

## Stepchildren And Incest: Law Enforcement Efforts Against Sexual Abuse In Families (A Case Study on the Decisions of Wonogiri State Court, Idi Sharia Court, and Banda Aceh Sharia Court)

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**ABSTRACT**

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**Purpose of the study:** This paper aims to analyze three cases of sexual violence perpetrated by stepfathers to underage stepdaughters (incest) in Wonogiri Regency and Aceh Province.

**Methodology:** This legal research used a normative juridical approach. The literary legal research was conducted by studying literary materials or secondary data. The writers used the Legal System Theory of Lawrence M. Friedman.

**Results:** Friedman opined that there are four elements in law enforcement. In the analyzed cases, they were: (1) legal structure: the court and sharia courts, (2) legal substance: laws used by judges in deciding upon the cases, namely Law No. 17 of 2016 and Aceh Qanun No. 6 of 2014, (3) legal culture: society had a role in enforcing the law in these cases, as the police force, general prosecutors, and judges have carried out their functions well, and (4) legal impact: the strict implementation of punishments will bring a greater deterrent effect on the perpetrators. Some factors triggered the crime of incest to happen,

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namely: (1) the perpetrator, (2) the victims as underage children are deemed powerless against the perpetrator, and (3) the environmental condition where the houses were deserted.

**Applications of this study:** This analysis can be used by the government to better enforce the law on sexual violence in families in Indonesia.

**Novelty/Originality of this study:** This writing analyzes three cases using two aspects, namely Friedman's theory and judicial consideration in making decisions.

*Keywords: Stepchild, Law Enforcement, Sexual Violence, Incest.*

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## INTRODUCTION

As a legal state, Indonesia's state establishment must be based on the law (Fairuzzaman & Rakasiwi, 2021, p. 175). This refers to the written statement in the Explanation of the 1945 Constitution, which states that, "Indonesia is a state which is based on the law as opposed to mere power" (Surbakti, 2010, p. 138). An issue that is often faced in Indonesia concerns criminal law enforcement, especially for juveniles. The enforcement and punishment imposition of that law will affect a child's psychological development in the future. "The greatest issue in criminal law enforcement, especially that for juveniles is its effects on the child's psychological development in the future."

Criminal law arrives in society as a facility to limit crime. Thus, the criminal law arrangement refers to anything that concerns criminal actions such as murder, rape, torture, etc., that are deemed as despicable behavior in society. The imposed sanctions are strict, including the imprisonment of the body, soul, and freedom (Effendi, 2011, p. 140).

Violence is an action that is wrong or unjustified. The term *violence* means one's behavior towards another that causes physical or psychological damage. Violence has a special character, namely one's actions that cause physical wounds to other people or even cause death. Violence is often accompanied by coercion, such as torture, murder, robbery, harassment, and even rape of underage children (Badan Pengembangan dan Pembinaan Bahasa, 2022).

Child abuse may be defined as any purposeful behavior towards a child that causes not only physical but also mental (emotional), psychological, and sexual suffering. It includes bad treatment that threatens a child's bodily integrity. Such actions are often committed by parties

that have power over that child, who are actually expected to be trustworthy and responsible, such as parents, guardians, teachers, or companions.

Children serve as the nation's next generation and fathers have the role of protectors so long as that child is still under their responsibility. Both biological and stepchildren have the same right to be loved. A father is the head of the family that must provide examples for the family. The Convention on Children's Rights that has been ratified by the government through the Presidential Decision No. 36 of 1990 and Law on Child Protection No. 23 of 2002 explains that children are those under the age of 18 years.

Children have rights that must be protected, as stipulated in Article 2 clause (1) of Law No. 4 of 1979 on Child Welfare. It states that children have the right to welfare, treatment, care, as well as guidance with sincere love from their biological families, step-families, or under special care so that they may grow and develop properly.

Sexual violence is often deemed as a deviation behavior as that action forces another person to undergo a sexual relationship that makes him/her become involved as an unwanted object of attention (Colier, 1998, p. 4). It can be said that most victims of harassment in Indonesia are women.

In Indonesia, there is an annual increase in sexual violence. Victims do not only include adults, this crime also involved teenagers, children, and even toddlers. According to Lyness, sexual violence to children includes the act of touching or kissing children's sexual organs, the act of raping children, showing pornographic media/items, showing genitals to children, and many more. Sexual abuse is a type of abuse that, based on the perpetrators' identity, is divided into two categories, namely: (a) Familial Abuse. A type of familial abuse is incest, i.e., sexual violence where the victim and perpetrator are related or they are part of the same nuclear family. This includes people who became the substitute of parents, such as stepfathers, stepmothers, caretakers, or other people who are trusted to take care of the child, and (b) Extrafamilial Abuse, where the abuse was committed by people other than the victim's family (Noviana, 2015, pp. 14–16). The Annual Report of the National Commission of Anti-Violence against Women (The National Commission of Women) has reported various kinds of sexual violence that happened in Indonesia. These cases were collected from various community organizations, and governmental institutions, as well as complaints from the society obtained by this National Commission through the Referral Complaint Unit or the Commission's official email for the past year (Komnas Perempuan, 2021).

