

RESEARCH SUMMARY

SENTENCING DISPARITY IN SEXUAL ASSAULT AND RAPE CASES IN INDONESIA 2019-2021

A SEXUAL ASSAULT

Figure 1 Criminal Provisions
Proved in Convictions
(n = 303 Decisions)

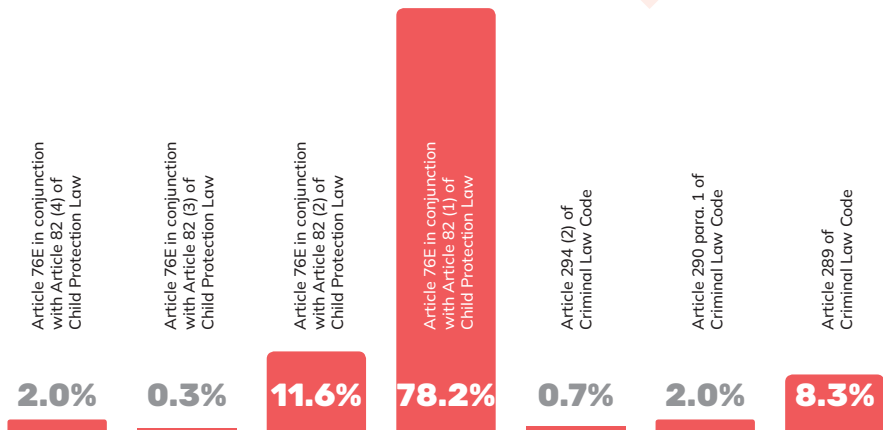


Figure 1 shows that in sexual assault cases, most defendants used violence or threats of violence, as outlined in Article 76E in conjunction with Article 82(1) of the Child Protection Law. The research indicates a high prevalence of sexual violence against children, with **78.2% of the 303 cases reviewed found to be violations of these articles.**



Figure 2 Age of Victims when the Offense Committed (n = 369 Victims)

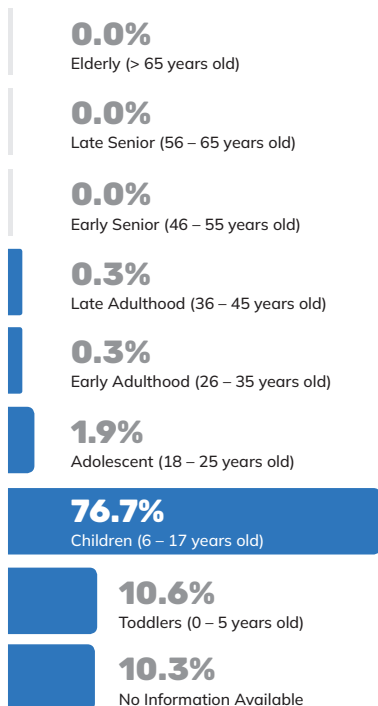
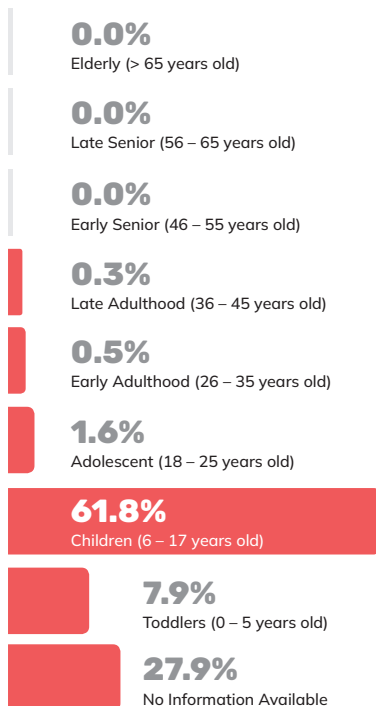


Figure 3 Age of Victims when the Offense Reported (n = 369 Victims)



An analysis performed on **303** decisions on sexual assault involving

 **369 victims¹**

unveils that sexual assault cases occurred during **2019-2021** were

mostly dominated by children as victims.

Those data also indicate the existence of delay in reporting in

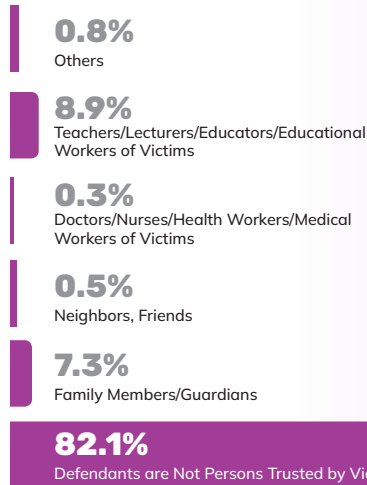
14,9 %

of sexual assault cases against children,

although the majority of offenses were reported in a relatively brief period after the incident took place.

¹ Out of 303 decisions on sexual assault analyzed in this research, there are 369 victims identified because there are several decisions that involve more than one victim.

Figure 4 Status of Defendants as Persons Trusted by Victims (n = 369 Victims)



The data on defendants in sexual assault cases shows that **most defendants (82.1%) were not persons trusted by victims.** In cases where the defendants were trusted figures, **8.9% were educators, and 7.3% were family members or guardians of the victims.**

The term "persons trusted by victims" refers to individuals who are expected to care for or act as guardians of the victims, such as teachers, caregivers, parents, or others who bear a social or legal responsibility for the victim's wellbeing.

Figure 5 Defendants Had Ever Been Convicted Before (n = 307 Defendants)



The figure illustrates that only

5,5 %

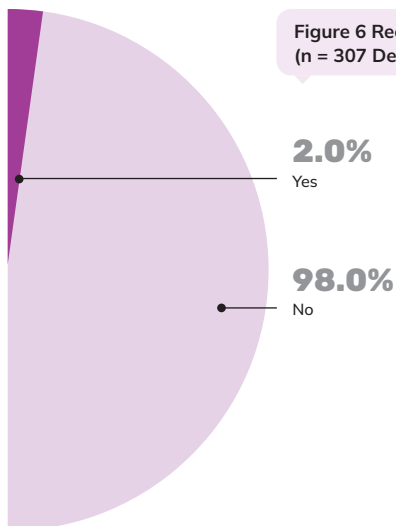
of defendants had history of ever being convicted, while

79,2 %

of them were first-time offenders, and

15,3 %

were unable to be identified due to unavailability of data.



