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Protection of Human Rights from Sexual Violence Against Women and Children Victims in East Seram Regency (A Study of Court Decisions in 2018-2022)

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Abstract: *This research discusses numerous cases of sexual violence in East Seram Regency based on court decisions from 2018–2022. The focus of this research is the protection and fulfillment of the right of sexual violence victims in East Seram Regency. This study is a normative juridical with analytical descriptive method based on theories, concepts and regulations which are analyzed qualitatively. The results of this study indicate that the protection and fulfillment of human rights of sexual violence victims in East Seram Regency is still suboptimal due to the existence of social factors in society that do not recognize the importance of protecting the rights of sexual violence victims. It is shown that a highly unhealthy patriarchal culture, a criminal justice system that does not fully advocate victims and still focuses on criminalizing the perpetrators, as well as a society with low educational and economic standards. The advice given is that it is necessary to provide advocacy to the public regarding healthy sex education and the delivery of the information regarding rights of women and children, to strengthen the capacity of law enforcement officials in protecting the rights of victims of sexual violence, and establishing implementing regulation for the Sexual Violence Criminal Act as a legal basis for providing protection for sexual violence victims.*

Keyword: *Human Rights, Sexual Violence, East Seram Regency.*

INTRODUCTION

Sexual violence is the treatment of bad actions against the body, a person's sexual desire, and reproductive function that there is an element of coercion and against a person's will, so that it has an impact on a person's physical, psychological and sexual suffering which is included in one form of violation of human dignity (Rahayu, 2021). Hence, victims of sexual violence must receive protection from both the state and society so that victims can live freely and avoid the shadows of violence, torture and treatment that leads to degrading

human dignity and status (torture, other cruel, inhuman and degrading treatment) (Paradias & Soponyono, 2022).

Sexual violence is a type of violence that can occur in both the public and domestic spheres and families with domestic violence problems can already be suspected that the perpetrators are predominantly male (Setiawan et al., 2018). The WHO World Report on Violence and Health lists several forms of sexual violence that can be experienced by women, namely marital rape or intimate partner sexual assault, unwanted sexual advances, including requesting sexual activity in return for services, as well as forced marriage, cohabitation, and child marriage (Hairi, 2016).

Sexual violence can also be seen as the act of imposing unwelcome sexual advances on someone, whether through physical or verbal means. This includes heinous acts like rape, as well as hurtful taunts or jokes about sexual matters. It also encompasses invasive personal inquiries about one's sexual life, making lewd gestures with hands or facial expressions, emitting sexually suggestive sounds, and a myriad of other distressing behaviors (Paradias & Soponyono, 2022).

Victims of sexual violence are also known to be blamed for the crimes they experience. In general, women are the ones who are blamed whether it is related to the way they dress, their behavior, the time of the abuse, or the justification that does not place men as perpetrators because it is natural for men who have a high libido to commit sexual violence (Faisal et al., 2023).

The Annual Report of the National Commission on Violence Against Women for the period 2012 to 2021 noted that there were at least 49,762 reports of sexual violence cases. Furthermore, from January to November 2022, National Commission on Violence against Women (Komisi Nasional Anti Kekerasan Terhadap Perempuan) also received 3,014 cases of gender-based violence against women, including 860 cases of sexual violence in the public sphere and 899 cases in the private sphere (Komisi Nasional Anti Kekerasan Terhadap Perempuan, 2022b). Meanwhile, records released by the Ministry of Women's Empowerment and Child Protection (2022) show that there were 25,050 women victims of violence in Indonesia throughout 2022, where there was an increase in cases of 15.2% from the previous year of 21,753 cases (KPPA, 2023).

Legal protection of women in Indonesia is an effort to protect women's human rights, especially to provide security in the fulfillment of women's rights by providing consistent and systematic attention aimed at realizing gender equality both in government and in law (Is et al., 2022).

In theory, the protection of human rights has been universally protected and recognized through the Universal Declaration of Human Rights, also known as the Universal Declaration of Human Rights (UDHR) (Hutabarat et al., 2022). Indonesia itself drafted the 1945 Constitution before the UDHR, but the ideas of human rights reflected in the declaration were already known by the founding fathers of Indonesia in the BPUPKI session in 1945 (Asshiddiqie, 2007).

The important framework in the concept of human rights in Indonesia consists of two key aspects: individual protection and state protection (Hakim & Kurniawan, 2021). Individual protection means that the concept of individual human rights of the Indonesian people must be maintained within the framework of the state obligation to protect all its people. Meanwhile, state protection has a conceptual framework that also includes environmental and territorial issues (Hakim & Kurniawan, 2021).

In its development, in dealing with the problem of discrimination against women, the UN issued the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) as an international human rights instrument on December 18, 1979 and entered into force on September 3, 1981 as international treaty. With the approval of CEDAW as an international convention, efforts to eliminate all forms of discriminatory acts

against women became the end of efforts in the international arena in the women's decade which was used as an effort to protect and introduce as well as voice the rights of women around the world (Setyowati, 2021).

Furthermore, in relation to sexual violence itself, the theory of Gender Based Violence (GBV) is also known. The United Nations High Commissioner for Refugees (UNHCR) defines GBV as violence committed against a person because of their sex or gender. Such violence forces another person to do something against their will through force, coercion, threats, deception, cultural expectations, or economic means (UNHCR, 2022). Gender-based violence has the following forms of violence:(Kasim, 2012)

- a. Physical Violence that physically injures a person either with or without tools, such as kicking, hitting, stomping, etc.;
- b. Psychological Violence that makes a person experience emotional attacks so that it can cause the person to be traumatized, feel uncomfortable, and all things that are not related to physically harming someone;
- c. Sexual violence that indicates violence committed against a person who does not want a sexual act or without the consent of that person, such as rape, forced abortion, sexual slavery, etc.;
- d. Political violence that makes a woman unable to exercise political rights because she is considered incapable of playing a role in politics;
- e. Economic Violence that makes a person financially limited or can also be interpreted as abandoning a person and unable to work.

Sexual violence in general is a very common phenomenon, not only in Indonesia but around the world. Sexual violence is referred to as a global problem despite methodological differences between studies that have an impact on the prevalence of reported sexual violence cases (Stoltenborgh et al., 2011). According to Karen J. Marcdante, most perpetrators of child sexual abuse are teenagers and adults who are known to have a close relationship with the child and feel they have power over the child, but perpetrators can also be strangers (Affiarni et al., 2020).

