

## **Analysis of Judge's Decision on Criminal Offence Against Minors (Study of Case Decision Number. 787/Pid.Sus/2022/PN Btm)**

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**Abstract.** *The purpose of the research in this study: To find out, analyze the Law Enforcement of Criminal Acts of Obscenity Against Minors in the Decision of Case Number. 787/Pid.Sus/2022/PN Btm and to find out, analyze the Implementation of the Child Protection Law Against Criminal Acts of Obscenity in Decision 787/Pid.Sus/2022/PN Btm. This study uses a normative legal approach, with a descriptive analytical research method. The data used are primary and secondary data that will be analyzed qualitatively. Research problems are analyzed using the theory of justice, the theory of punishment. The implementation of the Child Protection Act ensures that child victims of obscene crimes receive special protection during the legal process. This includes protection from public exposure and further psychological impact. Children's rights to psychological and social support must be fulfilled, including access to therapy and counseling to help them recover from the trauma they have experienced. The legal process must be conducted in a manner that is sensitive to the emotional and psychological needs of child victims. The collection of information and involvement of children in the judicial process must be carried out with their welfare in mind. Child victims must be accompanied by legal or psychological counselors to ensure that their rights are protected and that the judicial process does not add to their mental burden. The Decision of Case Number 787/Pid.Sus/2022/PN Btm shows the effective implementation of the Child Protection Law in dealing with indecent acts against children. By utilizing the provisions of this law, the court seeks to ensure that the perpetrator receives appropriate punishment and the victim receives the necessary protection and support. Law enforcement that focuses on child protection and the imposition of strict penalties is an integral part of preventing similar crimes and ensuring justice for children as victims.*

**Keywords:** Children; Criminal; Law.

## 1. Introduction

Indonesia is a developing country that continues to innovate in its development system, including in the economic sector. National development based on Pancasila and the 1945 Constitution aims to create a society that is prosperous physically and mentally, just, prosperous, and equal.<sup>1</sup>

Indonesia as a country of law as stated in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia is based on the concept of the theory of State Sovereignty (Soverignty), which in principle states that law is the highest power in a country. Therefore, all state apparatus, whatever their name, including citizens, must submit to, obey, and uphold the law without exception.<sup>2</sup>In state activities, law determines everything. Law is the commander.

Law is a system of rules that govern our lives. It is the system of rules that governs us, not the individuals who happen to hold office. While people in public office come and go dynamically, the system of rules remains consistent and relatively stable.<sup>3</sup>

In every country based on law, those who violate legal norms are required to be held accountable for their actions. Legal norms are made to be obeyed, and violations will be subject to sanctions. In Indonesia, it is firmly stated that this country is a country based on law, not solely based on power. Thus, Indonesia is a country based on law where every citizen's behavior must be guided by existing legal norms. The law functions to regulate relations between individuals and between individuals and the state, so that everything runs in an orderly manner. Therefore, the purpose of law is to achieve peace by realizing legal certainty and justice in society. Legal certainty requires the formulation of clear and firm rules in statutory regulations.<sup>4</sup>

The Criminal Code (KUHP) is one of the main sources of material criminal law in Indonesia. The KUHP contains general principles of criminal law, provisions on punishment or penitentiary law, and most importantly, legal regulations containing prohibitions and orders that must be obeyed by everyone. These prohibitions and orders are contained in Book II and Book III of the KUHP, which contain formulations of certain acts, both active and passive. The threat of criminal penalties for violators of this rule is a characteristic that distinguishes it from other laws and regulations.

Every citizen in the jurisdiction of Indonesia receives equal legal treatment, regardless of race, skin color, or economic and social background. Every violation

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<sup>1</sup> Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia

<sup>2</sup>B. Hestu Cipto Handoyo, *Constitutional Law, Citizenship & Human Rights, Understanding the Process of Consolidating the Democratic System in Indonesia*, Yogyakarta, Atma Jaya University, First Edition, 2003, p. 12.