The figure on the side addresses the status of Defendants as recidivists². Out of all Defendants in

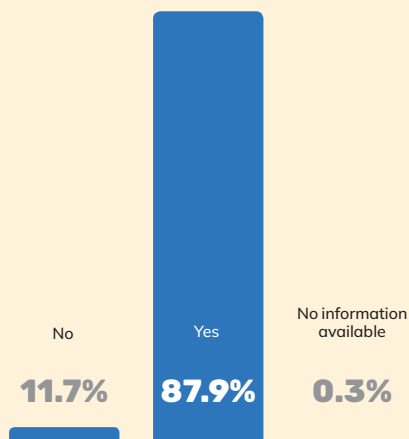
sexual assault cases, only 2% 

of them were recidivists, 98%

were not classified as recidivists.

The figure on the side describes that **11.7 percent** of all Defendants in Sexual Assault cases **underwent criminal proceedings without the presence of legal counsels**. In relation to this matter, certainly not all criminal cases require the presence of legal counsels. For instance, defendants who are indicted for offenses with maximum criminal charges below 5 (five) years of imprisonment are not legally obliged by law to have legal counsels present³.

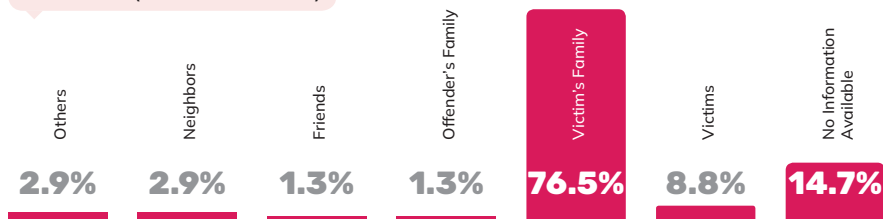
Figure 7 Cases with the Presence of Legal Counsels (n = 307 Defendants)



² Recidivists are those who repeat the same offense or offenses classified by law as similar within five years, as addressed in the Second Book, Chapter XXXI of Indonesian Criminal Law Code.

³ Article 56 paragraph (1) of Indonesian Criminal Procedural Law Code.

Figure 8 Parties who Reported the Offense (n = 307 Defendants)



Most reports of sexual assault offense were made by victim's family (**76.5%**). Among all, **8.8%** of reports were made by victims themselves, **2.9%** by neighbors, and another **2.9%** by other parties that were not specified. Both offender's family and friends contribute **1.3%** of the total respectively, while **14.7%** of reporting parties were not addressed in decisions.

The majority of sexual assault cases do not see any repetition, with **62.1 percent of them committed only once before it was reported.**

Most repetition occurs in the range of **2-3 times (23.8 percent)**, followed by **4-5 times (6.8 percent)** and **6-10 times (3.3 percent)**. Repetition in sexual assault cases occurs more infrequently compared to rape cases.

Figure 9 Repetition of Acts Committed Against Victims (n = 369 Victims)

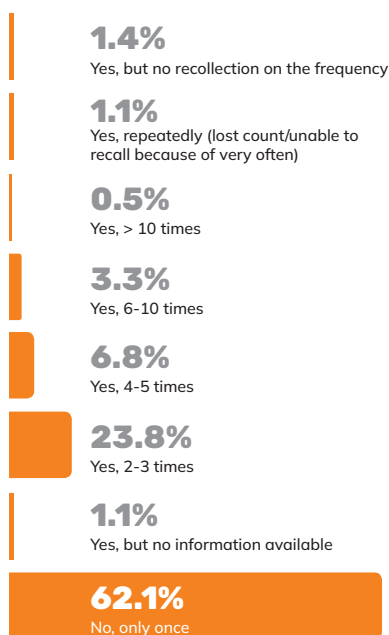


Figure 10 Types of Principal Criminal Charges (307 Defendants)

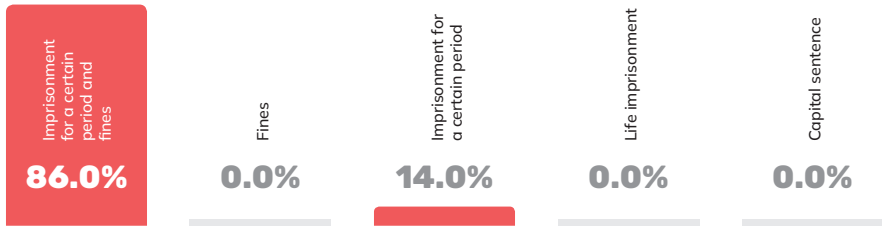
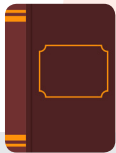
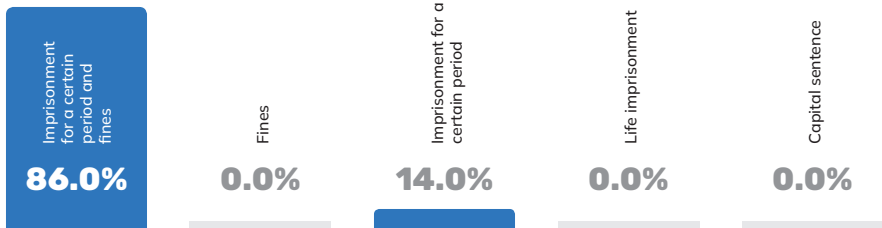


Figure 11 Types of Principal Sentences (n = 307 Defendants)



This research reveals that **86% of criminal charges combine imprisonment and fines**, while only **14% impose imprisonment alone**.

The same pattern may be observed in court decisions, with a combination of imprisonment and fines also dominates at

86%



14%

of analyzed court decisions only contain imprisonment sentences.