The 2021 Annual Report reported cases of abuse that happened in 2020. The spread of Covid-19 decreased cases of abuse in the report by 31%. But it does not mean that cases of sexual violence have truly decreased. The decreasing number of sexual violence cases in the Annual Report was because victims were afraid to report as they lived proximately to the perpetrators during the pandemic (due to large-scale social restrictions) (Komnas Perempuan, 2021).

A family is a place where a child is educated and taken care of. It is one of the most important factors that influence the growth and development of a child. A family is a source of inspiration that provides basic knowledge of religion and science. It has a role in forming a child's character and personality. Families have a role in influencing the good and bad behaviors of children, as children obtain experience from their parents in their environment.

A stepfather is a man (that is not the biological father) who married the biological mother of a child. It cannot be denied that in Indonesia, people often associate evilness when hearing the term "step" parents. In reality, this is not always true. There are many cases where families live harmoniously even with step-parents or step-children. Sometimes, children feel that the positions of their biological fathers are substituted by the coming of the stepfather. Thus, sometimes children may oppose, avoid, and suspect stepfathers (Sujianto, 2009, p. 49).

In some cases that occurred, victims do not want to report the case of abuse they experienced as they are afraid of the threats they received from the perpetrator. As minors, child victims are often afraid when threatened. Thus, this paper analyzes this issue based on the legal perspective as girls often become victims of sexual violence where the perpetrators are family members that have the responsibility to be protectors (familial abuse). This analysis is written in form of writing entitled: "Step Children and Incest: Law Enforcement Efforts Against Sexual Abuse in Families (A Case Study on the Decisions of Wonogiri State Court, Idi Sharia Court, and Banda Aceh Sharia Court)"

From the explanation above, this research has two problems, namely: (a) how is the law enforcement on the sexual violence of incest carried out by the stepfather to the stepchild? and (b) how is the judicial consideration in deciding upon the criminal case of incest sexual violence perpetrated by the stepfather to the stepchild? The limitation of this research is that the issue analyzed in this article only concerns the stepfather as the perpetrator of sexual violence on his underage step-child.

## RESEARCH METHOD

This legal research used the normative juridical approach with the support of a case study. The normative juridical approach means that the literary legal research was conducted by studying literary materials or secondary data. It used the deductive method of thought, where a conclusion was drawn from something with general characteristics that were already proven to be true. This conclusion was directed to something with a specific characteristic (Hidayat & Sedarmayanti, 2002, p. 23).

Thus, the object was analyzed using an approach with qualitative characteristics. It was a research method that refers to legal norms in constitutional regulations (Soekanto & Mamudja, 2001, pp. 13–14). The case study approach means that the research is inductive. It means that it departs from the cases collected and it provides a general description of the topic analyzed in a form of description. The general stipulations on the events that happened are compared with the ideal legal norms that are explicit and that are deemed to still be applicable (Fatoni, 2003, p. 28).

In this writing, the writer used data in the form of court decisions, literature, and constitutional regulations. The writer analyzed the enforcement of the law on sexual violence in families committed by stepfathers. After collecting adequate research data, the writer used the descriptive technique of analysis to analyze the data by clearly describing the analyzed object as is. The data and information obtained from the research object were analyzed and reviewed by linking them to theories and applicable regulations, aiming to resolve the issue discussed. Then, the writers drew a conclusion according to the analyzed issue (Soemitro, 1983, p. 24).

The descriptive method was an effort that focuses on the current actual situation. The data were then collected, arranged, explained, and analyzed. In this case, the writer used the descriptive qualitative method of analysis which described and analyzed the sexual violence criminal act perpetrated by stepfathers on stepchildren.

## RESULTS AND DISCUSSION

### A. The Law Enforcement Towards the Sexual Violence Criminal Act Perpetrated by Stepfathers to Stepchildren

Every person is always deemed to have the same position in the face of the law (equality before the law). The law is deemed effective if it is implemented as well as possible. But in the effort to enforce the law, the law is not the only guidance.

Law enforcement is a process to achieve expected legal goals. Legal desires are in this case the thinking results of law-making institutions that are formulated in the form of legal regulations. The thought formulation of law-making institutions will certainly influence the law enforcement applied (Raharjo, 2009, p. 25). Law enforcement aims to protect the dignity, honor, and interests of human beings as well as to create justice. Law enforcement can run normally and peacefully. But sometimes, there are law violations. Thus, the violated laws must be enforced so that the perpetrators experienced a deterrent effect and so that a similar violation is not repeated. There are three elements that must be observed in law enforcement, namely:

1. Legal certainty (*rechtssicherheit*)

In essence, the law cannot deviate and it must apply according to the legal stipulations - *fiat justitia et pereat mundus* (even if the world falls, the law must still be enforced). In this case, the law must be applied and enforced according to the wishes of legal certainty. Legal certainty means justiciable protection against arbitrary actions.

