

## The Issue of Judicial Consideration in Acquittal (Vrijspreek): Cases of Sexual Violence Against Children

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### ABSTRACT

Acts of sexual violence against children in Indonesia continue to rise each year. This situation is triggered by victims' fear of reporting and attempts by perpetrators to silence them, especially when perpetrators have certain powers or positions. This crucial phenomenon is evident in the acquittal of Case Number 329/Pid.Sus/2024/PN Jap. The panel of judges' considerations were based solely on Article 183 KUHAP without considering Article 25 TPKS Law. This study uses a normative juridical method through a literature study of primary and secondary legal sources, which are analyzed descriptively and qualitatively. The purpose of the study is to examine the basis for the judge's decision, which contradicts the objectives of the law, as well as the legal consequences and solutions. The results of the study show that the panel of judges relied more on general rules than specific rules, thereby contradicting the principles of Lex Specialis Derogat Legi Generali and Testimonium de auditu. Therefore, it is recommended that law enforcement officials and judges progressively update their understanding of the law and implement preventive and repressive legal protection measures so that acquittal do not become a form of impunity for criminals.

### 1. Introduction

In Indonesia, the incidence of sexual abuse against minors is still high, and the number of victims rises annually. The Ministry of Women's Empowerment and Child Protection (KEMENPPA) reported that 8.43% of female children were victims of sexual abuse in 2021, and 8.82% of them were in 2024 (Santoso, 2024). This demonstrates that, particularly in the Papua area, sexual abuse against minors is a severe issue that needs particular attention. According to data from the Papua Regional Child Protection Commission (KPAD), there were 70 reported cases (Papua, 2024). The state has a duty to protect victims and punish offenders of sexual abuse severely since this situation demonstrates that the four pillars of child protection—the family, community, government, and state—are not being fully and ideally applied. In order to fulfill the country's ambitions for a fair and thriving society, children are both the subject and the aim of Indonesia's national development (Gosita, 1989). Under Article 1 Paragraph (4) of Law Number 11 of 2012 governing the Juvenile Justice System, child victims are defined as minors under the age of

eighteen who sustain bodily, psychological, and/or financial losses as a result of criminal activities.

The Indonesian state refers to *civil law*, which prioritizes written regulations, such as legislation, and makes them the legal basis that must be followed by its citizens (Febrianto, 2024). Indonesia realizes justice as legal protection against sexual violence against children through legislation. Judges should understand and apply the principle that "*Indonesia is a state based on the rule of law*" as stated in Article 1 Paragraph (3) of the 1945 Constitution.

According to Law No. 48 of 2009 on Judicial Authority, judges have the authority to receive, examine, and decide on cases brought before them. This indicates that there must be legal certainty, which judges realize through their decisions on cases, because every decision is a legal event that has legal consequences. Judges are also required to investigate, adhere to, and exemplify the justice and legal principles that are present in society. In order to settle the case, judges frequently have to make a pragmatic decision that might eventually lead to partial justice, particularly for the victims. In the case of decision Number 329/Pid.Sus/2024/PN Jap, a panel of judges rendered an acquittal (*Vrijspreek*) that is thought to be increasingly problematic. This case has become a particular concern for child protection activists and raises questions about the judges' objectivity, independence, and integrity in considering the trial's facts, which ran counter to the public prosecutor's demand for a 12-year prison sentence and a fine of Rp. 200,000,000.00 (two hundred million rupiah), with a subsidiary penalty of 6 months' imprisonment (Sari, 2025). This suggests that the acquittal is legally flawed, with the defendant in this case being a member of the Indonesian National Police with the rank of Second Brigadier (AFH). This case is classified as sexual violence against a child in Keerom, Papua, which was carried out physically.