OUT OF 303 SEXUAL ASSAULT CASES, NOT A SINGLE ONE INCLUDED RESTITUTION, DESPITE ITS CRUCIAL ROLE IN VICTIM RECOVERY.

B RAPE

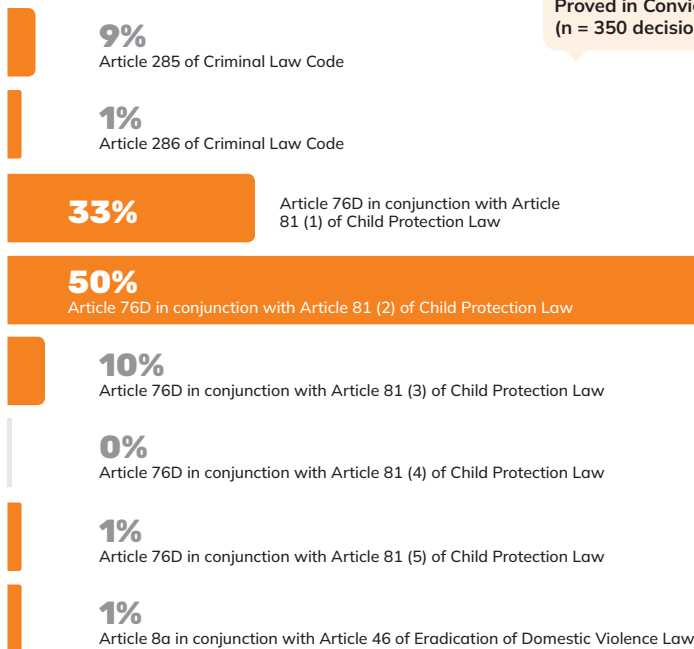


Figure 12 Criminal Provisions Proved in Convictions (n = 350 decisions)

The number of criminal cases violating the Child Protection Law as listed above shows that the prevalence of children as victims of rape offense is still extremely high.

Out of
350
decisions,

These findings highlight the need for the state, government, regional authorities, society, families, and parents to prioritize the protection and fulfillment of children's rights according to their roles and responsibilities.

94%
of victims are
children.

Among the rape case decisions, only one included a victim's request for restitution. The judge granted the full amount of **Rp33,262,000** because the application was well prepared, supported by written evidence, and included a restitution calculation from the Witness and Victim Protection Agency (Lembaga Perlindungan Saksi dan Korban/LPSK).

Figure 13 Age of Victims when the Offense Reported (n = 374 Victims)

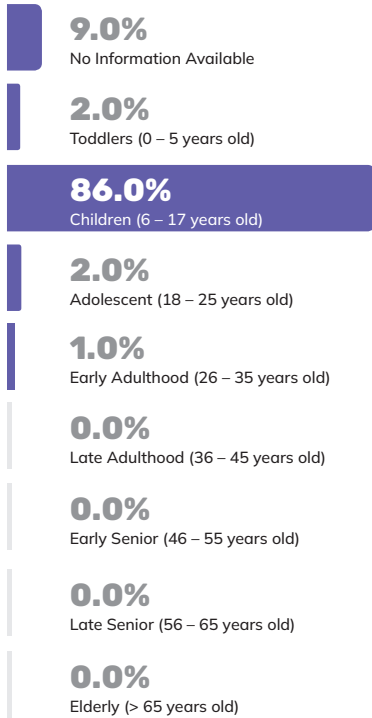
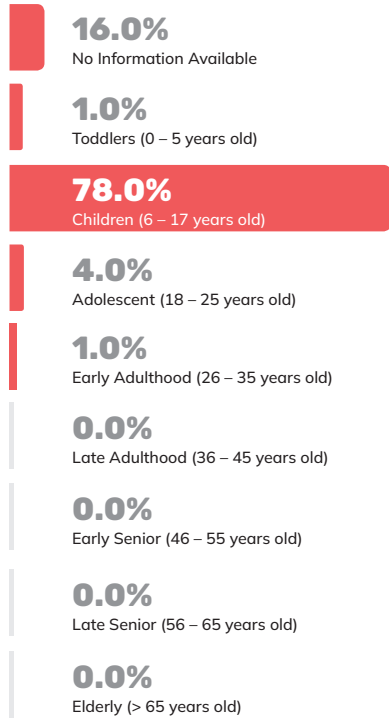


Figure 14 Age of Victims when the Offense Committed (n = 374 Victims)



children in the
age group of 6-17
years old

86%



Most victims in rape cases are **children aged 6 to 17**. The data also reveal a reporting delay, with a **9.2 percent** gap between the victim's age at the time of the offense and their age when the crime was reported. This delay is particularly evident in cases involving toddlers and young children.



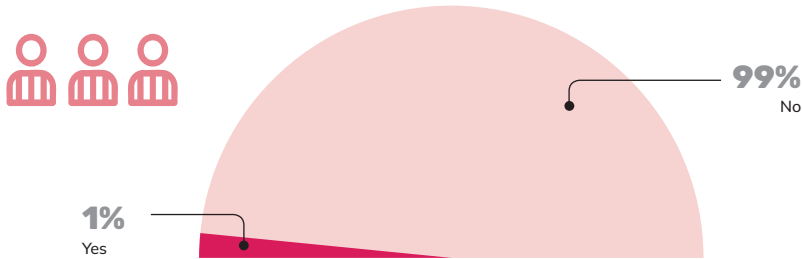
The figure above shows that **85.6 percent of defendants in rape cases** were strangers or people who did not have a close relationship with the victims. Among those who were trusted, **12.3 percent** were family members or guardians, **0.8 percent** were educators, and **1.0 percent** had other types of relationships with the victims.

Figure 16 Defendants Had Ever Been Convicted Before (n = 363 Defendants)



of defendants were unable to be identified because no information available in decisions.

