

Criminal Responsibility for Children as Perpetrator Criminal Act of Interception

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Abstract: *This paper aims to determine and analyze the legal construction of criminal responsibility for children as perpetrators of sexual intercourse and to determine and analyze the basis for legal considerations of judges in imposing criminal sanctions on children as perpetrators of sexual intercourse at the Madiun District Court. This study uses the Juridical Sociological method. To obtain data, this study uses primary data obtained from field studies with data collection techniques through observation and interviews at the Madiun District Court and secondary data obtained from literature studies. The results of the study indicate that the Law relevant to the crime of sexual intercourse against children is Article 81 paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as amended by Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law Jo Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System. The criminal sanctions imposed on the child perpetrators indirectly are two main criminal sanctions as regulated in Article 71 paragraph 1 of the Child Criminal Justice System Law. The basis for the Judge's legal considerations in making a decision is a legal consideration, namely considerations based on facts revealed in the trial and non-legal considerations contained in mitigating and aggravating matters. It is recommended that Judges in examining child perpetrators of crimes must be more careful and more observant so that in giving sanctions to child perpetrators, they are not criminal in accordance with the actions they have committed and that the Government immediately form Government Regulations and encourage the Special Child Development Institution (LPKA), Social Welfare Institution (LPKS), Special Child Service Room (RPKA) and Temporary Child Placement Institution (LPAS).*

Keywords: *Criminal; Children; Perpetrators;*

1. Introduction

Sexual violence committed by children is the highest case among the various types of criminal acts committed by children. In the article 81 paragraph (2) of Law Number 17 of 2016 concerning the Stipulation of Regulations The government replaced Law Number 1 of 2016 concerning changes secondly, Law Number 23 of 2002 concerning Child Protection The law has stated that against individuals who committing the crime of sexual intercourse will be subject to criminal sanctions.

In cases of criminal acts of sexual intercourse committed by children PA in the Decision of Case Number: 1/Pid.Sus-Anak/2024/PN Mjy who is 14 years old years and 10 months. In the trial process of the District Court judge Madiun Regency issued a verdict in the case with the number: 01/Pid.Sus- Child/2024/PN.Mjy. The perpetrator's child with the initials PA who is still 14 (four) years old.

18) years old was declared to have been proven legally and convincingly guilty committing a crime "by intentionally carrying out trickery, a series of lies, or persuading the child to have sexual intercourse with him or her with other people" and was sentenced to 2 (two) years in prison at the Blitar LPKA and criminal work training in lieu of a fine for 3 (three) months at the Office Madiun Regency Workforce.

Related various study Which discuss about criminal responsibility for children as perpetrators of sexual intercourse, author found several studies that discussed similar topics. Although the topics the research conducted shows similarities, but there are several aspects that make these studies different from the research that will be carried out raised in this scientific work. The researches referred to are as follows:

1. Zulfikri, "Resolution of Criminal Acts of Sexual Intercourse Committed by Child Against Child: A Study at the Takengon District Court". Research object which is raised in this scientific paper is based on research results to the investigator for the protection of women and children of the Takengon Police that in the crime of sexual intercourse committed by a child against children, no diversion resolution was carried out because it was not fulfill the provisions for criminal acts that can be prosecuted diversion as stipulated in Article 7 of Law Number 11 2012 on the Juvenile Criminal Justice System. So that criminal acts sexual intercourse carried out by a child against a child, then the process settlement in court. Then the differences can also be identified in the formulation of the problems raised, where this research raises the problem formulation is as follows: How to Settle Legal Actions Crimes Committed by Children Against Children. While the research that what is raised in this writing is the basis for the judge's considerations in imposing criminal charges against children as perpetrators of crimes intercourse at the Madiun District Court in the Case Number: 01/Pid.Sus Anak/2024/PN.Mjy.
2. Faizin Gigih Wardana, "Criminal Responsibility for Perpetrators Sexual Intercourse Against Children (Praya Decision Study Number: 7/Pid.Sus-Child/2022/PN PYA)". This research raises the topic that judges imposing a 1

(one) year correctional sentence on the Institution Special Child Development Center (LPKA) Central Lombok and convicts receive 2 (two) months of work training at LPKS Paramitha Mataram with supervision of the Public Prosecutor and Mataram Correctional Center. Meanwhile, in this research, what is raised is the judge's decision in the form of imprisonment and job training as a substitute for a fine.

