

Research Article

# Legal Protection of Children Victims of Sexual Violence in the Family

(Study of Decision Number 2068/Pid.Sus/2020/PN. Medan)

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**Abstract.** Sexual violence within the family is a serious crime that not only violates the law, but also causes deep physical and psychological suffering for the victim. The complexity of this case is even higher because the perpetrator is usually a close family member, causing trauma and obstacles in law enforcement. Decision Number 2068/Pid.Sus/2020/PN. Medan is the basis for an analysis of the extent to which legal protection can be provided to victims. The formulation of this research problem includes: (1) how is the form of legal protection for victims of sexual violence in the family according to Indonesian positive law, and (2) how is the implementation of this protection in Decision Number 2068/Pid.Sus/2020/PN. Terrain. The research method used is normative juridical with legislative, conceptual, and case study approaches. Data sources are obtained from laws and regulations, legal literature, and analysis of court decisions. The results of the study show that legal protection for victims is regulated in the Child Protection Law, the Criminal Code, and other legal instruments that emphasize preventive, repressive, and rehabilitative protection. The Medan District Court's decision has imposed severe penalties on the perpetrators according to the provisions, but the protection of victims is still limited to formal aspects without a comprehensive psychological recovery program. In conclusion, legal protection for victims of sexual violence in the family already has a clear normative basis, but its implementation is still weak. The collaboration of law enforcement officials, child protection agencies, and professionals is needed to ensure the full recovery of victims.

**Keywords:** Legal Protection; Sexual Violence; In the Family; Court decision; Victim recovery

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## 1. Introduction

At the time the author raised this case, there were already several academics discussing it. The case occurred on Lorong II Veteran LK VII street, Bagan Deli Village, Medan Belawan District, Medan Madya City, Medan, namely an uncle named IMRIN WD. SITORUS Age 58 Years Committed sexual violence against his own niece Anggi Kristiyanti Simanjuntak (victim I), Cantika Juwita Br. Simanjuntak (victim II) and Grensensia Br. Simanjuntak (victim III). However, this case was only revealed and admitted by the perpetrator in February 2020, after the victim told the witness Monang Simanjuntak, and as soon as the witness found out about it, he immediately made a report to the Belawan Port Police. This event has occurred in 2016, from May to November 2019 or at least at some time in 2016 to 2019.

This case was revealed after the victim's son, Anggi Krisdayanti Simanjuntak, ran away from the perpetrator's house to Lia's house, namely his bounya in the Fisherman's village. When Lia or her bounya found out about this, she immediately asked Anggi Krisdayanti Simanjuntak what the perpetrator did to her. Then the victim said that the perpetrator had put his bird in, and Grensensia was held by his breasts and squeezed his breasts, and Cantika put his bird into Cantika's vagina but little" and this incident has happened repeatedly and innumerable. This incident occurred at the defendant's house because the three victims' children lived in the defendant's house.

After the witness lia or bounya knew this, he then made a complaint report to the Belawan port police. Then the police asked the three victims' children to be examined as evidence from the report. Then when the witness went to the HKBP School at the school, the victim's children

were Anggi Kristiyanti Simanjuntak, Cantika Juwita Simanjuntak, Gresensia Simanjuntak, then the school teacher had gathered and had asked the 3 (three) victims about the incident, and the three victims' children admitted the truth and said while crying.

With the issuance of Law Number 23 of 2002 as amended by Law Number 35 of 2014 concerning Child Protection which mandates the existence of collective control in the form of the involvement of the state, government, local governments, communities, families and parents or guardians in providing protection for children, it should be able to prevent the emergence of sexual violence against children. However, the reality is that it has been  $\pm$  18 years since the Law on Child Protection was enacted, and there has been an increase in cases of sexual violence against children, even the perpetrators are still within the family.

