

## Judges Considerations of Criminal Acts Conducted By Adult against Children

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### Abstract.

*Children are one of the assets of national development, which should be considered and taken into account in terms of quality and their future. Without reliable quality and a clear future for children, national development and the fate of the nation will be difficult to imagine. Children, as heirs and holders of the fate of the nation, also determine the pace of the national development process in all fields. The formulation of the problem is 1) How is the Law on Judicial Power in making considerations? 2) How to overcome the obstacles and solutions given by the Judge in giving consideration to the crime of decency committed by adult men against children? The method used is juridical normative. The results of this study are: (1) The judges' consideration of decency crimes committed by adult men against minors in the decision of the Temanggung District Court Number: 53/Pid.Sus/2019/PN TMG has paid attention to the basis for judging, the basis for deciding, and values who live in society, then have considered juridical considerations. (2) Overcoming obstacles and solutions given by judges in giving consideration to crimes of decency committed by adult men against children.*

*Keywords: Judges; Considerations; Adult; Children.*

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### 1. Introduction

Indonesia is a country that upholds law enforcement and human rights, this is because law and human rights are interrelated. Law is a forum that regulates all matters regarding the protection of human rights.<sup>1</sup> In connection with this, the Indonesian people should have protection of safety and security that is real in the aspects of life.<sup>2</sup> This is emphasized in Article 1 Paragraph (3) of the 1945 Constitution that the State of Indonesia is a State of Law, however this means bahwa within the Unitary State of the Republic of Indonesia, law is the lifeblood of all aspects of life. Law has a strategic and dominant position in the life of the nation and state.<sup>3</sup>

Children are one of the assets of national development, which should be considered and taken into account in terms of quality and their future. Without reliable quality and a clear future for children, national development and the fate of the nation will be difficult to imagine. Children, as heirs and holders of the fate of

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<sup>1</sup>Tuti, Titik Triwulan. (2010). *Konstruksi Hukum Tata Negara Indonesia Pasca-Amandemen UUD 1945*. Jakarta: Kencana.p. 28

<sup>2</sup>*Ibid*, p. 114

<sup>3</sup>Effendy, Marwan. (2005). *Kejaksaan RI Posisi & Fungsi dari Perspektif Hukum*, Jakarta: Gramedia Pustaka Utama.p. 1

the nation, also determine the pace of the national development process in all fields. In legal development, children must be conditioned initially to understand their respective rights and obligations in the life of the community, nation and state.<sup>4</sup> Crime is increasingly developing in its form not only relating to crimes of life or related to property, but other crimes including the emergence of crimes related to decency, namely crimes in the form of sexual crimes which not only affect adults but also begin to afflict children. Sexual violence itself is a sexual contact in the form of sexual coercion and coercion that either party does not want.<sup>5</sup>

Based on the opinion of Sri Endah Wahyuningsih<sup>6</sup>, that laws based on Pancasila and the 1945 Constitution are in accordance with the demands of development and are able to respond to the development of society both at the national and global levels. Legal development aims to accelerate and increase reform activities and the formation of a national legal system in all its aspects, ensure the sustainability and integrity of the nation, and provide benchmarks, direction and encouragement for social change towards the realization of justice and a prosperous society based on Pancasila and the 1945 Constitution.

The practice of law enforcement against perpetrators of decency crime is faced with complex problems, among others, criminal offenses in the field of decency are generally placed as complaint offenses, to enforce the law against perpetrators of criminal acts by law enforcement officials requires complaints from the complainant and the complainant in general is to become a victim of a crime of decency. The judge as the executor of the judicial power has the authority in the prevailing laws and regulations and this is done by the judge through his decisions, both light decisions and heavy decisions. Judges in making decisions must consider many things.<sup>7</sup>

The law has several roles in regulating people's behavior. There are three main roles of law in society, namely as follows: first as a means of social control, second as a means of facilitating the process of social interaction and third as a tool for creating certain conditions.<sup>8</sup>

Through law enforcement, law becomes a reality. In law enforcement, there are three elements that must always be considered, namely: legal certainty, benefit and justice.<sup>9</sup>

In the Indonesian legal system, criminal law can be interpreted in a narrow way and can be interpreted broadly. Criminal law in the narrow sense is only material criminal law, which contains norms that regulate acts which constitute criminal acts and criminal acts. Meanwhile, criminal law in a broad sense consists

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<sup>4</sup>Hidayat, Bunadi. (2010). *Pemidanaan Anak Dibawah Umur*. Bandung: Alumni.p. 8

<sup>5</sup>Ismantoro Dwi Yuwanno, 2015, *Penerapan Hukum dalam Kasus Kekerasan Seksual Terhadap Anak*, Yogyakarta: Pustaka Yustisia.p. 1

<sup>6</sup> Wahyuningsih, Sri Endah. (2013). *Prinsip-Prinsip Individualisasi Pidana dalam Hukum Pidana Islam*, Semarang: Diponegoro University Publishing Agency

<sup>7</sup>Rifai, Ahmad. (2010). *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresi*, Jakarta: Sinar Grafika.p. 104

<sup>8</sup> Prasetyo, Teguh. (2011). *Kriminalisasi dalam Hukum Pidana*. Bandung: Nusa Media Publisher.