Figure 17 Recidivist Defendants
(n = 363 Defendants)

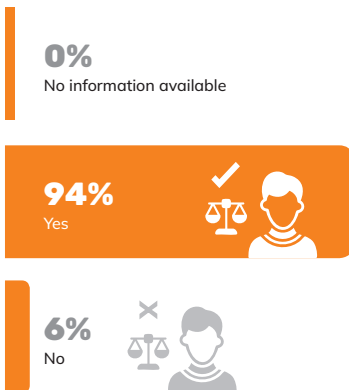


Out of all Defendants
in Rape cases, only

1%
of them who
were recidivists

99%
were not
recidivists.

Figure 18 Cases Without the Presence of
Legal Counsels (n = 363 Defendants)



The figure on the side shows that **6% of defendants** in rape cases went through criminal proceedings without legal counsel. Under Indonesian law, not all criminal cases require legal representation. For example, defendants charged with offenses carrying a maximum sentence of less than five years are not legally required to have a lawyer present.

Figure 19 Parties Reporting the Offense (n = 363 Defendants)

Figure 19 shows that most rape offenses, **77%**, were reported by the victim's family. **12%** were reported by the victims themselves. Other reports came from the offender's family (**9%**), unspecified parties (**5%**), neighbors of the offender or victim (**2%**), and teachers or lecturers (**1%**).

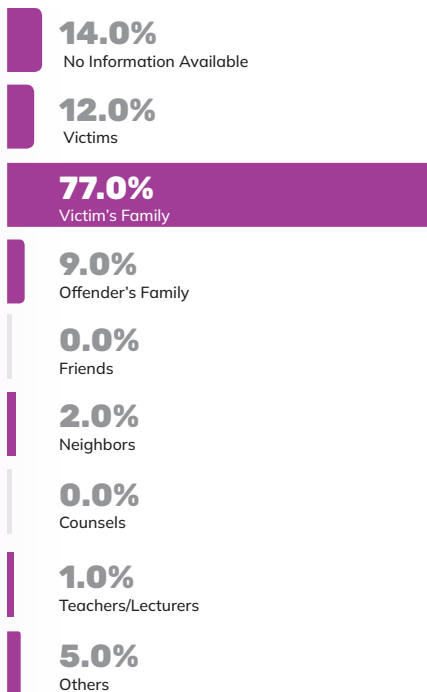
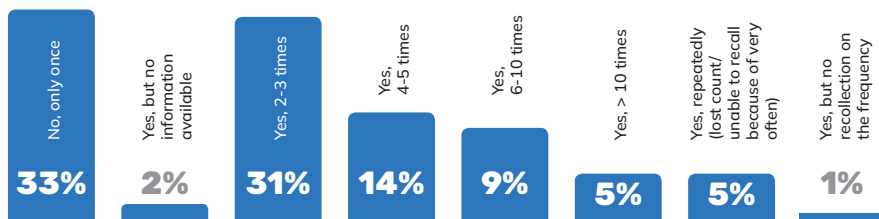


Figure 20 Repetition of Acts Committed against Victims (n = 374 Victims)



The figure above shows that many victims experienced repeated acts of rape. Of all victims, **33% were raped once, 31% were raped 2-3 times, 14% were raped 4-5 times, 9% were raped 6-10 times, 5% were raped more than 10 times, and 5% lost count or couldn't recall due to the frequency of the assaults.**

Table 1 Gap between the Time when the Offense Committed with Report Being Made in Offenses Committed Repetitively (n = 250 Victims in Offenses Committed Repetitively)

	Age of Victims		
Gap between the Time when the Offense Committed with Report Being Made	No Information Available	Children	Adults
Unidentifiable	4.4%	8.0%	0.0%
Report Immediately Being Made	0.0%	56.4%	1.2%
1-year gap	0.0%	16.8%	0.4%
2-year gap	0.0%	4.8%	0.0%
3-year gap	0.0%	2.4%	0.0%
4-year gap	0.0%	1.2%	0.0%
5-year gap	0.0%	2.4%	0.0%
6-year gap	0.0%	0.8%	0.0%
7-year gap	0.0%	0.4%	0.0%
10-year gap	0.0%	0.4%	0.0%
12-year gap	0.0%	0.4%	0.0%
Total	4.4%	94.0%	1.6%
Total Number of Victims in Offenses Committed Repetitively			250

In cases where victims experienced repeated rape, adult victims typically reported the offense immediately, with any delay being no longer than one year. Child victims, on the other hand, often delayed reporting, though **56.4%** of them reported the offense right away. Most child victims (**16.8%**) reported the abuse within one year of the first incident. The data also shows that some child victims delayed reporting for **2 years (4.8%), 3 years (2.4%), 4 years (1.2%), 5 years (2.4%), 6 years (0.8%), 7 years (0.4%), 10 years (0.4%), or even up to 12 years (0.4%).**

Figure 21 Types of Principal Criminal Charges (363 Defendants)

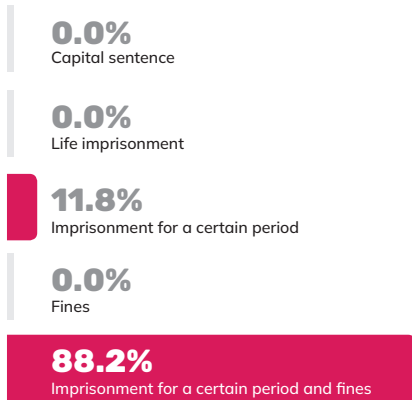
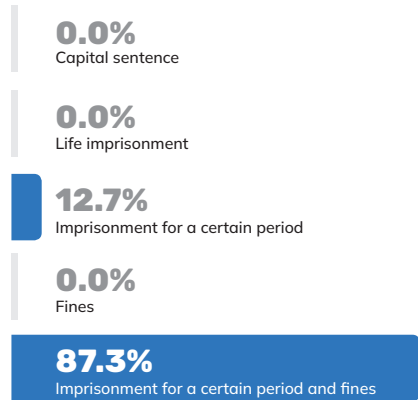


Figure 22 Types of Principal Sentences (n = 363 Defendants)



- This research finds that criminal charges are dominated by a combination of imprisonment for a certain period and fines, at

88.2%

Meanwhile, the remaining

11.8%

of those charges only take form as imprisonment for a certain period.



