

Legal Analysis of Legal Protection for Child Victims of the Criminal act of Sexual Committed by Children (Case Study of Decision of Case Number: 2/Pid.Sus-Anak/2023/Pn. Clp)

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Abstract. *According to the SPPA Law, children in conflict with the law are children who are 12 years old but under 18 years old who are suspected of committing a crime. The criminal justice system for children is different from the criminal justice system in general, considering that children need protection. The purpose of writing this research is to determine the legal protection for child victims against the crime of sexual intercourse in Decision Number: 2/Pid.Sus-Anak/2023/PN. Clp and the judge's considerations in sentencing children who commit the crime of sexual intercourse with minors in Decision Number: 2/Pid.Sus-Anak/2023/PN Clp. 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. Based on the results of this study, Law Number 35 of 2014 has regulated the form of legal protection for children, in the Decision of the Cilacap District Court Number 2/Pid.Sus-Anak/2023/PN Clp, children as victims do not receive the rights they should receive, such as legal assistance, rehabilitation, and restitution. This shows a discrepancy between legal provisions and their implementation in the field. The Panel of Judges in Decision Number 2/Pid.Sus-Anak/2023/PN Clp has imposed a criminal sentence of coaching and job training on Child Perpetrators under the age of 14 in accordance with Article 69 of the SPPA Law, where children who are not yet 14 years old can only be subject to action. The judge's considerations in this decision are based on legal and non-legal considerations.*

Keywords: *Criminal; Children; intercourse; Sexual.*

1. Introduction

The Republic of Indonesia is a state based on law, therefore all aspects of the implementation and administration of the state are regulated in a system of laws and regulations. In this sense, the state is implemented based on a constitution or the Basic Law of the State and other legal regulations.¹

Current law in Indonesia refers to children who commit crimes as Children in Conflict with the Law (ABH). Conceptually, children in conflict with the law, have the meaning of legal subjects who are not yet 18 years old, a child who often comes into conflict with the law because the child in question is suspected or accused of committing a crime. In Law Number 35 of 2014 concerning Child Protection, an explanation has been provided regarding the age of the child, where a child is someone who is not yet 18 years old and who is still in the womb.²

The criminal justice system for children is also different from criminal justice in general. The juvenile criminal justice system is a special justice system for trying children suspected of committing crimes as regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.³The juvenile criminal justice system is the entire process of resolving cases for children in conflict with the law, starting from the investigation stage to the development and guidance stage after serving a sentence.⁴

The focus of this study is the crime of sexual intercourse where the perpetrator is a child and the victim is also a child. The crime of sexual intercourse is included in the crime of morality. The crime of sexual intercourse is a crime that is very difficult to investigate because no one reports the incident to the authorities, especially if the perpetrator is a child and the victim is also a child. The crime of sexual intercourse, if reported according to the community, is something that can cause disgrace to the person and can damage the family's good name. Group one of Book Two Chapter 14 of the Criminal Code and this is referred to as a crime against morality and decency.⁵

R. Soesilo said that what is meant by sexual intercourse is the meeting of the male and female genitals which is usually done to have children, so the male genitals must enter the female genitals so that semen is released.⁶

The case that the author raised in this study is the crime of sexual intercourse committed by a child against a child. That the child perpetrator invited the child victim to have sexual intercourse like a husband and wife and said he would marry the child victim. That in the room, the Child Perpetrator told the Child Victim to take off her clothes but the Child Victim refused and tried to push the Child Perpetrator's body but the Child Perpetrator still took off the Child Victim's clothes until she was naked and told the Child Victim to lie down on the bed

¹Sri Endah Wahyuningsih, Rismanto, Criminal Law Enforcement Policy Against Money Laundering in the Framework of Criminal Law Reform in Indonesia, *Journal of Legal Reform*, Vol. 2 Number 1, 2016, p. 46

²Nursariani Simatupang, 2018, *Child Protection Law*, Medan, Pustaka Prima, p. 4.

³M. Nasir Djamil, 2013, *Children Are Not to be Punished*, Discussion Notes on the Child Criminal Justice System Law (UU-SPPA), Jakarta, Sinar Grafika, p. 43.

