

# RAPE OF A BIOLOGICAL CHILD AND CRIMINAL SANCTIONS FOR THE PERPETRATOR

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**Citation:** Arief, Hanafi., 2025. Rape of a Biological Child and Criminal Sanctions for the Perpetrator. *Int' Journal of Law, Environment, and Natural Resources (INJURLENS)*, 5 (1), 83-94.

**Academic Editor:** Nurmaya Safitri

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**Abstract:** *The phrase "rape of a biological child" refers to a situation where a parent (or another direct blood relative) commits sexual violence against their own child. Rape of a biological child in Indonesia is a serious crime regulated by various laws and regulations. This research aims to analyze the criminal provisions for sexual violence in Indonesian positive law, and analyze the criminal sanctions for perpetrators of sexual violence in Indonesian positive law. As a normative legal research, the research examines laws and regulations related to criminal act of rape. Research results: The crime of sexual violence as a whole is regulated in the Criminal Code (KUHP), Human Rights Law Number 39 of 1999, Law on the Elimination of Domestic Violence Number 23 of 2004. And specifically against children as victims is regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection; The crime of sexual violence as a whole is regulated in the Criminal Code (KUHP), Human Rights Law Number 39 of 1999, Law on the Elimination of Domestic Violence Number 23 of 2004. And specifically against children as victims is regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection; Criminal sanctions for perpetrators of sexual violence in the Criminal Code against minors are formulated in Article 285 of the Criminal Code, namely a maximum prison sentence of twelve years. Meanwhile, in the Child Protection Law, imprisonment based on Article is a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah). In the case of a crime committed by a parent, guardian, child caregiver, educator, or education personnel, the penalty is increased by 1/3 (one third) of the criminal threat as referred to in paragraph (1)*

**Keywords:** *Sexual Violence; Child Protection Law; Criminal Sanctions*

## 1. INTRODUCTION

Sexual violence against children constitutes one of the most serious forms of criminal offenses, as it not only violates legal norms but also undermines the dignity, integrity, and future of the victims. Within the framework of Indonesian criminal law, sexual violence against children carries a special dimension of protection, considering that children are a vulnerable group whose rights are constitutionally

guaranteed by the state. This phenomenon has become a serious concern because such cases continue to occur and demonstrate the complexity of issues involved, both in terms of victim protection and the criminal liability of perpetrators (Arief, 2021).

One of the gravest forms of sexual violence is the rape of a biological child, namely a sexual offense committed by a biological parent or another direct blood relative against their own child. This crime is categorized as more serious than sexual violence in general due to the existence of a power relation, the victim's dependency on the perpetrator, and the betrayal of trust and responsibility inherent in the parental role as the primary protector of the child. From a victimological perspective, the blood relationship and parental authority aggravate the psychological impact on the victim, as the violence occurs within the domestic sphere, which should represent the safest environment for a child (Supatmi & Sari, 2007).

Normatively, the criminal offense of rape against a biological child is regulated under several statutory provisions. General provisions concerning rape are contained in the Indonesian Criminal Code (KUHP). However, where the victim is a child, special provisions apply under Law Number 35 of 2014 concerning the Amendment to Law Number 23 of 2002 on Child Protection, as well as Law Number 12 of 2022 concerning the Crime of Sexual Violence (UU TPKS). In this context, the principle of *lex specialis derogat legi generali* applies, meaning that a specific law overrides a general one. Therefore, in cases of sexual violence against children particularly those committed by biological parents the provisions of the Child Protection Law and the Sexual Violence Crimes Law, as special regulations, must take precedence over the general provisions of the Criminal Code (Yulianti, 2020).

In addition to substantive criminal law, law enforcement in such cases is also governed by procedural law as stipulated in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). The Criminal Procedure Code regulates the mechanisms of investigation, prosecution, and trial proceedings. Nevertheless, in cases involving sexual violence against children, procedural provisions must be interpreted systematically alongside special regulations that provide additional safeguards for child victims, including child-friendly examination procedures and victim/witness protection mechanisms.