<sup>3</sup>Gunarto, *Law Enforcement Agenda and Its Relevance for National Development*, *Journal of Legal Reform* Volume I No.1 January-April 2014, page 3

<sup>4</sup>Ibid, p. 5

and unlawful act will be faced with applicable law. Thus, every citizen has the right to receive legal protection and defense from the government.

As a consequence, the government must ensure a safe and orderly atmosphere in society. If a citizen feels unsafe, he or she has the right to seek legal protection from the authorities or the government. In enforcing and ensuring security and public order, sanctions are required, which can only be enforced if there is a law that regulates it.

The law functions to regulate relations between individuals and between individuals and the state, so that everything runs orderly. The purpose of law is to achieve peace by realizing legal certainty and justice in society, without distinguishing background, social status, position, or skin color. In this modern era, where the economic needs of society are increasing, especially related to the fulfillment of needs and employment, there is vulnerability in the field of public security. The frequent occurrence of crime is one of the impacts of this condition. Crime, as a social phenomenon, is faced by society both in rural and urban areas. The intensity of crime is increasing every day, with increasingly sophisticated and varied modus operandi, including theft with violence that hurts the victim to sadistic murder.<sup>5</sup>

A crime is an act that is formulated in the Criminal Code as a crime or criminal act. In a broader sense, this relates to various aspects such as delinquency, deviation, changes in the quality of crime, and the process of criminalization and decriminalization of criminal acts or acts. These changes are influenced by factors such as place, time, interests, policies of the ruling class, outlook on life, and social, economic, and cultural developments at a certain time and place.<sup>6</sup>

Crime is one of the realities in life that requires special handling. This is due to the fact that crime can cause unrest in the lives of society in general. Therefore, various efforts are always made to deal with crime. However, in practice it is very difficult to eradicate crime completely, because crime tends to develop along with the development of society.<sup>7</sup>

Rapid development of society and increasing crime rates have an impact on the tendency of members of society to interact with each other. In this interaction, there are often acts that violate the law or the rules that have been established in society. To create a sense of security, peace, and order, it is important for all members of society to obey these rules. However, not everyone is willing to obey the rules, and there are still those who deviate from existing norms, which are generally not liked by society.<sup>8</sup>

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<sup>5</sup>Wirjono Prodjodikoro, *Certain Criminal Acts in Indonesia*, Jakarta: PT.RefikaAditama, 2002, p. 15

<sup>6</sup>S.R.Sianturi, *Principles of Criminal Law in Indonesia and its application*, 3rd ed., Jakarta: Storia Grafika, 2002, p. 204

<sup>7</sup>Wirjono Prodjodikoro, *Certain Criminal Acts in Indonesia*, Jakarta: PT.RefikaAditama, 2002, p. 15

<sup>8</sup>Soerjono Soekanto, *Sociology: An Introduction*, Jakarta: Rajawali Press, 2000, p. 21

The increase in crime in Indonesia has resulted in the emergence of various modes of criminal acts. In addition, the lack of public knowledge about criminal law can cause someone to become a victim or perpetrator of a crime. One form of crime that occurs in society is the crime of indecent acts against children.

The juvenile criminal justice system covers the entire process of resolving cases for children in conflict with the law, from the investigation stage to the guidance stage after undergoing the criminal process. This system is based on the principles of protection, justice, non-discrimination, and the best interests of the child. In addition, this system also respects the rights of children, supports their survival and development, and ensures that the actions taken are proportionate. Deprivation of liberty and punishment are considered as a last resort, with the main goal of avoiding reprisals and focusing on the rehabilitation and reintegration of children into society.<sup>9</sup>

The defendant in the case of indecent acts against children has received a prison sentence as retribution for his actions, but the existence of the child who became the victim will not be able to return to normal. Then how can the state pay attention to the rights of children as victims of indecent acts.