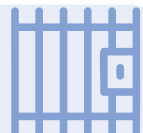
Those rates correspond with court decisions, with

- **87.3%** of them contain sentences using a combination of imprisonment for a certain period and fines,

and the remaining

12.7%

only contain sentences in the form of imprisonment for a certain period.



Sentencing disparity refers to imposing different sentences on cases that share similar characteristics. The sentencing disparity becomes discriminative if judges, in determining the severity of sentences, deliberately include characteristics of cases that are irrelevant to be considered (illegal factors), e.g. race, gender, or social class.

Factors determining the severity of sentences

When a judge determines the severity of sentences, the judge certainly will also consider certain factors deemed to be relevant as determining factors.

- Theoretically, according to Gabriel Hallevy, there are two characteristics classified as factors to determine the severity of sentences, as follows:
 1. Impersonal characteristics (*in rem*), namely characteristics that constitute part of offenses. For instance, Judges consider the number of victims, impact of an offense, whether the child victim is a person with disability or not, and how the offender commits their offense.
 2. Personal characteristics (*in personam*), namely characteristics extracted from “identity” or background of offenders. For instance, matters relating to motivation of offenders, recidivist status of offenders, economic situation or environment of offenders, and relationship between offenders with victims.

- Legally, Article 54 paragraph (1) of the 2023 Indonesian Criminal Law Code incorporates a 'sentencing guideline' that requires the sentencing to must consider:
 - a. form of fault of offenders;
 - b. motive and purpose of committing Offenses;
 - c. psychological status of offenders;
 - d. Offenses are committed premeditatedly or not;
 - e. how offenses are committed;
 - f. attitude and conduct of offenders after committing Offenses;
 - g. life history;
 - h. social condition, and economic condition of Offenders;
 - i. impact of sentences on the future of Offenders;
 - j. impact of Offenses on Victims or Victim's family;
 - k. pardon from Victims and/or Victim's family; and/or
 - l. legal and justice values upheld by the society.

Deriving from those aspects, this research will measure the sentencing disparity in sexual assault and rape cases that share similar characteristics (measuring the sentencing disparity)⁴. Similarity of characteristics among those cases is observed based on similarity of 10 (ten) characteristics⁵, among others: **(1) Number of Offenders; (2) Number of Victims; (3) Disability Status of Victims; (4) Age of Victims; (5) Helplessness of Victims when the Offense Committed against Them; (6) How the Offense was Committed; (7) Frequency/Repetition of Acts in a Series of Offense; (8) Status of Defendants as Persons Entrusted to Take Care of Victims; (9) Offenses Preceded or Not Being Preceded by Violence Threat; and (10) Impact on Victims. Find below the description of each mentioned characteristic:**

⁴ This research will only present the value of sentencing disparity without evaluating further whether the sentencing disparity phenomenon is unjustified/unwarranted or not.

⁵ These 10 (ten) characteristics are obtained from theoretical approach, regulatory approach (including comparison to foreign sentencing guidelines), and Focus Group Discussions (FGD) held by researchers that invite discussion participants from practitioner, academic, and civil society elements.

Table 2 Characteristics of Sentencing Disparity in Sexual Assault and Rape Cases

No.	Characteristics	Description
1	Number of Offenders	<p>The number of offenders serves as a factor determining the severity of sentences as addressed under the Law, namely when an offense committed by more than 1 (one) person at the same time⁶, the criminal charge shall be increased. The more offenders involved in an offense, the more serious the offense is. Hence, sentences to be imposed shall be more severe.</p> <p>All cases that are compared to produce sentencing disparity value are cases committed by sole offender.</p>
2	Number of Victims	<p>The number of victims serves as a factor determining the severity of sentences as addressed under the Law, namely when victims are more than 1 (one) person or multiple victims, criminal charges shall be increased.⁷</p> <p>Out of 307 defendants in sexual assault cases, 286 defendants were convicted of sexual assault offense against 1 (one) victim, while the remaining 21 (twenty-one) defendants were convicted of sexual assault offense against more than 1 (one) victim.</p>

⁶ See 2016 Child Protection Law, Art. 81 para. (3) and Art. 82 para. (2), Sexual Violence Offense Law, Art. 15 para. (1) letter f.

⁷ See 2016 Child Protection Law, Art. 81 para. (5) and Art. 82 para. (4), Sexual Violence Offense Law, Art. 15 para. (1) letter e.

		<p>The same also applies to rape cases, out of 363 defendants, 355 defendants were convicted of rape offense against 1 (one) victim, while the remaining 8 (eight) defendants were convicted of rape offense against more than 1 (one) victim.</p> <p>Since the majority of sexual assault and rape cases committed against 1 (one) victim, for convenience purpose, this research will only account cases involving sole victim.</p>
3	Disability Status of Victims	<p>Disability Status of Victims as the manifestation of victims' vulnerability also serves as a factor determining the severity of sentences because disability-based vulnerability has a correlation of dependency between persons with disabilities with their caretakers, along with an impression that persons with disabilities are not deemed credible as victims and they tend to be associated as obedient to their family and caretakers.⁸</p> <p>Out of 286 defendants convicted of sexual assault offense, the majority of them, namely 281 defendants, committed their offense against victims who are not persons with disabilities, while 5 defendants committed their offense against victims who are persons with disabilities.</p>

⁸ Emily Ledingham, Graham W. Wright and Monika Mitra, "Sexual Violence Against Women With Disabilities: Experiences With Force and Lifetime Risk," American Journal of Preventative Medicine 62, Issue 6 (2022):895–902, doi: <https://doi.org/10.1016/j.amepre.2021.12.015>.