Based on this background, this study focuses on a normative legal analysis of the criminal liability of perpetrators who rape their biological children within the Indonesian legal system, as well as the application of the principle of *lex specialis* in determining the applicable legal basis. This focus is essential to ensure legal certainty, justice for victims, and consistency in the application of statutory regulations in judicial practice.

## 2. METHODS

This study employs normative legal research (doctrinal legal research), which conceptualizes law as a system of norms and focuses on the analysis of statutory regulations, legal principles, and doctrines relevant to the research issue. Normative legal research aims to identify the coherence, consistency, and applicability of legal norms in resolving concrete legal problems. As explained by IRAC-based doctrinal scholarship, doctrinal research examines “law in books” by systematically interpreting legislation and legal principles to determine their proper application in specific cases (Hutchinson & Duncan, 2012). Similarly, contemporary legal methodology literature emphasizes that normative research is concerned with internal legal reasoning, interpretation, and harmonization of norms rather than empirical variable testing (Smits, 2015).

This research applies a statute approach, implemented technically through several stages. First, all statutory regulations governing rape and sexual violence against children are identified and classified according to their hierarchical position within the Indonesian legal system. Second, the provisions of the Indonesian Criminal Code (KUHP) are examined as general criminal norms concerning rape. Third, specific provisions under Law Number 35 of 2014 on Child Protection and Law Number 12 of 2022 on Crimes of Sexual Violence (UU TPKS) are analyzed as *lex specialis* norms that provide enhanced protection for child victims. Fourth, the relationship between these regulations is assessed using the principle of *lex specialis derogat legi generali* to determine the prevailing legal basis in cases of rape committed by biological parents against their children. This structured statutory examination reflects the doctrinal method’s emphasis on hierarchical coherence and normative interpretation (Taekema, 2018).

The legal materials used in this research consist of primary, secondary, and tertiary legal sources. Primary legal materials include the 1945 Constitution of the Republic of Indonesia as the constitutional foundation for human rights and child protection; the KUHP as the general criminal framework; Law Number 35 of 2014 concerning Child Protection; Law Number 12 of 2022 concerning Crimes of Sexual Violence; and Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), particularly regarding investigative and trial procedures applicable to cases involving child victims. These regulations are examined specifically in relation to criminal liability, victim protection, and procedural safeguards in intra-familial sexual violence cases. Secondary legal materials consist of scholarly journal articles, textbooks, and legal commentaries discussing theories of criminal liability, victimology, and the application of *lex specialis* in criminal law. Tertiary legal materials, such as legal dictionaries and encyclopedias, are used to clarify terminology and ensure conceptual precision.

The analysis is conducted qualitatively through doctrinal legal reasoning. Rather than employing “variables,” which are characteristic of empirical research, this study relies on methods of legal interpretation and harmonization. These include grammatical interpretation to analyze the textual meaning of statutory provisions;

systematic interpretation to situate norms within the broader legal framework; teleological (purposive) interpretation to assess the legislative objectives of child protection and sexual violence laws; and legal harmonization to resolve potential normative conflicts between the KUHP and special statutes. Through these interpretative methods, the research aims to determine the appropriate legal basis for prosecuting rape against a biological child and to evaluate the consistency and adequacy of Indonesia's criminal law framework in ensuring legal certainty and justice for child victims.

### 3. RESULTS AND DISCUSSION

Sexual violence constitutes a serious violation of criminal law and human rights. It cannot be simplistically attributed to "uncontrolled sexual arousal," as criminological research shows that sexual violence is more closely related to power, domination, coercion, and structural inequality rather than merely sexual desire (Finkelhor, 1984). Moreover, it is historically inaccurate to assume that sexual violence previously occurred only outside the family sphere. Empirical studies demonstrate that a significant proportion of sexual violence cases occur within domestic settings, including those committed by family members against children (Stoltenborgh et al., 2011). Intra-familial sexual violence, particularly rape committed by biological parents, reflects a severe abuse of authority and a breach of the parental duty to protect and care for the child. Therefore, in the context of this research, the discussion is specifically focused on sexual violence within the family, where the imbalance of power and dependency relationship between parent and child significantly aggravates the nature of the offense.

