

Legal Protection for Child Victims of the Crime of Rape in Decision Number 95 PID.SUS/2023/PN.CLP

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Abstract. *This research aims to determine and analyze the legal protection for child victims of criminal acts of rape in decision Number 95 Pid.Sus/2023/ PN.CLP and the judge's considerations in decision Number 95 Pid.Sus/2023/ PN.CLP in providing legal protection for child rape victims. Sociological juridical approach method, research specifications are analytical descriptive, the types of data used are primary data and secondary data. The data collection method is field study and literature study, while the data analysis method is qualitative analysis. The theories used are the theory of legal protection and the theory of justice. Based on the research results, it can be concluded that legal protection for child victims of the crime of rape in decision Number 95 Pid.Sus/2023/PN.CLP is realized by imposing a prison sentence of 7 years and a fine of 50 million rupiah subsidiary 6 months in prison is a form of legal protection that abstracts for the victim by providing a sense of satisfaction because the perpetrator has been punished. The judge's considerations in decision Number 95 Pid.Sus/2023/PN.CLP in providing legal protection for child victims of rape are correct, where the judge has outlined considerations regarding the fulfillment of the elements of a criminal act in Article 81 paragraph (2) of the Child Protection Law, even though the perpetrator denied it, in its considerations the panel of judges was able to explain the results of its considerations through an analysis of the Visum Et Repertum. The judge has also considered aggravating and mitigating factors in the decision, where these considerations are used as reasons for the judge in handing down his decision.*

Keywords: Children; Crime; Protection; Rape.

1. Introduction

Children are a mandate and a gift from God Almighty, which must always be protected because they contain inherent dignity, honor and rights as human

beings which must be upheld.¹Children are weak individuals and are not yet able to defend their rights, so in this case the state needs to provide guarantees of protection for the fulfillment of children's rights through various actions, both preventive and repressive. To guarantee this, Indonesia itself has Law Number 34 of 2014 concerning Child Protection as last amended in Law Number 17 of 2016 (Child Protection Law) to guarantee these rights.²However, these efforts are still not effective, this is proven by the fact that there are still many cases of violations against children,³one of which is being a victim of sexual crime.

The crime of sexual violence against children is currently still relatively high in Indonesia. The Ministry of Women's Empowerment and Child Protection (KemenPPPA) noted that the number of cases of violence during the period from January to May 2023 reached 4,280 cases.⁴As for Central Java, Data collected from the PPPA Ministry Symphony shows that throughout 2022 the number of cases of sexual violence against children was 875 cases.⁵

One type of crime of sexual violence against children is the crime of child rape.⁶ The crime of rape, although it has been around for a long time, still raises pros and cons about law enforcement and how to deal with it. During the investigation, prosecution, and trial process, this crime most often causes difficulties. In addition to the problem of limitations, there is also the problem of proof, this is because rape or indecent acts are usually carried out without the presence of other people.⁷

The crime of rape against children is regulated in Article 287 paragraph (1) of the Criminal Code which states that anyone who has sexual intercourse with a woman outside of marriage, even though it is known or should be suspected that she is not yet fifteen years old, or if it turns out that she is not yet capable of marriage, is threatened with a maximum prison sentence of nine years. Specific provisions regarding the crime of rape are regulated in Article 76 D of the Child Protection Law which states that everyone is prohibited from committing violence or threats of violence to force a child to have sexual intercourse with

¹Widya Cindy Kirana Sari, Legal Protection for Children as Victims of Sexual Exploitation Crimes, *IPMHI Law Journal*, Volume 2 Number 1, 2022, p. 63.

²Mutiara Nastya Rizky, Legal Protection for Child Victims of Commercial Sexual Exploitation Through Social Media, *Iuris Media*, Volume 2 Number 2, June 2019, p. 198.

³Lilik Purwastuti Yudaningsih, Legal Protection for Children as Victims of Commercial Sexual Exploitation of Children (CSEC), *Journal of Legal Studies*, 2005, p. 64

⁴Indonesian Media, 4280 Cases of Sexual Violence Occurred in Indonesia Throughout 2023, <https://www.metrotvnews.com>, accessed November 23, 2023.