Based on the theoretical review above, it can be seen that there are ideal discrepancies in the application of theory with factual conditions in society. The high number of sexual violence cases in Indonesia shows this discrepancy. Law enforcement against sexual violence also still shows that the protection and fulfillment of human rights for victims of sexual violence is not optimal.

This research is located in East Seram Regency, Maluku Province as the location of the author's current residence who is currently working at the East Seram Regency Attorney's Office. During the author's work, the author found that there were various cases of sexual violence experienced by female and child victims in East Seram Regency. This research will also narrow the scope of time for the last 5 (five) years, namely 2018 to 2022 by examining court decisions that have judicial authority in East Seram Regency.

The author decided to conduct this research due to the scarcity of academic studies on the topic of sexual violence and human rights protection in East Seram Regency, making it a unique and novel contribution to the field.

Based on the background description provided above, this paper aims to address specific problem formulations that will serve as the focal points of discussion. Firstly, the research will explore the various forms of sexual violence perpetrated against female and child victims in East Seram Regency. Secondly, an examination will be conducted to determine whether the female and child victims of sexual violence in this region have received adequate guarantees of Human Rights protection from the State. Lastly, the study will focus on exploring ways to optimize the fulfillment of Human Rights and facilitate the recovery process for female and child victims of sexual violence in East Seram Regency.

METHOD

This research uses the Descriptive-Analytical form, which describes the data and information obtained based on the results of observations, interviews, documents, court decisions, and field notes, especially regarding cases of sexual violence against victims of women and children that occurred in East Seram Regency and continued with an analysis of the information that has been obtained. This research uses secondary data in the form of literature studies to study legal theories and principles contained in legal sources. This research uses primary, secondary, and tertiary legal materials. This research uses data collection tools through literature study. The method that will be used to process and analyze the data is a qualitative method. The results of this research are in the form of Descriptive-Analytical where in the final stage of the research the results will be processed and analyzed to draw conclusions.

RESULTS AND DISCUSSION

Decisions of the district courts that tried cases of sexual violence in the jurisdiction of East Seram Regency from 2018 to 2022 can be summarized as can be seen in the following table.

Table 1. Summary of Sexual Violence Court Decisions 2018-2022 in East Seram Regency

Decision No.	Defendant	Indictment	Verdict
No. 138/Pid.B/2018/PN.Msh	La Tamrin Wali	Article 290 paragraph 1 of the Indonesian Criminal Code (KUHP).	District Court: - Proven legally and convincingly guilty of committing the criminal act of "engaging in indecent conduct (Article 290 paragraph 1 of the Indonesian Criminal Code)" - Imprisonment for 4 (four) years.
No. 3/Pid.Sus/2019/PN Dth	Moksin Etlegar Alias Moko	First: Article 81 paragraph (3) in conjunction with Article 76D of the Child Protection Law Second: Article 81 paragraph (1) in conjunction with Article 76D of the Child Protection Law Third: Article 82 paragraph (1) in conjunction with Article 76E of the Child Protection Law	District Court: - Proven legally and convincingly guilty of committing the criminal act of "engaging in violence or threat of violence to force a child to engage in sexual intercourse with them, committed by a Parent or Guardian" as stated in the first alternative charge (Article 76D of the Child Protection Law). - Imprisonment for 10 (ten) years and a fine of Rp60,000,000.00 (sixty million Indonesian Rupiah) or confinement for 6 (six) months.
No. 8/Pidsus/2019/PN Dth	Mahmud Takaba Alias Muku	First: Article 81 paragraph (3) in conjunction with Article 76D of the Child Protection Law Second: Article 81 paragraph (1) in conjunction with Article 76D of the Child Protection Law	District Court: - Proven legally and convincingly guilty of committing the criminal act of "forcing a child to engage in sexual intercourse with them through threats of violence, committed by a guardian" as stated in the first alternative charge (Article 76D of the Child Protection Law). - Imprisonment for 10 (ten) years and a fine of Rp60,000,000.00 (sixty million Indonesian Rupiah) or confinement for 6 (six) months.
No. 5/Pid.Sus. Anak/2019/PN	Child AAA	First: Article 81 paragraph (1)	District Court: - Proven legally and convincingly guilty of

Dth		<p>in conjunction with Article 76D Child Protection Law</p> <p>Second: Article 81 paragraph (2) in conjunction with Article 76D Child Protection Law</p>	<p>committing the criminal act of "making threats of violence to force a child to engage in sexual intercourse with them," as stipulated in the alternative charge one (Article 76D Child Protection Law).</p> <p>- Imprisonment for 4 (four) years at the Special Child Rehabilitation Institution (LKPA) and vocational training for 6 (six) months.</p>
No. 9/Pid.B/2020/PN Dth	Nur Santi Umanailo Alias Nur Santi Kilbaren	<p>First: Article 296 of Indonesian Criminal Code (KUHP).</p> <p>Second: Article 506 of Indonesian Criminal Code (KUHP).</p>	<p>District Court:</p> <p>- Proven legally and convincingly guilty of committing the criminal act of "intentionally facilitating others to commit indecent acts and making it a livelihood," as stipulated in the alternative charge one (Article 296 of the Indonesian Penal Code).</p> <p>- Imprisonment for 10 (ten) months.</p>
No. 25/Pid.Sus/2020/PN Dth	Jen Kilbaren Alias Jen	<p>First: Article 81 paragraph (3) in conjunction with Article 76D Child Protection Law</p> <p>Second: Article 82 paragraph (2) in conjunction with Article 76E Child Protection Law</p>	<p>District Court:</p> <p>- Proven legally and convincingly guilty of committing the criminal act of "forcing a child to engage in sexual intercourse with a family member," as stated in the alternative charge one (Article 76D of the Child Protection Law).</p> <p>- Imprisonment for 12 (twelve) years and a fine of IDR 100,000,000.00 (one hundred million Indonesian Rupiah) or confinement for 6 (six) months.</p> <p>Court of appeal:</p> <p>- Proven legally and convincingly guilty of committing the criminal act of "committing sexual abuse with violence against a child under his/her care" (Article 76E of the Child Protection Law).</p> <p>- Imprisonment for 9 (nine) years and a fine of IDR 100,000,000.00 (one hundred million Indonesian Rupiah) or confinement for 6 (six) months.</p> <p>Court of cassation: Rejects the cassation request from the Applicant/Appellant Prosecutor.</p>
No. 21/Pid.Sus/2021/PN Dth	Hamid Rumalean Alias Hamid	<p>First: Article 81 paragraph (3) in conjunction with Article 76D of the Child Protection Law in conjunction with Article 64 paragraph (1) of the Indonesian Criminal Code (KUHP).</p> <p>Second: Article 81 paragraph (2) in conjunction with Article 76D of the Child Protection Law in conjunction with Article 64 paragraph (1) of the Indonesian Criminal</p>	<p>District Court:</p> <p>- Proven legitimately and convincingly guilty of committing the criminal act of "making threats of violent force to compel a child to engage in sexual intercourse with oneself, repeatedly perpetrated by a parent as a continued act," as stipulated in the alternative indictment one (Article 76D of the Child Protection Law).</p> <p>- A prison sentence of 13 (thirteen) years and a fine of Rp100,000,000.00 (one hundred million Indonesian rupiahs) or confinement for 6 (six) months.</p>