⁴Muhammad Hamdan and Mahmud Mulyadi, 2019, *Criminal Sanctions and Actions Against Children (According to the Juvenile Criminal Justice System Law)*, Medan, CV Pustaka Bangsa Press, p. 69.

⁵Bassar Sudrajat, 1986, *Criminal Law Complementing the Criminal Code*, Bandung, CV Armico, p.1.

⁶R. Soesilo, 1998, *Criminal Code (KUHP) and its complete commentary*, Article by Article, Bogor Politeia, p. 209

and have sexual intercourse. The Child Victim asked to be taken home but the Child Perpetrator did not want to take her home so the Child Victim stayed overnight at the Child Perpetrator's house. Then the next day the Child Perpetrator invited the Child Victim to have sexual intercourse again in the yard next to the Child Perpetrator's house. That during the 2 nights staying at the Child Perpetrator's house, the Child Victim was not given food and drink by the Child Perpetrator so that the Child Victim felt hungry. That based on the results of the Visum Et Repertum examination of the Cilacap Hospital UPTD by dr. Frianton Tua Saragi, SP.Og with the conclusion of the results of the examination of the Child Victim is that during the current examination a woman with an incomplete hymen was found.

The crime of sexual intercourse is an immoral act whose perpetrators and victims are not only adults but also children whose impacts can have mental and psychological consequences. Seeing the phenomenon of differences in verdicts based on various considerations of judges, the author is interested in studying the case.

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. Legal Protection for Child Victims of Sexual Intercourse Crimes in Decision Number: 2/Pid.Sus-Anak/023/PN. Clp

In essence, children cannot protect themselves from various actions that cause mental, physical, social and economic losses. Children must be assisted by others in protecting themselves, considering their situation and condition, especially in the implementation of criminal justice for children which is still very foreign to them.⁷

Children who are victims of a sexual crime experience losses not only in terms of physical, including disabilities, injuries and even death, but also non-physical, such as mental disorders, constant fear experienced by child victims when meeting other people, and children experiencing trauma, including depression, rape trauma syndrome, dissociation, eating disorders, and others. Therefore, efforts to provide protection for child victims are not only the responsibility of the perpetrators but also the responsibility of the state and society.⁸

For children who are victims of criminal acts, the Government, both Regional Governments, and other state institutions are obliged and responsible to provide Special Protection. In other words, children who are victims of a crime have rights that have been regulated in Law No. 35 of 2014, namely the right to receive special protection. This Special Protection will be given

⁷Maidin Gultom, 2014, Legal Protection for Children, Bandung, PT Refika Aditama, p.3.

⁸Mien Rukmini, 2006, Aspects of Criminal Law and Criminology (An Anthology), Bandung, PT Alumni, p.1.

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to children as victims of criminal acts of kidnapping, selling, and/or trading, children as victims of physical and/or psychological violence, children as victims of sexual crimes, children as victims of terrorist networks; Children as victims of mistreatment and neglect, and children who are victims of stigmatization from labeling related to the condition of their parents.

In Law of the Republic of Indonesia No. 35 of 2014 concerning Amendments to Law of the Republic of Indonesia No. 23 of 2002 concerning Child Protection, Article 69 A states "Special Protection for Children who are victims of sexual crimes as referred to in Article 59 paragraph (2) letter j is carried out through efforts:

- a. Education about reproductive health, religious values, and moral values;
- b. Social rehabilitation;
- c. Psychosocial support during treatment until recovery; and
- d. Provision of protection and assistance at every level of examination, starting from investigation, prosecution, to examination in court.

Legal protection for children related to the phenomenon of sexual crimes is legal protection that is carried out before the child becomes a victim of a sexual crime, namely preventive law and legal protection that is carried out after the child has become a victim of a sexual crime, namely repressive legal protection.

1) Preventive Legal Protection

Preventive legal protection is an effort made with the aim of preventing, reducing and eliminating crime.⁹Law No. 35 of 2014 concerning Child Protection provides quite a lot of protection for children, even before a crime occurs to a child, Law No. 35 of 2014 which regulates Child Protection has provided protection against becoming a victim of a crime.

