

Criminal Accountability of Children as Perpetrators of the Crime of Obscenity

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Abstract

This study aims to determine and analyze the concept of criminal responsibility against children who are perpetrators of criminal acts of sexual abuse, study the decision of the case number 03/Pid.Sus.Anak/2020/PN.Wsb. The legal research method used in this study is a sociological juridical approach. Criminal responsibility for perpetrators of sexual abuse is not only applied to adults but also to children, as regulated Article 76E of the Law on Child Protection, and the sanctions are regulated in Article 82 of Law No. RI. 17 of 2016 concerning Child Protection. The application of sanctions against children who have committed crimes has been regulated in Article 71 and Article 82 The Juvenile Criminal Justice System Act includes principal crimes and actions. Children who commit crimes of sexual abuse In the decision of Case Number: 03/Pid.Sus-Anak/2020/PN.Wsb the judge has given criminal sanctions to the child perpetrator with two main criminal sanctions, namely imprisonment (article 71 paragraph 1 letter e) and job training sanctions in lieu of fines. if not paid (article 71 paragraph 1 letter c), Law Number 11 of 2012 concerning the juvenile criminal justice system. In The imposition of criminal penalties for children who are perpetrators of crimes must be wiser by taking into account the best interests of the child, and imprisonment is only carried out as a last resort. negative for the future.

Keywords: Criminal Liability, Children, Perpetrators of Obscenity

1. Introduction

Children are a mandate and gift from God Almighty, who has inherent dignity and worth as a whole human being. Children are also the young generation who succeed the ideals of the nation's struggle, have a strategic role and have special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future.¹

However, it is very unfortunate that many children as potential successors to the nation's struggle are involved in criminal acts, the behavior of children that lead to criminal acts today is increasingly diverse, including the crime of obscenity, one of the triggers is due to the lack of parental supervision of social media that is currently developing. used by children such as Facebook, Youtube, Instagram and so on.

Deviant behavior of children is often referred to as juvenile delinquency. This behavior is not in accordance with the norms that exist in society, resulting in violations that tend to lead to criminal acts.²

Efforts to foster the development and protection of children require community participation, and if a child makes a mistake and commits a crime, then the child

¹ M. Nasir Djamil, 2013, *Anak Bukan Untuk Dihukum*, Sinar Grafika, Jakarta, p. 4

² Santi Kusumaningrum, 2014, *Penggunaan Diskresi dalam proses Peradilan Anak*. UI Press, Jakarta, p. 34.

deserves special protection and treatment in terms of the judicial process. as stipulated in Law Number 11 of 2012 concerning the Juvenile Justice System.³

The enactment of Law Number 23 of 2002 concerning Child Protection is based on various considerations including that every citizen has the right to feel safe and free from all violence and discrimination.⁴

Children as the nation's generation must of course get special attention and protection, Law Number 23 of 2002 concerning Child Protection is given an understanding of child protection, namely as follows: "Child protection is all activities to guarantee and protect children and their rights in order to live, grow, develop, and participate optimally in accordance with human dignity, and receive protection from violence and discrimination".⁵ The 1945 Constitution of the Republic of Indonesia also emphasizes the rights of children, Article 28B Paragraph (2) states that every child has the right to survive, grow and develop and has the right to protection from violence and discrimination.⁶

In article 16 paragraph (3) of the Child Protection Act and article 66 paragraph (4) of Law no. 39 of 1999 concerning Human Rights states that the arrest, detention or imprisonment of a child is only carried out if it is in accordance with applicable law and can only be done as a last resort.

However, in the practice of juvenile criminal justice, there are still many judges who impose sanctions on children who are perpetrators of crimes with imprisonment and sometimes even add a fine. today also occurs in the jurisdiction of the Wonosobo District Court, a crime committed by a child who is declared to have committed sexual abuse against a boy who is still under age.

The imposition of criminal sanctions on children as perpetrators of criminal acts which are declared as criminal acts of obscenity that meet the provisions of Article 82 of the Law of the Republic of Indonesia Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number: 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning child protection became a law, for the actions of the child the perpetrator was then sentenced to prison for 2 (two) years and a fine of Rp. 5000,000.00 (five million rupiahs) provided that if the fine is not paid, it will be replaced with job training for 6 (six) months at the social rehabilitation center for children who require special protection.

The provision of criminal sanctions against perpetrators who are still under the age of course must pay attention to the best interests of the child and must be wiser in remembering Basically a child has not been able to account for all his mistakes for various reasons, both due to environmental influences, age factors, maturity levels and so on so as to provide opportunities for law violations to occur.