2. Benefit (*zweckmassigkeit*)

In law enforcement, the society hopes for benefit. A law is directed to humans. Thus, its application must naturally provide benefits to people or society. Law enforcement must not bring negative impacts to the community.

3. Justice (*gerechtigkeit*)

Apart from protecting the interests of society, law enforcement applied must also have a role to enforce justice in the law violations that happen in society. In this case, the law must be just and it must not side with certain groups in society (the law must have general characteristics). This is contrary to subjective, individualistic, and unequal justice (Mertokusumo, 1999, p. 145).

Some factors influence law enforcement in Indonesia so that it may run according to its objective, namely:

1. The legal factor

The law is all regulations that are coercive and binding. If a person violates that law, he will be imposed with sanctions. These sanctions are strict and coercive to its violators. There is a different definition of law, i.e., a set of norms or principles that function to regulate various human behavior in societal life to create a peaceful, safe, and harmonious life. There are two sources of law, i.e., material legal sources and formal legal sources. The material legal source is a legal source that determines the contents of a legal principle. It includes one's sense of law or general consensus, religion, habits, and governmental legal politics. Then, the formal legal source is a source that determines where that regulation obtained a legal source. The formal legal source consists of laws, norms, jurisprudence (former judicial decisions), tract, and opinions of known legal scholars.

2. The societal factor

Law enforcement comes from society itself. It aims to create a peaceful, safe, and harmonious society. Because of that, society is demanded to fulfill applicable legal regulations so that law enforcement may run according to expectations. In this case, there needs to be an awareness of society to obey and support the application of the law to achieve the goal of law enforcement.

3. A rather great influence from society

Every region in Indonesia has its own culture. Even, in some Indonesian regions, the existence of a culture is highly obeyed and believed by society from generation to generation. The fulfillment of societal needs cannot be separated from the cultures that are sourced from society.

Societies have different cultures. But each culture has substances that generally apply anywhere. The substantial characteristic of cultures includes that cultures are manifested and channeled through human behavior. Culture has existed prior to the birth of a particular generation and it does not die with the death of the said generation. People need culture and it is manifested in their behavior.

4. The factor of facilities and infrastructure

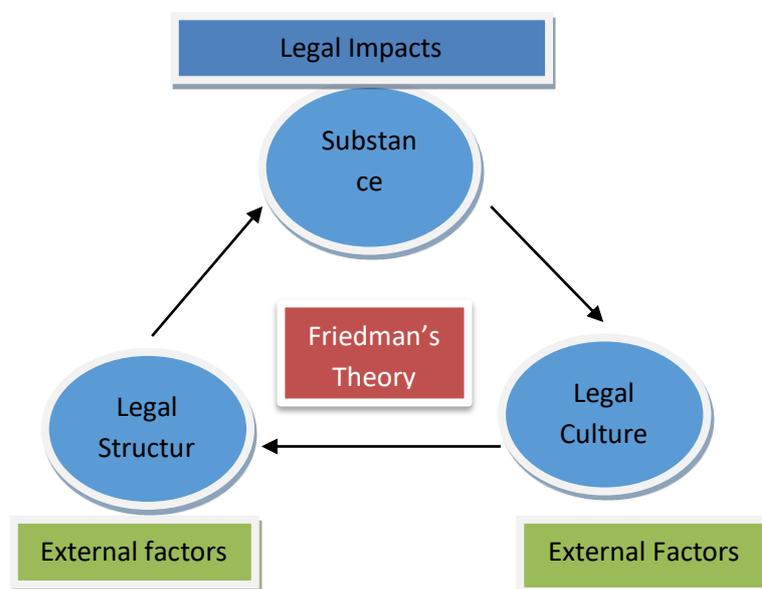
Law enforcement cannot run well without facilities and infrastructure. Some things must be fulfilled to reach the goal of law enforcement, including educated and skilled human resources, good organization, adequate instruments, adequate funding, etc.

5. The factor of the law enforcers

For the law to run well and for it to provide society with justice, there need to be law enforcers to take care of the factor of the law enforcers. Law enforcers in Indonesia are divided into several positions, including police officers, attorneys, and judges (Poernomo, 1988, p. 25).

Lawrence M. Friedman suggested that four elements must be considered in law enforcement, namely legal structure, substance, culture, and impacts (Friedman, 1977, p. 7, 1984, p. 16). Then, the writer will discuss each element stated by Friedman.

**Figure 1.** Law Enforcement according to Friedman



*First*, the legal structure consists of the element of the amount and size of the jurisdiction court, the procedures for seeking an appeal from one court to another, and how the legislative body is arranged. The element of the amount and size of the jurisdiction court concerns the type of case examined and the legal procedure used. In the theory stated by Lawrence M. Friedman, the legal structure is called a structural system. This means that it concerns whether or not that law can run well as planned.