First, to overcome sexual harassment and violence against children, society needs to provide education about sex from an early age for children and parents are also needed to protect children, meaning that early sex education is not about children's maturity, but about children's organs that must be protected by themselves. Second, another step that can be taken is social education to develop social responsibility to members of society and foster mental health of the community through moral and religious education. Third, families provide care by providing children's rights and providing protection to children with special needs, by building good relationships between family members and children. The form of relationship or relationship between family members and children can be in the form of care with affection, providing attention, ensuring the safety and welfare of children that continues for the good of the child.¹⁰

2) Repressive Legal Protection

In the Child Protection Law, every child who is a victim of sexual violence must be protected. The rights of child victims of sexual violence are as follows:

- a. Legal Aid

⁹Lukman Hakim Nainggolan, "Forms of Sexual Violence against Minors," Equality Journal, Vol 13, no. 1, 2008, p.80.

¹⁰Nurini Aprilianda, "Protection of Child Victims of Sexual Violence Through a Restorative Justice Approach," Arena Hukum Vol 10, No. 2, 2017, p. 326.

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- b. Rehabilitation
- c. Medical assistance services
- d. Restitution

According to the author, the form of legal protection for Child Victims of Sexual Crimes in Case Decision Number 2/Pid.Sus-Anak/2023/PN.Clp such as providing prevention, legal assistance, rehabilitation and restitution has not been fully optimal, this can be seen in the decision that the author studied, children as victims of sexual violence crimes have not fully received legal assistance at the investigation, prosecution, to the trial level are still often ignored and not accompanied by legal counsel and do not receive legal assistance in the form of rehabilitation and are still often ignored and still leave prolonged trauma. Then the victim also did not receive restitution in the form of compensation.

3.2. Judge's Considerations in Sentencing Children Who Perpetrate the Crime of Sexual Intercourse with Minors in Decision Number: 2/Pi.Sus-Anak/2023/PN Clp

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.¹¹The 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.¹²A court decision that is not based on sufficient consideration will be the same as a decision without soul and substance.¹³

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 philosophical considerations are considerations that are based on the detrimental and damaging impacts on the order of life in society, nation and state.¹⁴

Panel of Judges in the case Decision Number 2/Pid.Sus-Anak/2023/PN Clp directly chose the second alternative charge of the public prosecutor, namely Article 81 Paragraph (1) of Law Number 35 of 2014 concerning Child Protection, with the following elements:

a. Every Person's Element

Literally, every person is a legal subject who can be held accountable for the actions he/she has committed. Every person refers to a legal subject, an individual or a corporation (Article 1 number 16 of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection).

¹¹Rachmani Puspitadewi, A Brief Note on the Development of Judicial Power in Indonesia, Pro Justitia Journal, Vol 24 No 1, January 2006, p. 1.

¹²Indah 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

¹³Soraya 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

¹⁴Elrick Christovel Sanger, Law Enforcement Against Drug Trafficking Among the Young Generation, Lex Crimen, Vol II No 4, August 2013, p. 8.

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b. Elements of Committing Violence or Threats of Violence, Forcing, Children, Having Sexual Intercourse with Them or with Other People

Violence is any act of abuse of physical force with or without the use of means in an unlawful manner and causing danger to the body, life and freedom of a person, including causing a person to faint or become helpless.

That the "threat of violence" is making the person being threatened afraid because there is something that will harm him through violence.

That "forcing" is an action that corners someone to the point where there is no more reasonable choice for them than to follow the will of the person forcing them.

The elements of violence or threats of violence, coercion, are alternative, so if one of them has been proven, then this element has been proven.

Regarding the definition of sexual intercourse when referring to the Hoge Raad decision/Arrest dated February 5 1912, it is a contest between the male and female genitals which is carried out to produce children, so the male genitalia must enter the female genitalia to produce semen, if the conditions are met. If this is not fulfilled then the action turns into an obscene act. The judge's considerations in applying criminal provisions to the perpetrator in this case have been appropriate, where the judge has considered both legal considerations, facts in the trial, witness statements, existing evidence, the judge's beliefs and supporting matters as well as the criminal sanctions imposed.

