

Judges' Considerations in Sentencing Elderly Perpetrators of Sexual Violence

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ABSTRACT

The phenomenon of sexual violence continues to show a significant upward trend, occurring in educational settings, within families, and across society at large. Such acts not only inflict physical and psychological trauma on the victims but also have the potential to hinder their development and contribution as the nation's future generation. One particular issue that has garnered public attention in this context is the involvement of elderly individuals as perpetrators of sexual violence. The advanced age of these offenders often presents distinct challenges for law enforcement officials in the process of upholding justice in Indonesia. This research constitutes an empirical study aimed at examining the judicial considerations employed by judges when imposing criminal sanctions on elderly perpetrators of sexual violence. The main objective of this study is to analyze the law enforcement process and identify the factors that form the basis of legal consideration towards elderly offenders in such criminal acts. The findings of this research indicate that judges' considerations in sentencing elderly perpetrators are influenced by multiple factors, including the physical and psychological condition of the offender, the severity of the crime, the impact on the victim, as well as the fundamental principles and objectives of criminal punishment. Nevertheless, the enforcement of legal measures against sexual violence involving elderly offenders remains a priority to ensure justice for the victims and to create a deterrent effect for the perpetrators, while also taking into account the specific conditions associated with advanced age within the criminal justice framework.

Keywords: *Sexual Violence, Elderly Perpetrators, Judge's Considerations*

Pertimbangan Hakim Dalam Menjatuhkan Sanksi Pidana Terhadap Pelaku Kekerasan Seksual Yang Berusia Lanjut

ABSTRAK

Fenomena kekerasan seksual menunjukkan kecenderungan peningkatan yang signifikan, baik di lingkungan pendidikan, keluarga, maupun masyarakat secara umum. Kondisi ini tidak hanya menimbulkan dampak traumatis secara fisik dan psikologis terhadap korban, tetapi juga berpotensi menghambat perkembangan serta kontribusi mereka sebagai generasi penerus bangsa. Salah satu isu yang mendapat perhatian khusus dalam diskursus ini adalah keterlibatan individu lanjut usia sebagai pelaku tindak pidana kekerasan seksual. Faktor usia lanjut tersebut kerap menjadi tantangan tersendiri bagi aparat penegak hukum dalam menjalankan proses penegakan hukum di Indonesia. Penelitian ini merupakan studi empiris yang bertujuan untuk mengkaji pertimbangan yuridis yang digunakan oleh hakim dalam menjatuhkan sanksi pidana terhadap pelaku kekerasan seksual yang telah berusia lanjut. Tujuan utama dari penelitian ini adalah untuk menganalisis proses penegakan hukum serta mengidentifikasi faktor-faktor pertimbangan yang digunakan aparat peradilan terhadap pelaku kekerasan seksual yang telah memasuki usia lanjut. Berdasarkan hasil penelitian, ditemukan bahwa pertimbangan hakim dalam menjatuhkan sanksi pidana terhadap pelaku lanjut usia dipengaruhi oleh berbagai aspek, antara lain kondisi fisik dan psikologis pelaku, tingkat keseriusan tindak pidana yang dilakukan, dampak yang ditimbulkan terhadap korban, serta prinsip dan tujuan pemidanaan itu sendiri. Kendati demikian, penegakan hukum terhadap tindak pidana kekerasan seksual yang melibatkan pelaku lanjut usia tetap menjadi prioritas utama untuk menjamin terpenuhinya rasa keadilan bagi korban serta memberikan efek jera bagi pelaku, dengan tetap memperhatikan kondisi khusus yang melekat pada usia lanjut dalam kerangka sistem pemidanaan.

Kata kunci: *Kekerasan Seksual, Pelaku Lanjut Usia, Pertimbangan Hakim*

INTRODUCTION

The younger generation represents the nation's successors, holding a critical role in shaping the future direction of Indonesia. They are entitled to survival, growth, and development, as well as protection from violence and discrimination, as stipulated in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Data from the National Commission on Violence Against Women (Komnas Perempuan) recorded 2,363 reported cases of sexual violence in Indonesia throughout 2023, with the majority of victims being women and minors.¹ This figure reflects that sexual violence remains a genuine and persistent threat to Indonesia's younger generation, who are legally entitled to protection under the law.