3. Mahalia Nola Pohan & Sri Hidayani, "Accountability for Legal Review of Criminal Act of Committing Sexual Intercourse Against a Child According to the Law Law Number 35 of 2014". The research raised the issue Legal Consequences of the Criminal Act of Having Sexual Intercourse with a Child and the Causal Factors for the Criminal Act of Committing Sexual Intercourse Towards Children, while the research raised by the author is regarding the criminal responsibility of children who commit sexual intercourse and the basis the judge's considerations in imposing criminal charges against children as perpetrators of the crime of sexual intercourse.

From several scientific papers above, it can be concluded that the topic that will be brought up in the criminal act of sexual intercourse committed by the perpetrator's child on children has never been written in previous scientific works.

In connection with the background mentioned above, what will be studied is: in this article are: (1) how is the construction of legal responsibility criminal proceedings against children as perpetrators of sexual intercourse in court Madiun Regency District Court in Case Number: 01/Pid.Sus-Anak/2024/PN.Mjy and (2) what is the basis for the judge's legal considerations in imposing criminal sanctions sexual intercourse at the Madiun District Court in Case Number: 01/Pid.Sus-Anak/2024/PN.Mjy.

2. Research Methods

The research methodology in this paper uses legal approach in a way *Juridical Sociology* with types of research *analytical descriptive*, the data sources in this study are primary data obtained from field studies with data collection techniques through observation and interviews and secondary data obtained from literature studies related to this study. The theories used are the Theory of Criminal Responsibility and the Theory of Punishment and the Purpose of Punishment.

3. Results and Discussion

3.1. Legal Construction of Criminal Responsibility for Children as Perpetrators of Sexual Intercourse Crimes at the Madiun District Court (Case Number: 01/Pid.Sus-Anak/2024/PN.Mjy)

Juvenile criminal justice is carried out separately and must be implemented special handling. The Juvenile Criminal Justice System (SPPA) is the entire process of resolving cases involving children law, from the investigation stage to the guidance stage after serving a sentence. Special Protection is a form of protection received by children in certain situations and conditions for get a sense of security from threats that endanger yourself and the soul in its growth and development.

Criminal liability child different with criminal responsibility for adults as perpetrators of criminal acts. The emphasis on juvenile criminal acts is greater than on adult criminal acts. in the criminal justice system. The criminal justice system for children as which is specifically regulated in the criminal justice system law children. 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 principles of protection Children have an obligation to provide special protection children in conflict with the law. The treatment of children who commit crimes must be different from adult criminal acts.

A person who can be held accountable under law Islam does not explain age limits but rather is based on signs. a certain sign, someone said *puberty* or sensible in men if had a wet dream and the woman was menstruating.

In Islamic law, criminal responsibility is caused by three things:

matter:

- 1) There are prohibited acts.
- 2) The act was done of one's own free will.
- 3) The perpetrator knew the consequences of his actions.

In certain circumstances, sometimes an action is carried out by someone there is a reason for the elimination of errors, and for the reason the removal of the error so that a person cannot be charged criminal responsibility, this is based on the hadith of the Prophet narrated by Imam Ahmad and Imam Abu Dawud, from Aisyah ra. Rasulullah SAW has said: the legal provisions are removed from three things, from the person who sleeps until he wakes up, from the insane until he is cured, and from the little child until he is until he grows up.

In positive law in Indonesia, children who commit crimes can still be held accountable, criminal threats for children who commits an act that is against the law is determined by The Juvenile Criminal Justice System Law, where the sentencing is determined to be half of the maximum criminal penalty for adults, while the imposition of life imprisonment and the death penalty are not enforced towards children.