Based on the testimony of witnesses or victims, AFH committed prurient acts against a 5-year-old child. The lewd acts were carried out by the victim's older sister's ex-boyfriend against her younger sibling, accompanied by threats, until the victim was frightened and suffered psychological trauma, causing the victim to contract a sexually transmitted disease. Based on this case, it is clear that children are not objects that can be used as a means of venting irresponsible actions that have the potential to threaten children, whether in terms of their mindset, behavior, or physical and psychological well-being. There is a previous study by Firmayanto & Karlin Mamu, 2025, entitled "*Acquittal of the Alleged Perpetrator of Child Sexual Abuse: An Analysis of Decision Number 329/Pid.Sus/2024/PN Jap*" with the conclusion that the panel of judges' decision in the acquittal of case number 329/Pid.Sus/2024/PN Jap was based solely on the testimony of the child victim, while other witnesses did not have direct knowledge of the incident. Based on Article 183 KUHAP, one witness

statement without the support of other evidence is not sufficient to prove the elements of the indictment, so the panel of judges handed down an acquittal that had a lasting impact on the victim's mental and physical health (Firmanyanto., & Mamu, 2025).

The fundamental difference between previous studies and this study lies in the focus of the conceptual approach. This study places greater emphasis on analyzing the applicability of existing legal provisions, but in practice, these provisions are not fully taken into consideration by the panel of judges. Criminal acts of sexual violence against children should have provisions in witness statements that differ from Article 183 KUHAP, considering that prurient acts generally occur without witnesses other than the victim and the perpetrator. The panel of judges' verdict was reviewed normatively from Article 25 TPKS Law, which contradicts the principles of *Testimonium de Auditu* and *Lex Specialis Derogat Legi Generali*. The panel of judges tended to base their decision primarily on Article 183 KUHAP in acquitting the defendant. Therefore, acquittal not only violated the victim's sense of justice but also weakened legal protection for children. Based on this, this study will raise several issues, namely:

1. How did the judge justify the acquittal in case Number 329/Pid.Sus/2024/PN Jap, which appears to be inconsistent with the objectives of the law?
2. How does this acquittal affect the legal consequences, and what solutions can be offered to guarantee the fulfillment of the rights and legal protection of victims?

The following theories—the theory of legal certainty and the theory of legal protection of children—will serve as the analytical foundation for the debate and the responses to the research questions. The state's and society's dedication to giving children a feeling of safety, fairness, and well-being is demonstrated by the legal protection of children. Philipus M. Hadjon, on the other hand, claims that the notion of legal protection is an attempt to use legal instruments to guarantee, protect, and aid legal subjects (Hadjon, 2011). The protection of children's rights is a matter of direct regulation in laws with legal goals.

Judges must establish legal clarity while rendering a decision in order to prevent disputes between the parties. In his book "*Einführung in die Rechtswissenschaften*," Gustav Radbuchs asserts that there are three essential principles in law (Rahardjo, 2012): (1) justice (*Gerechtigkeit*); (2) utility (*Zweckmäßigkeit*); and (3) legal certainty (*Rechtssicherheit*). Ideal legal products must have these three key components in order to accomplish basic legal goals. The purpose of this study is to determine whether the judge's considerations in acquitting the defendant in case No. 329/Pid.Sus/2024/PN Jap were



consistent with the goals of the law and to offer suggestions for a more suitable method of using the law as a foundation for the judge's considerations when rendering a decision, so that in similar cases in the future, judges will be more careful, thorough, and professional while protecting the rights of victims.

## 2. Method

This research is normative legal research. The approaches employed are the statute approach, case approach, and conceptual approach, which are based on various legal views and doctrines as the conceptual basis for formulating legal arguments to find solutions under review (Suteki., & Taufani, 2020). Using these methods, this study will investigate laws, theories, doctrines, jurisprudence, principles, and concepts of prudential acts that are connected to the factors that the panel of judges takes into account when granting acquittals (*Vrijspraak*), a significant topic in Indonesian law enforcement practice. Original research publications are not required to use this strategy. This approach is stated in a descriptive manner and ought to give a statement about the study process.

The data used in this paper is secondary data, with primary legal materials and secondary legal materials. Primary legal materials include applicable laws and regulations, the 1945 Constitution, Law No. 48 of 2009 concerning Judicial Power, Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, Law No. 12 of 2022 concerning Sexual Violence, the Criminal Code, the Criminal Procedure Code, KUHAP, KUHP, and in Case No. 329/Pid.Sus/2024/PN Jap as well as Presidential Decree No. 36 of 1990 concerning the Ratification of the *Convention on the Rights of the Child* and other related provisions. Secondary legal materials include scientific literature, as found in relevant books, journals, and articles. The collection of legal materials in this study used the library research technique. The data analysis method employed was descriptive qualitative, specifically involving the description of data analysis based on legal interpretation, with reference to the comprehensive description and elaboration of legal materials to obtain clarity on the legal issues studied by the author.