Sexual violence does not only leave physical injuries; it also causes profound psychological trauma that can destroy victims' futures and impede their potential as the next generation of the nation. For this reason, the issue demands serious attention from all elements of society. A body of research has demonstrated that survivors of sexual violence face a high risk of developing post-traumatic stress disorder (PTSD), depression, and chronic anxiety, all of which carry long-term consequences for their quality of life.²

Sexual violence constitutes one of the most harmful categories of criminal offences and has been recognized as a problem requiring prevention and eradication across nations, including Indonesia. At the global level, the World Health Organization (WHO) estimates that one in three women worldwide has experienced physical or sexual violence during her lifetime, establishing sexual violence as one of the most widespread forms of human rights violation.³ Sexual violence, which encompasses

¹ Komnas Perempuan, "Momentum Perubahan: Peluang Penguatan Sistem Penyidikan Di Tengah Peningkatan Kompleksitas Kekerasan Terhadap Perempuan (CATAHU 2023: CATATAN TAHUNAN KEKERASAN TERHADAP PEREMPUAN TAHUN 2023)," *Catahu: Catatan Tahunan Tentang Kekerasan Terhadap Perempuan*, 2023, <https://komnasperempuan.go.id/>.

² Byba Melda Suhita, Novita Ratih, and Kurniawan Edi Priyanto, "Psychological Impact On Victims of Sexual Violence: Literature Review," *STRADA : Jurnal Ilmiah Kesehatan* 10, no. 1 (May 30, 2021): 1412–23, <https://doi.org/10.30994/sjik.v10i1.825>.

³ Team of Sexual and Reproductive Health and Research World Health Organization (WHO), *Violence Against Women Prevalence Estimates: Global, Regional and National Prevalence Estimates for Intimate Partner Violence Against Women and Global and Regional Prevalence Estimates for Non-*

various forms of transgression against a person's sexual autonomy, produces severe consequences for victims across physical, psychological, economic, and social dimensions.⁴

Various measures have been undertaken by the state to prevent and eradicate sexual violence offences. Among these is legislative reform, including the enactment of Law Number 12 of 2022 concerning the Criminal Act of Sexual Violence (TPKS). In practice, however, the enforcement of this law frequently encounters challenges, particularly when perpetrators belong to vulnerable groups such as the elderly. Under Indonesian law, an elderly person is defined as an individual who has reached the age of 60 years or above, as provided in Article 1 number 2 of Law Number 13 of 1998 concerning the Welfare of the Elderly.⁵ This age threshold serves as an important reference in determining proportional legal treatment for offenders who fall within the elderly category

This situation presents a distinct challenge for law enforcement officers, given the absence of legislation that explicitly governs the handling of elderly individuals who commit criminal offences. This condition is consistent with findings indicating that Indonesia's criminal justice system lacks a specialized instrument regulating the sentencing of elderly offenders, leaving its resolution dependent on judicial discretion, with some cases treating elderly perpetrators in the same manner as general adult offenders.⁶

However, in practice, advanced age is frequently considered by judges when determining the type and severity of criminal sanctions to be imposed. This practice aligns with the principle of individualization of punishment recognized in criminal law

Partner Sexual Violence Against Women, WHO (Geneva: World Health Organization, 2021), <https://www.who.int/publications/i/item/9789240022256>.

⁴ Pemerintah Pusat Indonesia, "Undang-Undang (UU) Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual" (Jakarta, 2022), <https://peraturan.bpk.go.id/Details/207944/uu-no-12-tahun-2022>.

⁵ Pemerintah Pusat Indonesia, "Undang-Undang (UU) Nomor 13 Tahun 1998 Tentang Kesejahteraan Lanjut Usia," 1998, <https://peraturan.bpk.go.id/Details/45509/uu-no-13-tahun-1998>.