		Code (KUHP).	
No. 18/Pid.Sus /2021/PN Dth	Takbir Siarkanasa	<p>Primary: Article 81 paragraph (1) and Article 76D of the Child Protection Law</p> <p>Secondary: Article 81 paragraph (2) and Article 76D of the Child Protection Law, in conjunction with Article 65 of the Criminal Code.</p>	<p>District Court:</p> <ul style="list-style-type: none"> - Proven legally and convincingly guilty of committing the criminal act of "persuading a child to engage in sexual intercourse with them," as stipulated in the subsidiary charge (Article 76D of the Child Protection Law). - A prison sentence of 10 (ten) years and a fine of Rp100,000,000.00 (one hundred million Indonesian Rupiah), or confinement for 3 (three) months.
No. 55/Pid.Sus /2022/PN Dth	Abdul Mutalib Rumalowak	<p>Article 82 paragraph (1) in conjunction with Article 76E of the Child Protection Law.</p>	<p>District Court:</p> <ul style="list-style-type: none"> - Legally and convincingly proven guilty of committing the criminal act of "molestation of a child (Article 76E of the Child Protection Law)." - A prison sentence of 5 (five) years and a fine of Rp100,000,000.00 (one hundred million Indonesian Rupiah), or confinement for 6 (six) months.
No. 45/Pid.B /2022/PN Dth	Ilham Rumakefing	<p>First: Article 289 of the Criminal Code (KUHP)</p> <p>Second: Article 290 paragraph 1 of the Criminal Code (KUHP)</p>	<p>District Court:</p> <ul style="list-style-type: none"> - Legally and convincingly proven guilty of committing the criminal act of "engaging in indecent behavior." - A prison sentence of 3 (three) years.

Source: Primary Data, processed, 2023

The author obtained the court decisions from decisions stored in the archives of the East Seram Regency Attorney's Office as many as 9 (nine) decisions and 1 (one) other decision the author requested directly from the Dataran Hunimoa District Court. Analyzing the categorized judgments for each year (2018 – 2022), there was one case decided in 2018, three cases in 2019, two cases in 2020, two cases in 2021, and two cases in 2022. Regarding the location and jurisdiction of the courts, one decision was made by the Masohi District Court in 2018, which was then authorized to adjudicate cases in East Seram Regency. Furthermore, nine decisions were issued by the Dataran Hunimoa District Court. In examining these 10 (ten) decisions, the Author conducted an analysis of sexual violence cases, including the protection afforded to victims as part of Human Rights protection.

1. Perpetrators Characteristics

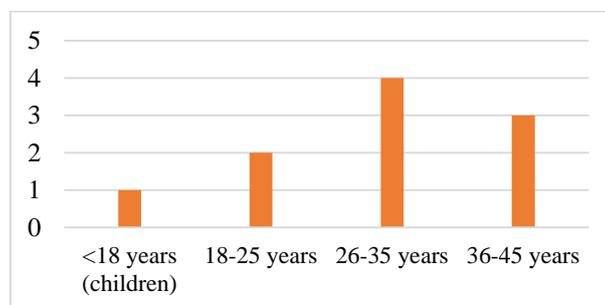


Figure 1. Age of Perpetrators

In figure 1 above, it can be seen that sexual violence was committed by perpetrators under the age of 18 (child group) as many as 1 person (10%), age 18-25 years as many as 2 people (20%), age 26-35 years as many as 4 people (40%), and age 36-45 years as many

as 3 people (30%). So it can be concluded that the group with the most perpetrators of sexual violence in East Seram Regency is the group of perpetrators aged 26-35 years and followed by the group of perpetrators aged 36-45 years and the group with the least perpetrators of sexual violence is the child group.

Based on this data, it can be seen that people who are considered adults have a higher tendency to commit sexual violence than children. The author argues that the high number of adult perpetrators (over 18 years old), especially in East Seram Regency, has a connection with the low awareness of sexual violence or sex education and the assumption that it is normal for adults to have intercourse or sexual abuse against victims. The author concludes this from the results of an interview with the Head of the General Crime Section of the East Seram Regency Attorney's Office, Julivia M. Selanno, who stated that acts of sexual abuse or sexual intercourse, whether committed by family members or boyfriends, against victims are normal for the community.

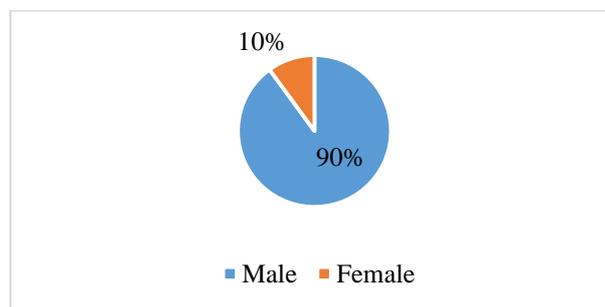


Figure 2. Gender of the Perpetrator

In figure 2 above, it can be seen that the majority of perpetrators of sexual violence are male (90%), while the perpetrators of sexual violence who are female are only 1 in 10 people (10%). In the case of the female perpetrator, the perpetrator was a pimp who involved female child victims in the practice of prostitution. The data shows that the majority of perpetrators of sexual violence in East Seram Regency are male. Based on the data above, the author argues that the high number of male perpetrators is strongly influenced by patriarchal culture as the main problem in cases of sexual violence.