Criminals or people who commit one form of "deviant behavior" are called criminals. In their view, society assumes that "criminals" are people who commit deviant acts that cannot be tolerated by the norms that exist in society itself. Thus, crime, besides being a humanitarian problem, can also be a social problem.<sup>10</sup>

The law must be upheld and implemented without deviation, as the adage "Fiat Justitia et pereat mundus" which means even if the world collapses, the law must still be upheld. Therefore, the judicial institution, judges, and their decisions must have dignity, authority, be respected, honored, and obeyed by all parties. Thus, the hopes of the justice-seeking community can be fulfilled, and the judicial process can take place properly, safely, comfortably, and without interference from any party. The community must be served well, on time, and immediately receive legal certainty. The main purpose of the judicial institution, especially in criminal trials, is to decide whether or not a person is guilty of the crime accused of him.<sup>11</sup>

Child protection is an effort to create conditions in which children can exercise their rights and obligations optimally. Based on the concept of *parens patriae*, namely that the state provides attention and protection to children as parents do to their children, the handling of children in conflict with the law must be carried

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<sup>9</sup>Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System

<sup>10</sup>Saparinah, *Social Perception Regarding Deviant Behavior*, Jakarta: Bulan Bintang, 1976, pp. 25-26

<sup>11</sup>The objectives of criminal procedural law in the Decree of the Minister of Justice of the Republic of Indonesia No. M.01.PW.07.03 of 1992 concerning Guidelines for the Implementation of the Criminal Procedure Code (KUHAP).

out by considering the best interests of the child. This must also be based on the values of Pancasila.<sup>12</sup>

Based on the background of the problem, the author wants to study it further with the title "ANALYSIS OF JUDGE'S DECISION ON CRIMINAL OFFENCES AGAINST MINORS (787/Pid.Sus/2022/PN Btm)"

## **2. Research methods**

To conduct research and analysis of the judge's decision on the crime of indecent acts against minors (case decision number. 787/Pid.Sus/2022/PN Btm), the approach method used is the Normative Juridical Approach method. Analyze the laws and regulations governing indecent acts, protection of children as victims, and the juvenile criminal justice system.

## **3. Results and Discussion**

### **3.1. Law Enforcement of Criminal Acts of Indecency Against Children in Decision of Case Number. 787/Pid.Sus/2022/PN Btm**

In the context of criminal law enforcement in Indonesia, there are two main aspects that are the main milestones, namely:

#### a) Material Criminal Law

Criminal Code (KUHP): Is the main source that regulates the types of criminal acts and the criminal threats imposed. The KUHP establishes the definition of criminal acts and provisions regarding punishment.

Special Legislation In addition to the Criminal Code, substantive criminal law is also regulated in various laws that include special criminal provisions for certain criminal acts.

#### b) Formal Criminal Law

The Criminal Procedure Code (KUHAP) regulates the procedures and methods for enforcing criminal law, including the investigation, prosecution, and trial processes. The KUHAP is the legal basis for the implementation of formal criminal law in Indonesia.

Special Laws: Several other laws also include provisions regarding criminal procedure for special cases that are not regulated in detail in the Criminal Procedure Code.

In criminal law enforcement in Indonesia, there are two systems that are applied simultaneously:

#### 1. Functional Differentiation System

This system reflects the division of duties and authorities between various law enforcement agencies that work separately and independently. This structure ensures that each agency has a clear role in the criminal law enforcement process,

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<sup>12</sup>Nur Rochaeti, "Restorative Justice Model as an Alternative Handling for Delinquent Children in Indonesia", MMH Volume 37 Number 4, December, 2008. p. 239

Police Responsible for the investigation and prosecution of criminal acts. Prosecutors Handle prosecutions, with case files compiled based on the results of police investigations. Judges Examine cases in court and make decisions based on the evidence and arguments presented, under the auspices of the Supreme Court.

## 2. Integrated Criminal Justice System

This system emphasizes the importance of cooperation and continuity between various law enforcement agencies. Although these agencies have different functions and responsibilities, they work in a series of interrelated processes:

- a. Investigation by the Police Involves the preparation of an investigation report which becomes the basis for the Prosecutor to prepare an indictment.
- b. Pre-Prosecution Process If the police files are deemed incomplete by the Prosecutor, the files are returned to the police to be completed with instructions from the Prosecutor.
- c. Prosecution and Trial Once the files are declared complete, the Prosecutor will continue the prosecution process, and the trial will be conducted in court by a Judge.

