

Legal Analysis criminal Punishment of Child Sexual Perpetrators Based on Social Justice (Case Study Number: 23/Pid.Sus/2024/Pn Stg)

Adi Ary Susanto¹⁾ & Umar Ma'ruf²⁾

¹⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: AdiArySusanto.std@unissula.ac.id

²⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: umar@unissula.ac.id

Abstract. Article 3 of Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection explains that child protection aims to ensure that children's rights are fulfilled so that they can live, grow and develop in accordance with human dignity. Children's growth and development are often faced with difficult situations, where children as the successors of the nation and future generations are often victims of violence and crime. Crimes that arise in the family environment can be in the form of sexual violence against children, one of which is intercourse. The research approach used in this study is through a normative legal approach using secondary data obtained through literature studies, then data analysis is carried out using qualitative descriptive analysis. The problems in this study are analyzed using the theory of punishment and the theory of justice. Based on the results of the study, the judge's considerations in sentencing in Criminal Case Decision Number 23/Pid.Sus/2024/PN Stg have been in accordance with the theory of punishment where the judge has considered both legal and non-legal considerations, facts in the trial, witness statements, available evidence, the judge's beliefs and things that support the criminal sanctions imposed. Criminalization in Indonesian law is a method or process of imposing sanctions or punishments on a crime or a person who commits a crime. Therefore, the Panel of Judges imposed a sentence of 11 years and a fine of Rp. 300,000,000.00 where the decision-making made by the panel of judges was through the judge's considerations that were in accordance with the legal facts and elements that had been revealed in the trial. The punishment imposed by the Panel of Judges was in accordance with social justice for both the victim and the defendant.

Keywords: Childre; Criminalization; Intercourse; Sexual.

1. Introduction

Indonesia is a State of Law (*rechstaat*), not based on power (*machstaat*). This means that Indonesia is a state of law that makes law the commander based on Pancasila and the 1945 Constitution, and upholds human rights, and guarantees that all citizens have equal standing before the law (equality before the law).¹

Based on Law Number 17 of 2016 concerning Child Protection, it aims to ensure the fulfillment of children's rights so that they can live, develop, and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination, in order to realize quality, noble, and prosperous Indonesian children. Child protection is all efforts made to create conditions so that every child can exercise their rights and obligations for the development and growth of children naturally, both physically, mentally and socially.²

Public legal awareness must start from the smallest scope, namely the family environment. In a large family environment, there are family members including father, mother, grandfather, grandmother, uncle, aunt, children, and other family members. Disharmony in the family can also cause crimes in the family environment, which are very common and again children are the victims of these crimes. Crimes that arise in the family environment include physical violence, psychological violence and even sexual violence against children, one of which is intercourse.

Child sexual abuse is a form of child abuse where adults vent their sexual desires on children or in other words, adults receive sexual stimulation from children.³ The crime of sexual intercourse with a child falls into the realm of criminal acts of morality. This criminal act of morality has become one of the concerns that occur in society in the life of the nation and state which can damage the mentality of the hopes for the future in the child. The criminal act of morality related to the crime of sexual intercourse is regulated in the Republic of Indonesia Law Number 35 of 2014 concerning Child Protection.

The case that the author raised in this study is a criminal act committed by a biological uncle, namely the Defendant SPK, who committed a crime of sexual intercourse with the Victim's Child who is his niece. That the Defendant SPK has committed violence or threats of violence to force the Victim's Child to have sexual intercourse with him. That the Defendant SPK has had sexual intercourse with the Victim's Child three times. During the first and second incidents, the Defendant ejaculated his sperm into the Victim's Child's vagina, while in the third incident, the Defendant ejaculated his sperm into the Victim's Child's stomach. That in carrying out his actions, the Defendant promised to give money to the Victim's Child and the Victim's Child was prohibited from telling anyone about his actions.

¹CST Kansil, 1989, Introduction to Indonesian Law and Legal System, Jakarta, Balai Pustaka, p. 33

²Arif Gosita, 1989, Child Protection Issues, Jakarta, Akademi Pressindo, p. 18

³Roy Syahputra, Handling of Sexual Violence Against Children Reviewed from the Child Protection Act, *Lex Crime*, Vol VII, Number 3, 2018, p. 123

As a result of the sexual intercourse committed by the Defendant, the Victim's Child often daydreamed, like a dazed person, felt traumatized and was pregnant. Based on the results of the examination conducted by the Melawi Regency Hospital with the examining doctor, Dr. Franky Christian Wijaya, a 13-year-old woman with brown skin was examined, during an internal examination of the person's body, a torn wound was found on the hymen and the results of the pregnancy test laboratory were positive.

