


Sentencing Disparities in Judicial Considerations of Electronic Sexual Violence Cases

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Abstract

Introduction: Indonesia, as a state governed by the rule of law, upholds equality before the law and the protection of human rights as fundamental principles. However, the rapid development of digital technology has created new challenges, particularly the emergence of electronic sexual violence, which has raised significant public concern. Although Law Number: 12 of 2022 regulates such crimes, judicial practice reveals sentencing disparities that undermine legal certainty and victim protection.

Purposes of the Research: This study aims to analyze the causes of judicial sentencing disparities in cases of electronic sexual violence and examine their implications for law enforcement in Indonesia.

Methods of the Research: The research employs a normative juridical method with a library research approach. Data were collected from primary legal materials such as statutory regulations, secondary legal materials including literature, doctrines, and previous studies, as well as tertiary legal materials such as legal dictionaries and encyclopedias.

Findings of the Research: The findings indicate the existence of disparities in three court decisions that applied similar provisions but resulted in significantly different sentences. Factors contributing to these disparities include differences in judicial interpretation, the application of individualized sentencing principles, and non-juridical considerations. Such disparities have serious implications, including diminished legal certainty, reduced deterrence for offenders, weakened victim protection, and declining public trust in the judiciary. Therefore, the establishment of consistent, transparent, and victim-oriented sentencing guidelines is essential to ensure substantive justice in Indonesia's criminal justice system.

Keywords: Sentencing Disparity; Electronic Sexual Violence; Judges; Legal Certainty; Victim Protection.

Submitted: 2025-09-14

Revised: 2025-11-20

Accepted: 2025-11-29

Published: 2025-12-06

How To Cite: Mohamad Nazrin, Bayu Prasetyo, and Elviandri. "Sentencing Disparities in Judicial Considerations of Electronic Sexual Violence Cases." TATOHI: Jurnal Ilmu Hukum 5 no. 9 (2025): 442-445. <https://doi.org/10.47268/tatohi.v5i9.3410>

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INTRODUCTION

Indonesia as a state governed by the rule of law, upholds the principle of equality before the law and the protection of human rights as fundamental values of governance. However, this legal idealism continues to face challenges, particularly in the context of technological advancements that bring ambivalent impacts: on the one hand, improving the quality of civilization, but on the other, giving rise to new forms of crime, including technology-facilitated sexual harassment. This phenomenon represents a criminal act that exploits social media and digital spaces, with women constituting the majority of victims¹.

Law Number 12 of 2022 on Sexual Violence Crimes explicitly regulates technology-based sexual violence. Nevertheless, in practice, law enforcement still faces serious issues, one of which is sentencing disparity. This can be observed in several court rulings that applied the same legal provisions yet imposed different sentences for similar offenses. Such inconsistency raises fundamental questions regarding legal certainty, equality before the

¹ C. S. T. Kansil ; Chritine S. T. Kansil, *Pokok-Pokok Hukum Pidana : Hukum Pidana Untuk Tiap Orang* (Jakarta: Pradnya Paramita, 2007).

law, and the effectiveness of sentencing in providing deterrence as well as protection for victims².

Accordingly, this study aims to analyze the causes and underlying factors of judicial sentencing disparities in cases of electronic sexual violence. Furthermore, it examines the implications of such disparities for law enforcement, the protection of victims' rights, and public trust in judicial integrity. It is expected that this research will contribute academically by promoting consistent, transparent, and fair sentencing guidelines that emphasize substantive justice.

METHODS OF THE RESEARCH

This study employs a normative juridical approach, which focuses on examining legal norms as contained in legislation, jurisprudence, doctrines, and relevant legal literature³. The data used are secondary data, consisting of primary legal materials (including the 1945 Constitution of the Republic of Indonesia and Law Number 12 of 2022 on Sexual Violence Crimes), secondary legal materials in the form of doctrines, theories, research findings, and scholarly articles, as well as tertiary legal materials such as law dictionaries and encyclopedias. Data collection was carried out through library research with the aim of obtaining conceptual foundations, principles, theories, and legal systematics relevant to the research object, which were then systematically analyzed to address the legal issues under study.

RESULTS AND DISCUSSION

Judicial considerations in sentencing perpetrators of electronic sexual violence (ESV) constitute a central aspect of the criminal justice system, as judges are not merely tasked with applying the law formally but also with delivering substantive justice. In this context, judges are required to examine trial facts, assess evidence, and evaluate witness testimonies before rendering their decisions. However, significant differences emerge in sentencing outcomes for cases of similar nature. Such disparities raise critical questions about the consistency and certainty of law enforcement in Indonesia.