Thus, although the Indonesian criminal law enforcement system adopts a clear division of tasks between its institutions (functional differentiation), their work processes are interconnected and take place in an integrated manner to ensure effective and sustainable law enforcement.<sup>13</sup>

Crime prevention, whether it concerns the legal interests of individuals, society, or the state, is a very complex and challenging task. Crime, as a social phenomenon, is difficult to eliminate completely because it has always existed in society as long as humans have been on earth. Crime is complex and has various behavioral variations, often in line with technological developments and the progress of the times.

Rapid technological developments can influence the increase in criminal acts, including sexual abuse. Electronic and print media that disseminate information from all over the world without filtering negative content also contribute to the increase in these crimes. This uncontrolled ease of access to information can worsen the problem, causing negative impacts on society and complicating crime prevention efforts. Therefore, crime prevention requires a comprehensive approach and adapting to the dynamics of technological developments and social change.

The crime of child molestation in Batam City against minors has many problems regarding how the law enforces justice for the perpetrators of the molestation who are punished with a punishment that can be said that the punishment cannot change the behavior of the perpetrators to be better, so that this causes the victim

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<sup>13</sup>Satjipto Rahardjo, Legal Studies, Bandung, PT Citra Aditya Bakti, 2000, p.43

to feel that they do not get efficient justice for the crimes the perpetrators have committed against the victim, especially minors. Law is a rule for humans, so the implementation of law or law enforcement must provide benefits or uses for society.

The quality of development and law enforcement must indeed go beyond mere formal and procedural aspects. Focus must be given to substantial quality, namely the effectiveness of the law in providing justice and real benefits to society. This means that the law must not only be implemented according to procedure but must also truly meet the needs and expectations of society. The target strategy for development and law enforcement must include several key aspects, including:

1. Substantive Justice Ensures that legal decisions and actions are not only formally valid but also fair and in accordance with the needs and rights of society.
2. Legal Effectiveness Assessing whether existing laws are truly effective in addressing the problems faced by society, and making adjustments if necessary.
3. Community Participation Integrating community opinion and input into the policy-making and law enforcement process, so that the laws implemented are more relevant and responsive to community needs.
4. Legal Reform Conducting legal reforms periodically to ensure that legal regulations and policies are always up to date and can meet the demands of the times and social changes.
5. Improving the Quality of Law Enforcement Officers Improving the capacity and integrity of law enforcement officers so that they can carry out their duties with professionalism and justice.

In law enforcement against sexual abuse crimes in Batam City, especially those involving adult perpetrators and underage victims, there are several factors that can affect the effectiveness of law enforcement. Some of the main factors that may affect are:

#### 1. Legal Factors

Legal factors in criminal law enforcement, especially for the crime of indecent assault in Batam City, involve several important aspects. Although laws and regulations already exist and are diverse, the main challenge lies in the effectiveness of their implementation. Here are some factors that influence law enforcement:

- 1) Weaknesses in Legislation Every law has weaknesses that can affect its implementation. For example, a lack of detail or ambiguity in certain articles can make it difficult to apply the law consistently and fairly.
- 2) Lack of Socialization and Legal Counseling The increase in crime rates, including sexual assault, is often caused by a lack of public understanding of applicable laws. Lack of socialization and legal counseling can hinder the public from understanding their rights and obligations and how to report violations.

3) Implementation of Legal Procedures Law enforcement must be in accordance with established procedures. In cases of sexual abuse, it is important that all investigative and prosecution steps follow the provisions of the law such as Law Number 35 of 2014 concerning Child Protection. Compliance with these procedures is important to ensure effective protection for victims.

4) Increasing Public Understanding A community that understands the law and its rights is more likely to report violations and cooperate with law enforcement. Therefore, increasing public understanding and awareness of the law is key to more effective law enforcement.