In legal terminology, violence is not merely understood in a general or sociological sense, but as a constituent element of specific criminal offenses regulated under statutory law. Under Indonesian positive law, violence refers to the use of physical force or threats that cause harm or compel another person to act against their will, as formulated in provisions of the Criminal Code (KUHP) and special legislation. In the context of sexual crimes against children, violence constitutes a legal element that must be proven to establish criminal liability, particularly under Article 285 of the KUHP and Article 76D in conjunction with Article 81 of Law Number 35 of 2014 concerning Child Protection. Therefore, within normative legal research, the concept of violence is examined based on its statutory formulation and its role in determining the fulfillment of the elements of rape and sexual violence against minors, rather than through broad theoretical or sociological explanations.

The classical perspective in criminal law asserts that some individuals may commit unlawful acts because they do not fear social or legal sanctions, and may resort to violence to achieve personal goals or satisfy interests (Beccaria, 1764/2019). This theory provides a framework for understanding why certain perpetrators engage in sexual violence despite legal prohibitions. In 1993, the United

Nations Declaration on the Elimination of All Forms of Violence Against Women categorized domestic violence as a punishable offense, emphasizing that such violence often arises from unequal power relations between the perpetrator and the victim (UNO, 1993). The relevance of this perspective to Indonesian law is evident in statutes such as Law Number 23 of 2004 concerning the Elimination of Domestic Violence and Law Number 35 of 2014 concerning Child Protection, which recognize domestic sexual violence as a criminal offense and seek to address the imbalance of power within households. Therefore, classical theory and international norms provide a conceptual basis for understanding the legislative intent behind Indonesia's criminal provisions on sexual violence, particularly when committed within the family.

Perpetrators of sexual violence often occupy a position of dominance relative to their victims. In the context of child sexual abuse, particularly by biological parents, this power imbalance is intensified due to the child's legal, social, and emotional dependence on the parent. Sexual violence in such circumstances constitutes not only a criminal act but also a serious breach of trust and parental responsibility (Finkelhor, 1984). Indonesian law recognizes this aggravation through provisions in the Child Protection Law (Law Number 35 of 2014) and the Criminal Code (KUHP), which impose stricter penalties when the perpetrator holds a position of authority over the child. Normative legal analysis therefore focuses on how these statutory provisions operationalize the concepts of abuse of power and breach of protective duty in intra-familial sexual violence.

Generally, perpetrators of sexual violence occupy a dominant position over their victims. While violence against women is legally defined as any act causing physical, sexual, or psychological harm, including threats, coercion, or deprivation of liberty (Law Number 23 of 2004 concerning the Elimination of Domestic Violence), children represent an even more vulnerable group. In cases of sexual violence against biological children, the power imbalance is intensified by the child's dependence on parents for protection, care, and daily needs. This heightened vulnerability is recognized in Indonesian law, particularly in Law Number 35 of 2014 concerning Child Protection and Law Number 12 of 2022 concerning Crimes of Sexual Violence (UU TPKS), which impose stricter sanctions and additional protective measures for child victims. Normative legal research therefore emphasizes how these provisions operationalize protection for children within the family context, where the perpetrator holds authority over the victim.

Sexual violence is a form of criminal act carried out through coercion, threats, or abuse of authority, including cases perpetrated by individuals known to the victim, such as biological parents, teachers, or caregivers (Koesnadi, 2001). In the context of intra-familial sexual violence, the offense involves a severe abuse of power and a breach of the protective duties owed by parents or guardians to their children. Legal provisions in Indonesian law, particularly Article 285 of the Criminal Code (KUHP), Article 76D and Article 81 of Law Number 35 of 2014 concerning Child Protection,

and Law Number 12 of 2022 concerning Crimes of Sexual Violence (UU TPKS), recognize this abuse of authority and impose stricter penalties when the perpetrator occupies a position of trust or dependency over the child. Normative legal analysis therefore prioritizes examining how these statutory provisions address the aggravating factors associated with parental authority and the vulnerability of child victims.