With the background mentioned above, this study aims to identify and analyze the concept of criminal responsibility against children who are perpetrators of crimes of sexual immorality, the study of case decisions number 03/Pid.Sus.anak/2020/PN.Wsb.

³ General Explanation of Law Number 11 of 2012 concerning the Juvenile Justice System

⁴ Vidi Pradinata, "Perlindungan Hukum Bagi Korban Tindak Pidana Kekerasan Dalam Rumah Tangga (KDRT)", *Jurnal Hukum Khaira Ummah*, Vol. 12. No. 4 Desember 2017. p. 6

⁵ Article 1 paragraph 2 of Law Number 23 of 2002 concerning Child Protection

⁶ 1945 Constitution, Article 28B paragraph 2

2. Research Method

The legal research method used in this study is a sociological juridical approach. This research belongs to the type of descriptive analysis research, which describes the applicable laws and regulations related to legal theories and practices of implementing positive law regarding the issues raised in the research.⁷ The scope of this research is limited to the study of the field of criminal law, especially regarding the concept of criminal responsibility against children as perpetrators of criminal acts of sexual abuse in the study of Decision on Case Number: 03/Pid.Sus-Anak/2020/PN.Wsb. The scope of the research was conducted in the Wonosobo District Court.

The data used in this study are: Primary data is data obtained directly from research in the field. In the context of field research, especially those concerning the subject of research.⁸ in this case obtained in research by conducting observations and interviews with respondents related to this research. Secondary data is data obtained from literature related to this research.

3. Results and Discussion

Child criminal responsibility is different from criminal responsibility for adults as perpetrators of criminal acts, child crimes with adult crimes are more focused on the criminal system, the criminal system for children as specifically regulated in the juvenile criminal justice system law. Indonesia as a country that has ratified the Convention on the Rights of the Child (Convention on the Rights of the Child) which regulates the principle of protection of children has an obligation to provide special protection for children who are dealing with the law, the treatment of criminal acts of children must be different from those of adults.⁹

In essence, the juvenile criminal justice system is intended to protect the rights and interests of children. On the basis of this, it can be said that the juvenile criminal justice process for imposing a criminal offense is an *ultimum remedium* and not a *primum remedium*, the purpose of the juvenile criminal justice process is not aimed at punishment, but at improving conditions, maintaining and protecting children and preventing the reduction of constructive court action. The juvenile criminal justice system which is intended for children in conflict with the law still pays attention to the best interests of children without depriving children of their human rights and so that children do not get negative stigmatization from the judicial process. and courts are not the only institutions in resolving conflicts,¹⁰

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System confirms the definition of a child, in article 1 number (3) it is stated that: "children in conflict with

⁷ Ronny Hanitdjo Soemitro, 1990, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalamania Indonesia Jakarta, p. 97.

⁸ Ibid. h. 16

⁹ Haris Pratama Teguh, 2020, *Hukum Pidana Dan Perlindungan Anak Di Indonesia*, Cet, 1, Pustaka Setia, Bandung, p. 134.

¹⁰ Fiska Ananda, "Penerapan Diversi Sebagai Upaya Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana", *Jurnal Daulat Hukum*, Vol. 1 No.1, Unissula Semarang, 2018

the law, hereinafter referred to as children who are 12 (twelve) years old but have not 18 (eighteen) years of age who is suspected of committing a crime. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Children who can be held accountable according to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, by looking at the child from the side of the act committed, if the child commits a crime before the age of 12 (twelve) years, it is not categorized as a naughty child so that from a legal perspective he cannot be held accountable, on the other hand, if the perpetrator's child has reached the age of 12 (twelve) years and is not yet 18 (eighteen) years old, he can be held accountable for his actions. then if the child is not yet 18 (eighteen) years old but is married, then it is not categorized as a child and the judicial process is through general court instead of juvenile justice.¹¹

Children who are not yet 14 years old can only be subject to action sanctions, children who are 14 years old and not yet 18 years old can be subject to a basic crime, and if they are threatened with cumulative punishment in the form of imprisonment and fines, the fines are replaced with job training, and the punishment is up to the child 18 years old. The lightness of the act, the child's personal condition, or the circumstances at the time of committing the act can be taken into consideration by the judge to impose a crime or action taking into account the aspects of justice and humanity.¹²

Acts that result in the defendant being convicted must meet the following criteria: the existence of a criminal act, capable of being responsible, intentionally or negligently, and there is no excuse for forgiveness.¹³ criminal liability according to Bambang Purnomo is that someone can be convicted or not because of the ability to account for his actions. In foreign languages it is known as *Toerekenings vat baarheid*, and the defendant will be released from his responsibility if it does not violate the law.¹⁴

According to Islamic law, criminal liability is the imposition of a person because of an act or no act he does of his own volition, where that person knows the intentions and consequences of his actions. The factor that causes criminal liability is immorality, namely doing actions that are prohibited by *syara'*. What is meant here is a person's fault for an action that has been determined not to be done. This concerns a person who has left an obligation or an order and is doing a prohibited act so that he can be held accountable.¹⁵

A person who can be held accountable in Islamic law does not explain the age limit but is based on certain signs, a person is said to be mature or intelligent in a man when

¹¹ Provisions for general explanation of Law Number: 11 of 2012 concerning the Juvenile Justice System .

