

Analysis Legal Criminal Responsibility for Children as Perpetrators of Criminal Acts from the Perspective of Substantive Justice (Study of Decision Number: 33/Pid.Sus-anak/2023/PN CLP)

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Abstract. *Crime as a form of human behavior that is very detrimental to society, because it threatens the norms that underlie life or social order can cause individual tensions, as well as social tensions. The incidents of crime in Indonesia are not only committed by adults, but also children can become perpetrators of crimes, not a few of which have even touched the realm of sexual intercourse. The crime of sexual intercourse by children against children is part of morality regulated in Law Number 23 of 2002 concerning Child Protection. The problem in this study is to determine and analyze the criminal responsibility of children as perpetrators of criminal acts in Decision Number 33 / Pid.Sus-Anak / 2023 / PN Clp. As well as to determine and analyze the decision of the Cilacap District Court judge Number: 33 / Pid.Sus-Anak / 2023 / PN Clp. from the perspective of substantive justice. The research approach used in this study is through a normative legal approach using secondary data obtained through literature studies, then data analysis is carried out using qualitative descriptive analysis. Based on the results of the study, in the Criminal Liability of Children in Decision Number 33/Pid.Sus-Anak/2023/PN Clp, the perpetrator child who is over 14 years old has met the requirements to be held criminally responsible in accordance with the SPPA Law. Because the crime he committed has a criminal penalty of more than 7 years, diversion cannot be applied. Meanwhile, the decision of the Cilacap District Court judge Number: 33/Pid.Sus-Anak/2023/PN Clp. in the perspective of substantive justice by the panel of judges sentenced him to 2 years in prison and a fine replaced with 3 months of job training. This decision was based on legal and non-legal considerations, as well as existing facts and evidence, so that it was considered to have fulfilled the aspect of substantive justice.*

Keywords: *Accountability; Children; Intercourse.*

1. Introduction

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the Republic of Indonesia is a state based on law.¹so that every human activity must be based on existing regulations to combat crime.

Crime as a form of human behavior that is very detrimental to society, because it threatens the norms that underlie life or social order, can cause individual tensions, as well as social tensions.²The crime incident in Indonesia is not only committed by adults, but also children can be perpetrators of crimes that have even touched on the realm of sexual intercourse. The crime of sexual intercourse by children against children is part of morality regulated in Law Number 23 of 2002 concerning Child Protection.³

In law enforcement, children who are in conflict with the law have the right to be treated differently from adults in the same criminal act. This aims to realize the handling of children's cases by paying attention to the interests of the child and not harming their physical and mental development.⁴In paying attention to the protection of children's rights, it does not eliminate the responsibility of the child perpetrator, law enforcers must be able to "prove" the guilt of the child perpetrator of the crime of sexual intercourse.⁵

One of the cases of sexual intercourse was also decided at the Cilacap District Court with Number 33/Pid.Sus-Anak/2023/PN Clp, in this case the child perpetrator violated Article 81 paragraph (2) Jo Article 76D of Law 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, Law Number 11 of 2012 concerning the Child Justice System, so that the child perpetrator was declared legally and convincingly proven guilty of committing the crime of "Intentionally carrying out trickery to persuade a child to have sexual intercourse with him" and was sentenced to 2 (two) years in prison and a fine replaced with 3 (three) months of job training.

Based on the description of the background of the problem above, the author is interested in researching and studying it in the form of a scientific thesis entitled

¹Muhammad Baharuddin and Akhmad Khisni, Effectiveness of Pleidoi by The Supreme of Criminal Murder, Law Development Journal, Vol. 2 No. 2, June 2020, p. 10

²Andi Hamzah, 2009, Criminal Law Terminology, Sinar Grafika, Jakarta, p. 32.

³Nashriana, 2014, Criminal Law Protection for Children in Indonesia, Rajawali Pers, Jakarta, p. 1

⁴Susan Estrich, Kelly D. Weisberg (ed), 2006, Application of Feminist Legal Theory to Women's Live: Sex, Violence Work and Reproduction, Temple Univ Press, New York, p. 431-432

⁵Maidin Gultom, 2017, Legal Protection for Children and Women, Refika Aditama, Bandung, p. 69.