⁶ Puteri Hikmawati, "Peniadaan Pidana Penjara Bagi Pelaku Lansia Dalam Pembaruan Hukum Pidana, Dapatkah Keadilan Restoratif Tercapai? (Elimination of Imprisonment for Elderly Criminal Offenders in Criminal Law Reform, Can Restorative Justice Be Achieved?)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 11, no. 1 (June 23, 2020), <https://doi.org/10.22212/jnh.v11i1.1583>.

doctrine, whereby the physical and psychological condition of the accused constitutes one of the factors judges weigh when delivering a verdict.⁷

This phenomenon gives rise to a legally complex and dilemmatic situation. On one hand, the perpetrator experiences physical, psychological, and social limitations attributable to advanced age. On the other hand, the perpetrator must be held accountable for the offence committed, given that the act violates the law, causes harm to the victim, and carries the potential to permanently damage the victim's future.

The research problems examined in this study are as follows: first, what mechanisms govern the enforcement of law against elderly perpetrators of sexual violence offences; and second, what factors constitute the legal considerations applied to elderly perpetrators in sexual violence cases. The objective of this study is to analyze the law enforcement process and the legal considerations pertaining to elderly individuals who commit sexual violence offences, with attention given to the human rights of perpetrators of very advanced age alongside the rights of victims who possess futures they aspire to and intend to pursue.

Several prior studies have addressed themes related to this research. The first examined, through a juridical lens, the criminal act of sexual violence against children in Decision Number 832/Pid.Sus/2023/PN Jkt.Brt, providing a normative framework for understanding the construction of sexual violence offences, and the second studies analyzed judicial considerations in sentencing for sexual violence occurring within the context of domestic violence, drawing on Decision Number 1/PID.SUS/2023/PN.PLJ, which is relevant due to its shared focus on the aspects of judicial reasoning. None of these prior studies specifically examined the dimension of the perpetrator's elderly age as a variable influencing judicial consideration, and it is precisely this gap that constitutes the novelty of the present research.

LITERATURE REVIEW

Criminal Liability Theory

⁷ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Jakarta: KENCANA, 2017).

The legal concept known as criminal liability, referred to in Dutch as *toerekenbaarheid* and in English as *criminal liability*, governs whether a person is eligible to be subjected to criminal sanctions on account of a criminal act they have committed. This process determines whether an individual may be acquitted of legal charges or must be held accountable and punished for the actions they have carried out.

The concept of criminal liability is not solely concerned with legal matters; it also involves moral principles and ethical norms upheld by society or particular social groups. This dimension is essential to the establishment of justice.⁸

Van Hamel described criminal liability as a normal psychological condition encompassing three types of capacity: the ability to understand the meaning and consequences of one's own actions; the recognition that such actions are not justified or are prohibited by society; and the capacity to determine whether to carry out the action. Accordingly, the basis of a criminal act only measures whether a deed violates the law, while the imposition of punishment depends on whether the person in question acted with fault.⁹

Punishment Theory

The criminal law system relies on theories of punishment to understand the purpose and function of sanctions. There are three principal theories of punishment: the absolute theory or retributive theory, the combined theory or purposive theory, and the relative theory.

The first is the Absolute Theory. This theory holds that punishment is imposed solely as a response to criminal conduct. Scholars such as Hugo Grotius, Immanuel Kant, and Hegel regarded punishment as a moral obligation and a means of restoring the imbalance caused by the offender's wrongdoing.

The second is the Combined Theory. This theory regards criminal sanctions as a means of protecting society from crime. Its primary objectives include serving as a

⁸Hanafi Amrani and Mahrus Ali, *Sistem Pertanggungjawaban Pidana* (Jakarta: Rajawali Pers, 2015).

⁹ Chairul Huda, *Dari Tindak Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*, Kencana, Jakarta, 2006, hal. 68

general safeguard, deterring criminal conduct, punishing offenders, and compensating for harm caused to society. According to Leo Polak, in the imposition of criminal sanctions within the framework of retributive considerations, three conditions must be satisfied under this objective theory: the act must be reprehensible and contrary to prevailing ethical norms, moral standards, and applicable law; sanctions may only be imposed upon an individual following the commission of such an act; and there must be proportionality between the offender's conduct and the punishment to be applied.¹⁰

The third is the Relative Theory. Roeslan Saleh argued that the process of punishment must take into account the interests of society, the offender, and the victim. The process should not focus exclusively on the interests of society or the offender, but must also give due consideration to the experiences of victims and their families.¹¹ Punishment from the perspective of proportional balance involves all three parties.

