

Legal Review of The Criminal Act of Child Molestery

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ABSTRACT

The aim of this research is to determine the application of material criminal law to cases of ongoing child abuse in decision Number 1271/Pid.Sus/2020/PT Sby. This research method is normative research, with a conceptual approach, namely legal research that looks for principles, doctrines and sources of law in a juridical philosophical sense. Results: Efforts to protect against identity reporting through mass media and to avoid labeling, providing safety guarantees for victim witnesses and expert witnesses, both physical, mental and social and providing accessibility to obtain information regarding case developments as well as support from the government or related institutions as well as from community members and those closest to them, case assistance from case examination to trial from the Women and Child Protection (PPA) unit and the social department.

Keywords: Children, Judges, Law, Crime, Obscenity

1. INTRODUCTION

The development of society due to this era of globalization apparently also has an impact on the world of crime (Pratama, 2019). One of them is morality crimes which are increasing over time, this is causing public anxiety and concern. However, this can also create a disease in society, namely the crime of sexual immorality. In fact, the Criminal Code (KUHP) has regulated provisions regarding criminal sanctions against perpetrators of criminal acts of sexual immorality, but in reality this crime still occurs in many places and is hidden in people's lives (Manoppo, 2023). It is not uncommon for these cases to escape the trap of applicable law, some even stop at the level of investigation by the police or prosecutor's office so that they do not reach the court process. Recently, there have often been criminal acts involving child abuse committed by adults, and what is even worse, this abuse is committed by the teachers themselves. This is a very big and dangerous threat to children as the nation's next generation (Kansil, 2014).

Children are a trust and gift from the Almighty God who has inherent dignity and worth as a complete human being (Sukawantara et al., 2020). Apart from that, children are the shoots, potential, and successors of the young generation to the ideals of the nation's struggle, having a strategic role, characteristics and special traits that guarantee the continued existence of the nation and state in the future. They also have the right to be protected, prosperous and educated optimally in order to create human resources who have good abilities and qualities, but in reality children continue to be exploited, whether economically by employing children, and turning them into street



children, or by lack of attention. Parents and the surrounding environment show how children are still victims of adults (Hanafi, 2022).

Children have an important role in the international community so that the whole world emphasizes the position of children as human beings who must receive protection for their rights (Lestari, 2017). Therefore, children are legal subjects, who have rights and obligations, where these rights and obligations must be strictly considered. Especially by truly providing protection for children. Because children are very vulnerable to becoming victims of crime, especially crimes in the field of morality and violating their rights as children. Acts of sexual violence against children can result in great trauma. Especially if the crime was committed by people closest to him or someone he knows. In Article 1 point 2 of Law Number 23 of 2002 concerning Child Protection, it states that: "Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate, optimally in accordance with their dignity, and human dignity, as well as receiving protection from violence and discrimination" Child protection is an effort that creates conditions and protects children in carrying out their rights and obligations, this is an interaction between existing phenomena and mutual influence in the context of fighting for child protection, it requires vigilance and awareness so that children are not made victims of adult abuse (Abraham, 2023).

There is a need for State and Government intervention in preventing the crime of sexual abuse against children from decreasing rather than increasing every year. Children must receive justice from the authorities (Harlen, 2022). To obtain justice, the only way is through the courts so that the perpetrators are deterred by giving appropriate criminal sanctions for the actions they have committed, therefore the government is trying to provide protection to children based on these considerations, the government has issued laws and regulations which specifically regulates child protection, namely Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning child protection (Mawarni, 2021).

Based on Law Number 35 of 2014 concerning Child Protection, in law enforcement this law is the basic reference in imposing sanctions or punishments on perpetrators of criminal acts of sexual intercourse with children. Imposing a crime certainly cannot be separated from law enforcers, namely the police, public prosecutors and judges in trying them, remembering that the duties and obligations of judges are to uphold the law and truth, so that judges in handing down sentences are as fair as possible for the perpetrators of criminal acts (Number, 23 C.E.) .

The boundaries of justice based on the judge's decision regarding the crime of sexual immorality are of course very abstract, both for the perpetrator of the crime and for the victim of the crime. However, in public life a perception has emerged which states that if the victim of a



criminal act of sexual immorality is a child then of course the sanctions imposed by the judge are more severe than if the victim is an adult. So, of course the judge's decision on this case will lead to a tendency for there to be differences in the punishment of the culprit.