The legal structure is based on Law No. 8 of 1981, which concerns law enforcing institutions, including the police force, attorney, court, and Criminal Executing Agency. The

enactment of this law aims so that there is no misuse of the law by law enforcing apparatus in carrying out their functions. In the case of legal misconduct, perpetrators can be sued based on that law. Thus, in carrying out their functions and authorities, the law-enforcing apparatus has been determined and guaranteed by written law. This also makes law enforcing apparatus become free from regulations under the authority of the government or other parties. It can be said that the law-enforcing apparatus has an important role in enforcing the law. This is because, even if the regulation made is good enough but if the law-enforcing apparatus failed to carry out its tasks and authorities correctly, the law will not run as it should. Because of that, there needs to be quality law enforcement apparatus. It means that they must be responsible for carrying out their functions and authorities based on the applicable regulations.

The writer will take examples of sexual violence cases. In this case, the perpetrators and victims have familial relationships (incest). Even though the perpetrator and victim are not biologically related, they are still a family, i.e., a stepfather and a stepdaughter. The victims of these cases of sexual violence are underage girls.

The *first* example is decision No. XX/Pid.Sus/2022/PN Wng. This case happened in Wonogiri Regency, Central Java Province, Indonesia, specifically at the victim's house from March to September 2021. The victim was the perpetrator's stepdaughter who was 16 years old. The victim's mother and the perpetrator (the victim's stepfather) got married on Thursday, June 13<sup>th</sup>, 2019. Since then, the victim lived with the perpetrator. For his crime of undergoing sexual violence on the victim, the perpetrator was arrested on December 16<sup>th</sup>, 2021. By considering stipulations of the Republic of Indonesia's Law No. 17 of 2016 Article 81 on the Enactment of the Governmental Regulation in *lieu* of Law No. 1 of 2016 on the second change of Law No. 23 of 2002 on Child Protection that became law, the Wonogiri State Court in a trial open for public stated that the perpetrator is punished with imprisonment of ten years and a fine of Rp60.000.000,00 with the stipulation that if the fine is not paid, he must substitute it with an arrest of three months.

Then, the *second* example was decision No. 11/JN/2020/MS.lidi which occurred in Indra Makmur District, East Aceh Regency, Indonesia. This decision also regarded a case of sexual violence to an underage child (11 years old) whose perpetrator was that child's stepfather. This case happened from 2018 to 2020, which means that the victim was abused not only once but for around two years. The victim was afraid to report this to the authorities or anyone

else as she was afraid of the threats she received from the perpetrator. The victim was also very young; thus, she had no power to counter the perpetrator.

Idi Sharia Court in a deliberation meeting of the Judge Assembly with a normal procedural examination made the decision to the perpetrator based on Law No. 11 of 2006, Aceh *Qanun* (Law) No. 6 of 2016 on *Jinayat* (Criminal) Law as well as other legal stipulations associated with this case. The Defendant was proven valid and convinced guilty of undergoing *jarimah* (crime) of rape towards a child and was threatened with ‘*uqubat Ta’zir* (punishment) in Article 50 of Aceh *Qanun* No. 6 of 2014 on *Jinayat* Law. The Defendant was punished with *uqubat Ta’zir* of imprisonment for 150 months and the length of his imprisonment was to be decreased from the *uqubat Ta’zir* that has been served. Then, the Defendant must also pay a case fee of Rp.2.000,-

The *third* example was decision No. 20/JN/2021/MS.Bna of Banda Aceh Sharia Assembly. This case occurred in Baiturrahman District, Banda Aceh City, Indonesia. The case occurred on September 2020. During the event, the victim that was the stepdaughter of the perpetrator who was still 15 years old was raped when the perpetrator entered her room when she was taking a rest. In this case, the victim had no courage to file a report as she was threatened by the perpetrator. She tried to fight him, but was overpowered.

The Defendant was brought to trial based on the indictment of the General Prosecutor that was bestowed to the Banda Aceh Sharia Court with the letter of the bestowment of Common Case Examination of Procedures. In a deliberation meeting of the Judge Assembly of the Banda Aceh Sharia Court, the judges made a decision based on the sharia, Article 49 *Qanun* of the Nanggroe Aceh Darussalam Province No. 10 of 2002 on the Islamic Sharia Justice *jo* Article 50 *jo* Article 1 number 30 of the Aceh *Qanun* No. 6 of 2016 on *Jinayat* Law as well as all constitutional stipulations concerning this case. The Defendant was proven valid and convincingly guilty to perpetrate *jarimah* rape on a person with a *mahram* (close family) relationship as stipulated in Article 49 and Article 50 of the Aceh *Qanun* No. 6 of 2016 on *Jinayat* Law. In the first indictment, imposing the sanction of imprisonment for 200 months, subtracted by the imprisonment period that has been served and determined the Defendant to pay a case fee of Rp.2.000,- (two thousand rupiahs).