"Legal Analysis of Criminal Responsibility for Children as Perpetrators of Criminal Acts from the Perspective of Substantive Justice (Study of Decision Number: 33/Pid.Sus-Anak/2023/PN Clp)".

2. Research Methods

The approach method used by the author in compiling the journal uses the normative legal method. The research specification used in this study is the descriptive analysis type. In this study, the author emphasizes library research and primary materials in the form of applicable laws and secondary materials in the form of expert opinions, law books, journals and magazines.

The data collection technique used in this study used literature study, by collecting data from the results of reviewing library materials and secondary data including primary legal materials, secondary legal materials and tertiary legal materials. The data analysis technique in this study was carried out using qualitative data analysis, namely giving meaning and interpreting each data, after being processed, it is then manifested in the form of sentences systematically to draw a conclusion about the object being studied.

3. Results And Discussion

3.1. Criminal liability of children as perpetrators of criminal acts in Decision Number 33/Pid.Sus-Anak/2023/PN Clp.

Criminal liability is the enforcement of the law against the rules of law that have been applied. In the provisions of Law Number 11 of 2012 concerning the Juvenile Justice System, it is stipulated that children under 12 (twelve) years of age are considered unable to be held accountable for the criminal acts they have committed. Children who are over 12 (twelve) years of age but under 18 (eighteen) years of age are considered capable of being held accountable for the criminal acts they have committed.

In the SPPA Law, it has been regulated regarding the transfer of the settlement of Children's cases from the criminal justice process to a process outside the criminal justice system called diversion. The settlement of children's cases outside the criminal justice system must be attempted through diversion at the level of investigation, prosecution, and examination of Children's cases. Diversion can be carried out in cases where the crime committed is threatened with imprisonment of less than 7 (seven) years; and is not a repetition of the crime.

In the case of Decision Number 33/Pid.Sus-Anak/2023/PN Clp. The Judge stated that the Child had been proven legally and convincingly guilty of committing the crime of "Intentionally committing trickery to persuade the Child to have sexual intercourse with him" which violates 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 in the first alternative charge of the Public Prosecutor, and the Judge sentenced the Child therefore to imprisonment for 2 (two) years and a fine replaced with job training for 3 (three) months.

For children as perpetrators of sexual intercourse that violates Article 76 D or E of Law Number 35 of 2014 and the perpetrator is 14 years old, diversion cannot be carried out, because as stated in Article 7 paragraph 2 of the SPPA Law, it is not fulfilled. The first requirement for diversion is that the crime is subject to a prison sentence of less than seven years, while violations of Article 76 D and E of Law Number 35 of 2014, the perpetrator is subject to a maximum prison sentence of 15 years and if the perpetrator is a child according to Article 81 paragraph 2 of the SPPA Law, the prison sentence that can be imposed on a child is a maximum of 1/2 (one half) of the maximum prison sentence for adults. Therefore, a child who is 14 years old but not yet 18 years old as a perpetrator of sexual abuse can be sentenced to a maximum of 7.5 years in prison. This has exceeded the threshold for diversion to be applied to him. Thus, the judge's decision not to apply diversion is in accordance with applicable legal provisions. So that the child must be held responsible for the criminal acts committed in the form of imprisonment as determined by the panel of judges.

This is also in line with the theory of criminal responsibility, criminal responsibility is intended to determine whether a suspect/defendant is held responsible for a crime that occurs or not, in other words whether the defendant will be punished or acquitted. If he is punished, it must be proven that the act committed was unlawful and the defendant is able to be responsible. This ability shows the fault of the perpetrator in the form of intent or negligence. This means that the action is reprehensible, the accused is aware of the action taken.⁶

The theory of criminal responsibility basically demands that a person can be held responsible for a crime he has committed if he meets three main requirements, namely the existence of an unlawful act, the existence of a mistake (*dolus* or *culpa*), and the ability to be responsible (criminal responsibility).