2. Victim Characteristics

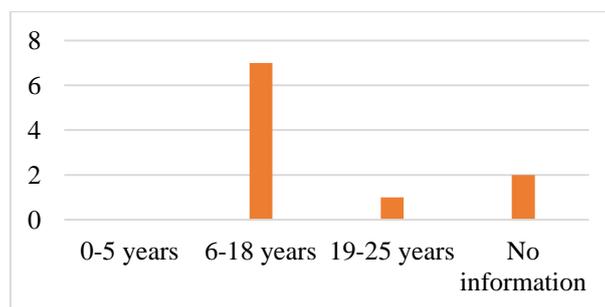


Figure 3. Age of Victims

In figure 3 above, it can be seen that victims of sexual violence in the group of child victims aged 6-18 years reached the highest number of 7 children (70%), followed by the group of victims aged 19-25 years as many as 1 person (10%), there was no information about the age of the victim as many as 2 cases (20%), and there were no victims who were included in the group of child victims aged 0-5 years. Thus, it can be concluded that the most common group of sexual victims in East Seram Regency is the group of child victims

aged 6-18 years. This shows how vulnerable children are to becoming victims of sexual violence.

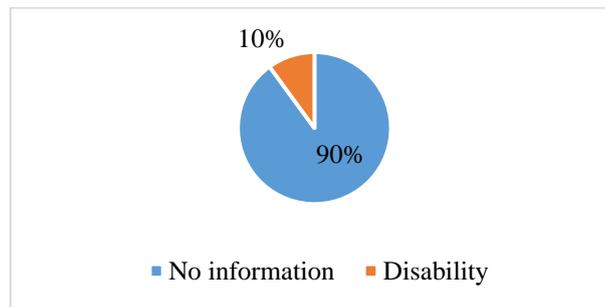


Figure 4. Disability Victim

From figure 4 above, it can be seen that there is 1 out of 10 decisions that show that the victim of sexual violence is a person with a disability, namely in the court decision on behalf of the Defendant La Tamrin Wali who committed sexual abuse as regulated in Article 290-1 of the Criminal Code. In the decision, it was stated that based on a certificate dated August 09, 2018 from the Regional Special Hospital of the Maluku Provincial Government on the victim signed by Dr. David Santoso T. SpKJ, MARS, the victim was diagnosed with mental disorder due to brain damage and dysfunction from physical illness and mental retardation.

In addition, witness testimony at trial also showed that the victim had been a person with a disability since birth, where the victim could not walk and could not communicate because she could not speak. Therefore, the author is of the opinion that the victim in this decision is a person with a disability as referred to in Article 1.1 of the Law on Persons with Disabilities.

However, neither the Public Prosecutor nor the Panel of Judges who tried the case referred to the Law on Persons with Disabilities despite witness testimony regarding the victim's disability since birth and a diagnosis of mental disorder and brain damage and dysfunction based on a certificate from the Regional Specialized Hospital of the Maluku Provincial Government. Thus, the Panel of Judges has disregarded the right of women with disabilities to obtain more protection from acts of violence, including sexual violence and exploitation, as a form of legal protection regulated in the Law on Persons with Disabilities.

Women with disabilities are in a more vulnerable position to experience sexual violence caused by factors, namely individual factors such as limited mobility and access to sexual education and environmental factors such as discrimination and lack of social support (Azhar et al., 2023).

3. Relationship between Perpetrators and Victims

Table 2. Relationship between Perpetrators and Victims

Perpetrators	Victims	Total
Adoptive Father/Uncle	Adopted child/nephew	3
Boyfriend	Girlfriend	2
Neighbors	Neighbors	2
Biological Father	Biological Child	1
Friend	Friend	1
Pimp	Commercial Sex Workers	1

Based on Table 2 above, it can be seen that the perpetrators of sexual violence were the victim's close family (biological father, adoptive father/uncle), the victim's boyfriend, the victim's neighbor, the victim's friend, and a pimp. If the biological father and adoptive father/uncle perpetrators are included in the family group, then the family group is the group that is the highest perpetrator of sexual violence with a total of 4 people. The group of boyfriend and neighbor perpetrators is the next highest group with 2 people each. Finally, the group of perpetrators of friends and pimps became the group that became the least perpetrators of sexual violence with a total of 1 person each.

In the case of sexual violence committed by a family member (the victim's biological father, adoptive father or uncle), the sexual violence also constitutes an incestuous relationship. In general, incest is defined as sexual relations between people who are related by blood or close sibling relationships that are considered to violate customary norms, legal norms, and religious norms (Komisi Nasional Anti Kekerasan Terhadap Perempuan, 2022a). The definition includes 3 (three) scopes, namely:

- a. Parental incest, which is sexual relations between a parent and child, such as a father with a daughter, or a mother with a son;
- b. Sibling incest, which involves relations between siblings; and
- c. Family incest, referring to sexual relations carried out by close relatives who hold power over a child and still maintain blood relations, whether direct descendants, ancestors, or collateral relatives. Examples include uncles, aunts, grandparents, nieces, nephews, cousins, and even stepfathers fall into this category in the context of the vulnerability of female children.

By referring to the scope of incest above, it can be seen that there are cases of incestuous relationships in the form of parental incest (biological father against biological daughter) and family incest (adoptive father/uncle against adoptive daughter/nephew). The case of incest was also explained by the Judge of the Dataran Hunimoa Court, Angghara Pramudya, in the event that the victim's biological father had sexual intercourse with his biological daughter resulting in pregnancy. Certainly, the unborn child of the victim in this case holds a dual status, being both the child and grandchild of the perpetrator. Due to the consequences of the incestuous relationship and its impact on the victim, the panel of judges has imposed an aggravation as stipulated in Article 81 paragraph (3) in conjunction with Article 76D of the Child Protection Law.

In addition to incestuous relationships, there were also dating relationships between perpetrators and child victims. In the 2 cases that had a dating relationship, there was a child perpetrator who had sexual intercourse with his girlfriend (a 14 year old child) accompanied by threats of violence as regulated in Article 81 paragraph (1) jo. Article 76D of the Child Protection Law and the other case was a sexual intercourse committed by the perpetrator against his girlfriend (15 years old) accompanied by seduction as stipulated in Article 81 paragraph (2) jo. Article 76D of the Child Protection Law.