Then in the case where the defendant is a child, the judge in making a decision must refer to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. As explained in the Law, the purpose of punishment is not merely as retribution but aims to foster and educate so that the Child Perpetrator realizes and acknowledges his/her mistakes. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System emphasizes protection, the best interests of the child, the survival and development of the Child Perpetrator and deprivation of liberty and punishment as a last resort.

Based on these considerations, the judge sentenced the child to 1 (one) year of rehabilitation at the Semarang Independent Children's Social Service Center and 6 (six) months of job training. The Child Judge will consider the best place for the interests of the Child Perpetrator to undergo informal rehabilitation at the Semarang Independent Children's Social Service Center, which targets children who have a history of problems, including children who have been through the legal process.

4. Conclusion

In the case of sexual violence against children in Decision Number 2/Pid.Sus-Anak/2023/PN Clp, the legal protection rights for child victims were not fully fulfilled, where child victims should have received the right to legal assistance, rehabilitation, and restitution in accordance with the provisions of the Child Protection Law (Law No. 35 of 2014). The absence of granting these rights indicates a deficiency in the implementation of child protection laws at the court level. The panel of judges in handing down the verdict against the child perpetrator has applied a correctional sentence in accordance with Article 69 of the Child Criminal Justice System Law (SPPA), which states that children under the age of 14 can only be subject to correctional measures. The judge's considerations in handing down the verdict involve legal and non-legal aspects, including trial facts, witness statements, evidence, and aggravating and

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mitigating circumstances. This shows that the judge is trying to wisely consider the condition and age of the child perpetrator.

5. References

Books:

- Abdussalam, 2007, Child Protection Law, Jakarta, Restu Agung
- Agus Rusianto. 2016, Criminal Acts and Criminal Responsibility, Jakarta, Prenada Media Group
- Dellyana, Shanty, 2004, Women and Children in the Eyes of the Law, Yogyakarta, Liberty
- Lembah Nurani Anjar Kinanti, 2022, et.all, Chemical Castration for Child Rapists, Pekalongan, Nasya Expanding Management
- Lilik Mulyadi, 1980, Juvenile Courts in Indonesia Theory and Practice of Problems, Jakarta Ghalia Indonesia
- M. Nasir Djamil, 2013, Children Are Not to be Punished, Discussion Notes on the Child Criminal Justice System Law (UU-SPPA), Jakarta, Sinar Grafika
- Maidin Gultom, 2014, Legal Protection for Children in the Juvenile Criminal Justice System in Indonesia, Bandung, PT Refika Aditama
- Nursariani Simatupang, 2018, Child Protection Law, Medan, Pustaka Prima
- Roeslan Saleh, 2008, The Illegal Nature of Criminal Acts, Jakarta, Aksara Baru
- Shanty Dellyana, 1988, Women and Children in the Eyes of the Law, Liberty, Yogyakarta

Journals:

- Ariani, Nevey V. "Implementation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in an Effort to Protect the Interests of Children." *Jurnal Media Hukum*, Volume 21, Number 2, 2014
- Asajania, I Puti., and Gede Made Swardhana "Implementation of Diversion for Child Criminals." *Journal of Legal Science*, Volume 6, No. 04, 2017
- Dewi Elvi Susanti, Criminalization of Children as Perpetrators of Criminal Acts, Case Study of Criminal Case Number 07/Pid-Sus-Anak/2017/PN.Pdg, *Jurnal Cendikia Hukum*, Volume 4 Number 2, March 2019
- Emy Rosna Wati, Handling of Children in Conflict with the Law, *Justitia Journal*, Volume 1 Number 2, October 2017
- Novira, Marlina Marlina Maya, "Policy for Combating Crimes Against Child Criminals from the Perspective of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System." *Mahupiki Journal*, Volume 1, No. 1, 2013
- Rachmani Puspitadewi, A Brief Note on the Development of Judicial Power in Indonesia, *Jurnal Pro Justitia*, Vol 24, No 1, January 2006
- 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.