**Second**, concerning the legal substance it encompasses the norms and behavior in society, the products issued, decisions, as well as new regulations issued by every person associated with that legal system. This is stipulated in Article 1 of the Criminal Code, which

states that, “there is no criminal action that can be punished if there is no law that regulates it.” This certainly has a great influence on whether or not the applicable legal system is good. The quality of the law-enforcing apparatus is not the only factor that influences whether or not the applicable legal system is good, it is also influenced by the regulations made. Even though the role of the law-enforcing apparatus is highly crucial, the regulations issued in a legal system are also an influencing factor. If a regulation made lacks good quality, it will also influence the application of the law in that society. There have been many cases of law violations that happened due to the weak legal system in Indonesia.

The *first* case was Decision No. XX/Pid.Sus/2022/PN Wng. This case of sexual abuse was perpetrated by the victim's stepfather. In this case, the perpetrator committed the crime of “purposefully undergoing violence or threats of violence, forcing a child to have sex with him, committed by a parent”. It means that the perpetrator has violated Article 81 clause (3) of Law No. 17 of 2016 on the second change of Law No. 23 of 2002 on Child Protection.

In the *second* case, i.e., Decision No. 11/JN/2020/MS.lidi, the case of sexual violence was committed by a stepfather in Indra Makmur District, East Aceh Regency. The defendant was proven valid and convinced guilty of "purposefully undergoing *jarimah* rape towards a child.” It means that the defendant has violated Article 50 *jo.* Article 48 of Aceh *Qanun* No. 6 of 2014 on *Jinayat* Law.

Then, concerning the *third* case, i.e., Decision No. 20/JN/2021/MS.Bna of Banda Aceh Sharia Court. In this case, there was an act of sexual abuse perpetrated by the victim's stepfather in Baiturrahman District, Banda Aceh City. The Defendant was proven valid and convincingly guilty to perpetrate *jarimah* rape on a person who was a *mahram*. It means that the defendant has violated Article 49 and Article 50 of Aceh *Qanun* No. 6 of 2014 on *Jinayat* Law.

As commonly known, based on Law 11 of 2006 on the Aceh Government, the Aceh Government is given some special authorities to manage its territory. One of those authorities includes the application of Islamic sharia values (*qanun*). *Qanun* is defined as constitutional regulations (a type of regional regulation) that function to regulate the government establishment and societal life of the Aceh people. The Aceh People's Representative Assembly have issued Aceh *Qanun* No. 6 of 2014 on *Jinayat* Law or the *Jinayat Qanun*.

Article 3 clause (1) of Law No. 6 of 2014 on *Jinayat* Law states that *Jinayat Qanun* regulates the perpetrators of *jarimah*, *jarimah*, and *uqubat* (sanctions imposed by the judge to

*jarimah* perpetrators. Then, Article 3 clause (2) stated that the aforementioned in clause (1) includes: *khamar* (alcoholic drinks), *maisir* (gambling), *khalwat* (spending time alone with extramarital partner), *ikhtilath* (the interaction of men and women where they touch each other, talk, etc.), *zina* (extramarital sex), sexual harassment, rape, *qadzaf* (disturbing other people), *liwath* (homosexuality between men), and *musahaqah* (homosexuality between women). Then, the punishment imposed on the *jarimah* perpetrators is the punishment of whipping. The punishment of whipping is given to perpetrators starting from 10 to 200 times, according to the crime committed. Concerning the case discussed in this paper, i.e., rape perpetrated by the stepfather to the stepdaughter, it is regulated in Articles 48-56 of Law No. 6 of 2014 on *Jinayat* Law.

**Third**, the third element is the legal culture. It is the attitude, behavior, and values associated with the legal system and the law. In this case, the legal culture can be defined as all of society's attitudes and behavior as well as their assessment that will determine how the legal system should run in the scope of the said society. It can also be said that legal culture is values and behavior that will influence the society in it. It may either give positive or negative influences on legal behavior. There are two kinds of legal culture, i.e., external legal culture and internal legal culture (Friedman, 1977, p. 293). This legal culture is social powers that are commonly called the values that live in a society (culture), that can shift the elements of legal structure and legal substance (Kuswardani, 2017, p. 426).

The external legal culture is a legal culture in the environment or population of the general population. Meanwhile, internal legal culture is the legal culture of society members that undergo legal tasks. These two legal cultures certainly influence each other and they are interrelated. For instance, in the case of police speeding tickets, if law violators do not have the habit of bribing, the law enforcing apparatus will not receive bribery. Thus, the law-enforcing apparatus will implement its tasks and responsibilities correctly.

If associated with the cases of incest sexual violence by stepfathers to stepdaughters as discussed in this research, society still lacks legal awareness. In these three cases, the perpetrators still recklessly commit sexual violence against the victims who are their stepdaughters, even though the perpetrators knew that it is an act of law violation and that there are sanctions. In this case, it means that the perpetrators were not afraid of the threat of imprisonment that will be imposed by the law enforcing apparatus. On the other hand, victims were afraid to report the case due to threats from perpetrators.