¹² Mohammad Taufik Makarao, 2013, *Hukum Perlindungan Anak dan Penghapusan Kekerasan Dalam Rumah Tangga*, Rineka Cipta, Jakarta,, p. 88-89.

¹³ Roeslan Saleh, 2017, *Perbuatan Pidana dan Pertanggungjawaban Pidana*, Cetakan Ketiga, Aksara Baru, Jakarta, p. 79

¹⁴ Romli Atmasasmita, 2001, *Reformasi Hukum, Hak Asasi Manusia, Dan Penegakan Hukum*, Cetakan Pertama, Mandar Maju, Bandung, p. 54.

¹⁵ Elfirda Ade Putri, "Pertanggungjawaban Pidana Terhadap Anak Pelaku Pencabulan Yang Melanggar Pasal 76 Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak", *Jurnal Katha Bhayangkara* volume 13 Nomor 2 Desember 2011, p.10

he has had a wet dream and a woman is menstruating.¹⁶ Criminal liability in Islam is the imposition of a person because of an act or no action he does of his own volition, where that person knows the intentions and consequences of his actions.¹⁷

In positive law in Indonesia, children who commit criminal acts can still be held accountable, the criminal threat for children who commit an act that is against the law is determined by the Juvenile Criminal Justice System Act, where the punishment is determined by half of the maximum criminal threat from adults, while life imprisonment and death penalty are not applied to children.¹⁸ Criminal sanctions for child perpetrators of criminal acts are the main criminal and action, the main crime is contained in Article 71 and the action sanction is regulated in Article 82 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

One of the cases of criminal acts committed by minors which lead to criminal acts as stated in decision on case number 03/Pid.Sus.Anak/2020/PN. wsb, the crime is suspected as a crime of obscenity. Pdeedperpetrator's child was charged with the first alternative indictment: as stipulated in Article 82 of Law No. RI. 17 of 2016 concerning the Second Amendment to the Law of the Republic of Indonesia No. 23 of 2002 concerning Child Protection, or Second: The defendant's actions are subject to criminal sanctions as stipulated in Article 80 paragraph (1) of the Republic of Indonesia Law no. 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection.

The crime of obscenity is an act that violates decency or a heinous act that is all within the environment of sexual lust, obscenity is an indecent act in the sexual field, for example the act of touching the genitals which is carried out in public which causes lust stimulation.¹⁹

The crime of obscenity as regulated in Article 76E of Law Number 35 of 2014 concerning Child Protection states: "Everyone is prohibited from using violence or threats of violence, coercing, deceiving, committing a series of lies or persuading children to commit or allow obscene acts to be carried out."

The criminal sanctions contained in article 76E are regulated in article 82 of Law Number 17 of 2016 concerning Stipulation of Government Regulations in lieu of Law Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection into Law, in Article 82 paragraph (1) reads: "Everyone who violates the provisions as referred to in Article 76E shall be punished with a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah)"

In the trial process, based on the facts revealed in the trial that the criminal act committed by the perpetrator's child which the judge believed was a criminal act of obscenity had fulfilled the elements as charged by the public prosecutor in the public prosecutor's demands, every person, intentionally, and elements of action, and the

¹⁶ Amin Syarif Qosim, dalam Nanda Agung Dewantara, 1987, *Masalah Kebebasan Hakim Dalam Menangani Suatu Masalah Perkara Pidana*, Aksara Persada Indonesia, Jakarta, p. 7-8

¹⁷ Elfa Murdiana, "Pertanggungjawaban Pidana Dalam Perspektif Hukum Islam dan Relevansinya Terhadap Pembaharuan Hukum Pidana Indonesia", *Jurnal Almawarid*, Vol, XII, No 1, Feb-Agust, 2012, p. 8.