2. Research Methods

The approach method used by the author in compiling the journal uses the normative legal method. The research specification used in this study is the descriptive analysis type. In this study, the author emphasizes library research and primary materials in the form of applicable laws and secondary materials in the form of expert opinions, law books, journals and magazines.

The data collection technique used in this study uses literature study, by collecting data from the results of reviewing library materials and secondary data including primary legal materials, secondary legal materials and tertiary legal materials. The data analysis technique in this study is carried out with qualitative data analysis, namely data collection using laws, theories and legal principles.

3. Results and Discussion

3.1. Judge's Considerations in Sentencing Perpetrators of Criminal Acts of Sexual Intercourse Against Minors in Decision Number: 23/Pid.Sus/2024/Pn. Stg

Every court proceeding is always led by a judge who has the authority to decide a case in court. In the process of giving a decision, the judge has the authority or power known as Judicial Power as regulated in Law Number 48 of 2009 concerning Judicial Power.⁴The judge's decision that needs to be considered is the legal considerations, so that anyone can assess whether the decision handed down has sufficient objective reasons or not.⁵A court decision that is not based on sufficient consideration will be the same as a decision without soul and substance.⁶

The Panel of Judges in its decision tried the Defendant based on legal considerations and philosophical or non-legal considerations. Legal considerations are considerations based on legal facts revealed in the trial and are stipulated by law as things that must be included in the decision. While non-legal or

⁴Rachmani Puspitadewi, A Brief Note on the Development of Judicial Power in Indonesia, Pro Justitia Journal, Vol 24 No 1, January 2006, p. 1.

⁵Indah Lestari, Sri Endah Wahyuningsih, Criminal Law Enforcement Against Narcotics Users at the Central Java Regional Police, Khaira Ummah Law Journal, Vol 12 No 3, September 2017, p. 602

⁶Soraya Parahdina, et, all, 2022, Optimization of Inheritance Case Mediation: In-depth Study of an Interlocutory Decision and the Decision of the High Religious Court, Pekalongan, Nasya Expanding Management, p. 59

philosophical considerations are considerations that are based on the detrimental and damaging impacts on the order of life in society, nation and state.⁷

Case Decision Number 23/Pid.Sus/2024/Pn. Stg basically tried the Defendant Sarifin who made threats of violence to force the Child Victim to have sexual intercourse with him. The Defendant Sarifin is the uncle of the Child Victim. The Defendant Sarifin has had sexual intercourse with the Child Victim three times. During the first and second incidents, the Defendant ejaculated his sperm into the Child Victim's vagina, while in the third incident, the Defendant ejaculated his sperm into the Child Victim's stomach. That in carrying out his actions, the Defendant promised to give money to the Child Victim and the Child Victim was prohibited from telling anyone about his actions. As a result of the sexual intercourse committed by the Defendant, the Child Victim often daydreamed, like a dazed person, feeling traumatized and pregnant. Based on the results of the examination carried out by the Melawi Regency Hospital with the examining doctor, Dr. Franky Christian Wijaya, a 13-year-old woman with brown skin was examined, during an internal examination of the person's body, a torn wound was found on the hymen and the results of the pregnancy test laboratory were positive.

Case decision Number 24/Pid.Sus-Anak/2024/Pn Stg The Panel of Judges in its verdict decided that the Defendant Srifin was proven legally and convincingly guilty of making threats of violence to force a child to have intercourse with him as stated in Article 81 Paragraph (3) of the Child Protection Law. Sentencing the defendant therefore to 11 years in prison and a fine of IDR 300,000,000.00 (three hundred million rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 6 (six) months.

According to the author's analysis, based on the Decision of the Magelang District Court Number 23/Pid.Sus/2024/PN Stg, it has fulfilled the elements as contained in Article 81 Paragraph (3) of Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection. The elements in the Law are: intentionally; committing violence forcing a child to have intercourse with him; carried out by parents, guardians, people who have family relationships, child caretakers, educators, education personnel, officers handling child protection, or carried out by more than one person together.

The judge's consideration in applying criminal provisions to the perpetrator in this case has been appropriate where the judge has considered both legal considerations, namely the facts in the trial, witness statements, existing evidence, the judge's beliefs and supporting matters and the criminal sanctions imposed and non-legal considerations, namely the aggravating and mitigating

⁷Elrick Christovel Sanger, *Law Enforcement Against Drug Trafficking Among the Young Generation*, *Lex Crimen*, Vol II No 4, August 2013, p. 8.

circumstances of the defendant. The aggravating circumstances for the defendant are that the defendant's actions have damaged the future of the victim's child, the defendant's actions have created disgrace for the defendant's family and the victim's child's family where the defendant is the victim's child's uncle-in-law, the defendant's actions have caused feelings of fear, trauma, and shame for the victim's child which can interfere with the growth and development of the victim's child, the defendant's actions are contrary to religious norms, moral norms, and norms of decency that apply in society, the defendant's actions are contrary to religious norms, moral norms, and norms of decency that apply in society. While the mitigating circumstances for the defendant are that the defendant was cooperative during the trial and the defendant regretted his actions and promised not to repeat similar actions and the defendant has never been sentenced to a criminal offense before.