This theory emerged as a corrective response to earlier theories that tended to disregard the position of the victim in the sentencing process. Accordingly, the attainment of a just balance between the interests of the offender and those of the victim constitutes the principal objective sought through the application of this theory.

Judicial Consideration Theory

Judicial consideration refers to the method or approach employed by judges in delivering verdicts to accused persons in criminal cases. The theory of judicial consideration encompasses the approaches judges use when rendering decisions, with attention to legal aspects, established facts, and principles of justice. In this process, judges weigh various factors, including the charges brought, witness testimony, evidence, and the interests of society. In the absence of facts proven at trial, a judge cannot deliver a verdict against the accused and must establish the truth of the events

¹⁰ Abidin A.Z and Andi Hamzah, *Pengantar Dalam Hukum Pidana Indonesia* (PT. Yarsif Watampone, 2010).

¹¹ Roeslan Saleh, *Stelsel Pidana Indonesia*, 3rd ed. (Jakarta: Aksara Baru, 1978).

¹¹ Mukti Arto and A. Haji, *Praktek Perkara Perdata Pada Pengadilan Agama*, 1st ed. (Yogyakarta: Pustaka Pelajar, 1996).

in question.¹²

According to Lilik Mulyadi, the essence of judicial legal consideration lies in proving the elements of a criminal act committed by the accused, with the purpose of ensuring that such conduct corresponds to the charges filed by the prosecutor, so that the reasoning employed is consistent with the substance of the judicial decision.¹³

There are two categories of judicial consideration: juridical consideration and non-juridical consideration.¹⁴ Juridical consideration is based on legal facts that emerge during trial proceedings and are prescribed by statute as information that must be reflected in the decision, such as the prosecutor's charges, the accused's statements, witness testimony, physical evidence, and the applicable provisions of criminal law.

The second category is non-juridical consideration. This is consistent with the mandate of Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Authority, which requires judges to explore, follow, and comprehend the legal values and sense of justice that live and develop within society, with the aim of ensuring that every judicial decision is in accordance with the law and reflects substantive justice.¹⁵ It is purposed to ensure that every judicial decision aligns with the law and reflects justice for society. Among the matters to be addressed in non-juridical consideration are the background of the accused, the impact of the accused's conduct, the condition of the accused, and the religion of the accused.

Theory of Justice

Aristotle described justice as a form of equilibrium. According to Aristotle, the measure of equilibrium consists of numerical equality and proportional equality. Numerical equality holds that every individual is regarded as equal within a single

¹² Lilik Mulyadi, *Kompilasi Hukum Pidana Dalam Perspektif Teoritik Dan Praktik Peradilan : Perlindungan Korban Kejahatan, Sistem Peradilan Dan Kebijakan Pidana, Filsafat Pemidanaan Serta Upaya Hukum Peninjauan Kembali Oleh Korban Ejahatan* (Bandung: Mandar Maju, 2010).

¹³ Revalno Alfons, Juanrico Alfaromona Sumarezs Titahelu, and Iqbal Taufik, "Pertimbangan Hukum Hakim Dalam Kasus Tindakan Pencurian Kendaraan Bermotor Yang Dilakukan Oleh Anak," *TATOHI: Jurnal Ilmu Hukum* 4, no. 4 (June 28, 2024): 292–301, <https://doi.org/10.47268/tatohi.v4i4.2434>.

¹⁴ Hyronimus Rhiti, *Filafat Hukum Edisi Lengkap : Dari Klasik Sampai Postmodernisme*, 5th ed. (Yogyakarta : Universitas Atma Jaya, 2015).

¹⁵ Pemerintah Pusat Indonesia, "Undang-Undang (UU) Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman" (Jakarta, October 29, 2009), <https://peraturan.bpk.go.id/Details/38793/uu-no-tahun-2009>.

unity; for example, all persons must be treated equally before the law. Proportional equality means giving to each person what is rightfully theirs, in accordance with their respective capacities and contributions.