2. RESEARCH METHODS

Normative research, with a conceptual approach, namely legal research that looks for principles, doctrines and sources of law in a juridical philosophical sense. This research also examines generally accepted principles or is called philosophical research on norms, rules and legislation, used as analytical descriptive. Analytical descriptive is a method that functions to describe or provide an image of the object under study through data that has been collected regarding criminal acts of sexual immorality by conducting analysis.

3. RESULTS AND DISCUSSION

Application Of Material Criminal Law Child Abuse Cases Under Decision Number 1271/Pid.Sus/2020/ PT Sby

The phenomenon of acts of violence that occur against children in Indonesia began to receive strong attention from various groups when many private television stations broadcast them graphically on criminal programs, such as: cases of rape committed by the victim's family or people close to the victim, cases of sodomy, trafficking of children to be exploited as commercial sex workers and even murder. The large number of cases of child violence that occur in Indonesia is considered an indicator of the poor quality of child protection.

Children who are not yet able to live independently certainly really need people as a place of refuge. The low quality of child protection in Indonesia has drawn a lot of criticism from various elements of society. The question that is often asked is to what extent the government has attempted to provide (legal) protection for children so that children can obtain guarantees for their survival and livelihood as part of human rights. In fact, based on Article 20 of Law no. 23 of 2002 concerning Child Protection, those who are obliged and responsible for implementing child protection are the state, government, community, family and parents.

The existence of obligations and responsibilities of the state and government for the implementation of child protection is emphasized in Articles 21 to 25 of Law no. 23 of 2002 concerning Child Protection, which includes obligations and responsibilities (Indonesia, 2002):

1. Respect and guarantee the human rights of every child without distinction of ethnicity, religion, race, class, gender, ethnicity, culture and language, child status, child birth order, and physical and/or mental condition (Article 21);

2. Providing support for facilities and infrastructure in implementing child protection (Article 22);
3. Ensure the protection, maintenance and welfare of children by taking into account the rights and obligations of parents, guardians or other people who are legally responsible for children and supervising the implementation of child protection (Article 23);
4. Guarantee that children exercise their rights to express opinions in accordance with the child's age and level of intelligence (Article 24).

The crime of obscenity is one of the crimes that disturbs society. Efforts to suppress criminal acts of obscenity are a shared responsibility and must be carried out by all parties, both the government and society. Law enforcement in court is one of the efforts to have the burden of law enforcement efforts in court on judges. It is hoped that the role of judges in providing appropriate and fair decisions in sexual abuse cases will be able to reduce the increasing number of criminal acts of sexual abuse.

Legal protection for children who are victims of sexual abuse according to Law Number 23 of 2002 concerning child protection, one of which is imposing criminal sanctions on the perpetrator of the criminal act of sexual abuse. Below we will present criminal decisions regarding criminal acts of sexual abuse against children in order to provide protection to victims of sexual abuse as in the case at the Surabaya High Court Decision Number: 1271/PID.SUS/2020/PT SBY.

1. District Court Decision

Tuban District Court Decision dated 8 September 2020 Number 157/Pid.Sus/2020/PN Tbn whose ruling reads as follows:

- a. Declare that the Defendant PARSILAN has been legally and convincingly proven guilty of committing the crime of "inducing more than 1 (one) child to commit obscene acts" as in the First Primair indictment;
 - b. Sentenced the Defendant PARSILAN to prison for 20 (twenty) years and a fine of Rp. 1,000,000,000 (one billion rupiah) provided that if the fine is not paid it will be replaced by imprisonment for 6 (six) months;
 - c. Imposing additional punishment on the Defendant in the form of Announcement of the Perpetrator's Identity
 - d. Determining that the period of arrest and detention that the Defendant has served shall be deducted entirely from the sentence imposed;
 - e. Determining that the Defendant remains detained;
6. Determine evidence in the form of:
1. 1 (one) Flashdisk containing Child Pornography Videos and Photos