## 3. Main Heading of the Analysis or Results

### 3.1. The Basis for The Judge's Acquittal in Decision No. 329/Pid.Sus/2024/ Pn Jap

The judge's considerations are a major foundation in realizing a decision that contains the values of justice (*ex aequo et bono*). Judges should ideally be based on objective legal assessments and moral considerations that

reflect the values of justice in reconstructing a case. Suppose judges only adhere to the normative aspects of the law without considering the ethical and moral dimensions. In that case, the decision fails to realize substantive justice and the law's benefits.

In the case under consideration by the judge, the incident began in early November 2022, when the victim, who was 5 years old at the time, witness 2 (the victim's older sibling), and the defendant were at the Arso District Shop owned by the victim's mother (Witness 3) at night, where the shop was already closed and quiet. Then, when Witness 2 (the victim's older sibling) went to buy snacks (instant noodles) at a kiosk, only the victim and the defendant were at the Arso District Shop. The defendant, who was initially sitting in front, moved to the side and gradually approached the victim.

At that moment, the victim tried to escape. However, the defendant immediately approached the victim, inserted three fingers through the front waistband of the victim's pants, and rubbed the victim's sensitive area, causing the victim to scream, "It hurts!" However, the defendant covered the victim's mouth. While committing these acts, the defendant also stared at the victim and threatened her with harsh words, forbidding her from telling anyone about the incident. After the defendant was satisfied, he stopped his actions but continued to stare at the victim and clench his fist at her, which made the victim even more frightened.

Some time later, the victim complained of itching and pain in her genitals. Witness 3 (the victim's father) and Witness 4 (the victim's mother) were not directly aware of the incident and only learned about it from Witness 2 (the victim's sibling), who initially was also unaware of the incident and only learned about it after receiving direct information from the victim's child. On 9 November 2022, the victim was taken to (Expert 2), a doctor who runs a pharmacy practice, and (Expert 2) diagnosed the victim with suspected vaginitis and recommended further examination by a dermatologist and venereologist (Expert 3).

After that, on 29 November 2022, Witness 2 (the victim's older sibling), Witness 3 (the victim's father), and Witness 4 (the victim's mother) took the victim to (Expert 3) for laboratory testing. The laboratory test results showed redness on the victim's genitals and the presence of *gonorrhoea bacteria*, which is known as *gonococcal vulvovaginitis* in children. The defendant and Witness 3 (the victim's father) were also examined by Expert 3 on 22 December 2022. Witness 3 (the victim's father) was declared normal based on the laboratory results. At the same time, the defendant tested positive for genital contamination, and leukocytes or signs of

inflammation were found in the urethra, followed by coccus bacteria. The defendant then said that he had previously felt feverish, like he had malaria, and had taken paracetamol. Expert 3 then prescribed the antibiotic Akilen. However, when Expert 3 checked at the pharmacy, the defendant had not purchased the medicine.

Based on the testimony of Witness (2), he was informed by an obstetrician who confirmed that *gonorrhoea* or *gonococcal vulvovaginitis* is a sexually transmitted disease, so it is highly likely that the perpetrator's dirty hands could have transmitted the disease to the victim. On 26 June 2023, Witness 2 took the victim's child to a psychiatrist (Expert 1), who is a doctor specializing in mental health (psychiatrist) with a subspecialty in child and adolescent psychiatry, because the victim's child had been experiencing itching in the genital area for more than 6 months, which was interfering with their play activities. Based on the medical records, the victim's child was diagnosed with post-traumatic stress disorder due to the sexual violence they had experienced. Based on the statements of the witnesses above, the defendant denied all the allegations, claiming that he did not commit the acts described by the witnesses. The defendant only admitted that he did indeed visit the Witness's home. However, he emphasized that he did not commit the acts alleged by the witnesses' statements.

During the deliberations, (Witness 6), who was outside the room, only heard that the victim's father requested compensation for medical expenses of Rp 100,000,000.00. After further discussion, the victim's family agreed to pay Rp 80,000,000.00. However, several months later, information emerged in the form of a text message from a friend of Witness 4 (the victim's mother) named Indah, which essentially stated that Witness 4 (the victim's mother) had framed the defendant for money alone. Witness 4 (the victim's mother) felt slandered by the defendant's aunt, and because of this, the matter proceeded to legal proceedings.