In accordance with the applicable article, namely Article 81 Paragraph (3) of Law Number 35 of 2014 concerning Child Protection, the threat of punishment for perpetrators of sexual intercourse is threatened with a minimum prison sentence of 5 years and a maximum of 15 years, in the case of sexual intercourse carried out by parents, guardians, child caregivers, child educators, education personnel, the threat of punishment is increased by 1/3 (one third) of the alleged criminal threat. In the case of Decision Number 24 / Pid.Sus-Anak / 2024 / Pn Stg in his demands, the Public Prosecutor demanded that the defendant be sentenced to 8 years.

According to the author, the verdict was appropriate considering that the defendant was an educator whose sentence should be heavier than the prosecutor's demands. Then the defendant was part of the family or close relative of the Victim's Child, namely the uncle-in-law. Moreover, the defendant was an educator who should have duties and obligations in the fields of education, training, and guidance.

3.2. Legal Analysis of Child Offenders' Criminalization Based on Social Justice in Decision Number: 23/Pid.Sus/2024/Pn Stg

Criminalization of sexual intercourse in Book II Chapter XIV of the Criminal Code on Crimes Against Morality. This crime is defined as a criminal act related to sexuality that can be committed against men or women. Sexual intercourse is divided into several types. The purpose of criminalization is basically to repair individual and social damage caused by criminal acts.

The crime of sexual intercourse is included in crimes against morality, which is regulated in Chapter XIV Book II of the Criminal Code (KUHP) Article 286, Article 287 and Article 288 of the Criminal Code. Meanwhile, sexual intercourse with minors has also been stipulated in Article 81 of Law of the Republic of Indonesia Number 35 of 2014 amending Law 23 of 2002 concerning Child Protection. Article 81 of the Child Protection Law regulates in general the acts committed by perpetrators of sexual intercourse with children by explaining the acts of

perpetrators who commit violence or with threats of violence by justifying the methods that can be used such as trickery, a series of lies or by using seduction, with the imposition of a heavier penalty than that stated in the contents of Article 287 of the Criminal Code.⁸

The types of acts of sexual violence are regulated in Article 4 Paragraph (1) of 2002 concerning Criminal Acts of Sexual Violence, namely:

- a. Rape
- b. Indecent acts
- c. Sexual intercourse with a child, indecent acts against a child, and/or sexual exploitation of a child
- d. An act of violating decency that goes against the will of the victim
- e. Pornography involving children or pornography that explicitly contains violence and sexual exploitation
- f. Forced prostitution
- g. The crime of human trafficking aimed at sexual exploitation
- h. Sexual violence in the household
- i. The crime of money laundering whose predicate crime is the crime of sexual violence
- j. Other crimes that are expressly stated as crimes of sexual violence

In the case that the author raised, the act committed by the defendant was intentionally committing violence or threats of violence to force a child to have sexual intercourse with him or with another person, the act was committed by a parent, guardian, child caretaker, educator, or education personnel. The defendant's actions violated Article 81 Paragraph (3) of Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into law, which has fulfilled the following elements:

1) Each person

That what is meant by "every person" is every person or legal subject who can be held responsible for his actions. The element of every person here refers to the Defendant Sarifin Alias Pak Kumis bin Mohassadi whose identity has been confirmed in the indictment.

2) It is forbidden to use violence or threaten violence to force a child to have sexual intercourse with him or with another person.

That the Panel of Judges is of the opinion that because the Child Victim refused and tried to push the Defendant's body but the Child Victim was unable to do so,

⁸AA Risma Purnama Dewi, I Nyoman Sujana and I Nyoman Gede Sugiarta, Criminal Acts of Sexual Intercourse with Minors, Journal of Legal Analogy, Vol 1, No 1 of 2019, https://www.ejournal.warmadewa.ac.id/index.php/analogi_Hukum/article/view/1452

the act has fulfilled the definition of the sub-element of "violence" as defined in the sub-element of "violence" above because the Defendant's words have made the Child Victim physically and psychologically helpless so that he then complies with the defendant's wishes who wanted to have sexual intercourse with the Child Victim against the Child Victim's will.