## 2. Law Enforcement Factors

Law enforcement will not run well, if not supported by law enforcers who specifically work in the legal field such as the police, prosecutors, lawyers, judiciary and correctional institutions. The weakness of law enforcement comes from its law enforcers, if the law enforcers are weak, then the community will perceive that there is no law in their environment or as if the community is in a jungle without any rules that regulate it.<sup>14</sup>

Currently, the dynamics of the search for justice in our legal system have become very complex. Legal and justice issues are no longer only related to technical procedural aspects to determine whether an act violates the laws and regulations or customary law prevailing in society. Instead, the main challenge now is how to prepare and adjust legal norms in the context of extensive legal transplantation along with the growth of the globalization order. In this situation, legal issues become relevant issues for every individual, not just for the protection of the rights of a handful of people.

The process of legal transplantation also requires the state and society to overcome distortions that may erode all institutions and supporting infrastructure of the Indonesian legal system. It is important to pay attention to the need for ethics, standards, and responsibility as the main values of law enforcers, which will support and guarantee the continuity of a healthy justice-seeking process.

The debate on this matter is increasingly emerging along with the dependence of society on the expertise and skills of professional groups. This dependence places professional ethics as a tool for society to control the profession, which in some cases can still be measured through general ethical parameters. Therefore, the moral dimension of the law enforcement profession is very important, including the meaning, function, and role of law enforcement and the code of ethics that regulates it.

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<sup>14</sup>Satjipto Rahardjo, Op. Cit, p. 46



Honor, courage, commitment, integrity, and professionalism are the foundation for law enforcement. Since ancient times, the law enforcement profession has been considered a noble profession. Therefore, law enforcers must respect the law and justice in accordance with their role as law enforcement officers. Understanding the code of professional ethics is an obligation for law enforcers in carrying out their duties. This code of ethics provides moral guidelines in acting and carrying out obligations. Professionalism without ethics can be uncontrollable, while ethics without professionalism can hinder progress and effectiveness.

In the Decision of Case Number. 787/Pid.Sus/2022/PN Btm, the child as a victim of indecent acts committed by an adult named Andri Santoso Als Bin Alm Kamina committed a crime by deliberately carrying out trickery, a series of lies, or persuading the child to have sexual intercourse with him or with another person, as in Article 81 paragraph 2, Law no. 17 of 2106 concerning the stipulation of Perpu Law number 1 of 2016 concerning the second amendment to Law number 23 of 2002 concerning child protection.

#### 1. The indictment

The defendant has been charged by the public prosecutor with primary and subsidiary charges. Article 81 paragraph 2, Law no. 17 of 2106 concerning the stipulation of Perpu Law number 1 of 2016 concerning the second amendment to Law number 23 of 2002 concerning child protection.

#### 2. Claims

For the criminal act of indecency committed by the defendant, the prosecutor submitted the following charges:

- a. Declaring the defendant ANDRI SANTOSO ALS ANDRE BIN (ALM) KAMINA guilty of committing a crime by intentionally carrying out trickery, a series of lies, or persuading a child to have sexual intercourse with him or with another person, as threatened by the criminal penalty in Article 81 Paragraph (2) of Law Number 17 of 2016 concerning the Stipulation of Perppu Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection as stated in the Public Prosecutor's subsidiary indictment;
- b. Defendant Andri Santoso Als Bin Alm Kamina, on Wednesday, September 28, 2022 committed violence or threats to force a child to have sexual intercourse. The Defendant invited the victim child to a hotel to commit an indecent act on Wednesday, September 28, 2022. Based on the evidence et repertum of the Santa Elizabeth Hospital which concluded that the hymen was not intact.
- c. Sentencing the defendant ANDRI SANTOSO ALS ANDRE BIN (ALM) KAMINA to 10 (ten) years in prison minus the time the defendant has been in detention with the order that the defendant remain in detention and a fine of IDR 100,000,000,- (one hundred million rupiah) subsidiary to 3 (three) months in prison.