Drawing from the testimony of the aforementioned witnesses, the judge concluded that the defendant in the first alternative indictment filed by the Public Prosecutor had violated Article 76 E of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection in conjunction with Article 82 Paragraph (1) of Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Perppu Number 1 of 2016 concerning Child Protection into Law. The defendant is satisfied that the following elements: (1) the elements of every person; (2) the element of forbidding the use of violence or threats

of violence; (3) the element of forcing, deceiving, a series of lies, or persuading a child to commit or permit the commission of prurient acts.

In its deliberations, the court found no witnesses who had directly witnessed the incident. However, the court's legal considerations referred to Article 183 KUHAP, which stipulates that a judge may acquit a defendant unless there are at least two pieces of valid evidence, meaning that a single testimony without supporting evidence cannot be used as a basis for proving the elements of the crime. Based on these considerations, the judges concluded that the third element was not fulfilled and that the criminal act charged could not be proven entirely, so the defendant must be declared not legally and convincingly proven guilty of the first alternative indictment.

After that, the panel of judges continued the examination by reviewing and considering the second alternative indictment, and the defendant was indictment with violating Article 6 letter (b) Jo Article 4 Paragraph (2) letter (c) of Law Number 12 of 2022 concerning Sexual Violence Crimes in the second alternative indictment with elements including: (1) The element of every person; and (2) The element of physically committing sexual or prurient acts against a child. Therefore, the judge's consideration remained in principle in accordance with Article 183 KUHAP, and the panel of judges assessed that the element of violence or physical sexual/prurient acts against a child in the second alternative indictment was not fulfilled. Consequently, the panel of judges declared the defendant not guilty and acquitted of legal charges.

### **3.1.1 Analysis of the Judge's considerations in Decision No.329/Pid.Sus/Pn Jap, Which Contradicts the Purpose of the Law**

The law establishes order and controls society's behaviour it is used to give direction or guidance. According to Gustav Radbruch, the three primary goals of law are justice (*Rechtssicherheit*), legal certainty (*Zweckmäßigkeit*), and utility (*Gerechtigkeit*). Legislation can be considered accomplished if a system fairly represents these three components. The interrelationships of these three components should form an ideal legislation. A law is deemed perfect and equitable if it offers advantages and legal clarity. Meanwhile, according to Aristotle, the purpose of law is to realise justice by giving each individual their rights (*ius suum cuique teibueret*) (Machmudin, 2010). In this case, the judge's lack of careful consideration and focus only on the law's general application without considering the victim's condition and the facts revealed at the trial can cause public distrust of law enforcement officials, especially judges at the

Jayapura District Court. Furthermore, the judge's analysis in Decision Number 329/Pid.Sus/2024 Pn Jap, which contradicts the purpose of the law:

### 1. Justice

According to Fence M. Wantu, the essence of justice lies in the ability to place things in their proper proportion and give each individual their due rights, based on the principle that everyone is equal before the law (Uma, 2021). Based on the judge's consideration of the witness testimony, it was evident that the defendant had indeed committed prurient acts against the child victim, as supported by the testimony of Witnesses (1), Witness (2), Witness (3), and Witness (4), the victim's medical records based on expert testimony can be used as evidence in the judge's consideration.

The judge's decision must be based on facts clearly proven through evidence submitted by the parties in court. Meanwhile, the judges referred to Article 183 KUHAP. This shows a contradiction with the element of justice, whereby the rights of the victim did not receive the consideration they deserved. The judges instead gave more consideration to the defendant's denial of committing the prurient act, even though there was clear evidence in the form of the victim's medical records. Furthermore, the judges' consideration was illogical, given that the defendant was willing to pay medical expenses in the form of a settlement amounting to a relatively large sum of Rp 80,000,000.00, which implies that the defendant was the perpetrator. However, the panel of judges did not consider this.