⁵LBH Semarang, National Children's Day, Grim Portrait of Cases of Violence Against Children in Central Java, <https://lbhsemarang.id>, accessed November 23, 2023.

⁶Setiyawati and Achmad Arifullah, Legal Protection for Child Victims of the Crime of Rape in Decision Number 239/PID.SUS/2022/PN.CLP, *Ratio Legis Journal*, Volume 2 No. 3, September 2023, p.1409

⁷Leden Marpaung, 1996, *Crimes Against Morality and the Problem of Prevention*, Jakarta: Sinar Grafika, p. 81.

him or with another person. The provisions of the articles above are a form of legal protection for child victims of the crime of rape by providing a threat of severe criminal penalties for the perpetrator.⁸

It is hoped that the regulation of criminal sanctions and other forms of protection for child victims of rape can be used as a guideline for judges in imposing sentences.

In the Cilacap District Court, it was recorded that in 2021, 4 cases of child rape were decided, in 2022 there were 10 cases, in 2023 there were 14 cases. These figures illustrate that the number of rapes with child victims that occurred in the Cilacap District Court is quite high. One of the cases of child rape is case Number 95 Pid.Sus/2023/PN.CLP. In this case, the defendant was charged with committing the crime of sexual abuse of a child by violating the provisions of Article 76D of the Child Protection Law. The defendant in this case had had sexual intercourse with the victim twice. The victim was willing to comply with the defendant's wishes because he had promised to be responsible/marry the victim if anything happened to the victim, and also often bought the victim food/snacks, and souvenirs. For these actions, the defendant was sentenced to 7 years in prison and a fine of IDR 50,000,000.00 with the provision that if the fine was not paid, it would be replaced with 6 months in prison.

The punishment imposed on the perpetrator in the above decision is only limited to imprisonment which is not a form of abstract legal protection, which can only provide satisfaction for the victim, and does not include restitution for the victim which is a form of concrete protection for the victim. The role of the judge in deciding the punishment for the perpetrator of the crime of rape against children also plays an important role in providing a deterrent effect on perpetrators of child molestation. A light punishment will not have a deterrent effect, so that similar cases can recur.

2. Research methods

The research approach method is sociological juridical starting from normative research which then observes the application of the law in society.⁹The research specification is analytical descriptive, namely describing the current state of the research object, based on the facts that appear or are, with the aim of creating a systematic picture or illustration of a phenomenon that occurs in society.¹⁰The types of data are primary data and secondary data. The data collection methods are field studies and literature studies, while the data analysis method uses

⁸Dwi Yoga Bayu Setiaji, Implementation of Criminal Sentences for Rape of Biological Children (Case Study at Mungkid District Court), <http://eprintslib.ummg.ac.id>, accessed November 23, 2023.

⁹Mukti Fajar ND and Yulianto Achmad, 2013, Dualism of Normative and Empirical Legal Research, Yogyakarta: Pustaka Pelajar, p.47.

¹⁰M.Djunaidi Ghoni and Fauzan Almansur, 2012, Qualitative Research Methodology, ar-Ruzz Media, Yogyakarta, p.25.

qualitative analysis, namely in the form of in-depth interpretation of legal materials as is common in normative legal research, then the results of the analysis are connected to the problems in the research to produce an objective assessment to answer the problems in the research.¹¹

3. Results and Discussion

3.1. Legal Protection for Child Victims of Rape in Decision Number 95 Pid.Sus/2023/PN.CLP

Based on the results of research at the Cilacap District Court, the crime of rape is quite high, this can be seen in the following table:

Table

Number of Child Rape Cases at Cilacap District Court 2020 to 2023

No	Year	Number of Cases
1	2021	4
2	2022	10
3	2023	14

Source: Cilacap District Court, 2023

In Decision Number: 95 Pid.Sus/2023/ Pn.Clp, the judge gave a verdict that the defendant was proven legally and convincingly guilty of committing a crime "by intentionally telling a series of lies to a child to have sexual intercourse with him" as regulated in Article 81 paragraph (2) of the Child Protection Law. The criminal threat for anyone who violates the provisions of the article above is a minimum of 5 (five) years and a maximum of 15 (fifteen) years in prison and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).