Aristotle divided his concept of justice into two categories: distributive justice and corrective justice. Distributive justice operates within the context of public law and focuses on the allocation of wealth and goods held by society. Corrective justice functions to rectify or justify something that is wrong, to provide compensation to the aggrieved party, or to impose appropriate sanctions upon the perpetrator of a criminal act.¹⁶

Progressive Law Theory

Progressive law encompasses rapid transformation, deep adjustment in legal theory and practice, and the innovation of various solutions. Satjipto Rahardjo explained that progressive law involves a series of radical steps aimed at reforming the legal system, including amending legal regulations where necessary, so that the law becomes more beneficial, particularly in enhancing human dignity and guaranteeing human well-being.¹⁷ Progressive law was established upon the foundational principle that law exists for humanity, not the other way around. Law must stand on the side of justice and the people, and must serve as an instrument of human liberation from oppressive structures, whether social, political, or economic.¹⁸

Progressive law does not center itself on fixed rules or legislation alone, but rather on the creativity of legal actors in interpreting the law in pursuit of substantive justice. In this regard, progressive law aligns with legal realism and *Interessenjurisprudenz*, both of which are approaches that prioritize social consequences and moral purposes over strict textual compliance with established rules.

¹⁶ Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*, Genta Publishing, Yogyakarta, 2009, hal. 10.

¹⁷ Mardona Siregar, "Teori Hukum Progresif dalam Konsep Negara Hukum Indonesia", *Muhammadiyah Law Review*, Vol. 8 No. 2 (2024), Hal. 2.

¹⁸ *Ibid.*

RESEARCH METHODOLOGY

This study constitutes empirical legal research, that is, research that examines law not merely as a written norm, but as a social phenomenon that lives and operates within society. As argued by Bintan R. Saragih, empirical legal research employs data obtained through observation or measurement in real-world situations, with the aim of identifying concepts concerning how law functions within society.¹⁹ This study applies three approaches simultaneously. The statute approach involves examining the legislation and regulations that bear relevance to the research discussion, enabling the researcher to analyze the consistency and compatibility among the legal rules under scrutiny. The case approach engages with legal cases that are either ongoing or have acquired permanent legal force.²⁰ The conceptual approach, meanwhile, departs from doctrines and perspectives developed within legal scholarship, allowing the researcher to identify legal definitions, legal concepts, and legal principles relevant to the issue under investigation, which subsequently serve as the foundation for constructing legal arguments.²¹

The methodological approach adopted in this study is qualitative in nature. Data sources consist of primary data obtained directly from the field, as well as secondary data comprising legislation, court decisions, journals, and relevant legal literature. Data collection was carried out through interviews, data observation, and library research. In qualitative analysis of empirical law, what matters more than the type of research conducted is the alignment between the data collection strategy, whether through interviews, case studies, or archival analysis, and the form of the research questions

¹⁹ B. Farhana Kurnia Lestari and Dhina Megayati, "Transformasi Perlindungan Hukum Terhadap Kekerasan Seksual Anak Dan Perempuan Di Era Baru," *Journal Kompilasi Hukum* 10, no. 2 (December 23, 2025): 560–70, <https://doi.org/10.29303/jkh.v10i2.297>.

²⁰ Cucun Cundaya Fitria Sari et al., "Perlindungan Perempuan Dan Anak Dalam Merehabilitasi Korban Tindak Pidana Kekerasan Seksual Melalui Media Online," *Risalah Hukum* 21, no. 2 (December 22, 2025): 164–72, <https://doi.org/10.30872/risalah.v21.i2.1912>.

²¹ Nabilla Tasya Shalsahbila and Yana Indawati, "Penegakan Hukum Terhadap Pelaku Tindak Pidana Kekerasan Seksual (Studi Di Polresta Sidoarjo)," *Yustisia Tirtayasa : Jurnal Tugas Akhir* 3, no. 2 (August 18, 2023): 109–24, <https://doi.org/10.51825/yt.v3i2.19100>.

posed.²² Data processing and analysis were conducted qualitatively, by classifying the collected data according to the identified research problems, followed by systematic analysis. This study was conducted at the Surabaya Metropolitan Police (Polrestabes Surabaya) as the primary research site.

RESULT AND DISCUSSION

Law Enforcement Against Elderly Perpetrators of Sexual Violence Offences

Law Number 12 of 2022 on Sexual Violence Crimes (TPKS) defines sexual violence in a comprehensive manner, encompassing various forms of violations against a person's sexual freedom, ranging from physical and non-physical sexual harassment, sexual exploitation, coercion, to technology-mediated acts. The breadth of this scope reflects the state's commitment to providing thorough protection to victims.