¹⁸ Jefferson B. Pangemanan, "Pertanggungjawaban Pidana Anak dalam Peradilan pidana di Indonesia", *Artikel, Lex et societatis Vol. III/Jan-Mar/2015*, p. 101

¹⁹ Andi Hamzah. 2009, *Terminologi Hukum Pidana*. Sinar Grafika, Jakarta p. 32.

judge did not find things that could erase the responsibility for either justification or forgiving reasons, then the judge imposed sanctions on the perpetrator's child with a cumulative penalty with the decision in essence as follows: *first*, Declaring that the Child Perpetrator has been legally and convincingly proven guilty of committing a crime "intentionally committing violence forcing the Child to commit an obscene act", as the first alternative indictment of the Public Prosecutor; *second*, Therefore, the Child Perpetrator shall be sentenced to imprisonment for 2 (Two) Years at the Special Child Development Institution (LPKA) in Kutoarjo and a fine of Rp. 5,000,000.00 (Five million rupiah) provided that if the fine is not paid, it is replaced with job training for 6 (six) months at Antasena's BRSAMPK (Social Rehabilitation Center for Children Needing Special Protection) in Magelang.

See the verdict on that the judge is of the opinion that the actions of child perpetrators are included in the category of criminal acts of obscenity and the relevant laws with criminal acts of molestation against children are as regulated in Article 76E of Law Number 35 of 2014 concerning Child Protection so that the sanctions imposed on child perpetrators of molestation are as regulated in Article 82 of Law No. RI. 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to the Republic of Indonesia Law No. 23 of 2002 concerning Child Protection.

In the decision on the child case Number 03/Pid.Sus.Anak/2020/PN.Wsb, the judge in addition to giving imprisonment sanctions is also a fine, provided that if the fine is not paid, it will be replaced with job training for 6 (six) months, at BRSAMPK (Center for the Social Rehabilitation of Children Requiring Special Protection) Antasena in Magelang. In the decision the judge has indirectly given criminal sanctions to the perpetrator's child with two main criminal witnesses, namely prison sanctions (article 71 paragraph 1 letter e) and job training sanctions as a substitute for fines if they are not paid (article 71 paragraph 1 letter c), Law Number 11 of 2012 concerning the juvenile criminal justice system, but in Article 71 and Article 82 concerning the Juvenile Criminal Justice System, the imposition of sanctions on children does not mention fines.

Sentencing of criminal acts for children who commit crimes must be wiser by taking into account the best interests of the child, and imprisonment is only carried out as a last resort, considering that the issue of criminal acts of children is more focused on behavioral problems related to psychology (Psychological),²⁰ and in general, crimes committed by children are not based on evil motives (evil will/evil mind) so that children who deviate from social norms against them are called juvenile delinquency.²¹

Criminal convictions for children must also look at the ability to be responsible for the age of the child who is the perpetrator of a crime, meaning that only perpetrators who meet a certain age limit have the ability to be responsible for the actions that have been carried out, this is because at a certain age psychologically it can influence someone to commit a crime. an act, basically a child at a certain age has not been able to properly realize what he is doing, meaning that a child at a certain age also cannot

²⁰ Nandang Sambas, 2013, *Peradilan Pidana Anak di Indonesia dan Instrumen Internasional Perlindungan Anak Serta Penerapannya*, Graha Ilmu, Yogyakarta, h. 12.

²¹ Ibid, h. 13.

separate which actions are good and bad, of course this also affects the child not being able to realize his actions.

4. Closing

The concept of criminal responsibility for children who are perpetrators of criminal acts of obscenity in the Decision on Case Number: 03/Pid.Sus-Child/2020/PN.Wsb, that the act of the child perpetrator by the judge is declared a criminal act of obscenity and the law applied by the judge in imposing criminal sanctions on child abuse is as stipulated in Article 76E of Law Number 35 of 2014 concerning Child Protection, so that the sanctions imposed on child perpetrators of sexual abuse as regulated in Article 82 of Law No. RI. 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to the Republic of Indonesia Law No. 23 of 2002 concerning Child Protection Becomes Law. and the child perpetrator was sentenced to basic criminal sanctions as stipulated in Article 71 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.criminal sanctions against child offenders with two main criminal witnesses, namely imprisonment (article 71 paragraph 1 letter e) and job training sanctions as a substitute for fines if they are not paid (article 71 paragraph 1 letter c), Law Number 11 of 2012 concerning the justice system child crime.

Judges in sanctioning children who are not criminals must be more careful by looking at the actions they have committed, and be wiser by paying attention to the best interests of children, considering that the issue of child criminal acts is more focused on behavioral problems related to psychology (Psychological), because in general, criminal acts committed by children are not based on evil motives and the responsibility of imprisonment for children has a negative impact on the future of the child.

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