases.[12]

A judge's freedom to render a verdict is a manifestation of the independence of the judiciary, as stipulated in Law No. 48 of 2009 on the Judiciary.[13] However, significant disparities in sentencing can give rise to various problems, such as legal uncertainty, injustice, and varying levels of protection for victims. Differences in rulings on similar cases also have the potential to create the perception that the law is not applied consistently, which can erode public trust in the judicial system.

The phenomenon of judges' legal reasoning in cases of sexual violence against children can be observed concretely in judicial practice; this is reflected in court rulings that use the same legal basis but result in differing criminal sentences. For example, in Judgment No. 17/Pid.Sus/2023/PN Cbn, the defendant was found guilty of committing the offense as stipulated in Article 76D in conjunction with Article 81(2) of Law No. 17 of 2016 concerning the second amendment to Law No. 23 of 2002 on Child Protection, and was sentenced to 12 (twelve) years' imprisonment. Meanwhile, in Judgment No. 343/Pid.Sus/2025/PN Sbr, the defendant was found guilty of committing the acts as stipulated in Article 76D in conjunction with Article 81(1) of Law No. 17 of 2016 on the Second Amendment to Law No. 23 of 2002 on Child Protection, and was sentenced to 10 (ten) years' imprisonment.[14]

Based on the two rulings above, the judges' legal reasoning in cases of sexual violence against children reveals issues regarding the consistency of sentencing in judicial practice. This phenomenon warrants further study to understand how judges weigh various factors when rendering their decisions. In this study, the primary focus is on the basis of the judges'

[10] Tiffany Lewis, Bianca Klettke, and Andrew Day, "Sentencing in Child Sexual Assault Cases: Factors Influencing Judicial Decision-Making," *Journal of Sexual Aggression* 20, no. 3 (September 2, 2014): 281–95, https://doi.org/10.1080/13552600.2013.804603.

[11] Muhammad Siddiq Armia et al., "Criticizing the Verdict of 18/JN/2016/MS.MBO of Mahkamah Syar'iyah Meulaboh Aceh on Sexual Abuse against Children from the Perspective of Restorative Justice," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 1 (June 29, 2022): 113–35, https://doi.org/10.19105/al-lhkam.v17i1.4987.

[12] Benni Erick and Khairil Rizal, "Pertimbangan Hakim Dalam Menjatuhkan Uqubat Terhadap Jarimah Pelecehan Seksual (Studi Kasus Mahkamah Syar ' Iyyah Aceh Barat)," *Jurnal Sosial Humaniora Sigli (JSH)* 4, no. 2 (2021): 119–36.

[13] Clare MacMartin, "Judicial Constructions of the Seriousness of Child Sexual Abuse.," *Canadian Journal of Behavioural Science / Revue Canadienne Des Sciences Du Comportement* 36, no. 1 (January 2004): 66–80, https://doi.org/10.1037/h0087217.

[14] Iwan Setyawan, Desi Yeni Pardede, and Stacie Stravinsky Chandra, "Legal Analysis of Punishment for Perpetrators of Violence Against Children in the Perspective of Substantive Justice (Study of Decision Number 103/Pid.Sus/2017/PN Psb)," *JURNAL MERCATORIA* 18, no. 1 (June 27, 2025): 102–14, https://doi.org/10.31289/mercatoria.v18i1.15346.

considerations, which include both legal and non-legal aspects, as well as the orientation of the objectives of criminal punishment used in adjudicating these cases. Therefore, this study focuses on analyzing the judges' considerations in rendering decisions that result in differences in sentencing in cases of sexual violence against children, specifically in Judgment No. 17/Pid. Sus/2023/PN Cbn and Judgment No. 343/Pid.Sus/2025/PN Sbr.

Method

This study is a normative or doctrinal study.[15] The legal materials used consist of primary and secondary legal sources. Primary legal sources include laws and regulations and court decisions that are the subject of the study, while secondary legal sources consist of books, journals, and legal literature related to the issues under investigation. The legal materials were collected through a literature review. Subsequently, the legal materials obtained were analyzed qualitatively using a prescriptive approach and presented descriptively.