The *fourth* element is legal impact, i.e., the impact targeted or expected from the application of the legal stipulations. Legal stipulations in the criminal sector always contain prohibited actions, the threat of imprisonment or other sanctions to their perpetrators, as well as the imposition of imprisonment on those who are proven to be guilty of perpetrating that crime. The legal stipulations that contain prohibitions and threats of sanctions must be made and applied as the first and most important requirement in imposing a sanction on a person who is deemed to have committed an act that brings loss to or endangers other people.

The formulation of criminal law is an abstract form of sanction imposition. It means that by determining certain actions as criminal actions, it is hoped to prevent the occurrence of that crime. It is hoped that everyone may restrain from committing that crime. Then, in the case where some people still commit that crime, there must be strict action to process that person. Thus, if that person is proven guilty, he will be imposed sanctions. The special prevention effect is deterring criminal perpetrators and the general prevention towards society, in general, can run effectively if the sanctions imposed on the perpetrators of the crime are not much different from the threatened sanctions. From the three decisions analyzed, it can be seen that the crimes imposed by the judges are close to the maximum threat of punishment. Even, in the third case, it reached the maximum.

**Table 1.** Law Enforcement in the Exemplary Decisions

No.	Friedman's Theory	Decision No. XX/Pid.Sus/2022/PN. Wng	Decision No. 11/JN/2020/MS.Idi	Decision No. 20/JN/2021/MS.Bna
1	Legal Structure	Wonogiri State Court	Idi Sharia Court	Banda Aceh Sharia Court
2	Legal Substance	Article 81 clause (3) of the Republic of Indonesia's Law No. 17 of 2016 on the second change of Law No. 23 of 2002 on Child Protection	Article 50 <i>jo</i> Article 48 of the Aceh <i>Qanun</i> No. 6 of 2014 on <i>Jinayat</i> Law	Article 49 and Article 50 of the Aceh <i>Qanun</i> No. 6 of 2014 on <i>Jinayat</i> Law
3	Legal Culture	Wonogiri People	East Aceh people, Indra Makmur District	Banda Aceh people, Baiturrahman District
4	Legal Impacts	Perpetrator, Victim, Wonogiri People	Perpetrator, Victim, East Aceh people, Indra Makmur District	Perpetrator, Victim, Banda Aceh people, Baiturrahman

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In these cases, the general attorney has the case to prosecute the sexual violence perpetrators (the stepfathers) in their legal regions, by undergoing a case bestowment to the authorized state court to adjudicate. Then, the courts examined and decided upon the case, namely Decision No. XX/Pid.Sus/2022/PN Wng in the Wonogiri State Court, Decision No. 11/JN/2020/MS.Idi in the Idi Sharia Court, as well as Decision No. 20/JN/2021/MS.Bna in the Banda Aceh Sharia Court. In the Decision No. XX/Pid.Sus/2022/PN Wng the indictment of the general prosecutor had an alternative form. The first alternative indictment was regulated in Article 81 clause (3) of the Republic of Indonesia's Law No. 17 of 2016 on the second change of Law No. 23 of 2002 on Child Protection

In Decision No. 11/JN/2020/MS.Idi, the indictment of the general prosecutor was that the perpetrator's actions violated Article 50 of the Aceh *Qanun* No. 6 of 2014 on *Jinayat* Law. The formulation of the criminal law contained the following elements: anyone, purposefully, committed rape, on a child. The elements of the Article 50 of the Aceh *Qanun* No. 6 of 2014 on *Jinayat* Law have been proven and fulfilled based on the available evidence and facts.

In the Decision No. 20/JN/2021/MS.Bna, the indictment of the general prosecutor had an alternative form, i.e., first indictment or second indictment. In this case, the judges considered the first indictment if the available evidence and facts are deemed adequate. Thus, the judges do not need to consider the second indictment. In the first indictment, the defendant was suspected of undergoing a law violation towards Article 50 *jo*. Article 1 number 30 of the Aceh *Qanun* No. 6 of 2014 on *Jinayat* Law

Next, the writer will describe how the cases of sexual violence in these three decisions occurred. The first case in Decision No. XX/Pid.Sus/2022/PN Wng was decided in the deliberative trial of the Wonogiri State Court on April 26<sup>th</sup>, 2022. In this case, the victim was a 16-year-old child who was the stepdaughter of the perpetrator. The victim's mother and the perpetrator (the victim's stepfather) got married on Thursday, June 13<sup>th</sup>, 2019. Since then, the victim lived with the perpetrator in Wonogiri Regency.