Legal protection for child victims of sexual violence has been regulated in various laws and regulations in Indonesia, such as Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Although this Law generally regulates criminal liability for perpetrators and guarantees justice for victims. However, in practice, this regulation only focuses on the perpetrator, not the victim. This regulation states that every child has rights as stipulated in articles 9 and 15. In Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law). However, various challenges arise in implementing these rules, especially in ensuring justice for victims and preventing victimization

Currently, Indonesia is a state of emergency for sexual crimes, recorded in the annual records of the online information system for the protection of women and children (SIMFONI PPA) in 2023 there are 12,052 cases of violence against women and children with details of 7,123 cases of violence against children, of which around 2,200 cases of sexual violence. From the above reports, most of the perpetrators of sexual violence are people who know the victim even from the home or school environment.

And additional data from the Indonesian Child Protection Institute (LPAI) notes that throughout 2022-2023, cases of sexual violence against children increased post-pandemic. LPAI recorded more than 1,000 cases of sexual violence in the family with the majority of victims aged between 6-17 years, most of which went unreported due to pressure from the family. Data shows that cases of sexual violence against children in Indonesia, including in North Sumatra, are still concerning.

## 2. Research Methods

This research uses **normative-empirical legal research methods** or **socio-legal research**. A **normative** approach is used to analyze relevant laws and regulations and legal doctrines related to child protection and sexual violence. Meanwhile, **an empirical** approach is used through a **case study** of Decision Number 2086/Pid.Sus/2020/PN. Medan to see the implementation of the law in practice.

**The types of data** used include:

**Primary data:** Decision Number 2086/Pid.Sus/2020/PN. Terrain.

**Secondary data:** Legislation, books, scientific journals, and other literature relevant to the research topic

## 3. Discussion

### Forms of Sexual Violence Against Children Victims of Sexual Violence Committed in the Family

Sexual violence against children is a serious human rights violation and has a long-term impact on the physical and psychological of the victim. Worse, many cases occur, the perpetrator is the victim's closest person, including nuclear family members such as biological fathers, siblings, uncles and those who are related by blood who should be a protector for the victim but instead become a threat. In the Encyclopedia Article From Encarta states that violence against children is a deliberate act that causes harm either physically or emotionally (Gelles in Huraerah, 2012).

Sexual violence is a form of violence against children, while sexual violence is an act that leads to sexual solicitation/urges such as touching, groping and kissing or doing actions that the victim does not want such as watching pornography, degrading remarks and harassing the victim. (Poerwandari, 2000), sexual violence against children is a form of social problem that seeks to deviate behavior, both by adults and children.

The forms of sexual violence that occur within the family, in this case "Biological Uncle", are very diverse, starting from obscenity, namely indecent touching or touching on sensitive areas, to the most severe acts such as rape or intercourse. According to Dr. Anne L. Stroud, an expert in forensic psychology explains that the perpetrator, in this case the biological father starts in ways that are difficult to understand, such as giving excessive attention or gifts, making physical touches that seem ordinary or establishing a special exclusive relationship with the child. The goal is to isolate the child from other family members and break down normal boundaries.

According to D.r Diana E.H. Russell, a sociologist who studies the issue of family violence, identified that many perpetrators have psychological problems such as pedophilia, impulse control disorders, or even an unparalleled history of past trauma. As a result of the violence experienced by the victim, it has a traumatic impact where the impact of this violence is much more destructive than violence committed by foreigners. Dr. Judith Herman in her revolutionary book on trauma, puts forward the concept of "Complex Trauma" (*Complex Trauma*). This is the type of trauma that occurs repeatedly in the context of a close and trusted relationship. Children who are victims not only experience PTSD (post-traumatic stress disorder), but also victims experience fundamental damage to their identity, sense of security, and ability to build healthy relationships.

Emotionally, victims often struggle with guilt, enduring deep shame, and self-loathing. They feel that they are the cause of violence, which is caused by views that are often instilled by the perpetrators. Psychologically, perpetrators often experience chronic depression, anxiety, eating disorders, or even suicide attempts. Socially, perpetrators have various difficulties in trusting others, especially male figures and often isolate themselves from their social environment.