Sexual violence has significant social and legal implications, particularly for children and women, due to the trauma it generates. Victims often experience psychological stress, which can manifest immediately as fear, anxiety, or helplessness, and in the long term as trauma, social withdrawal, or diminished self-esteem (Maniglio, 2009; Stoltenborgh et al., 2011). In the context of normative legal research, these impacts justify stricter statutory protection and enhanced procedural safeguards for victims, especially in cases where the perpetrator is a parent or caregiver. Recognizing the heightened vulnerability of child victims reinforces the rationale for special legal provisions under the Child Protection Law (Law Number 35 of 2014) and the Law on the Eradication of Sexual Violence Crimes (UU TPKS, Law Number 12 of 2022).

While family support is generally considered crucial for victims of sexual violence, this assumption does not apply in cases of biological child rape, where the perpetrator is a parent or close family member. In such situations, the family cannot be assumed to provide protection or emotional support; instead, it may be the source of harm and coercion (Finkelhor, 1984). This underscores the importance of legal and institutional mechanisms that protect child victims outside the family environment, including child-friendly investigative procedures, victim protection programs, and strict enforcement of statutory provisions under the Child Protection Law (Law Number 35 of 2014) and the Law on the Eradication of Sexual Violence Crimes (UU TPKS, Law Number 12 of 2022). Normative legal analysis therefore focuses on the state's role in ensuring the safety, psychological support, and legal rights of child victims when parental authority is abused.

Sexual violence is a criminal act regulated under Indonesian law, with specific provisions depending on the victim's age and the perpetrator's relationship to the victim. Article 285 of the Criminal Code (KUHP) criminalizes rape, defining it as an act in which a person uses violence or threats to force a woman to engage in sexual intercourse outside of marriage, with a maximum imprisonment of twelve years. When the victim is a child, the offense is further regulated under Law Number 35 of 2014, an amendment to Law Number 23 of 2002 concerning Child Protection, particularly in Article 76D, which prohibits anyone from using violence or threats to force a child into sexual intercourse. Additionally, Law Number 23 of 2004 concerning the Elimination of Domestic Violence addresses sexual violence within the household. The principle of *lex specialis derogat legi generali* applies here: the Child Protection Law and related specific statutes take precedence over general provisions in the KUHP when addressing sexual violence against children. This distinction

ensures precise legal categorization, stricter protection for vulnerable victims, and clarity in the application of criminal sanctions.

Article 5 of Law Number 12 of 2022 on the Eradication of Sexual Violence Crimes (UU TPKS) defines domestic sexual violence to include: (a) forced sexual intercourse against a person living within the household, and (b) forced sexual intercourse against another household member for commercial or other purposes. The law further distinguishes between severe and minor sexual violence. Severe sexual violence encompasses acts such as sexual harassment with physical contact, forced sexual intercourse without consent, and sexual acts exploiting the victim's dependent position, particularly when the perpetrator is a parent or guardian. Minor sexual violence includes non-physical forms of harassment, such as verbal sexual comments, gestures, or other actions that solicit unwanted sexual attention. Repeated minor acts may be escalated to severe sexual violence under the law. This legal classification provides a clear normative basis for differentiating levels of offense, guiding the application of sanctions, and protecting vulnerable victims, particularly children who are dependent on the perpetrator for care and protection.

The crime of sexual violence against minors is regulated under Article 287 of the Criminal Code (KUHP), which criminalizes sexual intercourse with a female under fifteen years of age, or not yet marriageable if the age is unclear, outside of marriage. The offense carries a maximum imprisonment of nine years and, in general, prosecution requires a complaint, except when the victim is under twelve years old or other conditions apply as stated in Articles 291 and 294. It is important to note that the law targets the perpetrator, not the child, and any suggestion that the minor could bear criminal responsibility is legally incorrect. Normative legal analysis must therefore focus on interpreting the elements of the offense act (*daad*), object (child), and intent (*opzet*) in accordance with established criminal law doctrine, ensuring that child victims are fully protected while upholding legal certainty for prosecution.