#### 3. Decision

The verdict is as follows:

- a. Declaring that the Defendant Andri Santoso alias Andre Bin Alm Kamina has not been proven legally and convincingly guilty of committing a crime as stated in the Public Prosecutor's Primary Indictment.
- b. To acquit the Defendant therefore from the Primary Charge.
- c. Declaring that the Defendant Andri Santoso alias Andre Bin Alm Kamina has been proven legally and convincingly guilty of committing the crime of "Intentionally persuading a child to have sexual intercourse with him" as stated in the Public Prosecutor's Subsidiary Indictment.
- d. Sentencing the Defendant to a prison sentence of 9 (nine) years and a fine of IDR 100,000,000,- (one hundred million rupiah), with the provision that if the fine is not paid, it will be replaced with a prison sentence of 3 (three) months.
- e. Determining that the period of arrest and detention that has been served by the Defendant is deducted in full from the sentence imposed.
- f. Determine that the Defendant remains in detention

The defendant has been charged with primary and subsidiary charges, so that the Judge, by considering the legal facts, directly chose the subsidiary charge of Article 81 Paragraph (2) of Law Number 17 of 2016 concerning the Stipulation of Perppu Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, which carries a minimum criminal sentence of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah). In the Judge's Decision, he sentenced the defendant to 9 (nine) years in prison and a fine of IDR 100,000,000 (one hundred million rupiah).

Regarding the verdict, it will be discussed regarding the considerations that have been considered by the Judge before making a verdict. According to Mackenzie, there are several theories or approaches that can be used by the Judge in considering the verdict in a case, namely:

#### 1. Theory of Scientific Consideration

Scientific Reasoning Theory refers to the use of rational and scientific considerations in the decision-making process, including in the legal context. Typically, this theory emphasizes the importance of applying scientific methods, valid data, and objective analysis in formulating and implementing policies or laws.

In child sexual abuse cases, the theory of Scientific Consideration can be applied to ensure that the legal process and decisions taken are based on a scientific and rational approach. Psychological assessment of the child victim is essential to understanding the emotional and psychological impact of the crime. This evaluation can help determine the need for treatment and support for the victim, as well as provide evidence of the impact of the crime on the child's development.

#### 2. Intuition Approach Theory

The Intuitive Approach Theory focuses on the use of intuition or instinctive feelings in the decision-making process. In the context of criminal law, especially in cases such as child molestation, this approach can influence the way judges or decision-makers understand and assess cases.

In criminal cases, especially those involving children, intuition can play a role in assessing how much impact the crime has had on the victim and their family. Judges or other parties involved may use their empathy to sense the distress experienced by the victim and take this into account in the decision-making process.

However, it is important to remember that decisions that rely entirely on intuition must be balanced with strong data and evidence. Relying on intuition without the support of objective data can risk creating unfair or biased decisions. Ideally, an intuitive approach should be combined with rational analysis and scientific methods to reach better and fairer decisions.

### 3. Ratio Theory

The Ratio Decidendi is a fundamental concept in common law legal systems that concerns the legal reasoning underlying court decisions. Ratio decidendi helps create legal certainty by providing clear guidance on how the law should be applied in a given situation. By following precedent, courts can ensure that legal decisions remain consistent, which is essential for fairness and public confidence in the legal system.

### 4. Theory of Equilibrium

This theory seeks to balance individual rights with legal obligations that must be complied with. For example, in the context of criminal law, this might mean balancing the rights of the accused with the need to punish the offender fairly.

The verdict in the case of indecent acts must reflect retributive justice, namely imposing a sentence that is commensurate with the severity of the crime committed. The sentence imposed must provide a deterrent effect and prevent other perpetrators from committing similar crimes.

In addition to punishment for the perpetrators, the principles of Pancasila justice also include the restoration of the rights and dignity of the victims. The courts must ensure that victims receive appropriate protection, rehabilitation, and compensation. The courts and the legal system must ensure that victims are treated with respect and receive appropriate protection. This includes maintaining the privacy of the victim and providing the necessary psychological support. Although perpetrators of criminal acts must be punished, the principle of humanity also requires that perpetrators be treated fairly and receive their rights according to the law.

Law enforcement in cases of obscene crimes must reflect a commitment to creating a safe and just society. This means that legal action must be carried out transparently and accountably to ensure public trust in the legal system.