Challenges of handling in the legal context According to Prof. Dr. Irwanto, SH, MH, a criminal law expert explained that although the law in Indonesia has provided severe sanctions for incest perpetrators, law enforcement still faces many challenges, one of which is the limitation of evidence because many of these cases do not have witnesses, and the victims also include children who do not understand the law. In addition, social pressure and stigma are still major obstacles. Families often try to cover up cases to "maintain a good name" or even blame the victim, this makes the victim even more alone or isolated. Therefore, handling this case requires a comprehensive approach. Not only in terms of law, but also from psychological support for victims and education to the community about the importance of child protection and rejection of all forms of violence in the family.

Sexual violence committed by the Biological Uncle against his child in academic language is known as intrafamily sexual violence. This sexual violence is the most basic form of betrayal of trust for children, where the father is known as a figure who should provide protection but instead becomes the perpetrator. According to Dra. Rosni, M.Si., in a journal entitled "The Impact of Sexual Violence on Children", this sexual violence often occurs in secret and is not revealed due to unequal power relations and threats from the perpetrators. The forms of sexual violence in detail will be explained as follows.

Inappropriate Physical Contact occurs through touching a child's sensitive area, such as the genitals, breasts, or buttocks, which is intentionally done by the perpetrator for the same purpose, in the journal Finkelhor (1984) in his book entitled "Child Sexual Abuse: New Theory and Research" explains that inappropriate touching is often the first step before more serious violence.

Sexual Exposure occurs when the perpetrator forces the child to expose himself or herself unclothed or naked, with the aim of witnessing sexual intercourse, or showing pornographic material or videos. Psychiatrist D.r Judith Herman in her book entitled "Trauma and Recovery" said that this sexual exposure can damage children's understanding of healthy sexuality.

This form of verbal and psychological sexual acts does not involve physical touch but uses words, lewd jokes, threats or sexual intrusion. Quoted from Maclean's (1993) research, a psychologist showed that verbal abuse can have psychological effects that are as serious as physical abuse. Because the victim feels unappreciated, confused and also has difficulty in building confidence and difficulty socializing.

Sexual Penetration is the most severe form of sexual violence, where forced sexual intercourse occurs.

### **Obstacles in the Implementation of Legal Protection for Children Victims of Sexual Violence in the Family Scope**

Legal protection for children victims of sexual violence carried out by Uncle Kandung faces a very complex set of obstacles. Obstacles in the legal protection of children as victims of sexual violence consist of 2 obstacles, namely internal barriers and external barriers. Internal obstacles in legal protection of children as victims of sexual violence consist of human resources/law enforcement factors and facilities or facilities factors. According to Julianti, A. (2018) in her journal entitled "Legal Protection of Child Victims of Sexual Violence in the Household of the Victim's Mother is in a very difficult position, where she has to choose between protecting the child or maintaining the integrity of the family and economic resources. A wife's financial dependence on her husband is often the biggest obstacle for a mother to take action. As well as the shame and guilt that often makes him not dare to report.

According to Prof. Sulisworo, S.H., M.Hum. (Criminal Law) the biggest obstacle in incest cases is proof. Because this is a closed locus delicti (crime scene), which is inside the house, it is difficult for investigators to find witnesses or strong physical buttocks. Statements from victims who are still children are often considered inconsistent, even though it is a hallmark of traumatic memory. According to him, the victim's testimony must be primary evidence that is strengthened by other evidence such as visum or the testimony of psychologists.

Meanwhile, according to Dr. Diah Anggaraini, S.H., M.H. (Child Protection Law), there are still many law enforcement officials who do not have special sensibilities in handling this case. Because law enforcement officials often use the same interrogation approach as usual criminal cases, without having to consider the condition of the child psychologist or the victim. So that this process actually causes secondary trauma for the victim. Law enforcement officials should use a restorative justice-based approach method that emphasizes more attention to the recovery of victims.