<sup>9</sup>Rahardjo, Satjipto. (1996). *Ilmu Hukum*, Bandung: PT. Citra Aditya Bakti.p. 181

of criminal law (substantive or material) and criminal procedure law (formal criminal law).<sup>10</sup>

According to Syahri (2020) Chief of Police Regulation and Chief of Police Regulation No. Pol. 14 of 2011 concerning the Professional Code of Ethics for the State Police of the Republic of Indonesia Several factors hindering law enforcement against police officers who violate the code of ethics are divided into internal factors and external factors. Internal factors, namely, there are still some unit leaders as individuals who have not fully paid attention to the implementation of disciplinary law enforcement duties. While the external factors, namely, the low welfare of members of the National Police and the lack of public awareness in conducting supervision and complaints when someone violates them.<sup>11</sup>

In relation to the crime of decency against children, there is a Decision Number Decision No. 53/Pid.Sus/2019/PN TMG in the case, the defendant WSP alias BASS bin W has been legally and convincingly proven to have committed a criminal act, committed a trick, a series of lies, or persuaded a child named SAR binti M to have intercourse with him or someone other. The actions of the defendant WSP alias BASS bin W as regulated and punishable by Article 76 D in conjunction with Article 81 paragraph (1) of Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection as the defendant's actions are proven to fulfill the indictment of Article 81 paragraph (2) of Act No. 35 of 2014 concerning Child Protection and the Sukadana District Court sentenced him to imprisonment for 8 (eight) years and a fine of IDR 100,000,000.00 (one hundred million rupiah),

Judicial practice in Indonesia has not fully guaranteed legal protection for children. A judge in deciding a case must consider juridical truth (law) with philosophical truth (justice). A judge must make decisions that are fair and wise by considering the legal implications and their impact on society. Deciding a case and considering whether a person should be convicted of a crime, a judge is based on the judge's conviction and not only based on existing evidence. The indicator can be found in the "legal judgment" used by the judge.

## 2. Research Methods

The method used in this research is a normative juridical approach. This normative juridical research is literature law where the methods or methods used in legal research are carried out by examining existing library materials.<sup>12</sup>The first stage of normative legal research is research aimed at obtaining objective law (legal norms), namely by conducting research on legal issues. The second stage of normative legal research is research aimed at obtaining subjective law (rights and obligations).<sup>13</sup> The relevance of this research approach is to analyze and examine

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<sup>10</sup>Hamzah, Andi. (2005). *Hukum Acara Pidana Indonesia*. Jakarta: Sinar Grafika.p. 9

<sup>11</sup> Syahri, A. (2020). *Law Enforcement against Policies Who Breached the Code of Conduct*, Journal Daulat Hukum, volume 3 Issue 3, ISSN:2614-560X.

<sup>12</sup>Soekanto, Soerjono & Sri Mamudji. (2009). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, print-11. Jakarta: PT Raja Grafindo Persada.p. 13-14

<sup>13</sup> Rusli, Hardijan. (2006). *Hukum Normatif, Bagaimana*, (Law Review Faculty of Law University of Pelita Harapan, Volume No. 3 .p.50.

the problems that are the object of research, namely the judge's consideration of decency crimes committed by adult men against minors.

### 3. Results and Discussion

#### 3.1. Law on Judicial Power in making considerations

According to Article 1 Act No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), judges are state judicial officials who are authorized by law to judge. Then the word "judge" is a series of actions by judges to accept, examine, and decide cases based on the principles of freedom, honesty and impartiality in the trial of a case and upholds 3 (three) principles of justice, namely simple, fast and low cost. The law has several roles in regulating people's behavior. There are three main roles of law in society, namely as follows: first as a means of social control, second as a means of facilitating the process of social interaction and third as a tool for creating certain conditions.<sup>14</sup>

The function of the judge is to give a decision on a case filed, where in a criminal case, this is inseparable from a negative system of proof, which in principle determines that a right or event or mistake is deemed to have been proven, in addition to the existence of means of evidence according to law also determined the judge's conviction which is based on good moral integrity.<sup>15</sup> A judge in imposing a sentence on a defendant may not impose the sentence unless with at least two valid evidence items, so that the judge is convinced that a criminal act has actually occurred and the defendant is guilty of committing it (Article 183 KUHAP). The means of valid evidence are: a) Witness statements, b) Expert statements, c) Letters, d) Instructions, e) Defendant statements or things that are generally known so that they do not need to be proven (Article 184 KUHAP).<sup>16</sup>