In both cases of sexual intercourse, the victims' children became pregnant and because the perpetrator and the victim had previously been in a romantic relationship, there was an attempt to marry the perpetrator and the victim as a form of settlement of the sexual violence case. However, the marriage between the perpetrator and the child did not take place and in the end the two child victims were married off to other men.

Other relationships between perpetrators and victims as found in court decisions are friendships, neighborly relationships, and there are also relationships within the scope of prostitution. In general, it can be concluded that the perpetrators of sexual violence are people who have a close relationship with the victim. This is also in accordance with research conducted by Afni Carolina which shows that the risk of a child becoming a victim of sexual violence is very high, both within the scope of their closest family, neighbors and friends (Carolina, 2005). Sexual violence is also closely related to domestic

violence, as there is a tendency for children to be victimized by perpetrators within their immediate family (Carolina, 2005).

The author also believes that victims are vulnerable to experiencing sexual violence due to power relations and a strong patriarchal culture in East Seram Regency. The imbalance between the perpetrator and the victim is evident in the victim's powerlessness when facing threats or coercion from the perpetrator to comply with the perpetrator's wishes. Therefore, the author attempts to examine the correlation between power relations and sexual violence in the verdict.

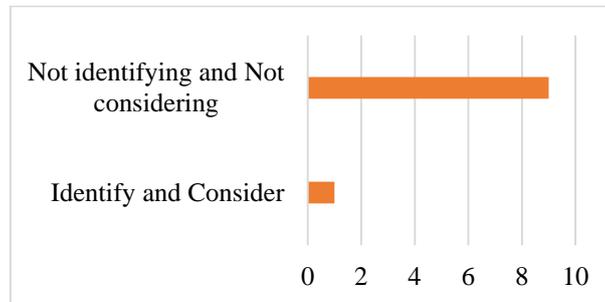


Figure 5. Consideration of Power Relationships Between Perpetrators and Victims

Based on figure 5 above, it can be seen that of the 10 decisions studied, the Panel of Judges only included consideration of power relations in the decision where the relationship between the perpetrator and the victim was the biological father and biological son on behalf of the Defendant Jen Kilbaren. Meanwhile, for the relationship between the perpetrator and the other victims, they did not identify and did not consider the existence of a power relationship between the perpetrator and the victim.

Whereas in cases of sexual violence, the power relationship between the perpetrator and the victim is an inseparable element (Aryana, 2022). The existence of power relations is also a manifestation of patriarchal culture where men are given privileges and place women in positions that can be controlled and degrade women both physically and psychologically (Aryana, 2022).

In the decision on behalf of the Defendant Jen Kilbaren, it is known that the panel of judges in their consideration linked the existence of a power relationship related to the element of force in cases of sexual intercourse based on Article 81 paragraph (3) jo. Article 76D of the Child Protection Law.

Regarding the judge's consideration in the decision, the author considers that the panel of judges who tried the case had used a gender perspective to protect victims. However, considering in terms of quantity that there is only 1 out of 10 decisions that consider power relations in cases of sexual violence, the author argues that in general the panel of judges has not fully implemented Article 4 letter f of PERMA Number 3 of 2017 which states "In examining cases, judges should consider Gender Equality and non-discrimination, by identifying the facts of the trial": f. Power relations that result in the victim/witness being powerless." According to the author, the protection of victims will be maximized if the panel of judges includes consideration of power relations in all decisions, be it cases of sexual intercourse or sexual abuse based on Article 81 and Article 82 of the Child Protection Law.

4. Impact and Harm to Victims

Table 3. Impact on Victims

Name of Defendant	Physical Impact	Psychological Impact	Health Impact	Education Impact
La Tamrin Wali	✓			

Moksin Etlegar	✓	✓		✓
Mahmud Takaba	✓		✓	
Anak AAA	✓		✓	
Nur Santi Umanailo	✓			
Jen Kilbaren	✓	✓	✓	✓
Hamid Rumalean	✓	✓	✓	✓
Takbir Siarkanasa	✓	✓	✓	✓
Abdul Mutalib Rumlalwak		✓		
Ilham Rumakefing				
Total	8	5	5	4

Based on Table 3 above, it can be seen that the impacts of sexual violence that can be identified in the decisions broadly include physical violence (injuries to reproductive organs), psychological violence (fear, shame, and trauma), health violence (child pregnancy), and educational impacts (dropping out of school). Physical impact is the impact most often included in the decision with a total of 8 cases. Then the psychological impact and health impact each amounted to 5 cases. Furthermore, the impact of education is the least impact that occurs with a total of 4 cases.

It can also be seen that 3 out of 10 decisions show the physical, psychological, health, and educational impacts at the same time due to the acts of sexual intercourse committed on behalf of the Defendants Jen Kilbaren, Hamid Rumalean, and Takbir Siarkanasa against each child victim. The impact on victims, especially women, is something that must be considered by judges in adjudicating cases relating to women as victims by asking about losses, the impact of the case and the need for recovery for victims as regulated in PERMA Number 3 of 2017.

However, in the case against the defendant Ilham Rumakefing there was no information about the impact experienced by the victim as a result of the sexual abuse. According to the author, the judge in the case against the defendant Ilham Rumakefing had ignored the impact experienced by the victim and showed an indication that victims of sexual violence have not been fully involved in the judicial process.

The neglect of the victim's impact on the case also shows that the Panel of Judges did not follow the guidelines to ask about the losses and impacts experienced by women as victims based on PERMA Number 3 of 2017. In fact, the act of sexual violence has a psychological impact in the form of stress, depression, feelings of guilt and self-blame, fear of contact with others, images of events where the child received sexual violence, nightmares, difficulty sleeping, fear of things related to abuse including objects, smells, places, doctor visits, self-esteem problems, sexual dysfunction, suicidal thoughts, somatic complaints, and unwanted pregnancy (Ramadhani & Nurwati, 2022). The decision also shows an indication that in cases of sexual violence, the orientation of judges in deciding and trying cases is still aimed at punishing the perpetrator and has not prioritized the interests of victims who have been harmed by sexual violence committed by the perpetrator.