4	Age of Victims	<p>This research will divide age category of victims into children and adult, using the justification that the age factor of child victims will affect the seriousness of the offense, and in this context, the sentence that will be imposed shall be more severe.</p> <p>Out of 286 defendants convicted of sexual assault offense, the majority of them, namely 222 defendants committed their offense against child victims, while 9 defendants committed their offense against adult victims. Meanwhile, 55 defendants committed their offense against victims without any information regarding their age, thus they will be excluded from the research.</p>
5	Helplessness of Victims when the Offense Committed against Them	<p>Victims that are made helpless by offenders will be in a situation that is far more vulnerable because they are unable to run or protect themselves. Hence, when offenders make victims helpless, followed by offenders exploiting the helplessness condition of victims to commit their act, the more serious the offense is, resulting in more severe sentences to be imposed.</p> <p>The helplessness condition of Victims may be caused by, among others, victims are made unconscious by offenders, victims are dosed by offenders, victims are hypnotized by offenders, victims are tied up by offenders, and others, where the helplessness condition will then be exploited by offenders to commit their act.</p>

		<p>Out of 286 defendants convicted of sexual assault offense, 31 defendants committed their offense preceded by victims were actively being made helpless by offenders.</p>
6	How the Offense was Committed	<p>How the Offense was Committed also serves as a factor that must be considered by judges when imposing sentences according to Sentencing Guideline under the 2023 Indonesian Criminal Law Code. Sexual assault offense and rape offense have different methods of committing the offense, considering that they have different act characteristics. Under Sexual Violence Offense Law, an act committed more than 1 (one) time or repetition may be deemed as an aggravating factor.</p>
7	Frequency/ Repetition of Acts in a Series of Offense	<p>In this research, the following are methods and frequency of defendants committing sexual assault offense, namely:</p> <p>1. sexual assault committed with coercion</p> <p>Out of 286 cases involving one defendant against one victim, there are 87 defendants who threatened victims once. Although the offense was only committed once, but the repetition may reach 10 times.</p>

2. sexual assault committed without coercion

Out of 286 cases involving one defendant against one victim, there are 23 defendants who committed sexual assault without making any threat against victims once. The repetition frequency of the offense does not exceed four times.

3. sexual assault committed with fraud, deception, or seduction

Out of 286 cases involving one defendant against one victim, there are 26 defendants who committed sexual assault without making any threat against victims. The highest repetition frequency is 10 times, with repetition variations amounting to five variations.

Meanwhile, methods and frequency of defendants committing rape offense are divided into 3 (three), as follows:

1. sexual penetration committed with coercion

Out of 355 cases involving one defendant against one victim, there are 113 defendants who committed rape with threat being made against victims. Penetration was performed between genitals (penis to vagina) once. There are 10 defendants who committed five sexual penetration acts against victims.

		<p>2. sexual penetration committed without coercion</p> <p>Out of 355 cases involving one defendant against one victim, there are 13 defendants who committed rape without making any threat against victims, but the victims were in unconscious state. There are two defendants who committed sexual penetration up to four times.</p> <p>3. sexual penetration committed with fraud, deception, or seduction</p> <p>Out of 355 cases involving one defendant against one victim, there are 64 defendants who committed rape using fraud, deception, or seduction against victims. There is one defendant who committed up to 12 sexual penetration acts by defrauding their victims.</p>
8	<p>Status of Defendants as Persons Entrusted to Take Care of Victims</p>	<p>The status of Defendants as Persons Entrusted to Take Care of Victims also serves as a factor determining the severity of sentences as addressed under the Law, namely when Defendants are parents, guardians, persons that have familial relationship, child caretakers, teachers, educators, officers handling child protection, the criminal charge shall be increased.</p>

		<p>In sexual assault cases, out of 286 defendants, 36 defendants abused their position as persons entrusted to take care of victims, and instead they committed sexual assault against victims. Meanwhile, in rape cases, out of 355 defendants, 45 defendants abused their position as persons entrusted to take care of victims and committed rape against victims.</p>
9	Offenses Preceded or Not Being Preceded by Violence Threat	<p>Existence of violence (physical) threat made by defendants against victims constitutes an indication of no consent existed between defendants and victims, that falls under the legal definition of sexual assault or rape offense. If, before committing their offense, the defendants initially made violence (physical) threat against victims, the more serious the offense is. Hence, the sentence to be imposed shall be more severe.</p> <p>In sexual assault cases, out of 286 defendants, 252 defendants committed their offense without being preceded by violence (physical) threat, while 34 defendants committed their offense with being preceded by violence (physical) threat.</p>

		<p>Meanwhile, in rape cases, out of 355 defendants, 249 of them committed their offense without being preceded by violence (physical) threat, while 106 defendants committed their offense with being preceded by violence (physical) threat.</p>
10	Impact on Victims	<p>The more severe impact resulted from an offense, the more serious the offense is. Hence, the sentence to be imposed shall be more severe. This Impact variable also serves as a factor determining the severity of sentences as addressed under the Law, namely when victims suffer from serious injuries, or passed away.</p> <p>Out of 286 defendants in sexual assault cases, 136 defendants inflicted mental trauma and disorder on victims, 97 defendants inflicted mental disorder on victims, and 25 defendants inflicted trauma (common) on victims.</p> <p>Meanwhile, out of 355 defendants convicted of rape offense, 234 defendants inflicted mental trauma and disorder on victims; 44 defendants caused trauma, mental disorder, and pregnancy on victims; 12 defendants inflicted mental disorder on victims; and 10 defendants caused trauma and pregnancy.</p>

In the event that there are several cases that share similarities in 10 (ten) characteristics mentioned above, it is assumed that sentences that are imposed should be similar. On the other hand, if in cases that share similarities in 10 (ten) characteristics mentioned above, different sentences are imposed, the existence of a sentencing disparity is proven.