2. 1 (one) Screen Capture Bundle of Child Pornography Videos and Photos.
3. 1 (one) INFINIX brand cellphone with IMEI Number 1: 354782081042801, IMEI Number 2: 354782081042819;
4. 1 (one) Telkomsel Sim Card number 082234817172 with ICCID number: 621000347281717200;
5. 1 (one) Indosat Sim Card number 085714215682 with ICCID number 62014000581156853;
6. 1 (one) V-gen 2GB Micro SD Memory Card;
7. 2 (two) sleeping pillows;
8. 1 (one) black shorts;
9. 1 (one) white men's undershirt;
10. 1 (one) used parent's brand drink bottle;
11. 2 (two) wooden bracelets.
12. 1 (one) sheet of red carpet measuring 2M x 2.1 M
13. 9 (nine) cigarette butts
14. 29 (twenty nine) passport photos of boys measuring 3 X 4
15. 13 (thirteen) passport photos
16. 1 (one) piece of used mineral water bottle with a blue cap connected to a white hose about 20 cm long
17. 2 (two) used blue mineral water bottle caps connected to a white hose about 20 cm long
18. 2 (two) used mineral water bottles with red caps
19. 1 (one) old bottle with Marjan Boudoin written on it
20. 1 (one) used bottle with a cap written ABC
21. 1 (one) used Kratingdaeng drink bottle
22. 1 (one) white jerry can with a black lid and a white hose about 90 cm long

Seized for destruction

23. 2 (two) pieces of foam wrapped in a floral patterned pillowcase
24. 1 (one) parsilan maulana@gmail.com email account exported as a DVD;
25. 1 (one) lanparsilan@gmail.com email account which is exported into DVD format.

Confiscated to be destroyed by deactivation through the Indonesian Ministry of Communication and Information

7. Charge the Defendant to pay court costs in the amount of IDR 5,000 (five thousand rupiah)
2. Judge's considerations

If all the charges have been fulfilled, then there is sufficient reason for the Panel of Judges to declare that the defendant has been proven guilty of committing the criminal act charged against

him and the defendant can be sentenced to a crime. Before implementing the decision, the judge needs to consider, among other things, the following:

Considering, that after the High Court has read and carefully studied the case file, including the minutes of investigation, the minutes of the District Court as well as the legal considerations and the reasons which formed the basis for the decision of the Judge of First Instance as well as the memorandum of appeal from the Defendant through his Legal Advisor and the memorandum of appeal from the Public Prosecutor, then the High Court is of the opinion that the legal considerations and conclusions of the District Court which are of the opinion that the Defendant has been proven guilty of committing the crime of PERSUADING THE CHILD OF MORE THAN 1 (ONE) PERSON TO COMMIT AN OBSCENE ACT as charged to him in the first primary indictment are correct and correct according to the law so that it can approved and taken over for consideration by the High Court itself in deciding this case at the appeal level;

Considering that, however, the High Court does not agree with the sentence imposed by the Tuban District Court against the Defendant because the sentence is considered too serious for the following reasons and considerations:

Whereas the article charged against the Defendant in the first primary indictment is violating Article 82 paragraph (1) in conjunction with Article 76E of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, the maximum penalty is 15 years in prison, Meanwhile, the Panel of Judges at the Tuban District Court sentenced him to 20 years in prison, so that the decision exceeded the maximum penalty limit, even though in the consideration of the Panel of Judges at the Tuban District Court it was based on the existence of Perpu Number 01 of 2016 and Law Number 17 of 2016, namely the addition 1/3 (one third) of the maximum criminal threat, however, in the opinion of the High Court Judge, the sentence is too heavy, because the existence of Perppu number 01 of 2016 still raises pros and cons in society because it also regulates additional punishment in the form of announcing the identity of the perpetrator, sanctions for chemical castration and chip installation, however there is no regulation on who will carry out the chemical castration, so that the doctors themselves have stated that they refuse to carry out chemical castration as regulated in Perppu Number 1 of 2016;

Considering, therefore, in this case it is necessary to apply the principle of In Dubio Pro Reo, namely that if there is doubt regarding a matter, matters must be decided in favor of the defendant as regulated in article 1 paragraph (2) of the Criminal Code;

Considering, that apart from the reasons mentioned above, it is also necessary to consider why the defendant has a sexual orientation disorder that is not like normal people in general, that apparently according to his confession, the defendant is also a victim "because of his past when the



defendant was still a child too having been sodomized so that the defendant has a deviant sexual orientation, thus the imposition of too high a crime imposed on the defendant will not guarantee that the defendant will be deterred, but there needs to be a psychological approach to cure him; Considering, apart from that, the imposition of a crime is not intended to take revenge but to educate so that in the future the Defendant will not repeat his actions again;