Furthermore, Article 184 Paragraph (1) KUHAP states that legally recognized evidence includes witness testimony, expert testimony, documents, and other evidence, as well as the defendant's testimony. Among these, witness testimony holds the most significant position as the primary evidence in criminal trial proceedings. This relates to the principle of *Testimonium de auditu*, which is testimony provided by a person based on the statements of someone else. This means that testimony from witnesses who did not directly hear, see, or experience the event can still be considered valid and has probative value in court, as confirmed in Constitutional Court Decision No. 65/PUU-VIII/2010 regarding *Testimonium de auditu* witnesses in criminal cases of child sexual abuse. In such cases, this testimony may be considered by the judge as long as it does not contradict the facts presented at trial. (Muhammad, et.al., 2025). *Testimonium de auditu* serves as a valid piece of evidence to support the conviction of the panel of judges and is taken into account by the judge, even when there were no witnesses

present during the occurrence of prurient acts, which could contradict the principle of *Testimonium de auditu*.

## 2. Legal Certainty

Legal certainty is established through carefully drafted and enforced regulations, which serve as the legal basis for judicial deliberations. This ensures clarity and logical consistency to prevent doubts or multiple interpretations that could lead to contradictions or conflicts between norms. According to Utrecht, legal certainty has two primary meanings (Rinduan, 1999). First, it refers to the existence of general norms so that most people understand what actions are permitted and what is prohibited by law.

Secondly, legal certainty protects every individual against arbitrary actions by judges when applying general legal provisions or rules, thereby creating legal uncertainty (*rechtonzekerheid*). The defendant is a member of the Indonesian National Police (AFH) who serves at the Keerom Police Station. The case reflects someone who abused their position and trust towards others by taking advantage of the victim's vulnerable (*dependent*) condition. However, the judge ruled that the elements charged by the public prosecutor were not proven and acquitted the defendant under Article 183 KUHAP. In fact, the testimony of witnesses and/or victims, even if only one piece of supporting evidence, is sufficient to prove that the defendant is guilty. The judge obtained the sentence used as legal consideration as stipulated in Article 25 Paragraph (1) of Law Number 12 of 2022 concerning Sexual Violence Crimes, which reads:

*"The testimony of witnesses and/or victims is sufficient to prove that the defendant is guilty if accompanied by one (1) other piece of valid evidence, and the judge is convinced that a criminal act has indeed occurred and that the defendant is guilty of committing it."*

In this case, the TPKS Law and the Child Protection Law as *lex specialis* principles were disregarded by the judge because the judge's considerations and decision were based on the KUHAP as *lex generalis*. Therefore, the basis of the judge's considerations referring to KUHAP became unclear, given that the TPKS Law and the Child Protection Law essentially regulate specifically the rules and penalties as well as the definition of criminal child sexual violence for perpetrators who commit prurient acts against children, and the provisions on witness testimony in the TPKS Law differ from those in the KUHAP. This case accordance with the conditions, the TPKS Law and the Child

Protection Law should be the basis for the judge's considerations because they are *lex specialis*.

Meanwhile, the old Criminal Code and Criminal Procedure Code do not provide specific provisions regarding perpetrators, witnesses, or victims of criminal acts as found in the TPKS Law and the Child Protection Law, so that the judge's consideration contradicts the principle of *Lex Specialis Derogat Legi Generali*, which means that specific rules override general rules. This indicates legal uncertainty when the panel of judges handed down the acquittal. Ultimately, led to multiple interpretations in applying legal regulations due to their failure to use the legal rules as they should have been applied.

### 3. Utility

Utility is one of the elements of legal purpose that emphasises that every regulation and law enforcement must provide benefits, happiness, and welfare for society. According to Jeremy Bentham (utilitarian school of thought), the purpose of law is to ensure maximum happiness or benefit for society (Afdhali., & Syahuri, 2023).

Utility means that the law is not enforced solely for certainty and justice, but its application must positively impact social life and create mutual benefit. However, the judge's considerations in this case give the impression that the law does not favour the victim, especially children as vulnerable parties, and that the panel of judges tends to favour the defendant, so that the acquittal is considered to disregard the rights of the victim and ignore the value of utility. This is detrimental to the victim because they do not receive the justice they deserve. However, the judge's considerations in the acquittal are not commensurate with what the victim suffered, so the verdict is considered incomplete or *onvoldoende gemotiveerd*. Therefore, the matter indicates that the judge's considerations do not provide protection and benefits for the victim, and the verdict is considered contrary to the element of utility.