3) Carried out by parents, guardians, people who have family ties, child caretakers, educators, education personnel, officers who handle child protection, or carried out by more than one person together.

At the time the crime was committed, the defendant was the Head of the SDN 15 Nanga Pinoh Education Unit, Nanga Pinoh District, Melawi Regency, so the defendant is a member of the community who is able to dedicate himself to organizing education according to his expertise, who serves as a mentor, researcher, manager, or education administrator, so that at the time the defendant committed the act as in the second element above, the defendant was an "educational staff".

In the case that the author raised, the defendant was proven legally and convincingly in court through the existing evidence that the defendant committed the act intentionally and not due to his negligence, in addition the defendant is a legally competent person so that he can be held accountable. Therefore, the defendant must be held accountable for his actions before the law. Accountability is reflected in a criminal sentence, a criminal sentence is expected to provide an educational effect for the perpetrator of the crime. Therefore the author agrees with the decision of the Panel of Judges who sentenced him to 11 (eleven) years and a fine of Rp300,000,000.00 (three hundred million rupiah) where the decision-making made by the panel of judges through the judge's considerations that are in accordance with the legal facts and elements that have been revealed in the trial. According to the author, the decision of the Panel of Judges has been able to provide an educational effect for the perpetrator so that he does not repeat his actions and is in accordance with the theory of justice.

Children are the next generation of the nation who must receive legal protection. Legal protection aims to reduce, prevent and protect children's rights. All forms of crime including sexual violence crimes whose victims are children must be punished fairly according to applicable law.

4. Conclusion

The judge sentenced the defendant to 11 (eleven) years in prison and a fine of Rp. 300,000,000 (three hundred million rupiah) who was found guilty of forcing a child to have sexual intercourse, in accordance with Article 81 Paragraph (3) of the Child Protection Law. The judge's considerations included legal aspects, trial facts, witness statements, evidence, and the judge's beliefs, which were deemed to be in accordance with applicable legal provisions.

Criminalization in Indonesian law aims to provide sanctions that educate perpetrators of criminal acts so that they do not repeat their actions. In this case,

the Panel of Judges sentenced the perpetrator to 11 (eleven) years in prison and a fine of Rp300,000,000 (three hundred million rupiah) based on considerations in accordance with the legal facts and elements revealed in the trial. This decision is considered fair to the victim and the defendant and provides a deterrent effect.

5. References

Books:

- Agus Rusianto, 2016, Criminal Acts and Criminal Responsibility, Jakarta Prenada Media Group
- Andika Wijaya WP, 2016, Sexual Crime Emergency, Jakarta, Sinar Grafika
- Dellyana, Shanty, 2004, Women and Children in the Eyes of the Law, Yogyakarta, Liberty
- Hanafi, Mahrus, 2015, Criminal Responsibility System, First edition, Rajawali Press, Jakarta
- Lilik Mulyadi, 2005, Juvenile Courts in Indonesia, Denpasar, CV Mandar Maju
- Nandang Sambas, 2011, Criminal Legal Protection for Children in Indonesia, Jakarta, Raja Grafindo Persada
- Prints Syarifin, 2000, Indonesian Children's Law, Bandung, Citra Aditya Bhakti
- Roeslan Saleh, 2010, Criminal Acts and Criminal Responsibility, fourth edition, Jakarta, Aksara Baru
- Soerjono Soekanto, 1986, Introduction to Legal Research, Jakarta, Publisher, University of Indonesia Press

Journals:

- AA Risma Purnama Dewi, I Nyoman Sujana and I Nyoman Gede Sugiarta, Criminal Acts of Sexual Intercourse with Minors, Journal of Legal Analogy, Vol 1, No 1 of 2019, <https://www.ejournal.warmadewa.ac.id/index.php/analogiHukum/article/view/1452>
- Anita Indah Setyaningrum, Umar Ma'ruf, Diversion as a Form of Settlement of Child Criminal Cases Through a Restorative Justice Approach by Central Java Police Investigators, Khaira Ummah Law Journal, Vol 14 No 3, September 2019
- Fauzi R, Implementation of Handling of Investigation of Criminal Acts of Child Abuse and Molestation at the Empat Angkat Candung Police Station, Jurnal Cendekima Hukum, Vol 5 No 1, 2019
<https://jurnal.unissula.ac.id/index.php/PH/article/view/1414>
- Roy Syahputra, Handling of Sexual Violence Against Children Reviewed from the Child Protection Act, Lex Crime, Vol VII, Number 3, 2018
- Sri Endah Wahyuningsih, Rismanto, Criminal Law Enforcement Policy Against Money Laundering Prevention in the Framework of Criminal Law Reform in Indonesia, Journal of Legal Reform, Vol. 2 Number 1, 2016