The crime of sexual intercourse that is charged to a child the perpetrator as regulated in Article 76D of Law Number 35 of 2003 2014 concerning Child Protection states:

"Everyone is prohibited from committing violence or threats of violence. forcing the child to have sexual intercourse with him or another person."

The criminal sanctions contained in Article 76D are regulated in Article 81

Article (1) of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection

as amended by Law of the Republic of Indonesia Number 17 of 2016 regarding the Determination of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 In 2002 Concerning Child

Protection became a Law of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System reads:

"Any person who violates the provisions as referred to in Article 76D is punishable by imprisonment for a minimum 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)".

According to the judge in the examination of the above case based on the facts revealed that the crime was committed by the child of the perpetrator who the judge believes has committed the crime of sexual intercourse has fulfilled the elements as charged by the prosecutor general in the public prosecutor's demands, every person, intentionally, and elements of the act, and the judge did not find anything that could remove responsibility for both justification and forgiveness, then the judge imposed sanctions on the perpetrator's child by the decision is as follows:

1. To declare that the above PA child has been proven legally and convincingly guilty of committing a crime "*persuade the child to do sexual intercourse with him as the primary charge*";
2. Sentencing the child to imprisonment therefore for 2 (two) years at the Blitar Special Children's Development Institution (LPKA) and job training at the Manpower and Transmigration Service of Madiun Regency for 3 (three) months;
4. Determine that the child is detained;
5. Reject the Applicant's Restitution Application;
6. Determine evidence in the form of:
 - 1) (one) piece of black long-sleeved t-shirt
 - 2) (one) pair of black culottes
 - 3) (one) piece of pink bra and
 - 4) (one) pair of purple panties (*seized for destruction*)
7. Charge the child to pay court fees in the amount of Rp. 5,000,- (five thousand rupiahs).

Looking at the decision above, it can be seen that the judge has made an analogy that the actions of the child perpetrator fall into the category of criminal acts of sexual intercourse and Laws relevant to the crime of sexual intercourse with children are as regulated in article 76D of the Law Number 35 of 2014 concerning Child Protection.

if analyzed using the Theory of Responsibility According to Roeslan Saleh, crime in a broad sense has three areas. including:

1. The ability to be responsible for the person who committed the act, namely seen in the consideration that the Panel of Judges did not find anything which can

eliminate criminal responsibility, either as a reason justification and/or excuse, then the child must be responsible for his actions, that because the Child is capable responsible, then must be declared guilty and sentenced to criminal penalties, then in his considerations he stated that the child during the examination process before the court was conducted normally and could answered well the questions asked of him both to the Judge, Public Prosecutor and Legal Counsel and understand and provide The judge also said that there was a good response to the testimony of the witnesses that the child mentioned above is a physically and mentally healthy person and can be held accountable for the actions he has committed.

2. The inner relationship (physical attitude) of the person doing the action with his actions are actions that are intentional, namely being able to seen from the consideration of the element of intention, it has been proven that Before committing an action against a child, the victim must first invite by giving sentences or words that make children psychologically interested and giving hope or promise and giving the hope that this is solely to channel lust his lust for the victim's child himself.
3. There is no reason to eliminate criminal responsibility for the creator.

This can be seen in the considerations of the Panel of Judges, namely that the victim's child is considered do not have the capacity or ability to give consent which is legitimate in sexual relations, and does not have maturity in physical, emotional, and legal to make decisions about activities

the sexual act he committed and what legal consequences arise from his actions the. So, in the Judge's opinion, the reason is "consensual" becomes irrelevant to apply in intercourse involving children. This is certainly in line with the philosophical foundation contained in in the laws and regulations governing child protection, namely prioritizing protection for children, then on the same basis the Judge considered this case as well also prioritizes protection for children in order to enforce the law which is fair and the Judge did not find anything that could eliminate criminal liability, either as a justification and or reasons for forgiveness, then the child must be held responsible his actions.