#### 3.1.2 Analysis of the Judge's considerations Aquittal in Case No.329/Pid.Sus/Pn Jap with Grammatical Interpretation of the Law

The panel of judges interpreted violence as any act that uses physical force or bodily strength. Forms of violence include blows, whether with the hands or with other objects, as well as acts such as confining, tying up, restraining, and other similar acts. The court's further considerations were



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based on Article 89 KUHAP, which states that "*committing violence*" refers to any act that causes a person to lose consciousness or become helpless, so that the essence of violence lies in a physical attack that deprives the victim of the ability to fight back or defend themselves. Meanwhile, threats of violence are defined as actions that cause fear, anxiety, or excessive concern in the victim.

Based on the considerations of the panel of judges, it can be argued that there is a *logical fallacy* in which the judges misunderstood the classification of "*Prurient acts*" and only considered the general meaning, even though this case is special because the victim is a child. The judges should have regarded it as sexual violence in the form of prurient acts. The definition of prurient acts (*ontuchtige handelingen*) encompasses all forms of actions related to sexual activity, whether performed on oneself or by another person, involving the genitals or other parts of the body that can generally cause sexual arousal and desire. The category of Prurient acts is as follows (Lamintang, 1985):

**Table 1.1 Category of Prurient**

Category of prurient	Definition
<i>Exhibitionism</i>	It is the act of deliberately exposing or displaying one's genitals to others.
<i>Voyeurism</i>	It is an act of obtaining sexual satisfaction or stimulation by kissing someone passionately.
<i>Fondling</i>	The act of stroking or touching a person's genitals to arouse sexual desire.
<i>Fellatio</i>	It is the act of forcing someone to perform oral sex.

*Source: The book entitled "Certain Criminal Acts Against Life, Body, and Health that Threaten Life and Body"*

Based on Table 1.1 above, it can be seen that the case of sexual violence against children in the form of prurient acts considered by the judge falls under the category of *Fondling*, which is the act of touching or groping the victim's genitals with the intention of satisfying sexual desire. This is reinforced by the testimony of witnesses and the victim that the defendant committed a heinous act by inserting three fingers into the victim's trousers and rubbing them against the victim's genitals (female) until the defendant was satisfied and the victim felt pain. Considering that judges

are at the forefront of law enforcement in judicial institutions and must carry out their duties in accordance with the objectives of the law, judges must be able to balance rights and obligations within the law so that the decisions taken should reflect legal order and quality. Therefore, when delivering a verdict, the panel of judges must consider three main aspects: philosophical, juridical, and sociological.

The judge's consideration should refer to philosophical aspects based on the view expressed by Leden Marpaung, who states that criminal sexual abuse is an unlawful act that violates norms of decency and morality because it relates to behavior motivated by sexual desire (Marpaung, 2014). Such acts also constitute human rights violations that often occur in society, particularly targeting children, and there is no justification for such Prurient acts under any circumstances.

Regarding the legal aspects of the judge's consideration, based on Article 183 Jo Articles 89 KUHAP without considering the more specific provisions in Articles 4 Paragraph (2) letter (b) Jo 25 TPKS Law. Meanwhile, the judges' considerations from a sociological perspective do not seem to reflect sensitivity to the social and psychological impact experienced by the victims. This is evident from the verdict, which acquitted the defendant of all alternative charges brought by the Public Prosecutor. The panel of judges did not adequately consider the rights of the victims, particularly in relation to post-traumatic recovery and protection.

### **3.2 Legal Consequences of Acquittal in Case No. 329/Pid.Sus/ Pn Jap**

An acquittal is a type of verdict rendered by a panel of judges who have tried, examined, and determined that the defendant has not been proven legally and convincingly guilty of committing the crime charged by the public prosecutor (Bakti, 2024). In the Article 191 Paragraph (1) KUHAP governs an acquittal. As a result, the defendant is free from all legal accusations, meaning they are not subject to punishment and cannot get a criminal sentence.