In this case, the sentence imposed on the defendant is imprisonment for 7 (seven) years and a fine of Rp. 50,000,000, - (fifty million rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 6 (six) months. The verdict is lower than the prosecutor's demands, which is a prison sentence of 9 years and a fine of Rp. 50,000,000, - subsidiary to 6 (six) months imprisonment. In the decision Number 95 / Pid.Sus / 2023 / PN Clp, resistance for the victim is also not included, this is because previously this case was rolled out in the Court between the perpetrators had made a contribution (in the form of money to the victim's child's parents) so that the judge did not include restitution in the decision.¹²

¹¹Bahder Johan Nasution, 2008, Legal Science Research Methods, Bandung: CV. Mandar Maju, p.174.

¹²Results of an interview with I Wayan Sugiartawan, as Judge of the Cilacap District Court, February 7, 2024.

Another opinion regarding the fulfillment of the right to restitution for child victims of rape was conveyed by Mrs. Sri Haryani, who stated that in many rape cases, restitution was not included in the judge's decision. This is because the victim does not understand what restitution is, coupled with most of the perpetrators' economic capabilities being categorized as poor or unable. So it is impossible to impose restitution with a high value, while for the victim it is very unfair if it is only limited to restitution with a small value.¹³

The 7-year prison sentence and a fine of Rp 50,000,000 according to the author is sufficient to provide legal protection for the victim. Even though in the trial the perpetrator did not even admit to having inserted his penis into the victim. The decision illustrates that in imposing a sentence, the judge is guided by Article 81 paragraph (2) of the Child Protection Law, where perpetrators of the crime of rape against children are threatened with a minimum prison sentence of 5 years and a maximum of 15 years and a maximum fine of 5 billion rupiah.

Decision Number 95 Pid.Sus/2023/PN.Clp has provided abstract legal protection for the victim, namely the victim's satisfaction because the perpetrator has been punished for his actions. Outside the trial, based on witness statements, the perpetrator has given some money as an apology. The imposition of imprisonment can be viewed from two main aspects of the purpose of punishment, namely the aspect of community protection and the aspect of improving the perpetrator. What is meant by the aspect of community protection includes the purpose of preventing, reducing or controlling criminal acts and restoring the balance of society (including resolving conflicts, bringing a sense of security, repairing losses/damage, eliminating stains, reinforcing the values that live in society). Meanwhile, what is meant by the aspect of improving the perpetrator includes various purposes, including rehabilitating and re-socializing the perpetrator and protecting him from arbitrary treatment outside the law.¹⁴

On the verdict Number 95 Pid.Sus/2023/PN.Clp the judge's decision has provided justice for the victim and also the perpetrator. In this case, the victim's hurt has been repaid by imposing a criminal sentence on the perpetrator, while the perpetrator must accept the punishment for the actions he has committed. The judge's decision has also provided benefits to the community, where by punishing the perpetrator, it can provide a deterrent effect for the perpetrator and also prevent the occurrence of criminal acts of rape against children, because the community will think about the criminal sanctions that will be received. With the issuance and reading of the decision in case Number 95 Pid.Sus/2023/PN.Clp in court after going through the trial process, the decision has permanent legal force, so that it has fulfilled the principle of legal certainty.

¹³Interview with Muhammad Arif, as an Advocate in Cilacap, February 12, 2024.

¹⁴Barda Nawawi Arief, 2002, Anthology of Criminal Law Policy, CitraAditya Bakti, Bandung, p. 224

3.2. Judge's Consideration in Decision Number 95 Pid.Sus/2023/ Pn.Clp in Providing Legal Protection for Child Victims of Rape

The judge's decision is a product of the trial process in court. While the court is the last place for justice seekers to escape, so the judge's decision should be able to meet the demands of justice seekers. In this regard, the judge in deciding his case must reflect three elements, namely justice, legal certainty, and benefit.¹⁵

The judge's consideration is one of the important aspects in determining the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and legal certainty. The judge's consideration must be examined and carefully because it contains benefits for the parties concerned. If the judge's consideration is not examined properly and carefully, then the judge's decision originating from the judge's consideration will be canceled by the High Court or the Supreme Court.¹⁶