Result and Discussion

The law serves to create order and legal certainty in society. Legal certainty is a key value of legislation because it provides clear boundaries between what is legal and what is not. With this certainty, law enforcement officials and the public can use it as a guide in applying applicable legal provisions. Based on this understanding, criminal sanctions are used as a tool to combat crime while also serving as a deterrent for offenders.[16] Criminal sanctions serve as a guide for society because they are viewed as a means to address various forms of crime that continue to evolve, particularly crimes in which children are the victims. In Indonesia, children hold an important status because their rights are guaranteed by the national constitution, including the right to grow, develop, and receive protection from all forms of violence and discrimination.[17]

However, in judicial practice, the enforcement of the law regarding children as victims of sexual violence does not always result in consistent rulings. This is evident in cases of sexual violence against children in Judgment No. 17/Pid.Sus/2023/PN Cbn and Judgment No. 343/Pid. Sus/2025/PN Sbr. Both cases essentially share the same characteristics, namely that they both involve sexual intercourse with a minor. However, the two cases resulted in different rulings as a consequence of the judges' discretion to examine and adjudicate criminal cases based on their legal considerations. This indicates a disparity in rulings, which essentially negates the concept of parity—that is, equal punishment for similar crimes under comparable conditions or circumstances.[18]

In Judgment No. 17/Pid.Sus/2023/PN Cbn, the defendant committed the acts by luring the victim, who was only 12 (twelve) years old, through a romantic relationship and promises of

[15] John Creswell and J David Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (Sage publications, 2017).

[16] Ari Nurhaqi, "Respon Nilai Keadilan Atas Keberlakuan Asas Legalitas Dalam Hukum Pidana," *Collegium Studiosum Journal* 5, no. 1 (2022): 1–9.

[17] Sanusi Sanusi, "Diversion in the Settlement of the Criminal Act of Disposal of Infants," *JPPI (Jurnal Penelitian Penididikan Indonesia)* 10, no. 1 (2024): 296–301, https://doi.org/https://doi.org/10.29210/020243238.

[18] Nurmala Ismail et al., "Disparitas Sanksi Pidana Dalam Perkara Persetubuhan Terhadap Anak Di Pengadilan Negeri Soa-Sio," *HERMENEUTIKA* 5, no. 2 (2021), https://doi.org/http://dx.doi.org/10.33603/hermeneutika.v3i2.

responsibility. These acts did not only involve sexual intercourse but also escalated into sexual exploitation, in which the victim was offered and sold to third parties via social media in exchange for certain compensation. Based on these facts, the defendant was charged under Article 81(2) in conjunction with Article 76D of the Child Protection Act. The Public Prosecutor sought a prison sentence of 7 (seven) years; however, the Panel of Judges imposed a harsher sentence of 12 (twelve) years' imprisonment.

Meanwhile, in Judgment No. 343/Pid.Sus/2025/PN Sbr, the defendant's acts were committed using violence or the threat of violence and by exploiting the victim's psychological state, in which she was in a position of fear toward the defendant. These acts were committed repeatedly over a specific period of time and were therefore classified as a continuing offense, which ultimately resulted in the child victim becoming pregnant. Based on these facts, the defendant was charged under Article 76D in conjunction with Article 81(1) of the Child Protection Act in conjunction with Article 64 of the Criminal Code. The prosecutor sought a prison sentence of 13 (thirteen) years, but the judge imposed a lighter sentence of 10 (ten) years in prison.

Based on the above discussion, it is evident that although both cases involve the same type of criminal offense, there are differences in the modus operandi and circumstances that lead to differences in sentencing. These differences serve as a crucial basis for analyzing how judges evaluate cases before rendering a verdict. The sentencing of offenders cannot be separated from the roles of prosecutors and judges as law enforcement officials who are required to have a deep understanding of the elements of the crimes committed—particularly in cases of sexual violence against children—so that law enforcement can deliver justice for both the offenders and the community.[19]

According to Rusli Muhammad (in Haikal, 2023), a judge's considerations in rendering a verdict can be divided into legal and non-legal considerations. From a legal perspective, the judge first assesses whether the elements of the charged offense have been met based on the legal facts revealed during the trial and as required by law to be included in the verdict.[20] In Judgment No. 17/Pid.Sus/2023/PN Cbn, the judge determined that the element of "intentionally using deception, a series of lies, or persuasion to induce a child to engage in sexual intercourse with the defendant or with another person" had been satisfied through the defendant's actions of seducing the victim into engaging in sexual intercourse and offering or selling the victim to men seeking sexual favors via social media. Meanwhile, in Judgment No. 343/Pid.Sus/2025/PN Sbr, the judge determined that the element of "using violence or the threat of violence to force a child to engage in sexual intercourse with the defendant or with another person" as well as the element of "if, among several acts—even though each constitutes a crime or offense— are so interconnected that they must be regarded as a single continuing act" had been satisfied based on the defendant's repeated actions, which exploited the victim's fear.