After the panel of judges announced the acquittal in the trial, the defendant must be released from detention as a result of automatic legal consequences, as stated by the panel of judges consisting of Chief Judge Zaka Talpatty, Associate Judge Korneles Waroi, and Associate Judge Ronald Lauterboom, who read out the acquittal on Thursday, 23 January 2025, in Case No. 329/Pid. Sus/2024/ Pn Jap, declaring that the defendant was not proven guilty of the first and second charges, then acquitting the

defendant of all charges brought by the Public Prosecutor and ordering that the defendant be released from custody immediately after the verdict was read out.

The panel of judges ignored the fact that the victim suffered prolonged psychological trauma and contracted an infectious disease as a result of the sexual violence. This acquittal demonstrates a form of impunity because the perpetrator did not receive an appropriate criminal punishment. This indicates that the panel of judges ignored the fact that the victim suffered prolonged psychological trauma and contracted an infectious disease as a result of the sexual assault. The acquittal indicates a form of impunity, as the perpetrator did not receive the criminal punishment he deserved.

### **3.2.1 The Urgency of Legal Protection in the Acquittal Decision No. 329/Pid.Sus/2024/ Pn Jap**

The phenomenon of sexual violence occurs as a result of power imbalances and gender differences, which ultimately cause physical suffering for victims. Many people do not realize that sexual violence is more often experienced by children when it occurs in isolated situations with minimal parental supervision. The issue of sexual violence makes children a vulnerable group that needs to be prioritised for protection and safety, one that should be facilitated by the state. Respecting and upholding human rights, especially children, is a top priority for the Indonesian government. The Republic of Indonesia's 1945 Constitution's Article 28B Paragraph (2), defines child protection and its goals. The Convention on the Rights of the Child, which was ratified by Presidential Decree No. 36 of 1990 on *the Convention on the Rights of the Child*, is one of the international instruments on children's rights that strengthens guarantees for child protection.

Arif Gosita contends that in order to guarantee the realization of children's welfare rights, child protection must be applied thoroughly and consistently, reflecting social fairness (Gosita, 1985). This illustrates that the goal of child protection is a legal effort to protect and guarantee people's interests by giving everyone, including children, the power to behave in a way that upholds their rights.

Therefore, the objectives and legal efforts explicitly provided for victims of sexual violence against children are also reaffirmed in the theory of legal protection according to Philipus M. Hadjon, which explains that legal protection is a form of recognition and respect for the dignity and human rights inherent in every legal subject (Hadjon, 2007). Philipus M. Hadjon

distinguishes between two types of legal protection: preventive legal protection and repressive legal protection.

Based on the acquittal in case 329/Pid.sus/2024/ Pn Jap, there was an error on the part of the judge in applying the law, which led to an abuse of power in making the decision, particularly without considering the sociological aspects of the victim. The case needs further review to prevent a similar case from resulting in a legally flawed acquittal decision. Therefore, the author expresses an opinion in line with that of Philipus M. Hadjon that legal protection is needed through an approach involving two types of legal protection, as described below.

## 1. Preventive Legal Protection

Preventive legal protection is a proactive measure taken by the government to anticipate and prevent sexual violence against children before it occurs. The role of the government and the police is not limited to law enforcement after a crime has been committed, but also includes a strategic role in prevention through education and socialisation programmes aimed at raising public awareness through socialisation in schools and local communities through educational activities where children are given an understanding of the forms of sexual violence, how to recognise the signs, and the steps that can be taken if they become victims or witnesses. Meanwhile, parents are also equipped with an understanding of open communication with children and adequate supervision.

In addition, children are educated about their rights to protection, respect, and complaint services, such as the police cooperating with the Office of Women's Empowerment, Child Protection, and Family Planning (DP3AKB) and legal aid services, such as those provided by the police, which can coordinate with the Witness and Victim Protection Agency (LPSK) as stipulated in Article 73 letter (h) and (i) of the TPKS Law to be involved in education and socialisation of complaint services. At the same time, socialisation in the form of seminars and training for law enforcement officials, particularly judges and police, was conducted in relation to cases of sexual violence against children involving a police officer as the perpetrator and a judge who acquitted AFH. This situation requires special attention to evaluate professionalism the judge's through education on the prevention of sexual violence against children, including an understanding of the basic concepts of indecent acts and child protection, as well as promoting the principle of *victim-centered justice*, including maintaining

the confidentiality, dignity, and psychological well-being of child victims during the legal process.