Judge in examining criminal cases, strives to find and prove material truth based on facts revealed in court and upholds the indictment formulated by the public prosecutor. A judge's decision is a decision pronounced by a judge because his position in a trial of a criminal case which is open to the public after carrying out the process and procedural law of criminal procedure generally contains the sentence of punishment or acquittal or waiver of all lawsuits is made in written form with the aim of solving the case there are 3 options possible decisions to be issued by the judge, namely:<sup>17</sup> 1) Convictions or punishment (*veroordeling*); 2) Free decision (*vrijspraak*); 3) The decision is free from all lawsuits (*onslag van alle rechtsvervolging*)<sup>18</sup>

Quality judges' decisions are decisions based on legal considerations in accordance with the facts revealed in court, in accordance with the law and the judges' beliefs without being influenced by various external and internal

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<sup>14</sup> Prasetyo, Teguh. (2011). *Kriminalisasi dalam Hukum Pidana*, Bandung: Nusa Media Publisher

<sup>15</sup> Rifai, Ahmad. (2010). *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*, Jakarta: Sinar Grafika.p. 103

<sup>16</sup> Rahardjo, Satjipto. (1998). *Bunga Rampai Permasalahan Dalam Sistem Peradilan Pidana*, Jakarta: Pusat Pelayanan Keadilan & Pengabdian Hukum. p. 11

<sup>17</sup> Hamzah, Andi. (2014). *Hukum Acara Pidana Indonesia*, Jakarta: Sinar Grafika.p. 284

<sup>18</sup> *Ibid*.p. 284

interventions so that they can be accountable professionally to the public (the truth and justice). The judge in making a decision considers the following matters:

- Juridical factors, namely laws and theories relating to cases or cases.
- Non-juridical factors, namely seeing from the environment and based on the conscience of the judge himself.

The freedom of judges is absolutely necessary, especially to ensure the objectivity of judges in making decisions. According to Soedarto, the judge gave his decision on the following matters:

- The decision regarding the event.
- Decisions regarding the law.
- Decision regarding the crime.

The main function of a judge is to give a decision on a case submitted to him, where in a criminal case this is inseparable from the negative evidence system (*negative wetterlijke*), which in principle determines that a right or event or error is deemed proven, in addition to the existence of tools. Evidence according to law is also determined by the judge's conviction which is based on good moral integrity.

The Temanggung District Court, which hears criminal cases with ordinary procedure at the first instance court, has ruled as below in the case of the Defendant, the position of the case in the decision of the Temanggung District Court. Number: 53/Pid.Sus/2019/PN TMG are as follows:

- Identity of the Defendant
- Case Position
- Public Prosecutors' demands
- Amar Verdict

The author hopes that the Judge in imposing criminal offenses against children who commit immoral crimes who are still minors should pay attention to the consequences arising from the existence of an act, both psychological and psychological aspects of the victim, so that the decision can satisfy the sense of justice for the victim and society. Seeing this fact, the criminal law should provide appropriate sanctions for the perpetrators of these crimes so that the rule of law is really upheld and order is created in society. In addition, these sanctions are expected to provide a deterrent effect for the perpetrators of crimes so that they will not repeat their actions in the future and prevent others from committing these crimes because of a threat of severe sanctions. Apart from that the child gets the opportunity to make up for the mistakes by doing good to the victim and maintaining a relationship with the victim's family. In the end, children are given the opportunity for reconciliation and healing in a community that has been adversely affected by their criminal acts.

However, a judge still has to pay attention to the criminal responsibility ability of the perpetrator in imposing a sentence. There is no doubt that in imposing a sentence, however, a crime must be rewarded or punished accordingly, because in addition to being used as a retribution for crime, it can also be used as a remedy and prevention of the increasing number of crimes, to support these efforts according to the author, there must be a change in perspective. as a whole in cases of rape committed by children with underage victims so that children as

victims and children as perpetrators get their rights fairly and wisely in accordance with applicable laws so that we can all provide protection for children's rights.

### 3.2. Overcoming obstacles and solutions given by judges

Justice in general is an act or fair treatment. While fair is impartial, impartial and side with the right. Justice according to philosophical studies is when two principles are fulfilled, namely: firstly not to harm a person and secondly, what is the treatment of each human being what is his right, if these two principles can be fulfilled then it is said to be fair.<sup>19</sup>

One of the Judges, a member of the Temanggung District Court, stated that the meaning of justice in practice in handling legal problems is still debatable. Many parties feel and consider that the judiciary is not fair because it is too conditional with procedures, is formalistic, rigid, and is slow in rendering a decision on a dispute. This factor cannot be separated from the judge's perspective on the law which is very rigid and normative-procedural in concretizing the law.<sup>20</sup>

Justice is generally defined as an act or fair treatment. While fair is impartial, impartial and side with the right. Justice according to philosophical studies is when two principles are fulfilled, namely: first, not to harm a person and second, what is the treatment of each human being. If these two principles can be fulfilled then it is said to be fair.