5. Public Prosecutor's Indictment

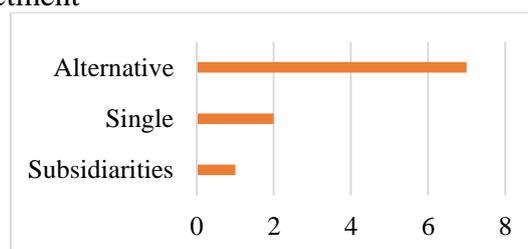


Figure 6. Form of indictment by the public prosecutor

From Graph 6 above, it can be seen that the form of indictment most commonly used by the Public Prosecutor was an alternative indictment at 70%, a single indictment at 20%, and a single indictment at 10%. In relation to 7 out of 10 cases that used alternative charges, the Public Prosecutor at the East Seram Regency Prosecutor's Office charged perpetrators of sexual violence using Article 81 or Article 82 of the Child Protection Law (sexual intercourse or sexual abuse of a child); Article 296 of the Criminal Code or Article 506 of the Criminal Code (prostitution service provider); and Article 289 of the Criminal Code or Article 290 of the Criminal Code (sexual abuse of a woman).

In relation to 2 of the 10 cases that used a single charge, the articles charged were Article 290-1 of the Criminal Code (sexual abuse of a woman) and Article 82 paragraph (1) of the Child Protection Law. Meanwhile, the subsidiarity charges used by the Public Prosecutor were primair Article 81 paragraph (1) and subsidiarity Article 81 paragraph (2) of the Child Protection Law (sexual intercourse with a child).

In terms of the use of subsidiarity charges by the Public Prosecutor at the East Seram Regency District Prosecution Service, there was one case of sexual intercourse in the name of the Defendant Takbir Siarkanasa against a child victim who was charged with the primary charge of committing violence or threatening violence to force a child to have sexual intercourse with him or another person (vide Article 81 paragraph (1) jo. Article 76D of the Child Protection Law) and subsidiary to deceit, a series of lies, or inducing a child to have sexual intercourse with her or another person (vide Article 81 paragraph (2) jo. Article 76D of the Child Protection Law).

For the consideration, both the sexual intercourse regulated in Article 81 paragraph (1) of the Child Protection Law and Article 81 paragraph (2) of the Child Protection Law have the same criminal provisions, namely imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah). Meanwhile, in the Circular Letter of the Attorney General No. SE-004/J.A/11/1993 concerning the Preparation of Indictments, it is determined that the subsidiary charges are arranged in layers with the aim that one layer has a function as a substitute for the previous layer, where the arrangement starts from the criminal offense that is punishable by the highest penalty to the criminal offense that is punishable by the lowest penalty in sequence (Saragi, 2012). Therefore, the author considers that the Public Prosecutor at the East Seram Regency District Prosecutor's Office is more appropriate to use an alternative charge rather than a subsidiary charge because the criminal penalties in Article 81 paragraph (1) and paragraph (2) of the Child Protection Law are the same.

6. Judge's Consideration

Table 4. Aggravating Circumstances Against the Defendant

Consideration of Aggravating Circumstances	Total
The actions of the defendant/child have damaged the future of the victim	7
The Defendant's actions have damaged the victim's honor	4
The actions of the Defendant/Child violate the norms of decency, religion, and the norms of the law	3
The Defendant's actions disturbed the community because they were contrary to general moral values	3
The defendant's actions caused the victim to be traumatized	3
The defendant was convoluted and did not confess frankly	2
The actions of the Defendant as a relative who is considered a parent and/or parent should protect and nurture the victim	2
The defendant committed his acts against the victim repeatedly	1
The Defendant's actions were committed against his adopted child	1
The Defendant's actions caused the victim and her family to feel embarrassed	1
The child perpetrator did not immediately marry the victim's child when he found out that she was pregnant, which caused a dispute between families	1

The Defendant's actions constitute an extraordinary crime	1
The defendant committed his actions while intoxicated	1
The actions of the Defendant have damaged the good name of the victim's family	1

Table 5. Mitigating circumstances against the defendant

Consideration of Mitigating Circumstances	Total
The defendant/child has not been convicted	9
The defendant confessed and regretted his actions	4
The defendant / child is still young / college age so that it can still be expected to be better in the future / expected to improve behavior	4
The defendant was polite during the trial	4
The defendant is the head of the family or the backbone of the family who has the responsibility to provide for the defendant's livelihood.	4
The defendant has apologized to the victim's family and the defendant's apology has been forgiven.	2
The defendant promised not to reoffend.	2
There has been an amicable settlement between the Defendant and the victim or the victim's family based on a peace agreement.	2

Based on Table 4 above, the author sees that there are 3 types of aggravating circumstances for the defendant that are most often considered by the Panel of Judges, namely the actions of the defendant/child have damaged the future of the victim in 7 out of 10 decisions (70%); damaged the honor of the victim in 4 decisions (40%); and there are 3 decisions each (30%) that consider: a) violating the norms of decency, religion, and legal norms, b) disturbing the community because it is contrary to moral values in general, and c) causing trauma to the victim.

Meanwhile, in Table 5 above, it can be observed that the mitigating circumstances most frequently considered by the Panel of Judges are as follows: The Defendant/Child has never been previously convicted in 9 out of 10 decisions (90%). Additionally, in each case, 4 decisions (40%) take into account: a) admitting and regretting the act, b) being young or a student with the expectation of self-improvement, c) maintaining a respectful attitude during the trial, and d) serving as the head of the family or the breadwinner. Lastly, in each case, 2 decisions (20%) consider: a) apologizing to the victim's family and being accepted by them, b) pledging not to repeat the offense, and c) having achieved reconciliation between the Defendant and the victim based on a Peace Agreement letter.

In terms of aggravating circumstances for the Defendant, the Author appreciates the Judiciary for considering the future of the victim and the trauma experienced by them. The Author agrees that the impact on the victim is crucial to be taken into account in the criminal justice system, showcasing the efforts of the judicial panel to protect the rights and interests of the victim. Regarding children who are victims of sexual violence, Mr. Angghara Pramudya also conveys that the principle of the best interest of the child, as outlined in Article 3 of the Convention on the Rights of the Child and ratified through Presidential Decree Number 36 of 1990, is always considered by the judicial panel. A tangible manifestation of this principle is the sentencing or the implementation of *strafmacht* after assessing the impact experienced by the victim.