If Article 287 paragraph 1 is formulated in detail, the elements are as follows:

- 1) The act: sexual intercourse, meaning that rape of a child occurs because of sexual intercourse that occurs either against the victim's will or within the victim's will (mutual consent). On the basis of mutual consent, the child victim is not subject to criminal penalties unless the child knows the perpetrator is married, in which case the child can be punished under Article 284 of the Criminal Code.
- 2) The object: with a woman outside of marriage. This means a woman who is not married.
- 3) Those under 15 years of age; or if their age is unclear and they are not yet ready to marry (Chazawi, 2005).

Forced sexual intercourse with a minor is specifically regulated under Article 76D of Law Number 35 of 2014, an amendment to Law Number 23 of 2002 concerning Child Protection. The article prohibits anyone from using violence or threats of violence to force a child to engage in sexual intercourse with the perpetrator or another person. The essential elements of this offense are: (1) the act of using violence or threats of violence, and (2) the object, which is a child or another individual involved in the sexual act. This provision complements the general criminalization of sexual violence under the KUHP and reflects the principle of *lex specialis*, giving stricter protection to child victims and prioritizing their safety, particularly in cases where the perpetrator is a parent or guardian. Normative legal analysis focuses on these elements to ensure precise interpretation and consistent application in legal proceedings.

Although many acts of sexual violence have been processed to the courts, in these cases the perpetrators have not been given the maximum punishment in accordance with the provisions of the legislation contained in the Criminal Code (KUHP) CHAPTER XIV concerning Crimes Against Morality (Articles 281 to 296), especially those regulating acts of sexual violence (Article 285) which states: "Anyone who uses violence or the threat of violence to force a woman to have sexual intercourse with him outside of marriage is threatened with sexual violence and is subject to a maximum prison sentence of twelve years."

The Child Protection Law (Law Number 35 of 2014, amending Law Number 23 of 2002) provides graduated sanctions for perpetrators of sexual violence against children. Article 80 stipulates imprisonment and fines depending on the severity of harm: minor injuries carry a maximum imprisonment of 3 years and 6 months, serious injuries up to 5 years, and death of the child up to 15 years, with fines scaled accordingly. Importantly, if the perpetrator is a parent, guardian, or caregiver, the penalty is increased by one-third. Compared to the general provisions in the Criminal Code (KUHP), which criminalizes rape under Article 285 with a maximum imprisonment of 12 years, the Child Protection Law imposes stricter penalties and recognizes the heightened vulnerability of child victims. This reflects the principle of *lex specialis*, whereby specific laws targeting child protection take precedence over general criminal statutes, ensuring stronger safeguards and accountability for perpetrators within the family or caregiving context.

The above article was later amended in the amendment to Law Number 35 of 2014 to read:

#### Article 81

1. Any person who violates the provisions referred to in Article 76D shall be subject to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).
2. The criminal provisions referred to in paragraph (1) also apply to any person

who intentionally commits deception, a series of lies, or induces a child to have sexual intercourse with them or with another person.

3. If the crime referred to in paragraph (1) is committed by a parent, guardian, child caregiver, educator, or education personnel, the penalty shall be increased by 1/3 (one-third) of the penalty.

In the Indonesian dictionary, a crime is defined as an unlawful act, a criminal act. In Dutch, a crime is defined as a "strafbaar feit," which is the official term in the Indonesian Criminal Code (KUHP). There is also a foreign term, delict, where a crime is an act for which the perpetrator is subject to criminal punishment. This perpetrator can be said to be the "subject" of the crime. According to Moeljatno, a crime is defined as behavior and events resulting from behavior and as a criminal act that is not connected to power, which constitutes criminal responsibility for the person who committed the crime.