3.2. Basis for Judges' Considerations in Imposing Criminal Sanctions on Children as Perpetrators of Sexual Intercourse Crimes at the Madiun District Court in Case Number: 01/Pid.Sus-Anak/2024/PN Mjy.

The judge has complete freedom to determine the type criminal and the high or low level of a criminal sentence, the judge has the freedom to move at the minimum and maximum limits, the criminal penalties regulated in the law for each criminal act.

The basis for the judge's considerations in making a decision can be divided into two categories, namely: Legal considerations, namely the judge's considerations are based on legal facts revealed in the trial and determined by law as matters that must be included in the decision, and considerations that are of a nature non-

juridical, namely the judge in making his decision looks more at to the defendant's background, the consequences of the defendant's actions and his/her personal condition the accused and the accused's religion. The basis for judges' considerations in imposing criminal sanctions against children as perpetrators of sexual intercourse crimes in court Madiun Regency District Court in case Number: 01/Pid.Sus-Anak/2024/PN Mjy among others:

1. The public prosecutor's charges, against the Public Prosecutor's charges, Child The perpetrator and the child's legal advisor stated that they understood and will not raise any objections.
2. Witnesses, to prove the charges, the Public Prosecutor has presenting witnesses including:
 - a. Child Victim
 - b. Lilis Umiati (Mother of the Victim's Child)
 - c. Budi Mulyono
 - d. Bambang Sulistyono
 - e. Fitria Pahes Ika alias Sisca
 - f. Statement of the Perpetrator's Child
 - g. Evidence.

That in the judge's consideration, the child perpetrator has been charged by Public Prosecutor with charges in the form of subsidiarity, so that The judge, taking into account the legal facts above, first prove Primair's charges as regulated in Article 81 paragraph (2) of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments on Law Number 23 of 2002 concerning Child Protection as amended by Law of the Republic of Indonesia Number 17 of 2016 regarding the Determination of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 In 2002 Concerning Child Protection became a Law Jo Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which the elements are as follows:

- a. Every person;
- b. Intentionally committing fraud, a series of lies, or persuade the child to have sexual intercourse with him or with another personother;

Considering that regarding these elements, the Judge consider it as follows:

1. Elements Every person;

Considering that what is meant by the element "Every person" in the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Protection A child is an "individual or corporate person" which in this case is as a legal subject, namely as the bearer of rights and obligations or whoever the perpetrator of the criminal act that was committed can accountable to him, in this case directed towards himself Children who are in conflict with the law are children who are in conflict by law;

Considering that based on Article 1 number 3 of the Republic of Indonesia Law Number 11 of 2012 concerning the Criminal Justice System which refers to children those in conflict with the law, hereinafter referred to as children, are children who is 12 (twelve) years old, but not yet 18 (eight) years old twelve) years which in this case the Public Prosecutor has submitted in court the child named PAHES WIJAYA alias JAYA Bin JATMIKO (Deceased), who at the start of the trial the identity of the child had been investigated carefully by the Child Judge, the identity has also been confirmed by the Child as his/her identity as stated in the Birth Certificate Number 2739/2008 attached to the file, it turns out that the child has not been reaching the age of 18 (eighteen) years;

Considering that the Child during the examination process in front of the trial behaved normally and was able to answer well questions put to him both to the Judge and the Public Prosecutor and Legal Advisor and understand and provide good responses based on the statements of the witnesses; Considering, that based on the considerations in above, the Judge is of the opinion that the Child above is a healthy person physically and spiritually and can be held accountable for it the actions he did;

Considering, that in this way the elements of each person have been fulfilled according to law;

2. The element of deliberately carrying out trickery, a series of lies, or persuades the child to have sexual intercourse with him or her with other people;

Considering that this element is of an alternative nature, which means If one element of this element has been fulfilled then the other elements in this element it is considered to have been fulfilled;

Considering that what is meant by intent is:

"willing and knowing". This means that someone who does something deliberate action, must intend and realize the action and/or the consequences. So it can be said that intentionally means wants and knows what to do so that people doing an action intentionally intending that action and besides knowing or being aware of what is being done and the consequences that will arise therefrom;

Considering that the meaning of the element "committing deception, a series of lies, or persuasion" is as follows: to do trickery means the perpetrator does something with his wits his cunning towards other people so that people are deceived with the aim of making him the perpetrator can do his actions. Definition of a series of lies is the perpetrator doing words that appear to be true to other people so that the person is willing to obey the perpetrator's wishes, even though what he said actually did not contain any truth.

Considering that what is meant by persuading is an act the perpetrator to influence other people as he wishes in such a way sympathetic, gentle and kind, so that with that influence, people who influenced to comply with the perpetrator's wishes;

Considering that the definition of sexual intercourse according to R. Soesilo, referring to the Arrest Hooge Raad dated February 5, 1912, namely "the complaint between male and female genitals which is carried out forget a child, so the male member must enter the member women so that they ejaculate semen" (R. Soesilo, 1981: 209); Considering that based on the definition of "Child" in the Law Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is a person who is not yet 18 (eighteen) years old, including children who still in the womb and based on Birth Certificate Excerpt Number 3519- LT27042018-0035 as attached in the file on behalf of the Child The victim is MELATI PUTRI WIDYA KASIH and after being connected with Witness statements, children in conflict with the law and facts in The trial found that both physically and mentally the victim's child was still aged 13 (thirteen) years apart from the time this case occurred It turns out that the victim's child has not yet reached the age of 18 (eighteen) year;

Considering that based on the revealed legal facts in court that the child and the victim's child knew each other on Friday July 21, 2023 at around 20.00 WIB at Jiwan field, Madiun Regency, after being introduced by Anak's friend named Sdri. JELES and Son with the victim's child, he had sexual intercourse at the child's house. still in the room, namely on Jl. Setya Dharma RT/RW: 017/004 Village/District. Jiwan, Madiun Regency, on Saturday, July 22, 2023 at around 21.00 WIB where the child had sexual intercourse with the victim child in the way that when the child invites the victim child to his house, the child tells him to The victim's child entered the room saying "LET'S GO INTO THE ROOM" (LET'S GO INTO THE ROOM)

The victim's child answered "AKU EMOH" (I DON'T WANT TO), then the child said "WES TO MANUTO" (JUST FOLLOW ME) so that the victim child follow the child to his room after being in the child's room and The victim's child chatted, then the child put his arm around the victim's shoulder The victim and then the child said "KOWE KI AYU" (YOU ARE BEAUTIFUL) while groping the victim's child's cheeks, kissing the right cheek, lips, left cheek, then the child kissed the victim's lips then the child closed the door the room from the inside and locked it then had sex with the child The victim then took off the child's shorts and underwear. The victim said "DILEBOKNE YA" (INSERT YES) which position the child's penis was already erect, the victim's child replied "NO THO, NGGKO NEK WES" "NOT A VIRGIN, OTHERWISE YOU WILL NOT BE A VIRGIN"

HOW? then the Child lifted the Victim Child's shirt and opened it hook of the victim's child's bra, then the victim's child's breasts were squeezed, kissed and nipples sucked, then the child climbed onto the victim's body and inserted his penis into the vagina of the victim's child and the victim's child said "IT HURTS", after a while his penis could go inside a little.

The victim's vagina was moved back and forth while kissing the victim's lips. The victim a few moments later the child pulled out his penis and took out return the sperm to the blanket, with the position still on top of the victim's child's body,

then the child says "DILEBOKNE ENEH YA" (INSERT AGAIN YES) and the victim's child remained silent and then the child immediately pushed his penis inside.