As a note, it is also important to consider the impact on the victim in terms of how law enforcement obtains statements from the victims themselves. In this regard, Ms. Julivia M. Selanno mentioned that the Public Prosecutor strives to understand the psychological condition of the victim by observing their demeanor both before and after the occurrence of the sexual violence. For instance, a victim who was cheerful before the sexual violence may exhibit changes in behavior, becoming somber or withdrawn afterward. During the victim's examination in court, the Public Prosecutor poses questions

designed to encourage the victim to open up about the case and willingly share honest details about their experience.

7. Victim Assistance

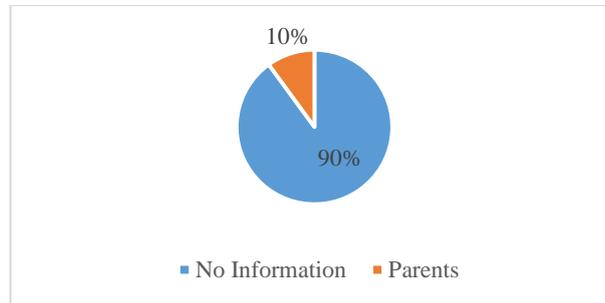


Figure 7. Attendance of victim advocates

Based on figure 7 above, it can be observed that only 1 out of 10 decisions (10%) explicitly mentions victim support, specifically in the case of Defendant La Tamrin Wali Alias Tamrin. In that decision, it is indicated that the victim was accompanied by their parents during the trial. It is noteworthy that the support provided by the victim's parents in this decision was due to the victim experiencing difficulties in communication and providing testimony during the trial. Meanwhile, the remaining 9 decisions do not provide information regarding the victim support process.

In relation to this matter, Mr. Angghara Pramudya stated that there is no provision to require information about the victim's companion in the decision. Furthermore, everything that happened in the trial, including whether or not there was an advocate for the victim, was recorded in the minutes of the trial. Therefore, an interview is needed to find out about victim assistance, especially in East Seram Regency.

Ms. Julivia M. Selanno said that given the large number of child victims of sexual violence, the advocate for the victim is often the victim's biological parent based on a request from the Public Prosecutor at the East Seram Regency Attorney's Office. Mr. Angghara Pramudya also stated that in the event that parents are unable to accompany the victim, a guardian from the victim's side will accompany the victim. If there is no companion for the victim at all, then the Panel of Judges will postpone the hearing until there is a companion for the victim.

Therefore, the author considers that both the Public Prosecutor and the Panel of Judges have done a good job in protecting the victim's right to assistance as stipulated in Article 23 paragraph (2) of the Juvenile Justice System Law which stipulates that at every level of examination, child victims or child witnesses must be accompanied by parents and/or people trusted by the child victims and/or child witnesses, or social workers. In addition, when referring to Article 69A letter d of Law No. 35/2014 on Child Protection, it is also stipulated that the provision of protection and assistance in every judicial process must be provided to children. The right to assistance as stipulated in Article 5 letter p of Law No. 31/2004 on Witness and Victim Protection.

As a note, East Seram Regency also does not yet have a Technical Implementation Unit for Women and Children's Protection (UPTD PPA) or a Women and Children's Empowerment and Protection Center (P2TP2A) to provide support to victims of sexual violence. Furthermore, the Governor of Maluku has issued Governor Regulation Number 19 of 2022 regarding the Position, Duties and Functions, Organizational Structure, and Work Procedures of the Regional Technical Implementation Unit for the Protection of Women and Children as the basis for establishing UPTD PPA at the district level. Article 3, paragraph (2), letter b of the Governor Regulation clearly defines the functions of

UPTD PPA in providing legal support services. However, as of now, UPTD PPA in East Seram Regency has not yet been established. According to the Author, the absence of this institution is closely related to the region's status as an underdeveloped area that generally lacks adequate community service facilities. This can have an impact, especially when the victims of sexual violence are adult women who do not live with their families and therefore cannot accompany the victims in court like child victims who are supported by their families.

8. Victim recovery

From the examination of 10 (ten) court decisions, the Author did not find information regarding the recovery for victims of sexual violence, whether in the form of restitution, compensation, or rehabilitation. Regarding restitution as a form of recovery, the Author found, based on interviews with sources, that broadly there are two factors influencing the non-utilization of the right to restitution by victims in East Seram Regency, namely:

a. Cultural factors

According to Ms. Julivia M. Selanno, there is an assumption in the community that by asking for compensation or restitution in the form of a sum of money to the perpetrator of sexual violence, it is as if the victim was sold by the victim's family to the perpetrator. The author considers that the existence of this perspective also has the potential to result in revictimization of victims carried out by the community in the form of degrading the victim's status as an item that can be traded rather than a human being with full dignity. In addition, this phenomenon further shows the inequality and powerlessness of women and men, as is characteristic of patriarchal culture.

b. Ignorance factor

Based on information received by Mr. Angghara Pramudya, the victim's right to be informed about restitution was not fully implemented by the Panel of Judges at the Dataran Hunimoa District Court, as stated in Article 8 paragraphs (1) and (2) of Supreme Court Regulation (PERMA) Number 3 of 2017. Even though the Panel of Judges informed the victim about the right to apply for restitution to the Defendant, the victim did not exercise her right to apply for restitution. In this case, the author considers that in general the community in East Seram Regency has not realized what rights victims have.

While the fulfillment of compensation in the form of restitution and compensation to the victim should ideally provide a sense of protection, as such, both the victim and their family can undergo the recovery process from the discomfort caused by the experienced violence. The compensation or restitution referred to is compensation for the loss of material, income, suffering, expenses for medical and/or psychological treatment, and/or other losses suffered by the victim as a result of the violence they experienced (Rahmi, 2019).

Thus, the author considers that the Panel of Judges at the Dataran Hunimoa District Court has overruled the victim's right to restitution as stipulated in Law Number 35 of 2014 concerning Child Protection in Article 71D paragraph (1) which stipulates that "Every child who is a victim as referred to in Article 59 paragraph (2) letter b, letter d, letter f, letter h, letter i, and letter j has the right to apply to the court for the right to restitution which is the responsibility of the perpetrator of the crime" as a form of special protection for children who are victims of sexual violence (vide Article 59 paragraph (2) letter j of the Child Protection Law). In fact, the existence of restitution aims to make criminals realize the fact that their actions have harmed victims so that the perpetrators have an obligation to restore the rights of the victims who have been violated (Badrudduja & Widowaty, 2023).