In this case, the element of an unlawful act has been fulfilled through the act of deceit committed by the perpetrator. The element of guilt is also fulfilled because the judge found that the child perpetrator committed the act intentionally (*dolus*), which is proven by the manipulative action to persuade the victim to have intercourse. Finally, the element of responsible capacity is also relevant in this case because the child perpetrator is declared to have been mentally and physically capable of understanding and controlling his actions, so that he can be held criminally responsible.

In this case, the Judge found that the child as the perpetrator had fulfilled the element of intent in deceiving the victim to persuade the victim to have sexual intercourse. This is in line with the principle of criminal responsibility, where perpetrators who are mentally and physically capable are considered responsible for their deliberate unlawful actions. So the judge decided that the Child was proven legally and convincingly guilty of deceiving another child to have sexual

⁶Kanter and Sianturi, 2002, *Principles of Criminal Law in Indonesia and Their Implementation*, Storia Grafika, Jakarta, p. 54

intercourse, which is a violation of Article 81 paragraph (2) of Law No. 35 of 2014 concerning Child Protection.

From the perspective of criminal responsibility theory, a 2-year prison sentence and a 3-month job training sanction indicate that the judge considers that the child has the capacity to be responsible for his actions, even though he is still in the category of children. In addition, in the case of children as perpetrators of crimes, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System emphasizes that criminal responsibility for children must be carried out with a different approach than adults. With the judge also providing an alternative in the form of a fine that is replaced with 3 months of job training. This shows that the judge pays attention to the rehabilitation and development factors of the child perpetrator, not just punishing to provide a deterrent effect.

3.2. Decision of the Cilacap District Court Judge Number: 33/Pid.Sus-Anak/2023/PN Clp. In the Perspective of Substantive Justice

Every court proceeding is always led by a judge who has the authority to decide a case in court.⁷The Panel of Judges in its decision tried the Defendant based on legal considerations and philosophical or non-legal considerations. Legal considerations are considerations based on legal facts revealed in the trial and are stipulated by law as things that must be included in the decision. While non-legal or philosophical considerations are considerations that are based on the detrimental and damaging impacts on the order of life in society, nation and state.⁸

Based on the Decision of the Cilacap District Court Number 33/Pid.Sus-Anak/2023/PN Clp, the elements contained in Article 81 paragraph (2) Jo. Article 76D of the Republic of Indonesia Law Number 17 of 2016 concerning the Stipulation of Perpu Number 1 of 2016 concerning the Second Amendment to the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection. The elements in the Law are: anyone; intentionally commits deception, a series of lies, or persuades a child to have sexual intercourse with him or with another person.

The actions of the Child Perpetrator have fulfilled the elements of the first indictment of the Public Prosecutor, but because the form of the indictment is alternative and not cumulative, the judge cannot decide the case that is not based on the indictment from the public prosecutor, so it can be said that the indictment is a form of basis in deciding the case, because the indictment is the basis for examination or benchmark in trying a criminal case and the judge may not decide a case that is not charged by the public prosecutor.

The judge's considerations in applying criminal provisions to the perpetrator in this case have been appropriate, where the judge has considered both legal

⁷Rachmani Puspitadewi, A Brief Note on the Development of Judicial Power in Indonesia, *Pro Justitia Journal*, Vol 24 No 1, January 2006, p. 1.

⁸Elrick Christovel Sanger, *Law Enforcement Against Drug Trafficking Among the Young Generation*, *Lex Crimen*, Vol II No 4, August 2013, p. 8.

considerations, facts in the trial, witness statements, existing evidence, the judge's beliefs and supporting matters as well as the criminal sanctions imposed.