Considering, that based on the considerations above, the Panel of Judges of the High Court also does not agree with the additional punishment in the form of announcing the identity of the perpetrator because this additional punishment is not the appropriate method if the intention is only to provide a deterrent effect so that the action is not repeated, but what is more important is actually it is the roles and responsibilities as well as supervision of parents, families and society regarding child protection that need to be improved, so that with strict preventive supervision it is hoped that sexual violence against children can be prevented;

Considering, that based on the reasons and considerations mentioned above, the decision of the Tuban District Court Number 157/Pid Sus/2020/Pn Tbn dated 8 September 2020 which is requested for appeal needs to be revised, namely simply regarding the length of the sentence imposed on the Defendant, which in full will be stated in the ruling. decision.

3. Decision

Remembering article 82 paragraph (1) in conjunction with article 76E of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning child protection, Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations ; then the Surabaya High Court handed down the decision:

- Receive application from appellant;
- 1. Defendant Parsilan;
- 2. the public prosecutor at the Tuban District Prosecutor's Office;
- 1. Declare that the aforementioned PARSILAN Defendant has been legally and convincingly proven guilty of committing the crime of "inducing more than 1 (one) child to commit obscene acts" as stated in the First Primair indictment;
- 2. Sentenced, therefore, to imprisonment for 13 (thirteen) years and a fine of Rp. 1,000,000,000,- (one billion rupiah) with the provision that if the fine is not paid it will be replaced by imprisonment for 3 (three) months
- 3. Determining that the period of arrest and detention that the Defendant has served shall be deducted entirely from the sentence imposed;
- 4. Determining that the Defendant remains in custody;
- 5. Determine evidence in the form of:



- 2 (two) used mineral water bottles with red caps
- 1 (one) old bottle with Marjan Boudoin written on it
- 1 (one) used bottle with a cap written ABC
- 1 (one) used Kratingdaeng drink bottle
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7. Charge the Defendant court costs at two court levels which at the appeal level are set at IDR 2,500 (Two thousand five hundred rupiah);

From the decision made by the judge, it can be seen that in order to provide protection to victims of sexual abuse, the judge decided to give the defendant a fairly serious sentence, namely 5 years in prison. Based on this case, this is in accordance with Law no. 23 of 2002 which regulates obscenity, especially in articles 82 and 88. Article 82 states that every person who deliberately commits violence or threatens violence, forces, commits deception, a series of lies, or persuades a child to commit or allow an obscene act to be committed, shall be punished with imprisonment for a maximum of 15 years and a minimum of 3 years and a fine of a maximum of 300 million rupiah and a minimum of 60 million rupiah, while Article 88 states that anyone who economically or sexually exploits a child with the intention of benefiting himself or another person, shall be punished with a maximum prison sentence. 10 years and/or a maximum fine of 200 million rupiah. The Indonesian nation should pay attention to child protection because the mandate of the 1945 Constitution article 28 B (2) states that "Every child has the right to survival, growth and development, and is entitled to protection from violence and discrimination" then the Human Rights Law Human Article 33 (1) states that "Everyone has the right to be free from torture, punishment or cruel, inhuman, degrading treatment and human dignity", - while Article 29 (1) states that "Everyone has the right to personal protection, family, honor, dignity and property rights". The Child Protection Law article 13 (1) states "Every child while in the care of parents, guardians or any other party responsible for their care has the right to receive protection from discrimination, exploitation both economic and sexual, neglect, cruelty, violence and persecution, injustice and other wrong treatment". Article 59 states that "The government and other state institutions are obliged and responsible to provide special protection to children in emergency



situations, children in conflict with the law, children from minority and isolated groups, children economically and/or sexually exploited, children who are trafficked, children who are victims of abuse of narcotics, alcohol, psychotropic substances and other addictive substances (drugs), children who are victims of kidnapping, sales and trafficking, children who are victims of physical and/or mental violence, children who have disabilities and children who are victims of abuse and neglect.”

However, in reality, these ideals are still far from expectations, various violations of children's rights still often occur in Indonesia, and there are still children who experience abuse, violence, exploitation and discrimination, as shown in the analysis of the situation and conditions of children. Indonesia.