## 2. Repressive Legal Protection

In order to restore victims' rights and maintain substantive justice, repressive legal protection is an enforcement tool used after an illegal act has been performed. It imposes severe penalties on the offender, such as jail time, fines, or other types of punishment. According to several rules and regulations, those who commit acts of sexual assault, in particular, may face criminal penalties. Particular criminal sanctions for those who committed acts of sexual assault against children were not specifically regulated under the previous Criminal Code. Legislation Number 1 of 2023 concerning the Criminal Code (KUHP), which will take effect in 2026, is the result of the Indonesian court system's revision of the legislation to give more attention to the particulars of child sexual abuse and the associated criminal punishments. According to Article 415 of the new Criminal Code, those who commit acts of sexual aggression against children face a maximum penalty of nine (9) years in prison. Furthermore, as stated in Article 6 letter (c) of the TPKS Law, those who commit sexual abuse against minors face a maximum sentence of 12 (twelve) years in prison or a fine of up to IDR 300,000,000.00 (three hundred million rupiah). Additionally, a minimum prison penalty of five (five) years, a maximum of fifteen (fifteen) years, and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah) are imposed under Article 76E in combination with Article 82 Paragraph (2) of the Child Protection Law.

Based on the above case, an acquittal may be based on cassation according to jurisprudence. The basis for this acquittal is the Decision of the Supreme Court of the Republic of Indonesia Number 725K/Pid/1983 dated 15 December 1983 as jurisprudence whose legal force was reinforced in Decision Number 114/PUU-X/2012. This change confirms that acquittal can now be subject to cassation, especially in verdict Number 329/Pid.Sus/2024/Pn Jap, so that the public prosecutor can prepare evidence in the form of *Visum et Repertum* or a statement from a specialist in psychiatry/psychology and medical records as stipulated in Article 24 of the TPKS Law to have the verdict overturned and ensure that the Jayapura District Court judge's misapplication of the law is corrected as well as advocates and victims have the right to file a complaint with the Judicial Commission (KY) regarding the alleged bias of the panel of judges, who only considered the defendant's testimony and ignored the facts presented at the trial. This constitutes an alleged violation of the Joint Decree of the Chief

Justice of the Supreme Court RI and the Chief Justice of the Judicial Commission RI on the Code of Ethics and Code of Conduct for Judges (KEPPH) Number 047/KMA/SKB/IV/2009 and Number 02/SKB/P.KY/IV/2009. If it is proven that the judges committed such acts, they must be subject to severe sanctions.

As a result, based on the above explanation, preventive and repressive legal protection measures serve to reduce the number of cases of sexual violence against children and strengthen legal protection in sociological aspects for victims. Judges prioritise and evaluate these measures to better exercise their authority per the code of ethics, uphold high integrity in making quality decisions without discrimination, and impose deterrent (layered) sanctions for perpetrators according to their actions. Therefore, judges must have a systematic, logical basis (*legal reasoning*) that is meticulous in their considerations when handling cases, particularly those involving sexual violence against children.

#### 4. Conclusion

Sexual assault against children is a crime that transgresses moral and decency standards, particularly when it comes to minors. This issue is governed by certain legislation, including the TPKS Law and the Child Protection Law. However, in reality, these specific regulations are not followed, as demonstrated in Acquittal (*Vrijspraak*) Number 329/Pid.Sus/2024 /PN Jap, which goes against the intent of the law and the principles of *Lex Specialis Derogat Legi Generali and Testimonium de auditu*. This is because, in its deliberations, the panel of judges only considered Article 183 KUHAP, which stipulates that valid evidence must consist of at least two pieces of evidence. In contrast, the specific provision in Article 25 of the TPKS Law states that a single witness or victim statement can be used as valid evidence to convict the judge. Conceptually, the panel of judges also erred in interpreting the meaning of prurient acts. As a result of the acquittal, the perpetrator was not given a commensurate punishment, thereby weakening the protection of victims. Therefore, preventive and repressive legal protection measures are needed to achieve the Indonesian government's commitment to minimizing child sexual violence cases.

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## Laws and Regulations



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Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

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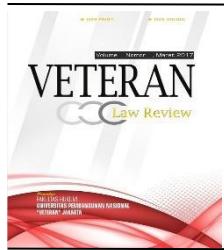
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