In decision Number 95 Pid.Sus/2023/Pn.Clp, the judge stated that the defendant had been legally and convincingly proven to have committed the crime of rape against a minor, thus imposing a prison sentence of 7 years and a fine of 50 million rupiah, subsidiary to 6 months in prison. The judge's consideration in the decision was the legal consideration, namely the fulfillment of the elements of the crime charged by the public prosecutor. as it is known that the public prosecutor has charged the suspect with an alternative charge, namely Article 81 paragraph (2) of the Child Protection Law or Article 82 paragraph (1) of the Child Protection Law. Considering the form of the charge as such, the Panel of Judges can immediately consider the charge that is considered most appropriate for the defendant's actions.

Based on the description above, it can be seen that in determining criminal sanctions, a judge uses legal and non-legal considerations. In legal considerations, proof of the elements of a crime determines whether the defendant's actions are in accordance with or not in accordance with the crime charged by the prosecutor or public prosecutor. Legal factors are based on legal facts found in the trial. Legal facts are obtained during the trial based on witness statements and evidence. The judge uses these legal facts to determine whether a defendant's actions fulfill all the elements of the crime charged against him. These elements will indicate the type of crime that the defendant has committed, in this case the defendant's actions have fulfilled the elements in Article 81 paragraph (2) of the Child Protection Law.

According to Mr. Suyanto, the judge's consideration in decision Number 95 Pid.Sus/2023/PN.CLP is very appropriate. The elements of evidence and evidence

¹⁵Margono, 2012, *Principles of Justice, Benefit and Legal Certainty in Judges' Decisions*, Sinar Grafika, Jakarta, p. 37

¹⁶Mukti Arto, 2004, *Civil Case Practice in Religious Courts*, Yogyakarta: Pustaka Pelajar, p. 140.

of sexual intercourse are explained in such detail and very scientifically that they can be accepted rationally. This consideration is the key to proving that sexual intercourse has occurred, even though the perpetrator had helped. Because to prove this act, only the victim and the perpetrator are witnesses, when the perpetrator denied this act of sexual intercourse, in its considerations the panel of judges was able to explain the results of the Visum Et Repertum Number: 440.3/Ver/3592/16.8 dated February 9, 2023 very clearly and scientifically.¹⁷

The author is of the opinion that the judge's considerations in decision Number 95 Pid.Sus/2023/PN.CLP were appropriate. In the decision, the judge outlined considerations regarding the fulfillment of the elements of the crime in Article 81 paragraph (2) of the Child Protection Law. The judge also considered the aggravating and mitigating factors of the decision, these considerations were used as reasons by the judge in issuing his decision, whether in the form of a criminal decision or other.

Considerations regarding the aggravating and mitigating factors for the accused are regulated in Article 197 letter d and 197 letter f of the Criminal Procedure Code. Article 197 letter d of the Criminal Procedure Code states that Considerations that are compiled in brief regarding the facts and circumstances along with the evidence obtained from the examination at trial which are the basis for determining the guilt of the accused. While Article 197 letter f of the Criminal Procedure Code states that the Article of the legislation that is the basis for the criminalization or action and the legislation that is the legal basis for the verdict, accompanied by the aggravating and mitigating circumstances for the accused.

Judges as law enforcers have duties in the judicial field, namely to receive, examine, decide and resolve every case submitted to them. In their legal considerations, the position of judges is impartial (impartial judge) Article 5 paragraph (1) of the Judiciary Law. The term impartial must not be literal, because in making their decisions, judges must side with the right. In this case, it does not mean being impartial in their considerations and assessments. More precisely, the formulation of Article 5 paragraph (1) of the Judiciary Law states that the court judges according to the law without discriminating between people.¹⁸

The judge's legal considerations in making a decision must reflect the sense of justice of the community, namely not only based on legal considerations but also sociological considerations, by considering the subject of the perpetrator of the crime, namely the perpetrator's condition, the perpetrator's daily life, the perpetrator's age and also the things that underlie the perpetrator's committing the crime. What is more important is the consideration of children as victims of criminal acts as legal subjects who are directly affected by the actions committed

¹⁷Results of an interview with Mr. Suyanto, Advocate in Cilacap, January 27, 2024.