In addition to the provisions stated in the Law, the Panel of Judges has also set aside Supreme Court Regulation (PERMA) Number 3 of 2017 concerning Guidelines for Adjudicating Cases Involving Women Facing the Law. This includes Article 8, paragraph (1) stating, "Judges are to inquire with women as victims about the losses, case impacts, and the need for recovery," and paragraph (2) stating, "Judges are to inform the victim of their right to join cases in accordance with Article 98 of the Criminal Procedure Code and/or file a regular lawsuit or a restitution request as stipulated in the provisions of the legislation."

9. Prosecution Statement and Judges' Decision

Table 6. Comparison of Charges and Verdicts

Proven Criminal Articles	Punishment in Prosecution	Sentence in Judgment
Article 81 paragraph (3) of the Child Protection Law	10 years in prison and a fine of Rp60,000,000.00 (sixty million rupiah)	10 years in prison and a fine of Rp60,000,000.00 (sixty million rupiah)
	13 years in prison and a fine of Rp60,000,000.00 (sixty million rupiah)	10 years in prison and a fine of Rp60,000,000.00 (sixty million rupiah)
	12 years in prison and a fine of Rp100,000,000.00 (one hundred million rupiah)	12 years in prison and a fine of Rp100,000,000.00 (one hundred million rupiah)
	14 years imprisonment	13 years in prison and a fine of Rp100,000,000.00 (one hundred million rupiah)
Article 81 paragraph (2) of the Child Protection Law	8 years in prison and a fine of Rp100,000,000.00 (one hundred million rupiah)	10 years in prison and a fine of Rp100,000,000.00 (one hundred million rupiah)
Article 81 paragraph (1) of the Child Protection Law (Child Perpetrators)	5 years imprisonment in LPKA and 6 months of vocational training	4 years imprisonment in LPKA and 6 months of vocational training
Article 82 paragraph (1) of the Child Protection Law	6 years in prison and a fine of Rp100,000,000.00 (one hundred million rupiah)	5 years in prison and a fine of Rp100,000,000.00 (one hundred million rupiah)
Article 290 paragraph 1 of the Indonesian Criminal Code (KUHP).	4 years imprisonment	4 years imprisonment
	4 years imprisonment	3 years imprisonment
Article 290 of the Indonesian Criminal Code (KUHP).	1 year 2 months imprisonment	10 months imprisonment

Based on Table 6 above, it can be observed that generally, the sentences in the Judges' decisions tend to be lower or equal to the sentences in the public prosecutor's demands. The difference is notable in the case of Defendant Takbir Siarkanasa, who was proven guilty of committing sexual intercourse as stipulated in Article 81 paragraph (2) of the Child Protection Law, where the imposed imprisonment sentence (10 years) was higher than the demanded imprisonment sentence (8 years). Regarding fines, the Panel of Judges approved all the Public Prosecutor's proposals as stated in their demands. Additionally, there are also imprisonment sentences in the Special Child Rehabilitation Institution (LPKA) for juvenile offenders.

Table 7. Criminal disparity in cases of sexual intercourse with children by adult perpetrators

Name of Defendant	Proven Criminal Articles	Basic Criminal Punishment against the Defendant
Takbir Siarkanasa	Article 81 paragraph (2) of the Child Protection Law	10 years in prison and a fine of Rp100,000,000.00 (one hundred million rupiah)
Moksin Etlegar	Article 81 paragraph (3) of the	10 years in prison and a fine of Rp60,000,000.00

	Child Protection Law	(sixty million rupiah)
Mahmud Takaba	Article 81 paragraph (3) of the Child Protection Law	10 years in prison and a fine of Rp60,000,000.00 (sixty million rupiah)
Jen Kilbaren	Article 81 paragraph (3) of the Child Protection Law	12 years in prison and a fine of Rp100,000,000.00 (one hundred million rupiah)
Hamid Rumalean	Article 81 paragraph (3) of the Child Protection Law	13 years in prison and a fine of Rp100,000,000.00 (one hundred million rupiah)

The Author evaluates the existence of criminal disparities in cases of sexual intercourse against child victims committed by adult perpetrators under Article 81 of the Child Protection Law. Based on the provisions in Article 81 paragraph (3) of the Child Protection Law, it is stipulated that the aggravation of the criminal penalty is 1/3 (one-third) compared to the provisions in Article 81 paragraphs (1) and (2). Therefore, the court verdicts for Defendants proven to have committed sexual intercourse under Article 81 paragraph (3) should ideally impose a heavier criminal penalty than the penalty given to Defendants proven to have committed sexual intercourse under Article 81 paragraph (2).

In this case, the criminal disparity can be observed in the case of the Defendant Takbir Siarkanasa, where he was proven to have committed sexual intercourse with a child under Article 81 paragraph (2). However, the imprisonment penalty imposed on him is the same as that for Defendants Moksini Etlegar and Mahmud Takaba, who were proven to have committed sexual intercourse with a child under Article 81 paragraph (3) with an additional penalty of 1/3 (one-third). Moreover, the fine imposed on Defendant Takbir Siarkanasa is even greater than the fines imposed on the two Defendants who received the additional penalty of 1/3 (one-third). Therefore, the Author assesses that the imposition of these penalties is not proportional to the offenses committed by each of the respective Defendants.

CONCLUSION

Based on the discussion outlined in connection with the research problem formulated in this study, the Author draws several conclusions as follows:

- 1 Cases of sexual violence against female and child victims in East Seram Regency involve criminal acts such as rape, molestation, and the provision of prostitution services. Furthermore, the majority of sexual violence victims in East Seram Regency are underage girls (females under 18 years old), and the victims have close relationships with the perpetrators.
- 2 Female and child victims of sexual violence in East Seram Regency have not yet received optimal guarantees of Human Rights protection. This is evident in unfulfilled victim rights, especially regarding the right to recovery through restitution, compensation, or rehabilitation. Additionally, there is a lack of protection and legal equality, and freedom from discrimination, as guaranteed in the Witness and Victim Protection Law, Child Protection Law, and the Law on Juvenile Criminal Justice System.
- 3 The optimization of Human Rights fulfillment for women and children who become victims of sexual violence in East Seram Regency can commence with the promotion of healthy sex education as a preventive measure against future cases of sexual violence. Moreover, training and capacity-building for law enforcement, including the police, prosecution, and judiciary, are essential to effectively address cases of sexual violence.

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