Disparities in Imprisonment Sentencing for Sexual Assault Offenses

a. Sentencing Disparity Value in Sexual Assault Offense

From the grouping of sexual assault cases, there are 18 case categories found. Each category consists of sexual assault cases that share 10 similar characteristics, therefore, cases that fall under the same category may be compared to one another to observe differences in imprisonment sentences. Out of 18 mentioned categories, only 1 (one) category that shares the same sentence (parity), while the other 17 categories show differences in sentences (disparity). Of all sentencing disparity percentages on each category of sexual assault cases, the **total sentencing disparity value for sexual assault offense is 80%.**

b. Sentencing Disparity Interval Gap in Sexual Assault Offense

This research is intended to identify sentencing disparity interval gap. Measuring the sentencing disparity interval gap aims to quantitatively observe the gravity of sentencing disparity. The bigger differences in sentences among cases that share similar characteristics, the higher sentencing disparity will be. This research divides 4 (four) variations of differences between maximum and minimum imprisonment sentences from 18 categories of similar sexual assault cases, namely:

- First variation: 8 categories with differences in sentences between 0-30 months;
- Second variation: 5 categories with differences in sentences between 31-60 months;

- Third variation: 3 categories with differences in sentences between 61-90 months; and
- Fourth variation: 2 categories with differences in sentences between 91-120 months.

Disparities in Imprisonment Sentencing for Rape Offenses

a. Sentencing Disparity Value in Rape Offense

From the grouping of rape cases, there are 33 (thirty-three) categories of rape cases that share similarities in 10 characteristics. Out of those 33 case categories, qualitatively, there is not one category of rape case that shares the same sentence (parity). Hence, those 33 (thirty-three) categories of rape cases have differences in sentences (disparity). Of all sentencing disparity percentages on each category of rape cases, the total **sentencing disparity value for rape offense is 88%**.

b. Sentencing Disparity Interval Gap in Rape Offense

This research divides 5 variations of differences between maximum and minimum imprisonment sentences from 33 categories of similar rape offense cases, namely:

- First variation: 10 categories with differences in sentences between 2-30 months;
- Second variation: 10 categories with differences in sentences between 31-60 months;
- Third variation: 5 categories with differences in sentences between 61-90 months;
- Fourth variation: 7 categories with differences in sentences between 91-120 months; and
- Fifth variation: 1 category with differences in sentences more than 120 months.

1. Intra-Jurisdiction Sentencing Disparity: District Courts and Sharia Courts

a. Court Decision Number 3/Pid.B/2020/PN Cjr (Decision 1) vs. Court Decision Number 679/Pid.B/2020/PN Kag (Decision 2)

Both decisions on rape offense share the same 9 (nine) characteristics of an offense, but there is a 4 (four) year length difference between their imprisonment sentences. The defendant in Decision 1 committed rape with coercion and violence threat of murdering the victim. For that offense, the defendant was sentenced for 4 (four) years of imprisonment. Meanwhile, the defendant in Decision 2 committed rape offense with coercion and violence threat of murdering the victim, but the defendant was sentenced for 8 (eight) years of imprisonment.

b. Decision of the Aceh Singkil Sharia Court Number 7/JN/2019/Ms.Skl (Decision 1) vs. Decision of the Banda Aceh Sharia Court Number 19/JN/2020/Ms.Bna (Decision 2)

Both decisions on rape share the same 8 (eight) characteristics of an offense, but there is a different imposition of types of punishment (*strafsoort*) on the same rape *jinayat* offense against children. The defendant in Decision 1 was sentenced for 200 (two hundred) months or 16 years and 6 months of imprisonment as *uqubat* punishment according to Article 76D in conjunction with Article 81 paragraphs (1) and (2) of Child Protection Law. Meanwhile, the defendant in Decision 2 was sentenced for 175 (one hundred and seventy-five) caning strokes as *uqubat* punishment according to Article 50 of Aceh *Qanun* No. 6 of 2014. Hence, by reviewing these two decisions, it is found that sentencing disparity does not

only relate to the length of imprisonment sentences imposed, but also relates to types of punishment imposed. This finding is significant because sentencing disparity may be originally derived from the law itself.

2. Inter-Jurisdiction Court Sentencing Disparity: District Court vs. Military Court

a. Decision of the Military Court III-19 Jayapura No. 215- K/ PM.III-19/AD/X/2020 (Decision 1) vs Decision of the District Court of Trenggalek No. 36/Pid.Sus/2020/PN Trk (Decision 2)

Both decisions on sexual assault offense in 13 categories share 10 similar characteristics, but there is a difference in length of imprisonment sentences, namely 102 months (8 years and 5 months). In Decision 1, the defendant was sentenced for 18 months (1 year and 6 months) of imprisonment, which actually violates the minimum possible sentence allowed under Child Protection Law. The opposite happens in Decision 2, while sharing similar characteristics with Decision 1, the defendant was sentenced for 120 months (10 years) of imprisonment. Aggravating and alleviating factors in both decisions are only limited to generic factors relating to cases and trial conditions, such as sexual assault committed by the defendant harms the future of the victim, the defendant acted politely or the defendant gave perplexing testimony in court.

b. Court Decision Number 107/Pid.B/2021/PN.Pwk (Decision 1) vs. Court Decision Number 14-K / PM.II-11 / AD / I / 2019 (Decision 2)

Both decisions on rape in those 30 categories share 10 similar characteristics, but there is a difference in length of imprisonment sentences up to longer than 120 months.

In Decision 1, the imprisonment sentence imposed is 132 months (11 years), while Decision 2 only imposes imprisonment sentence for 8 months. In Decision 2, the Panel of Judges deems that the criminal charge brought by Military Prosecutors for 1 (one) year of imprisonment to be too severe and it is only fair to lower the sentence. That opinion appears to be inconsistent with considerations provided by the Panel of Judges before imposing any sentence on the defendant that tend to expose the depravity of the defendant's act.

As provided in the table below, this research finds a pattern of far lower average of imprisonment charges and sentences in rape and sexual assault cases administered in military courts compared to average of imprisonment charges and sentences in rape and sexual assault cases administered in district courts.