Furthermore, the presentation of evidence in criminal cases must be based on admissible evidence as stipulated in Article 235 of Law No. 20 of 2025 on the Criminal Procedure Code. In both cases analyzed, the evidence was supported by witness testimony, a forensic report (visum

[19] Yanti Kirana, *Pelindungan Hukum Terhadap Anak Sebagai Korban Kekerasan Seksual* (Purwokerto: PT. Pena Persada Kerta Utama, 2023).

[20] Jenggis Khan Haikal, *Analisis Pertimbangan Hakim Dalam Menjatuhkan Putusan Bebas Terhadap Pelaku Tindak Pidana Penipuan Jual Beli Tanah*, ed. Alfiatin (Purwokerto: Penerbit Amerta Media, 2023).

et repertum) as documentary evidence, the defendant's testimony, and physical evidence in the form of clothing, a cell phone, and the guest register from the lodging facility, all of which were presented during the trial. Thus, from a legal standpoint, the evidence in both cases was based on admissible evidence that provided a basis for the judge to find the defendant guilty of the criminal acts with which they were charged.

In addition to legal considerations, the judge also took into account non-legal aspects related to sociological and psychological conditions, such as the defendant's background, social circumstances, and aggravating and mitigating factors.[21] In Judgment No. 17/Pid.Sus/2023/PN Cbn, the aggravating factors included, among others, the fact that the defendant's actions caused public alarm and were acts that could ruin the future of the victim, a child who is 12 (twelve) years old and still attending elementary school (SD), while the mitigating factors included the defendant's polite demeanor during the trial, the presence of remorse, and the fact that the defendant had no prior criminal record. Meanwhile, in Judgment No. 343/Pid.Sus/2025/PN Sbr, the aggravating factors include, among others, the defendant's actions causing the child victim trauma and jeopardizing the child victim's future, while the mitigating factors are relatively the same: the defendant has no prior criminal record, behaved cooperatively during the trial, and expressed remorse for his actions.

Furthermore, the judge's legal reasoning can also be examined from several aspects, namely: 1) regarding the facts of the act—in Judgment No. 17/Pid.Sus/2023/PN Cbn, the defendant not only had sexual intercourse with the victim but also sold and offered the victim's child to pedophiles via social media. Meanwhile, in Judgment No. 343/Pid.Sus/2025/PN Sbr, the acts were committed repeatedly within a family relationship, accompanied by psychological pressure on the victim, who felt afraid of the defendant; 2) regarding the victim's condition, in the second case the victim became pregnant, which, from a victimological perspective, indicates a more severe impact compared to the first case; 3) regarding the perpetrator's role, in the first case, the perpetrator acted as the party exploiting the victim for economic gain, whereas in the second case, the perpetrator exploited power dynamics within the family environment.

Differences in these three aspects ultimately require judges to develop comprehensive legal reasoning in their legal considerations before deciding a case. This is in line with the provisions of Article 50(1) of Law No. 48 of 2009 on Judicial Power, which states that "A court decision must not only contain the reasons and grounds for the decision but also cite specific provisions in relevant laws and regulations as well as unwritten sources of law upon which the adjudication of the case is based." Furthermore, Article 53(2) of the Judicial Power Act stipulates that "Every court ruling and decision as referred to in paragraph (1) must include the judge's legal reasoning based on appropriate and correct grounds and legal bases".[22]

According to Sudikno Mertokusumo (in Susilowati et al., 2024), legal reasoning—also known as the ratio decidendi or the judge's reasoning—is the part of a court decision that contains the legal considerations used by the judge in deciding a case. In the case-law approach, a decision is viewed as the establishment of a legal rule; thus, the binding portion consists of the judge's

[21] M. Mu'afilah Rizqi Pratama et al., "Penerapan Pertimbangan Yuridis Dan Non-Yuridis Hakim Dalam Putusan Ringan Perkara Perdagangan Anak," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 2 (2026): 5017–25, https://doi.org/https://doi.org/10.61104/alz.v4i2.4843.