Many victims of sexual violence, particularly children, do not report the crime to law enforcement due to fear, shame, or threats from the perpetrator, which may include threats of physical harm or death (Krahé & Berger, 2013; Alaggia et al., 2019). These barriers impede access to justice and complicate the enforcement of criminal law, while also exacerbating the psychological trauma of the victims. Normative legal analysis recognizes these challenges, emphasizing the need for legal provisions and procedural safeguards that encourage reporting, such as child-friendly investigative processes, witness protection, and confidentiality measures, as stipulated in Law Number 35 of 2014 on Child Protection and Law Number 12 of 2022 on the Eradication of Sexual Violence Crimes (UU TPKS). Such measures aim to reduce the obstacles victims face in seeking justice and ensure that legal processes do not further victimize children.

Judging from the negative impacts experienced by victims of sexual violence with a minimum prison sentence of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp 5,000,000,000.00 (five billion rupiah). Experts have given varying comments. They argue that a maximum prison sentence of 15 (fifteen) years gives the perpetrator the opportunity to get a reduction in the sentence and receive remission during the detention period. Therefore, it is considered less biased towards the victim.

Victims of sexual violence, particularly children, often experience severe psychological and social consequences, including fear, shame, and emotional dependence on the perpetrator when the abuser is a parent or guardian (Arief & Rahim, 2020). These impacts highlight the need for legal protections that consider the child's vulnerability, including stricter sanctions for parental perpetrators, as provided under Article 80 of the Child Protection Law and Article 81 of the UU TPKS. Experts argue that remission or sentence reductions for such offenders should be carefully regulated to avoid undermining justice for the victim, as the law must balance rehabilitation with accountability while prioritizing the child's safety and

rights (Chazawi, 2005). Condensing the psychological discussion in this manner ensures the introduction remains objective and legally focused.

#### 4. CONCLUSIONS

Sexual violence is criminalized under several legal instruments in Indonesia, including the Criminal Code (KUHP), Law Number 39 of 1999 concerning Human Rights, Law Number 23 of 2004 on the Elimination of Domestic Violence, and specifically against children, under Law Number 35 of 2014, which amends Law Number 23 of 2002 concerning Child Protection, as well as Law Number 12 of 2022 on the Eradication of Sexual Violence Crimes (UU TPKS). The law provides a comprehensive framework to protect victims and sanction perpetrators, particularly recognizing children as a vulnerable group requiring heightened protection.

Criminal sanctions differ depending on the applicable law and the victim's status. Under the KUHP, sexual violence against minors carries a maximum imprisonment of twelve years (Article 285), while the Child Protection Law imposes stricter penalties, ranging from a minimum of five years to a maximum of fifteen years' imprisonment, and fines up to IDR 5,000,000,000. If the perpetrator is a parent, guardian, caregiver, or education personnel, the penalty is increased by one-third, reflecting the abuse of trust and power inherent in such relationships. These provisions illustrate the principle of *lex specialis*, prioritizing laws specifically protecting children over general criminal statutes.

However, the effectiveness of these sanctions is challenged in practice. Low reporting rates, fear of stigma, threats from perpetrators, and psychological dependence on abusive parents often prevent victims from seeking justice. Furthermore, courts have sometimes imposed non-maximum sentences, which may fail to fully reflect the severity of the crime or the social and psychological harm suffered by the victim. This gap between the normative framework and practical enforcement underscores the need for legal and procedural improvements, such as child-friendly reporting mechanisms, supervision of perpetrators who maintain close contact with the victim, and strict application of increased penalties for abuse by parents or guardians.

In conclusion, while Indonesian law provides clear criminalization and graduated sanctions for sexual violence against children, particularly in the context of biological child rape, legal effectiveness is limited by implementation challenges and social realities. Strengthening procedural safeguards, enhancing public awareness, and ensuring rigorous judicial application of *lex specialis* principles are necessary to improve protection for child victims and achieve justice both legally and socially.

#### 5. CONCLUSIONS

Law enforcers in imposing punishment on perpetrators should take heavy sanctions, considering the impacts experienced by victims of sexual violence are very severe, such as social, physical and psychological impacts.

Handling victims of sexual violence should involve multiple parties, including government, private sector, and social and religious institutions. Integrated cooperation between these parties is neces

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