Table 3 Comparison of Average of Criminal Charges and Sentences in Military Courts and District Courts on Sexual Assault Offense

Court Types	Criminal Provisions	Average Charges	Average Sentences
Military Court	Article 294 (2) of Indonesian Criminal Law Code	8 months	7 months
District Court	Article 294 (2) of Indonesian Criminal Law Code	60 months	42 months

Military Court	Article 76E in conjunction with Article 82 (1) of Child Protection Law	60 months	20 months
District Court	Article 76E in conjunction with Article 82 (1) of Child Protection Law	100 months	84 months

This research reveals cases prosecuted under **Article 294 (2) of the Indonesian Criminal Code**, the average prison sentence in military courts is only **13.3%** of the average in district courts. This means military court sentences are **86.7% shorter** than those in district courts. Similarly, the average imprisonment **charge** in military courts is just **16.7%** of that in district courts, making it **83.3% lower**.

For cases prosecuted under **Article 76E in conjunction with Article 82 (1) of the Child Protection Law**, the gap is smaller but still significant. The average imprisonment **charge** in military courts is **60%** of that in district courts, making it **40% lower**. However, the **actual sentences** imposed in military courts are only **23.8%** of those in district courts, meaning military court sentences are **76.2% shorter**.

Table 4 Comparison of Average of Criminal Charges and Sentences in Military Courts and District Courts on Rape Offense

Court Types	Criminal Provisions	Average Charges	Average Sentences
Military Court	Article 285 of Indonesian Criminal Law Code	36 months	24 months
District Court	Article 285 of Indonesian Criminal Law Code	82 months	82 months
Military Court	Article 76D in conjunction with Article 81 (1) of Child Protection Law	48 months	19 months
District Court	Article 76D in conjunction with Article 81 (1) of Child Protection Law	117 months	111 months

For cases prosecuted under **Article 285 of the Indonesian Criminal Code**, the **average imprisonment charge** in military courts is **44.4%** of that in district courts, meaning military courts issue charges that are **55.6% lower**. When it comes to **actual sentences**, military courts impose punishments that are only **29%** of the average in district courts, making them **71% shorter**.

Similarly, for rape cases charged under **Article 76D in conjunction with Article 81 (1) of the Child Protection Law**, the **average imprisonment charge** in military courts is just **40.9%** of that in district courts, meaning it is **59.1% lower**. More strikingly, the **average prison sentence** in military courts is only **17.1%** of the district court average, making it **82.9% shorter**.

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THE URGENT NEED TO REVIEW SUPREME COURT CIRCULAR NO. 1 OF 2017

In several rape and sexual assault cases, courts often impose sentences below the minimum legal threshold, citing the existence of an intimate relationship between the offender and the victim. This reasoning assumes that sexual contact was consensual and based on mutual attraction. However, in the context of child protection, any form of sexual violence against children, whether involving force, threats, persuasion, or even so-called consent, is still classified as a criminal offense.

This principle, commonly known **as statutory rape**, establishes that a child's consent is legally invalid because children are not capable of providing informed and voluntary agreement.

Given this, **Supreme Court Circular No. 1 of 2017**, particularly point 5, requires urgent review as it contradicts fundamental child protection principles and existing legal frameworks. The following arguments highlight these contradictions.

01 Provisions under Sexual Violence Offense Law stress that child marriage is an offense, including cases of forced marriage in the name of cultural practices between rape victims and offenders. However, the Supreme Court Circular No. 1 of 2017 considers reconciliation performed through a marriage as an alleviating factor for adult offenders, which is in contradiction to principles under the Sexual Violence Offense Law.

02 Juvenile Criminal Justice System Law prioritizes the best interests of the child principle in any proceedings. In contrast, Supreme Court Circular No. 1 of 2017 leans toward interests of adult offenders, by granting authority for judges to impose sentences below minimum possible sentences in specific situations. This approach demonstrates the lack of protection to children as victims of offenses.

03 Sexual Violence Offense Law explicitly prohibits any out-of-court dispute resolution for sexual violence offenses. Although Supreme Court Circular No. 1 of 2017 does not explicitly address out-of-court dispute resolution, the framework encourages reconciliation between adult offenders and child victims. That reconciliation may be potentially used as the basis to perform out-of-court dispute resolution that opposes to prohibitions under the Sexual Violence Offense Law.

04 Supreme Court Regulation No. 3 of 2017 requires judges to consider gender equality and non-discrimination by considering facts in proceedings, including physical and mental vulnerability of victims and power relation between offenders and victims. However, Supreme Court Circular No. 1 of 2017 tends to dismiss the vulnerability position of child victims, especially in the context of power relation against adult offenders.

These four points clearly show that **Supreme Court Circular No. 1 of 2017, especially point 5, is not only inconsistent** with the Juvenile Criminal Justice System Law, the Sexual Violence Offense Law, and Supreme Court Regulation No. 3 of 2017, but also **fails to uphold the principle of providing the best protection for child victims.**

In cases of sexual violence, especially those involving children, the legal system must focus on **protecting victims, recognizing their vulnerability, and preventing further exploitation.** Therefore, the enforcement of this Supreme Court Circular **must be reviewed** to ensure that the criminal justice system **prioritizes the best interests of victims** by considering **power dynamics and the unique vulnerabilities of children** in sexual violence cases.

E RESEARCH RECOMMENDATION

This research reveals the existence of sentencing disparity in sexual violence cases, especially in sexual assault and rape cases. The disparity may be triggered by existing legal provisions and lack of guidelines for judges in determining the severity of sentences. As a result, judges' subjectivity, influenced by social background, personal views, school of thought, and past experience, is frequently used as a reference when imposing sanctions. To minimize sentencing disparity, the following steps may be taken:

Drafting a sentencing guideline:

A specific guideline for sexual assault and rape offenses is urgently needed. This guideline addresses factors determining the severity of sentences as references for judges. A similar practice has been implemented in United Kingdom through sentencing guidelines for various offenses.

Routine meetings and discussions:

If a legal codification is not feasible to be achieved in certain jurisdictions, such as differences between Child Protection Law and Qanun Jinayat in Aceh, routine meetings between judges, penitentiary experts, and civil society are necessary to be held to set sentencing standards.

Dissemination of policy and sustainable trainings:

Routine trainings for judges are essential to enhance the understanding of policy on handling sexual violence cases, such as Supreme Court Regulation 3/2017 and Supreme Court Circular 10/2020.