¹⁸Andi Hamzah, 2006, Criminal Code and Criminal Procedure Code, Rineka Cipta, Jakarta, p. 94.

by the defendant who is in fact their own biological father. Judges are required to have confidence by linking confidence with legitimate methods and evidence, and creating their own laws that are based on justice which of course does not conflict with Pancasila as the source of all laws.

4. Conclusion

PLegal protection for child victims of rape in decision Number 95 Pid.Sus/2023/PN.CLP is realized by imposing a prison sentence of 7 years and a fine of 50 million rupiah, subsidiary to 6 months imprisonment, which is a form of abstract legal protection for victims by providing a sense of satisfaction because the perpetrator has been punished. The judge's considerations in the decision were correct, where the judge had outlined the considerations regarding the fulfillment of the elements of the crime in Article 81 paragraph (2) of the Child Protection Law, although the perpetrator denied it, in its considerations the panel of judges was able to outline the results of its considerations through an analysis of the Visum Et Repertum.

5. References

Journals:

- Lilik Purwastuti Yudaningsih, Legal Protection for Children as Victims of Commercial Sexual Exploitation of Children (ESKA), *Journal of Legal Studies*, 2005.
- Mutiara Nastya Rizky, Legal Protection for Child Victims of Commercial Sexual Exploitation Through Social Media, *Media Iuris*, Volume 2 Number 2, June 2019.
- Setiyawati and Achmad Arifullah, Legal Protection for Child Victims of the Crime of Rape in Decision Number 239/PID.SUS/2022/PN.CLP, *Ratio Legis Journal*, Volume 2 No. 3, September 2023.
- Widya Cindy Kirana Sari, Legal Protection for Children as Victims of Sexual Exploitation Crimes, *IPMHI Law Journal*, Volume 2 Number 1, 2022.

Books:

- Andi Hamzah, 2006, *Criminal Code and Criminal Procedure Code*, Rineka Cipta, Jakarta.
- Bahder Johan Nasution, 2008, *Legal Science Research Methods*, CV. Mandar Maju, Bandung.
- Barda Nawawi Arief, 2002, *Anthology of Criminal Law Policy*, CitraAditya Bakti, Bandung.
- Leden Marpaung, 1996, *Crimes Against Morality and Problems of Prevention*, Sinar Grafika, Jakarta.
- M. Djunaidi Ghoni and Fauzan Almansur, 2012, *Qualitative Research Methodology*, ar-Ruzz Media, Yogyakarta.

Margono, 2012, *Principles of Justice, Benefit and Legal Certainty in Judges' Decisions*, Sinar Grafika, Jakarta

Mukti Arto, 2004, *Civil Case Practice in Religious Courts*, Pustaka Pelajar, Yogyakarta.

Mukti Fajar ND and Yulianto Achmad, 2013, *Dualism of Normative and Empirical Legal Research*, Pustaka Pelajara, Yogyakarta.

Regulation:

Law Number 35 of 2014 concerning Child Protection.

Law Number 39 of 1999 concerning Human Rights.

Law Number 48 of 2009 concerning Judicial Power.

Law Number 8 of 1981 concerning Criminal Procedure Law.

Law of the Republic of Indonesia Number 1 of 1946 concerning Criminal Law Regulations

The 1945 Constitution of the Republic of Indonesia

Internet:

Dwi Yoga Bayu Setiaji, Implementation of Criminal Sentences for Rape of Biological Children (Case Study at Mungkid District Court), <http://eprintslib.ummgl.ac.id>, accessed November 23, 2023.

Indonesian Media, 4280 Cases of Sexual Violence Occurred in Indonesia Throughout 2023, <https://www.metrotvnews.com>, accessed November 23, 2023.

LBH Semarang, National Children's Day, Grim Portrait of Cases of Violence Against Children in Central Java, <https://lbhsemarang.id>, accessed November 23, 2023.

Interview:

Interview with I Wayan Sugiartawan, as Judge of the Cilacap District Court, February 7, 2024.

Interview with Mr. Suyanto, Advocate in Cilacap, January 27, 2024.

Interview with Muhammad Arif, as an Advocate in Cilacap, February 12, 2024.