Judge's decision in the case Number 53/Pid.Sus/2019/PN. Tmg has permanent and binding legal force (*inkracht van gewijsde*). This is in accordance with the provisions of laws and regulations, there are provisions that regulate the meaning of decisions that have permanent legal force in relation to criminal cases, namely in the explanation of Article 2 Paragraph (1) of Act No. 22 of 2002 concerning Clemency which states that court decisions that have permanent legal force are: (1) Court decisions of first instance which are not filed for appeal or cassation within the time determined by the Criminal Procedure Code; (2) An appeal court decision that is not filed for cassation within the time specified by the Law on Criminal Procedure; or (3) Cassation decision.

Based on the results of an interview with Heni Rahmawati, it was stated that what was done by the perpetrator with the victim and his family in accordance with the concept of restorative justice was a new paradigm in criminal law enforcement, even though this concept has long been developed and practiced in the settlement of criminal cases.<sup>21</sup>

Based on the description above, it can be analyzed that peace is pursued as an effort to settle cases outside the court. This is because the punishment embodied in the court process is aimed at general prevention and special prevention. The general prevention is that by convicting the perpetrator of a crime, it is hoped that he will reduce his intention to do evil, while the special prevention

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<sup>19</sup> Mertokusumo, Sudikno. (1996). *Mengenal Hukum: Suatu Pengantar*. Yogyakarta: Liberty, p.107.

<sup>20</sup> Interview with Stephanus Y Arywendho, as Judge Member of the Temanggung District Court, on March 16, 2020

<sup>21</sup> Interview with Heni Rahmawati, as the Office for Community Empowerment, Women, Child Protection, Population Control and Family Planning (DP4KB) Temanggung, on March 19, 2020

is that by completing the criminal act, it is hoped that he will not repeat his actions again. Criminal requirements generally include requirements relating to aspects of the act and aspects of the person. Both of these aspects, there are two principles that are paired with each other, namely the principle of legality which concerns the aspect of action and the principle of culpability regarding the principle of error concerning the aspect of the person.

The judge's decision is the result of the authority to adjudicate every case handled and based on the Indictment and the facts revealed at trial and linked to the application of a clear legal basis, including the severity of the application of imprisonment (deprivation of liberty), this is appropriate the principle of criminal law, namely the principle of legality as regulated in Article 1 Paragraph (1) of the Criminal Code. Regarding judges who impose a minimum sentence against the defendant, according to the author, this cannot be applied forever because it has the potential to become jurisprudence in the future, however, the Law on Judicial Powers stipulates that judges' decisions are independent and must be free from intervention from any party.<sup>22</sup>

In the opinion of the author, the punishment imposed on perpetrators of decency against children in the verdict Number 53/Pid.Sus/2019/PN. Tmg has fulfilled the element of justice, because the judge in imposing a sentence does not only refer to the provisions of the statutory regulations, but also considers other elements such as peace has occurred and the defendant is willing to marry the victim. Judges as executors of judicial power have authority through decisions based on conviction, good moral integrity and consider the sense of justice in society. This means that judge justice in the judicial process does not only refer to formal legal provisions, but also considers various aspects related to the interests of the perpetrator, victim, family and society in general.

#### 4. Conclusion

Judges' considerations of decency crimes committed by adult males against minors in the decision of the Temanggung District Court Number: 53/Pid.Sus/2019/PN TMG have paid attention to the basis for adjudicating, the basis for deciding, and the values that live in society, then have taken into account the considerations juridical. Juridically based on the indictment of the public prosecutor, witness statements, letters and statements of the defendant and non-juridical based on burdensome and mitigating matters, has paid attention to the elements in Article 81 paragraph 2 of Act No. 35 of 2014, then the judge in making a decision must consider the existing law in the community in accordance with the Law on judicial powers. Overcoming obstacles and solutions given by Judges in giving consideration to criminal offenses committed by adult males against children that the obstacle for judges in making decisions is that the court institution is unfair because it is too conditional with procedures, is formalistic, rigid, and is slow in giving decisions on a dispute. This factor cannot be separated

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<sup>22</sup>Rahardjo, Satjipto. (1996). *Hukum dalam Perspektif Sejarah & Perubahan Sosial dalam Pembangunan Hukum dalam Perspektif Politik Hukum Nasional*, Jakarta: Rajawali, p. 33

from the judge's perspective on the law which is very rigid and normative-procedural in concretizing the law.

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