The rampant acts of violence that have recently occurred against children, whether in the form of physical, psychological or sexual violence, do not receive adequate legal protection and human rights so that children repeatedly become victims. Children are indeed the weakest human beings. In general, children are very dependent on adults, very vulnerable to acts of violence committed by adults, and are still psychologically unstable. Therefore, the government is obliged to provide protection for child victims of criminal acts. As regulated in article 59 of the special protection section, the Child Protection Law is "The government and other state institutions are obliged and responsible to provide special protection to children in emergency situations, children in conflict with the law, children from minority and isolated groups, economically exploited children and/or sexual, children who are trafficked, children who are victims of abuse of narcotics, alcohol, psychotropic substances and other addictive substances (drugs), children who are victims of kidnapping, sales and trafficking, children who are victims of physical and/or mental violence, children who have disabilities , and children who are victims of abuse and neglect.

In providing protection to victims of criminal acts of sexual harassment, physical and psychological violence. The government provides protection through efforts as regulated in article 69 of the Child Protection Law, disseminating and socializing the provisions of laws and regulations that protect child victims of violence, monitoring, reporting and providing witnesses. Legal protection efforts for children need to be continuously pursued in order to maintain children's welfare considering that children are a valuable asset for the future progress of a nation. The quality of protection for children should have the same degree/level as protection for adults, bearing in mind that everyone has the same position before the law (equality before the law). Therefore, the state, together with all other members of society, need to work together to provide adequate protection to children from various forms of violence and manipulation carried out by



irresponsible people, so that children as the nation's heir generation can stand. firmly in entering an increasingly harsh life in the future.

Inhibiting Factors in Handling Crimes of Sexual Abuse against Children as Victims and Solutions

The importance of protecting crime victims is not only aimed at victims of crime, but also protection for victims resulting from abuse of power. The issue of justice and human rights in relation to criminal law enforcement is not a simple task to realize. Many events in people's lives show that these two things do not receive serious attention from the government, even though it is very clear that in Pancasila, as the philosophy of life of the Indonesian people, issues of humanity and justice have a very important place as the embodiment of just and civilized Humanitarian Principles and social justice. for all Indonesian people. One example of the lack of attention to issues of justice and human rights in criminal law enforcement is related to legal protection for victims of crime.

Victims of crime are basically the parties who suffer the most in a criminal act, because they do not receive as much protection as is provided by law to perpetrators of crime. As a result, when the perpetrator of a crime has been given criminal sanctions by the court, the condition of the crime victim is completely ignored. In fact, the issue of justice and respect for human rights does not only apply to perpetrators of crimes but also victims of crimes.

In handling the crime of sexual abuse, there are obstacles in implementing legal protection for child victims of sexual abuse, as explained as follows:

1. Victims of sexual harassment suffer prolonged fear if they report the perpetrator's actions and provide testimony against the perpetrator in court. Victims (witnesses) do not dare to give testimony because of threats from certain parties or fear that their disgrace will be known by the public, this is because victims of sexual abuse apart from suffering physically, also experience great mental pressure due to the action, such as feeling dirty and guilty. and have no future.
2. In handling cases, it is difficult to obtain legal protection from both institutions and outside institutions for defendants and crime victims. And society's lack of understanding about sexuality.

From these various obstacles, solutions or solutions to these obstacles can be formulated as follows:

1. Victims of sexual harassment are individuals who suffer physically, mentally and socially due to criminal acts, victims can even suffer from prolonged fear, this is because victims of sexual abuse apart from suffering physically, also experience great mental stress due to these actions. The resolution of these obstacles is the role of the government or related institutions as well as the community, which is obliged and responsible for providing special protection for victims who are



still minors or called children. In accordance with law 23 of 2002 as amended in law number 35 of 2014 concerning child protection. that victims of criminal acts of sexual immorality continue to be given support from both their families and the community so that they can eliminate the trauma of the crimes that have befallen them.

2. Legal protection efforts include case assistance from case examinations to case trials from the Legal Aid Institute (LBH) and the Women and Children Protection Unit (PPA) in providing outreach to all levels of society to be more vigilant in looking after children, especially underage children.

4. CONCLUSION

Rehabilitation efforts need to be carried out, both within the institution and outside the institution. Efforts to protect against identity reporting through mass media and to avoid labeling, providing safety guarantees for victim witnesses and expert witnesses, both physical, mental and social and providing accessibility to obtain information regarding case developments as well as support from the government or related institutions as well as from social groups. community and people closest to them, case assistance from case examination to trial from the Women and Child Protection Unit (PPA) and the social department.

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