According to Dr. Siti Aminah, M.Psi. (Child Clinical Psychologist) "children's emotional dependence on parents, even on the perpetrators is very strong, so that children often feel guilty and afraid if they report their father, because they are worried that it will damage the good name of the family. Victims who experience this should undergo intensive psychological therapy to help the victim recover slowly and boldly which is known as Child dependency syndrome. Budiman Santoso (family sociologist) said that stigma and patriarchal culture are the two main factors that keep the case hidden in the head, namely: the public tends to blame the victim or the victim's mother and considers this incident as a family disgrace that must be covered. And the power of the father as the head of the family is often uncontested.

Based on the above analysis, obstacles in the psychological and social of children can be caused by the dilemma of the child as a victim who experiences an inner conflict between love and fear, and feels guilty because of his father's actions, the victim is also still financially dependent on the perpetrator so that it is a factor that makes the victim silent or does not report this case. In this case, the role of the mother is very wrong, on the one hand the mother wants to protect her child and on the other hand wants to maintain the integrity of the family and economic stability. This case is also not covered by the stigma of the community who often beat the victim (why not fight)

or the victim's mother (why not know or take care of the victim). This stigma makes victims choose not to report and hide this case rather than face ridicule from the public.

Obstacles in the subtle violence against children that occur within the family in this case "Uncle" are juridical and procedural obstacles. The difficulty of proving in this case is very difficult because the victim's testimony is often the only key evidence. Therefore, law enforcement officials need special procedures that are more in favor of the victim, such as video recording when the victim testifies to avoid bullying of children or victims. Legal processes that are not child-friendly can cause additional trauma (revitalization) for children. Repeated questions and in a formal court environment can make children feel afraid and uncomfortable. The limited role of support institutions such as child protection institutions (such as LPA or P2tp2A), and psychologists who have not been optimal in the implementation of their roles. This lack of coordination makes the case handling process ineffective and victims do not get adequate assistance.

### **Legal Protection of Children Victims of Sexual Violence in the Family (Decision Number 2068/Pid.sus/2020/PN. Medan)**

Legal protection for children who are victims of sexual violence within the family is basically the responsibility of the state to guarantee the right to live, grow, develop, and be protected from violence and discrimination. This protection does not talk about punishing the perpetrator but also includes how to prevent and recover victims comprehensively.

According to Philipus M. Hadjon, legal protection basically consists of two, namely preventive legal protection (prevention) which aims to prevent violence in the family. This is done to realize laws and regulations, community education and supervision of parents and the environment of children. Meanwhile, repressive (settlement after a violation occurs) is law enforcement against the perpetrators of a crime after a criminal act has occurred, which aims to provide justice for the victim as well as a deterrent effect for people who commit sexual violence in the family. Where this concept is relevant in the application of cases of child sexual violence, the state government monitors and is present to provide prevention and recovery of victims.

According to **Soerjono Soekanto**, the prevention of criminal acts requires the involvement of various factors, including family, schools, and the community. In the context of children, **Law No. 35 of 2014 concerning Child Protection** emphasizes that families are obliged to protect children from all forms of violence. Thus, preventive protection is not only formal legal, but also educational and social.

Based on Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Protection Child. Legal protection for children victims of sexual violence carried out by biological uncles is strictly implemented through the imposition of sanctions on perpetrators. Article 82 paragraph (1) jo Article 76E Regulating criminal sanctions for every person who deliberately commits violence or threats of violence, coerces, deceives, commits a series of lies, or persuades a child to commit or allow an obscene act to be committed. Based on the reading of article 82 paragraph (1) it reads "every person who by force or threat of violence forces a child to have intercourse with him or with another person, is punished with a prison sentence of a minimum of (5) years and a maximum of (15) years and with a maximum fine (30000000,000) million rupiah. Furthermore, in article 76E of Law Number 35 of 2014, which is an amendment to Law Number 23 of 2002 concerning child protection, it regulates the prohibition of everyone from committing violence or threats of violence, coercion, deceit, committing a series of lies, or persuading children to commit or allow obscene acts.