The phenomenon of sentencing disparity can be observed in three court decisions under study: Decision Number: 1083/Pid.Sus/2023/PN Sby, Decision Number: 152/Pid.B/2023/PN Mam, and Decision Number: 9/Pid.Sus/2024/PN Wgw. Although all three cases applied the same provision under Law No. 12 of 2022, the sentences imposed varied significantly. The first decision imposed 1 year and 8 months of imprisonment with a fine of IDR 100 million, while the second imposed only 6 months of imprisonment with a fine of IDR 2 million. The third was even more lenient, imposing 2 months and 4 days of imprisonment with a fine of IDR 5 million. These variations illustrate the lack of consistency in sentencing perpetrators of ESV.

In the Surabaya District Court decision, the judge emphasized deterrence and victim protection as the basis for imposing a heavier sentence. This reasoning reflects the application of absolute (retributive) theory, which views punishment as a form of retribution for unlawful conduct. Conversely, the Mamasa District Court placed more

² Dr. M. Munandar Sulaeman, *Kekerasan Terhadap Perempuan Tinjauan Dalam Berbagai Disiplin Ilmu & Kasus Kekerasan* (Bandung: Refika Aditama, 2010).

³ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, 1st edn (Jakarta: Raja Grafindo Persada, 2010).

weight on individualized sentencing by considering the defendant's admission of guilt and efforts at reconciliation. Meanwhile, the Wonosobo District Court rendered an even lighter sentence, reasoning that the act was merely an attempt. This inconsistency highlights divergent orientations among judges in interpreting the purpose of punishment.

These differences are influenced not only by juridical factors but also non-juridical considerations. From a juridical standpoint, judges exercise discretion in interpreting statutes, which allows differing perspectives on how legal elements are applied and how sentences are determined. From a non-juridical perspective, factors such as the defendant's background, social context, and perceived level of culpability often influence sentencing outcomes. This underscores that sentencing is not entirely objective but also shaped by judicial subjectivity.

From perspective of justice theory, such disparities contradict the principle of equality before the law. Offenders who commit the same act should receive equivalent legal treatment unless there are valid grounds for mitigation. Excessive variation in sentencing suggests a bias in justice delivery. This reveals the suboptimal application of the mixed theory of punishment, which should ideally balance retribution and deterrence. Instead, these disparities blur the objectives of sentencing, making it difficult for the public to perceive justice as being upheld through judicial decisions⁴.

The implications of sentencing disparities are profound. First, they weaken the deterrent effect on offenders when sanctions are disproportionately lenient. Second, they erode public trust in the judiciary, as inconsistent rulings reflect poorly on judicial integrity. Third, victim protection is compromised when judges focus on formalistic considerations without adequately addressing victim recovery. Thus, sentencing disparity not only poses a legal challenge but also generates social and psychological consequences.

Moreover disparities in sentencing undermine the function of law as an instrument of human rights protection. The Sexual Violence Crimes Law explicitly prioritizes victims' rights and protection. However, inconsistent and disproportionate sentences fail to deliver justice for victims and risk revictimization, whereby victims feel further marginalized by the very legal process intended to safeguard them. This shortfall emphasizes the gap between normative legal ideals and their practical realization. To address these challenges, sentencing reform is essential, particularly through the establishment of standardized sentencing guidelines that prioritize victim protection. Such guidelines would provide judges with clear references, thereby reducing excessive subjectivity in sentencing⁵. Furthermore, strengthening judicial capacity through training in restorative justice and victim-centered approaches is necessary. Legislative reforms, particularly narrowing the minimum and maximum sentencing ranges, are also crucial in minimizing disparities. These measures would help ensure consistency, legal certainty, and substantive justice in handling cases of electronic sexual violence in Indonesia's criminal justice system.

CONCLUSION

This study demonstrates that sentencing disparities exist in cases of electronic sexual violence, even when applying the same provisions under Law Number 12 of 2022.

⁴ Sri Dwi Rahayu, Yulia Monita, "Pertimbangan Hakim dalam Putusan Perkara Tindak Pidana Narkotika", *PAMPAS: Journal of Criminal Law* 1, no. 1 (2020): 125-137. DOI: <https://doi.org/10.22437/pampas.v1i1.8314>

⁵ Soetardi Tri Cahyono, Wina Erni, and Taufik Hidayat. "Rekonstruksi Hukum Pidana Terhadap Kejahatan Siber dalam Sistem Peradilan Pidana Indonesia" *Jurnal Dame of Law* 1, no. 1 (2025): 111-133, DOI: <https://doi.org/10.64344/djl.v1i1.6>

Variations in court rulings, both in terms of imprisonment duration and fines imposed, reveal a lack of consistency in judicial reasoning. Contributing factors include differences in judges' interpretation of legal elements, the application of individualized sentencing principles, and non-juridical considerations such as the defendant's personal circumstances and social context. These disparities carry serious implications, including diminished legal certainty, weakened victim protection, reduced deterrent effects for offenders, and a decline in public trust toward the judiciary. Therefore, the establishment of clear and consistent sentencing guidelines that prioritize victim protection is essential to ensure substantive justice and strengthen the integrity of Indonesia's criminal justice system.

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