[22] Sunardi and Moh. Khandiq, *Murtad Sebagai Pertimbangan Hakim Pengadilan Agama Dalam Menjatuhkan Putusan Perkara Perceraian*, ed. Urip Giyono, Edisi Pert (Jakarta: Damera Press, 2023).

reasoning that is directly related to the merits of the case. These considerations are generally found in the "whereas" section under "the merits of the case".[23] Thus, in the two rulings analyzed, the judges' ratio decidendi is evident in the differences in how they assessed the facts and weighed legal and non-legal considerations, which resulted in differences in the criminal sentences imposed. This demonstrates that a judge's reasoning is dynamic and influenced by the judge's subjective assessment of the facts presented in court.

Differences in rulings are also evident in relation to the prosecutor's charges. In Ruling No. 17/Pid.Sus/2023/PN Cbn, the judge imposed a harsher sentence than the prosecutor had sought. This indicates that the judge assessed the defendant's actions more severely. Conversely, in Judgment No. 343/Pid.Sus/2025/PN Sbr, the judge actually imposed a lighter sentence than the prosecutor's request. This lighter sentence reflects that the judge considered mitigating factors. This difference indicates that when imposing a sentence, the judge not only considers the prosecutor's request but also applies legal judgment based on the applicable penal system.

Penitentiary law, as part of criminal law, governs the system of sanctions, which includes the strafstelsel (criminal penalty system) and the maatregelstelsel (measures system), as well as discretionary considerations. When there is a violation of legal interests and individual rights, law enforcement officials carry out their function of imposing and enforcing criminal penalties based on theories of criminal punishment. Theories of criminal punishment themselves aim to explain the basis of the state's authority to impose and enforce criminal penalties against perpetrators of criminal acts.[24]

With regard to punishment, criminal law recognizes several schools of thought regarding the purposes of punishment, namely:[25]

1. The Classical School, which emphasizes legal certainty and advocates for a criminal law system that is systematically organized and clear. This school aims to protect individuals from the arbitrariness of those in power, as articulated by Marco Tullio Beccaria in his work "De Delictis et Pene", which emphasizes the importance of formulating criminal law in a written and clear manner.
2. The Modern School, which focuses on identifying the causes of crime using an empirical approach and aims to protect society from crime by considering the circumstances of the perpetrator and the factors underlying the criminal act.

Based on these two schools of thought, criminal justice theory recognizes several concepts regarding the purposes of punishment.[26] First, the retributive concept, which views punishment as a form of retribution for the offender's wrongdoing based on their moral responsibility; thus, it is backward-looking or oriented toward acts that have already occurred. Second, the deterrence concept, which views punishment as a means of preventing crime, both through specific deterrence aimed at the offender and general deterrence aimed at society. Third, the integrative concept,

[23] Eny Susilowati, Endrawati, and Mahdi Surya Aprilyansyah, "Kedudukan Dan Manfaat Logika Dalam Penalaran Hukum Oleh Hakim," *Jurnal Sociopolitico* 6, no. 2 (2024): 190–202.
[24] Kirana, *Pelindungan Hukum Terhadap Anak Sebagai Korban Kekerasan Seksual*.
[25] Andreas N. Marbun, "Konsep Pemidanaan Dalam Perkara Tindak Pidana Korupsi" (Jakarta, n.d.).
[26] Hariyanto Hariyanto, Ahmad Rezy Meidina, and Mabarroh Azizah, "Decentralization and the Fulfilments of Children's Rights: Challenges and Opportunities for Local Government in Indonesia," *Lex Scientia Law Review* 8, no. 2 (November 30, 2024): 677–706, https://doi.org/10.15294/lslr.v8i2.14373.

which combines elements of retribution with the goal of protecting society; thus, the purpose of punishment is not singular but plural and balanced.[27]