The victim's child's vagina repeatedly and ejaculated his sperm on the blanket again After completing sexual intercourse, the child and the victim use clothes then we went out of the room and met the child's grandfather in the TV room;

Considering that based on the trial facts from statements from witnesses Bambang Sulistyono, witnesses Fitria Pahes Ika alias Sisca and Statement from the Child and the Victim's Child that the Child's grandfather/Witness Bambang Sulistyono had said that he had to come home quickly. The girl didn't. It's good to play at night, then the child takes the victim's child to the terrace and met Anak's older sister with her boyfriend, then Anak return to his home;

Considering that as a result of the Child's actions, the Child Victim experienced lacerations on the genitals as per the results of Visum Et Repertum Number: VER/440/49/RM/401.103.8/2023, dated 24 August 2023, made and signed by Dr. Fitria Khusnul Khotimah, Sp. OG, examining physician at Sogaten Regional Hospital, Madiun City, which has conducted an examination against Melati Putri Widya Kasih, with the results of the conclusions obtained 13 year old girl with torn hymen due to sexual contact with a blunt object;

Considering that based on the description above it has been proven that Before committing an action against a child, the victim must first invite by giving sentences or words that make children psychologically interested and giving hope or promise and giving the hope that this is solely to channel lust his lust for the Victim's Child himself;

Considering that based on the above matters, the Judge is of the opinion that the elements in this article have been fulfilled according to law;

Considering that because of all the elements of Article 81 paragraph (2) Republic of Indonesia Law Number 35 of 2014 Concerning Amendments to the Law Law Number 23 of 2002 concerning Child Protection as has been amended by Law of the Republic of Indonesia Number 17 of 2016 concerning the Determination of

Government Regulation in Lieu of Law Number 1 of 2016 Regarding the Second Amendment to Law Number 23 of 2002 Concerning Child Protection becoming a Law in conjunction with the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, then the Child must be declared to have been proven legally and convincingly guilty committing a crime as charged in the Primary indictment Public prosecutor;

Considering that as regulated in the Law RI Number 11 of 2012 concerning the Juvenile Criminal Justice System outlines that the punishment imposed on children must be based on restorative justice which emphasizes restoration to the situation originally and not in retaliation, intended to avoid stigmatization towards children in conflict with the law and it is hoped that children can return to the social environment in a normal manner;

Considering that therefore the criminal act is in the form of a restriction temporary release imposed on the Child in above, must be done within the shortest time period in accordance with provisions of Article 3 letter g of the Republic of Indonesia Law Number 11 of 2012 concerning The Juvenile Criminal Justice System must pay attention to physical needs, spiritual and social well-being of the child while he is serving his sentence;

That regarding the sanctions given to the Child, the Judge concluded that the punishment imposed on the child was in the form of a criminal sentence the point where the temporary separation between the child and his parents in the form of temporary freedom for children is something that the best thing to do at this time, in this way it is hoped that the child will can significantly change children's behavior and understanding of the meaning responsibility for what one does;

Considering that by placing the Child in an Institution It is hoped that the Special Child Development (LPKA) will have an impact on change Students' self both mentally and socially. Character-based coaching the character of LPKA students is related to the child's behavioral patterns, morals and attitudes educate. LPKA at the structural level has a role and task in implementing coaching and having a reciprocal relationship with students which shows that there are latent functions, manifest functions, and LPKA dysfunction in coaching, apart from that, in the LPKA, children with education The formality can continue and make the child a better person and responsible for the best interests of the child himself;

Considering that in order to impose a criminal penalty on a child, it is necessary consider first the aggravating circumstances and the ones make things easier for children:

Aggravating circumstances:

1. The child's actions are not appropriate because they are contrary to with legal, religious and moral norms;
2. The child's actions result in the child victim receiving a negative stigma in society, causing the child victim to lose trust himself;
3. The parents of the victim child have not been able to forgive the child's actions;

Mitigating circumstances:

1. The child is classified as a minor;
2. Children commit crimes without fully realizing the impact and consequences. as a result and it is hoped that after serving his sentence he will realise his mistakes and improve himself to become a better person and useful for society;
3. Children are still actively participating in education;
4. The child has never been punished