Then in the case where the defendant is a child, the judge in making a decision must refer to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. As explained in the Law, the purpose of punishment is not merely as retribution but aims to foster and educate so that the Child Perpetrator realizes and acknowledges his/her mistake. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System emphasizes protection, the best interests of the child, the survival and development of the child and deprivation of liberty and punishment as a last resort. Based on these considerations, the judge sentenced the child to 2 (two) years in prison and a fine replaced with 3 (three) months of job training. The judge's decision refers to Article 71 Paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

In substantive justice does not only focus on the formal application of the law, but also considers whether the punishment imposed is truly proportional to the level of guilt and the impact of the act. In Decision Number 33/Pid.Sus-Anak/2023/PN Clp, the judge sentenced the child as the perpetrator of the crime to 2 (two) years in prison and a fine replaced with 3 (three) months of job training. According to the author, the imposition of criminal law on the child perpetrator in this case has not fully fulfilled the sense of substantive justice, because this decision has not fully considered the interests and conditions of the child victim who was only 14 years and 9 months old when the crime occurred. The victim's very young age indicates that his future is still long and vulnerable to long-term negative impacts, both psychologically and physically, as well as the social stigma that may accompany him throughout his life due to the crime he experienced. Substantive justice demands that legal decisions not only reflect the implementation of correct legal procedures, but also ensure that the final result of the decision actually brings justice to all parties involved.

Substantive justice not only assesses the proportion of punishment for the perpetrator, but must also consider the direct impact experienced by the victim, and ensure that the court's decision truly reflects the victim's need for adequate recovery and protection. Although the Indonesian juvenile criminal law prioritizes the rehabilitation of child perpetrators, in this case, a sentence of 2 years in prison and 3 months of job training may not be enough to provide a balanced sense of justice for the victim. The sentence seems to focus more on the improvement and rehabilitation of child perpetrators, but ignores the fact that this young victim has to face severe trauma that may require more intensive protection and recovery.

On the one hand, the sentence can be considered to fulfill the aspect of justice for child perpetrators, because the criminal law for children in Indonesia does prioritize a more restorative and rehabilitative approach, in accordance with Law Number 11 of 2012 concerning the Child Criminal Justice System. Replacing the fine with job training shows an effort to restore the perpetrator, not just punish

him. On the other hand, this decision still does not reflect adequate protection for the victim because a prison sentence of 2 years does not sufficiently reflect the severity of the crime, considering the long-term impacts that can be experienced by child victims in cases of intercourse, both emotionally, psychologically, and socially.

This decision can be said to have fulfilled the formal requirements to hold the child perpetrator accountable. However, from the perspective of substantive justice, the sentence imposed has not truly reflected a fair proportion between the perpetrator's need for rehabilitation and the victim's rights that must be protected.

4. Conclusion

Based on the results of the research and discussion that have been described in chapter 3 (three), it can be concluded that the criminal responsibility of children as perpetrators of criminal acts in Decision Number 33/Pid.Sus-Anak/2023/PN Clp has fulfilled the value of criminal responsibility in accordance with the SPPA Law. The child perpetrator is over 14 years old so that he can be held criminally responsible. Therefore, because the child perpetrator committed the crime of sexual intercourse and has violated Article 81 paragraph (2) in conjunction with Article 76D of Law Number 23 of 2002 concerning Child Protection and the perpetrator is over 14 years old, diversion cannot be carried out, because the first requirement for diversion is that the crime is threatened with imprisonment of less than seven years, while violations of Article 76 D and E of Law No. 35 of 2014 the perpetrator is threatened with a maximum imprisonment of 15 years and if the perpetrator is a child, according to Article 81 paragraph 2 of the SPPA Law, the prison sentence that can be imposed on a child is a maximum of 1/2 (one half) of the maximum prison sentence for adults. Therefore, the Child Perpetrator can be sentenced to a maximum of 7.5 years in prison. This has exceeded the threshold for diversion to be applied to him.

Decision of the Cilacap District Court Judge Number: 33/Pid.Sus-Anak/2023/PN Clp. In the Perspective of Substantive Justice by the panel of judges, the child perpetrator was sentenced to 2 (two) years in prison and a fine replaced with 3 (three) months of job training, because he was proven guilty of committing trickery, a series of lies, or persuading a child to have sexual intercourse with him as stated in Article 81 paragraph (2) Jo Article 76D of the Republic of Indonesia Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection. The judge's considerations in applying criminal provisions to the perpetrator in this case have been appropriate where the judge has considered both legal and non-legal considerations, facts in the trial, witness statements, existing evidence, the judge's beliefs and supporting matters and the criminal sanctions imposed.

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