Based on concepts in sentencing theory, Judgment No. 17/Pid.Sus/2023/PN Cbn demonstrates a stronger inclination toward retributive and deterrence approaches. This is reflected in the imposition of a harsher sentence than the prosecutor's recommendation, indicating an emphasis on retribution for the defendant's actions—which involved not only sexual intercourse with a child but also sexual exploitation by selling and offering the victim to third parties. These harsher sentences also serve a preventive purpose, both to deter the perpetrator from repeating the offense and to discourage the broader public from committing similar crimes.[28]

Meanwhile, Judgment No. 343/Pid.Sus/2025/PN Sbr better reflects an integrative approach to sentencing. Although the defendant's actions were committed repeatedly and had serious consequences for the victim, the judge imposed a sentence lighter than the prosecutor's request, taking into account mitigating factors such as the defendant's cooperative attitude and lack of prior convictions. This indicates that the judge did not focus solely on retribution but also considered a balance between the severity of the offense and the defendant's subjective circumstances. Thus, this difference in sentencing orientation is one of the factors explaining the divergence in the rulings, where differences in the emphasis placed on the objectives of sentencing result in differences in the severity of the imposed sentences, even though both cases are governed by the same statutory provision.

The difference in rulings between the two cases can be understood based on the differences in the facts and the judges' considerations. However, in the second case, the weight given to mitigating circumstances—such as a cooperative attitude and the defendant's lack of prior convictions—appeared to be more dominant than the assessment of the long-term impact experienced by the child victim. From a normative and victimological perspective, pregnancy constitutes a serious consequence that should serve as an aggravating factor in sentencing, as it indicates a higher degree of harm—physically, psychologically, and socially—to the victim. Therefore, the imposition of a lighter sentence in that case indicates an imbalance in the fulfillment of a sense of justice oriented toward the protection of victims.

Furthermore, these discrepancies indicate the absence of consistent sentencing standards in cases of sexual violence against children. This situation can lead to legal uncertainty and potentially undermine the public's sense of justice. Therefore, clearer sentencing guidelines are needed to ensure that judges' rulings not only reflect their discretion in adjudicating cases but also guarantee consistency, proportionality, and maximum protection for children as victims of criminal offenses.[29]

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[27] Katrin Valencia Fardha, "Perkembangan Teori-Teori Hukum Pidana," *INNOVATIVE: Journal Of Social Science Research* 3, no. 5 (2023): 3982–91.

[28] Ahmad Rezy Meidina et al., "What an Important Implementation of the Educational Rights of Adopted Children in Indonesia from an Islamic Jurisprudence Perspective?," *El-Aqwal : Journal of Sharia and Comparative Law*, May 31, 2024, 85–96, https://doi.org/10.24090/el-aqwal.v3i1.11125.

[29] Nurul Fatwa Ali, Sunariyo, and Muhammad Nurcholis Alhadi, "Disparitas Putusan Hakim Dalam Kasus Kekerasan Seksual Oleh Pelaku Anak," *Legal Standing : Jurnal Ilmu Hukum* 9, no. 4 (2025): 852–61, https://doi.org/https://doi.org/10.24269/1s.v9i4.11418.

Conclusion

Based on the results of the research and discussion, it can be concluded that although Judgment No. 17/Pid.Sus/2023/PN Cbn and Judgment No. 343/Pid.Sus/2025/PN Sbr both pertain to the criminal offense of sexual intercourse with a child, the two cases demonstrate differences in the imposition of sentences. These differences are influenced by variations in the facts of the offense, the victim's circumstances, and the perpetrator's role, which are assessed by the judge through both legal and non-legal considerations. Furthermore, differences in the prosecutor's charges and the sentencing approach adopted by the judges also influence the severity of the sentence; the first judgment tends to reflect a retributive and deterrent approach through the imposition of a harsher sentence, while the second judgment more closely reflects an integrative approach by balancing the perpetrator's culpability with mitigating factors. Although these differences stem from judicial independence, this case raises concerns regarding sentencing consistency—particularly in the second ruling—which resulted in the victim becoming pregnant; from a victimological perspective, this circumstance should have served as an aggravating factor in sentencing. Therefore, the disparity in sentencing has the potential to create legal uncertainty and undermine the sense of justice; consequently, clearer sentencing guidelines are needed to ensure consistency, proportionality, and maximum protection for children as victims of criminal offenses.

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