Prior to examining the law enforcement framework, it is important to first acknowledge that sexual violence involving elderly perpetrators is no longer an avoidable reality. Data from the Online Information System for the Protection of Women and Children (SIMFONI-PPA) of the Ministry of Women's Empowerment and Child Protection indicates that sexual violence continues to dominate age-based forms of violence, with the largest proportion of victims coming from children, accounting for 62.2 percent compared to 37.8 percent of adult victims.²³ SIMFONI-PPA also records that perpetrators of sexual violence against children do not exclusively belong to the productive age group; a number of cases involve perpetrators aged over 60 years.²⁴ This reality confirms that advanced age does not automatically serve as a deterrent factor against the commission of sexual offences..

²² Muazah Satira Pertiwi, "Aspek Kriminologi Terhadap Pelaku Tindak Pidana Kekerasan Seksual Di Kabupaten Empat Lawang," *Lex LATA: Jurnal Ilmiah Hukum* 7, no. 3 (2025): 108–18, <https://doi.org/10.28946/LEXL.V7I3.3038>.

²³ "Sistem Informasi Online Perlindungan Perempuan Dan Anak," accessed March 10, 2026, <https://kekerasan.kemenpppa.go.id/ringkasan>.

²⁴ Ibid.

Such crimes cause serious consequences for victims, particularly children, including psychological, physical, social, and cognitive disturbances.²⁵ The contributing factors are multidimensional in nature, encompassing low levels of education and poor economic conditions of the perpetrator, a history of childhood trauma, dysfunctional family backgrounds, and power imbalances between the perpetrator and the victim.²⁶ Based on these considerations, every effort to resolve sexual violence cases requires a legal approach that focuses not only on the enforcement process itself, but also on victim protection and rehabilitation.

Although elderly persons are recognized as a vulnerable group requiring special attention as stipulated under Law Number 13 of 1998 on the Welfare of the Elderly, the law enforcement process against elderly perpetrators of sexual violence offences follows the same general stages applied to adult offenders. These stages include reporting the criminal offence to the police, followed by preliminary inquiry and formal investigation conducted by law enforcement authorities with due consideration to the perpetrator's health condition and alternative detention arrangements; the prosecutor's office takes age into account as a mitigating factor in determining charges; court proceedings prioritize closed hearings and psychological forensic examinations of the victim; and correctional placement in penitentiary facilities that provide specialized accommodations and treatment for elderly inmates.

Court Decision Number 366/Pid.Sus/2023/PN.Sby may be cited as a representative case in this context. The decision charged the defendant under Article 6 letter (a) of Law Number 12 of 2022 on Sexual Violence Crimes for the act of non-physical sexual harassment in the form of verbal threats directed at a child victim. The judge imposed a custodial sentence of 1 (one) year and 4 (four) months, which was

²⁵ Fita Kumalasari and Ratriana Y E Kusumiati, "Dampak Kekerasan Seksual Di Ranah Domestik Terhadap Perkembangan Remaja," *Jurnal Ilmiah Psikologi MIND SET* 14, no. 01 (June 26, 2023): 1–19, <https://doi.org/10.35814/mindset.v14i01.4130>.

²⁶ Aulya Khalisha Gunawan et al., "Profil Psikobehavioral Pelaku Kejahatan Seksual : Tinjauan Psikologis-Kriminologis Untuk Perkembangan Strategi Rehabilitasi Efektif," *Jurnal Ilmu Kedokteran Dan Kesehatan* 13, no. 2 (February 12, 2026): 423–33, <https://doi.org/10.33024/JIKK.V13I2.22221>.

lighter than the 2 (two) years' imprisonments sought by the Public Prosecutor.²⁷ This decision is significant in that it formally recognized verbal threats as a prosecutable form of sexual violence, thereby broadening the understanding of non-physical violence within the TPKS legislative framework. The decision represents progress in acknowledging non-physical violence, specifically verbal threats in this instance, as a basis for criminal punishment. Nevertheless, the custodial sentence of 1 year and 4 months is considered more lenient than the 2-year sentence sought by the prosecution, and the absence of victim restitution constitutes a significant shortcoming of the court's ruling.