Punishment theory provides a framework for determining how punishment should be applied to perpetrators of criminal acts. Connecting punishment theory to the crime of indecent acts against children in the decision of case Number. 787/Pid.Sus/2022/PN Btm involves analysis based on various punishment theories.

In cases of child molestation, retributive theory requires that the punishment imposed be commensurate with the severity of the crime and the impact on the victim. The punishment should reflect the degree of culpability and provide a just reward for the perpetrator's actions. The punishment imposed should be designed to deter the perpetrator from committing similar crimes in the future. This may involve rehabilitation and counseling for the perpetrator.

### **3.2. Implementation of the Child Protection Law Against Indecent Crimes in Decision 787/Pid.Sus/2022/PN Btm**

Obscenity as a crime against morality is regulated in the Indonesian Criminal Code (KUHP) in Chapter XIV on crimes against decency. The definition of obscenity includes acts that are considered to violate norms of decency and morality, whether committed against oneself or against others, and related to the genitals or other body parts that can stimulate sexual desire. The Child Protection Law regulates criminal acts involving sexual violence against children. The articles in this law provide definitions and qualifications regarding acts that are considered obscenity or sexual violence against children.

Child molestation is a crucial issue that reflects a major challenge in the context of child protection in Indonesia. The fact that this problem continues to increase, especially in a society that is religious and upholds moral values, shows the need for more serious attention and action.

The second principle "Just and Civilized Humanity" underlines the importance of protecting human rights, including children. This includes the need to maintain the dignity and rights of children to avoid violence and exploitation. The implementation of the Pancasila principles requires maximum efforts to protect children from obscene crimes and ensure that their rights are respected during the legal process.

Article 76D of the Child Protection Law regulates the crime of sexual violence against children, including molestation. The perpetrator can be given a heavy sentence if proven to have committed an indecent act against a child. Article 82 of the Child Protection Law also regulates a heavier sentence for perpetrators of crimes against children, including the crime of indecent acts.

Judges in cases of indecent acts must consider whether the perpetrator's actions fulfill the elements of a criminal act as regulated in the Child Protection Act.

The judge's considerations include assessing whether the actions committed by the perpetrator fall into the category of indecent assault or sexual harassment according to the Child Protection Act.

The Child Protection Law also pays attention to the rights of child victims, including the right to protection, rehabilitation, and compensation. In the verdict, the judge may pay attention to how these rights are fulfilled.

Based on the Child Protection Act, the punishment for perpetrators of indecent acts against children is generally heavier than for ordinary crimes. The judge will impose a sentence in accordance with the provisions of the applicable law to ensure that the perpetrator receives the appropriate punishment.

Decision 787/Pid.Sus/2022/PN Btm also includes rehabilitation and protection measures for victims, as regulated in the PA Law to help victims recover from trauma and undergo the recovery process.

In practice, the implementation of the Child Protection Act will involve a detailed evaluation of the available evidence, victim testimony, and related legal considerations. The court's decision in this case is expected to reflect the application of child protection principles as stipulated in the Child Protection Act.

Child molestation helps ensure that the punishment imposed not only meets formal legal requirements but also reflects broader sentencing goals, such as justice, deterrence, and rehabilitation. Each theory provides a different and complementary perspective in formulating fair and effective punishments in dealing with the crime of child molestation.

The Law on the Protection of Children against indecent acts in the decision of case Number 787/Pid.Sus/2022/PN Btm involves the application of various legal provisions aimed at protecting the rights of children as victims and ensuring that the justice system pays attention to the interests and welfare of children.

In the study of decision Number 787/Pid.Sus/2022/PN Btm, the author conducted an interview with the Clerk Romy Aulia Noor, SH, regarding the Application of the Child Protection Law Against Criminal Acts of Obscenity in Decision 787/Pid.Sus/2022/PN Btm. The interview was conducted on September 14, 2024 at 11.00 WIB, at the Batam District Court.<sup>15</sup>

1. What are the main considerations in making a decision?

Answer:

- a. The main considerations in making a decision in cases of indecent acts, especially those involving children as victims, usually include legal, social and moral aspects.
- b. The main consideration is the evidence presented in court, such as witness statements, physical evidence, expert testimony, and other documents that support the proof of indecent acts.