That in the decision of case Number: 1/Pid.Sus-Anak/2024/PN Mjy, this Panel of Judges has applied the Theory of Criminalization, at least it can seen from the basis for considering the decision which is based on the theory criminalization, namely the

phrase "then the child must be declared to have proven legally and convincingly guilty of committing a crime as charged in the Public Prosecutor's Primary Indictment". From the phrase it can be assessed that the Panel of Judges declared the Child guilty and deserves to be punished for committing a crime. Then the theory criminalization can also be assessed from the determination of the child to remain in detention, namely the phrase "that because the child is able to responsible, then must be declared guilty and sentenced to criminal penalties" and the phrase "that because the Child is not being detained and in the opinion of the Judge sufficient reason to detain because the child has been sentenced to prison, then it is necessary order the Child to be detained". So it is reflected that the Child "must "punished" with the aim of retaliating for what the perpetrator has done. perpetrators of criminal acts (children).

Then the reflection of the application of the theory of punishment in this decision can be seen from the basis of aggravating and mitigating factors for children, as follows:

Aggravating circumstances:

1. The child's actions are not appropriate because they are contrary to with legal, religious and moral norms;
2. The child's actions result in the child victim being stigmatized negative in society that causes the victim's child to disappear his self-confidence;
3. The parents of the victim child have not been able to forgive the child's actions;

Mitigating circumstances:

1. The child is classified as a minor;
2. Children commit crimes without fully realizing that they will

the impact and consequences and it is hoped that after serving his sentence can realize his mistakes and improve himself as a person which is better and more useful for society;

- 1) Children are still actively participating in education;
- 2) The child has never been punished.

Then, if we examine the application of the theory of punishment by the Panel of Judges we can see from the basis of the considerations in which the Panel of Judges stated that he did not find any excuse or justification for can eliminate criminal liability.

Considering that during the trial, the Judge did not find anything- things that can eliminate criminal responsibility, either as justification and/or excuse, then the child must take responsibility for his actions.

That based on the considerations of the Panel of Judges in its decision This is reflected in the Absolute Theory, the point of which is the imposition of criminal penalties.

is on the retribution given to criminals so anyone those who do evil must be punished without looking at the consequences that may arise arises due to the imposition of criminal penalties and the Theory of Objectives which is based on the principle on the basis that criminal law is a tool to enforce order (law) in society. The purpose of

criminal law is social order, and to enforcing the rules requires criminal sanctions.

4. Conclusion

Based on the research results, it is known that the actions of the child perpetrators including the category of criminal acts of sexual intercourse and the laws that apply by the judge in imposing sanctions for the crime of sexual intercourse with a child is as regulated in Article 76D of Law Number 35 of 2003. 2014 Concerning Child Protection, so that the sanctions imposed on children perpetrators of sexual abuse as regulated in Article 81 paragraph (2) of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 Concerning Child Protection as amended by Law RI Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to the Law Law Number 23 of 2002 concerning Child Protection becomes Law In conjunction with Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System while the basis for the judge's legal considerations in imposing sanctions on children perpetrators of sexual intercourse as in Decision Number: 1/Pid.Sus-Child/2024/PN.Mjy is a legal consideration, namely the facts in the trial and subjective considerations or beliefs of the Judge.

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August 2024

Bayu Adhipratama, Judge of the Madiun Regency District Court, *Interview*, 27

Concerning Amendments to Law Number 23 of 2002 Concerning Child Protection.

Decision Number. 1/Pid.Sus-Anak/2024/PN. Mjy, dated March 5, 2024.

Indictment Number. REG.PERK: PDM- 82/Mjn/Eku.2/01/2024, District Attorney's Office Madiun Regency, November 27, 2023, For Justice and Truth Based on the Almighty God.

Letter of Claim Number.Reg.Perk: PDM- 82/Mjn/Eku.2/01/2024, District Attorney's Office Madiun Regency, February 13, 2024, For Justice and Truth Based on the Almighty God.