The event started occurring on March 2021 when the house was empty. The perpetrator suddenly hugged and kissed the forehead of the victim. This did not make the victim suspicious because she thought that it was only a form of affection from a father to a daughter. But from day to day, the perpetrator kissed the victim more often. He did not only kiss the forehead but also the victim's neck and lips, making the victim uncomfortable. She tried to

reject this by pushing the defendant but she was overpowered. On September 2021, the perpetrator committed his action by undergoing intercourse with the victim and threatened her that if the victim told her mother, the perpetrator will be cast away. This made the victim afraid that another divorce will happen. This event was uncovered on December 16<sup>th</sup>, 2021, when the victim gained the courage to tell her mother. Then, the victim's mother reported this case to the Wonogiri Police Force.

The second case in Decision No. 11/JN/2020/MS.Idi was decided upon in the deliberation meeting of the Judge Assembly of the Idi Sharia Court on Monday, November 30<sup>th</sup>, 2020. In this second case, the victim was the defendant's stepdaughter who at the time of the event was only 10 years old. This case occurred in August 2020 at Indra Makmur District, East Aceh Regency.

Just like in the first case, when committing his action, the victim was threatened by the perpetrator that if she reported it to her mother that the perpetrator will fight with her mother. The victim only said "yes" without any resistance. The perpetrator has committed his action around ten times since 2018 at different times. The victim reported this to a witness, who was the uncle or the biological younger brother of the victim's father. At first, on Monday, August 17<sup>th</sup>, 2020, the witness asked why the victim always isolated herself and never wanted to go out and play with her friends. The victim told the witness that she was raped by her stepfather. Then, the witness reported this to his brother.

The third case is in Decision No. 20/JN/2021/MS.Bna was decided upon in the deliberation meeting of the Judge Assembly of the Banda Aceh Sharia Court on Wednesday, April 14<sup>th</sup>, 2021. In this third case, the victim was also a stepdaughter that lived in the same house as the perpetrator her stepfather. During the event of the crime on September 2020, the victim was still 15 years old. In this case, the victim was also afraid to report as she was afraid of the threats given by the perpetrator, that the victim will be killed if she told her mother. The victim tried to resist but she was overpowered. Then, the victim told this to her uncle who then reported this case to the authorities, i.e., the Banda Aceh Police Force.

From the three examples of incest sexual violence whose perpetrators were stepfathers of underage victims, it was known that the victims were afraid to report the case due to the threats they received from the perpetrator. Apart from that, the victims cannot fight the perpetrator as they were overpowered. The events started when the house was deserted and

there was only the perpetrator and the victim in the house. In these cases, it was suspected that the perpetrators used these situations to fulfill their desires.

Based on the data above, it was known that the *first* factor that triggered the events of incest sexual violence by stepfathers was no other than the perpetrator. Stepfathers are strangers who enter a family. They are different from biological fathers who are related by blood. The closer the relationship between the biological fathers and their children, the greater the growth of the love between them as parents and children. This is different from the relationship between stepfathers and stepchildren, where their close relationship may have a different meaning. This may be because the perpetrators have an inherent sexual deviation.

The *second* factor is the condition of the victim. Because the perpetrators feel that the victims are underage, they do not have the power to fight them. This was used by the perpetrators to fulfill their desires. When the perpetrators carried out their actions, they also threaten the victims, making them feel scared to report to anyone. But if the perpetrator is too young to understand sexual violence, the perpetrators often bribe the victims with certain items, and the victims tend to agree. These situations make the victims a role in the event of the crime (Kurnianingsih, Dimyati, Wardiono, & Absori, 2021, p. 215).

The *third* factor is the condition of the environment. The deserted condition of the house was often used by the perpetrator to commit his action. Or perhaps, his desire to undergo sexual violence suddenly emerged when seeing the deserted condition of the house. This was also because the perpetrator does not obtain satisfaction from a normal relationship with his partner who is no other than the victim's mother. There is not only one factor that causes the crime of incest sexual violence to happen. Even though the perpetrator is guilty, there are other factors that encourage or that become the causes of these cases. As in the three cases of sexual violence above, the perpetrators used the situation of the underage victims who do not have the power to fight the perpetrator. Apart from that, victims did not understand that action. Thus, sexual abuse happened without resistance from the victims.

## **B. The Judicial Consideration in Deciding Upon the Criminal Case of Incest Sexual Violence Perpetrated by Stepfathers to Step Daughters**

There were differences between the cases of incest and sexual violence in the three Decisions. The first case in Decision No. XX/Pid.Sus/2022/PN Wng happened in Wonogiri where the law enforcers used the common criminal law in making a verdict towards the

offender in the court. The sanctions imposed were imprisonment for 10 (ten) years and a fine of Rp 60.000.000,00 (sixty million rupiahs) with the stipulation that if the fines are not paid, it must be substituted with imprisonment for 3 (three) months. Apart from that, the perpetrators are burdened with the case fee of Rp 5.000,00 (five thousand rupiahs).