In the enforcement of sexual violence laws, Indonesia falls short in terms of implementation. Singapore applies victim-oriented criminal justice mechanisms, such as the Sexual Assault Care Centre (SACC), PAVE, and Family Service Center.²⁸ Similarly, the Netherlands employs forensic psychiatric assessments for perpetrators, conducted with the involvement of forensic psychiatrists, clinical specialists, and social workers. These measures aim to enable the government to make more objective and proportionate sentencing decisions without bias.²⁹

Factors Considered in Judicial Determinations Against Elderly Perpetrators of Sexual Violence Offences

The considerations of the court in imposing sanctions against elderly perpetrators encompass both juridical and non-juridical aspects.

From a juridical standpoint, the court affirms that age does not exempt an individual from criminal liability, with sentencing rendered proportionately, as reflected in the lighter sentence imposed due to the defendant's cooperative conduct

²⁷ "Putusan Pengadilan Tinggi Surabaya Nomor 366/Pdt/2023/Pt Sby," <https://www.hukumonline.com/pusatdata/detail/ma65d8a96b181db/putusan-pengadilan-tinggi-surabaya-nomor-366-pdt-2023-pt-sby/>.

²⁸ Maria Martha Yasri Purek, Dwityas Witarti Rabawati, and Finsensius Samara, "Perbandingan Pengaturan Perlindungan Korban Tindak Pidana Perkosaan Antara Sistem Hukum Pidana Singapura Dan Sistem Hukum Pidana Indonesia," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 3, no. 5 (November 3, 2025): 7005–10, <https://doi.org/10.61104/alz.v3i5.2339>.

²⁹ Joni Reef et al., "Young Offenders in Forensic Institutions in the Netherlands after Committing Serious Crimes: Contribution of Mandatory Treatment and Reduction of Reincarceration," *Criminal Behaviour and Mental Health : CBMH* 33, no. 1 (February 1, 2023): 33–45, <https://doi.org/10.1002/cbm.2272>.

throughout the proceedings and the fulfilment of the elements of the offence under Article 6 letter (a) of Law Number 12 of 2022 on Sexual Violence Crimes. The consideration of age as a mitigating factor is not explicitly stipulated in either the Criminal Code or the TPKS legislation. Asshiddiqie and Ali underscore the importance of standardized sentencing guidelines as an instrument to maintain consistency and predictability in judicial decisions.³⁰ Court proceedings continued to follow applicable procedural rules, though adaptations were made in practice through the use of teleconference hearings and medical examinations for the defendant. Non-judicial considerations from the court highlight the physical and mental condition of the perpetrator, which affects that person's capacity to serve the sentence, as well as the dilemma of social reintegration following release due to the stigma of being labelled a "sexual predator," which society is almost certain to assign.

The effectiveness of the sentence is also called into question, given that a custodial punishment shorter than what the Public Prosecutor demanded is considered to have minimal rehabilitative impact. Furthermore, the absence of restitution is particularly notable given that Article 30 paragraph (1) of Law Number 12 of 2022 on Sexual Violence Crimes expressly provides that victims of sexual violence crimes are entitled to restitution and recovery services. In addition, the lack of victim assistance and the return of evidentiary items to the victim carry the potential to cause re-traumatization.

The implications of the ruling send a clear signal to law enforcement authorities to make greater use of non-physical evidence, including victim testimonies and psychological forensic reports, in other sexual violence cases where physical evidence is minimal. The court's decision also conveys the message that sexual violence against children will not be tolerated, although criticism of the comparatively lenient sentence risks undermining public confidence in the justice system.

CONCLUSION

³⁰ Jimly Asshiddiqie and M. Ali Safa'at, *Teori Hans Kelsen Tentang Hukum*, 1st ed. (Jakarta: Konstitusi Press, 2021).

Overall, law enforcement in cases of sexual violence crimes, particularly those involving elderly perpetrators, demands a careful balance between justice for victims and the protection of the fundamental rights of individuals of advanced age. Judges are required to give due consideration to the gravity of the criminal act and its consequences for the victim, the criminal accountability capacity of elderly perpetrators, the relevant legislative provisions, as well as non-judicial factors such as the physical and mental condition of the perpetrator, personal life history, humanitarian aspects, and the broader social implications of the judicial decision.

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