This protection is not only limited to giving punishment to the perpetrator, but as a form of reparation for the victim. According to criminal law experts, cases of sexual violence committed by biological fathers are a form of extraordinary crime. According to Prof. Dr. N.H.T., S.H., M.H. (as the representative of the legal deportation) said that the imposition of punishment for perpetrators who have blood relations with the victim is a very appropriate and crucial step. From a psychological perspective, this case causes very complex and deep trauma for children. According to a psychologist Ira Purnamasari, M.Psi., Psychologist said that children who are

victims of sexual violence by their fathers often experience double trauma. The recovery process will be very difficult because children lose their sense of security in their own home.

In this recovery process, child protection practitioners should collaborate and take a child-friendly approach, so that in handling these cases can provide a sense of security for victims. This approach is very helpful for law enforcement officials to focus on the best interests of child victims of sexual violence. According to Dr. Seto Mulyadi, M.Psi. as a child protection figure, the handling of sexual violence cases must be carried out with a child-friendly approach. Where this process starts from investigation, trial, to rehabilitation, and all parties must avoid interactions that cause additional trauma.

Based on Decision Number 2068/Pid.Sus/2020/PN. Medan shows how the court seeks to provide justice and protection for victims. This verdict involved a defendant named IMRIN WD SITORUS, he was charged with committing a crime of sexual violence against a child brought of age. Based on the results of the analysis of Decision Number 2068/Pid.sus/2020/pn.. The defendant was sentenced to 10 years in prison and a fine of 5 billion with the provision that if the fine is not paid by the defendant, it will be replaced with imprisonment for (3) months. This decision was taken based on considerations, evidence and witnesses during the trial process.

From the results of the above decision, the application of the law applied to the perpetrator is quite firm, but the law enforcers have not fully provided protection for the victim. Law enforcement officials should be specially trained to interpret children's testimonies carefully and have empathy. In addition, the integrated service center for women and children's empowerment (P2TP2A) and the Indonesian Child Protection Commission (KPAI) should have a very important role in accompanying children, ensuring their rights are fulfilled and providing psychosocial support to child victims of sexual violence.

#### **4. Conclusion**

Medan District Court Decision Number 2068/Pid.sus/2020/PN. Medan, which convicted a biological uncle of sexual violence against his child, has become an important benchmark in law enforcement in Indonesia. This verdict not only imposes sanctions, but also reflects various critical aspects in the criminal justice system, especially related to child protection.

##### **Affirmation of the Legal Position of Child Victims**

This ruling expressly places the rights of children as victims of sexual violence above all else. Through the strict application of the Child Protection Act, the court sends a clear message that crimes against children, especially those committed by parents, are intolerable. This proves that our legal system has a powerful instrument to protect children from internal threats within the family.

##### **Substantive Justice Goes Beyond Formal Evidence**

Although the defendant was not proven guilty of the primary charge, this verdict still found legal truth through the subsidiary indictment. This shows that the court is striving to achieve substantive justice, that is, justice that is truly felt by the victim, instead of just adhering to legal formalities. The judge tried hard to dig up the facts that proved the crime, in order to protect the victim's child and give the perpetrator a commensurate punishment.

##### **Punishment and Prevention Functions**

The sentence of 10 years in prison and a very large fine (Rp5 billion) has two main functions: Retributive Function (Retribution): This punishment is in accordance with the weight of the crime committed, namely betrayal of the trust of the child and family. The long prison sentences reflect the severity of these moral and legal violations. Function of Deterrence (Prevention): Large fines and long prison sentences serve as a stern warning to the wider community. This verdict serves as a reminder that anyone, even a father, who commits sexual violence against a child will face severe legal consequences.

The Need for Comprehensive Protection

While this ruling provides justice for victims from a legal point of view, it is also a reminder of the importance of comprehensive protection. Protection does not stop at the judge's verdict, but must be continued with psychological and social rehabilitation for the victim. The victim's child needs constant support to overcome trauma, rebuild a sense of security, and continue living normally. Therefore, this ruling emphasizes the need for collaboration between legal institutions, psychologists, and child protection institutions in handling similar cases.

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