In Decision No. 1/JN/2020/MS.Idi that happened in East Aceh, the law enforcing apparatus used the Aceh Qanun as a guide in making a verdict on the Defendant in the Court (Idi Sharia Court). The punishment imposed was *uqubat ta'zir* imprisonment for 150 (a hundred and fifty) months, i.e., 12,5 years with the stipulation that the length of his imprisonment will be decreased totally from the *uqubat Ta'zir* imposed and punishing Defendant with a case fee of Rp.2.000,- (two thousand rupiahs).

Then, in the last decision No. 20/JN/2021/MS.Bna that happened in Banda Aceh City was the same as the second case, as it was based on Aceh *Qanun* in making a verdict on the Defendant in the Court (Banda Aceh Sharia Court). The punishment imposed was imprisonment for 200 months (16 years and 8 months). It was decreased by the length of imprisonment that has been served. Apart from that, the Defendant must pay the case fee of Rp.2.000,- (two thousand rupiahs).

From the information above, it can be noted that there were differences between the common criminal law and the Aceh *Qanun* in making a verdict in the Court for similar crimes. It can be seen that the punishment imposed in Decision No. XX/Pid.Sus/2022/PN Wng was lighter than that in Decisions No. 1/JN/2020/MS.Idi and 20/JN/2021/MS.Bna. It means that the punishments imposed using the Aceh *Qanun* as a guide were more severe compared to the common criminal law.

In the first case (Decision No. XX/Pid.Sus/2022/PN Wng), the things that aggravated the defendant's punishment according to the judicial consideration in the Wonogiri State Court were as follows: (a) The perpetrator's actions brought concerns to society, especially the family of the child victim; (b) the perpetrator's actions brought negative impacts on the child victim's psychology; (c) the perpetrator was the stepfather of the child victim that must actually protect, educate, and take care of the child victim; and (d) the perpetrator's actions have violated the norms of decency in the society.

Then, in Decision No. 1/JN/2020/MS.Idi, the things that aggravated the defendant's punishment according to the judicial consideration in the Idi Sharia Court were: (a) the defendant's actions did not support the Aceh government's program of upholding the Islamic

Sharia in Aceh Province; (b) the defendant's actions disrupted the morals in society; (c) the defendant's actions destroyed the future of the victim; and (d) the defendant was not truthful in the face of the court.

Meanwhile, in the last decision, i.e., Decision No. 20/JN/2021/MS.Bna, the things that aggravated the defendant's punishment according to the judicial consideration in the Banda Aceh Sharia Court were: (a) the defendant is a Muslim that should highly uphold the Islamic Sharia that is enforced in Aceh Province; (b) the defendant's actions have brought disgrace to the underage child victim, her parents, and family; and (c) the defendant's actions brought concerns to society, as it may influence other people to commit the same deed.

Based on the information above, it was known that the things that became the consideration of the judges in aggravating the punishment of the perpetrators in making a verdict were different between the first case (the common criminal law) and the second and third cases (the Aceh *Qanun*). In the first case which was Decision No. XX/Pid.Sus/2022/PN Wng, the judges had more consideration on the psychological impacts on the child, the relationship between the perpetrator and the victim, as well as the influence on the societal environment. This means that the judge assembly prioritized the norms of decency.

This was different from the second (Decision No. 1/JN/2020/MS.Idi) and third cases (Decision No. 20/JN/2021/MS.Bna). Concerning the things that aggravated the punishments on the perpetrators, the judge assembly prioritized violations towards the values of Islamic sharia. This means that the perpetrators' actions were a violation of the Islamic values that are implemented in Aceh Province. In this case, the perpetrators were deemed as not supporting the implementation of these Islamic sharia values. Even so, other things such as the victims' future, the impacts on society, as well as family disgrace were also considered by the judges.

As for the things that lightened the punishments of these three cases, all perpetrators have never been punished before. All perpetrators also admitted guilty and they were sorry for their actions. They promised to never repeat such a crime. These things were considered by judges in all courts, whether the court applied the common criminal law or the Aceh *Qanun*. But, there was another difference in the second case (Decision No. 1/JN/2020/MS.Idi) where the perpetrator's good manners in court were also considered by the judges as a factor that lightened the punishment of the perpetrator.

## CONCLUSION

Friedman opined that four elements must be considered in law enforcement. These four elements in the analyzed cases were: (1) legal structure: the court and sharia courts, (2) legal substance: the laws used by judges in deciding upon the cases, namely Law No. 17 of 2016 and Aceh Qanun No. 6 of 2014, (3) legal culture: society had a role in enforcing the law in these cases, as the police force, general prosecutors, and judges have carried out their functions well, and (4) legal impact: the strict implementation of the threats of punishments of the laws will bring a greater deterrent effect on the perpetrators.

Some factors triggered the crime of incest to happen, namely: (1) the perpetrator, (2) the victims as underage children are deemed powerless against the perpetrator, (3) the environmental condition where the houses were deserted.

From the three cases analyzed, the imposition of punishments based on the Aceh Qanun was more severe compared to the punishments based on the common criminal law. Then, the things that aggravated the imposition of sanctions were different in the three cases as different courts have different considerations.

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