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<sup>15</sup>Romy Aulia Noor, SH, Clerk of Batam District Court, on September 14, 2024 at 11.00 WIB

c. The judge will evaluate whether the elements of the crime charged, for example in Article 81 or 82 of the Child Protection Law, are fulfilled. This includes ensuring that the perpetrator actually committed an indecent act against a minor.

2. Is the psychological impact on victims an important consideration?

Answer:

a. The psychological impact on the victim is an important consideration in making a decision, especially in cases of indecent acts involving children.

b. Children are considered a physically and psychologically vulnerable group. Child molestation crimes often cause long-term trauma, which can have a negative impact on their emotional, social and mental development. Judges usually take into account the extent to which the psychological impact has affected the victim's life.

c. Under the Child Protection Act, the state is obliged to provide special protection to children as victims of crime. This includes attention to the psychological well-being of children, which is recognized in law as a fundamental right that must be protected.

3. How is the role of power relations between perpetrators and victims considered in the court process?

Answer:

The power relationship between the perpetrator and the victim is an important factor considered by the judge in the trial process, especially in cases of indecent acts against children. This power relationship plays a role in increasing the punishment, because the perpetrator uses his position or authority to pressure or control the weaker victim.

4. Are there any special considerations in sentencing based on the age of the victim?

Answer:

a. The age of the victim is a very important special consideration in sentencing, especially in cases of indecent acts against children.

b. Child Protection Act, children are defined as individuals under the age of 18. Children as a vulnerable group receive special legal protection from the state. Therefore, crimes committed against children are often punished more severely than crimes against adults.

c. Articles 81 and 82 of the Child Protection Law stipulate heavier penalties for perpetrators of indecent acts or sexual violence against children, with a minimum prison sentence of 5 years and a maximum of 15 years, and a maximum fine of IDR 5 billion.

5. How do judges assess the protection provided to victims during the trial process?

Answer:

- a. Judges have an important role in ensuring that victims, especially children, receive adequate protection during the judicial process.
- b. In cases involving children as victims, judges must ensure that child protection principles are implemented throughout the trial process. Based on the Child Protection Law and Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, child victims must be protected from additional trauma or revictimization during the trial.
- c. Judges have the authority to protect the identity of victims, especially in cases involving minors. Article 64 of Law No. 23 of 2002 concerning Child Protection requires that legal proceedings involving children be conducted in private to the public and the media, in order to protect the privacy and honor of the victim.

Article 59 of Law Number 17 of 2016 concerning Child Protection. regulates the obligation of state institutions to provide special protection to children who are victims of criminal acts. In cases of sexual abuse, state institutions must ensure that child victims receive the necessary protection during the legal process. Courts, police, and other related institutions must provide protection to child victims from all forms of public exposure, intimidation, or other negative impacts during the judicial process.

Child victims must be protected from further trauma and not over-exposed to the legal process. This involves making arrangements so that the child is not exposed to situations that could worsen the trauma or disrupt the child's psychological well-being.

The application of the Child Protection Law in cases of indecent acts as in decision Number 787/Pid.Sus/2022/PN Btm covers various important aspects, ranging from protecting children's rights during the legal process, psychological support, to the application of fair punishment for perpetrators. This approach aims to ensure that child victims receive the protection and recovery they need while ensuring that perpetrators are given punishments that are in accordance with the severity of the crime.

#### **4. Conclusion**

The implementation of the Child Protection Act ensures that child victims of obscene crimes receive special protection during the legal process. This includes protection from public exposure and further psychological impact. Children's rights to psychological and social support must be fulfilled, including access to therapy and counseling to help them recover from the trauma they have experienced. The legal process must be conducted in a manner that is sensitive to the emotional and psychological needs of child victims. The collection of information and involvement of children in the judicial process must be carried out with their welfare in mind. Child victims must be accompanied by legal or

psychological counselors to ensure that their rights are protected and that the judicial process does not add to their mental burden.

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