

Legal Analysis of Prison Sentences by Judges in Cases of Sexual Abuse Against Children (Case Study of Semarang District Court Decision Number: 54/Pid.Sus/2022/Pn.Smg)

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Abstract. *The case concerns a sexual predator who abused a child with intellectual disabilities, which has been adjudicated by the Semarang District Court. The panel of judges imposed a sentence of 10 (ten) years of imprisonment and a fine of Rp. 1,000,000,000 (one billion rupiah), with the provision that if the fine is not paid, it shall be substituted with 4 (four) months of imprisonment, for violating Article 76E in conjunction with Article 82 paragraph (2) of Law No. 23 of 2002 concerning Child Protection, as amended by Law No. 17 of 2016 on the Stipulation of Government Regulation in Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 on Child Protection. The author considers that the decision is excessively severe and does not provide a sense of justice for the defendant. The issues examined in this study are: first, the considerations of the judges in rendering a decision in criminal acts of child sexual abuse; second, the analysis of such judicial considerations. This study employs a normative juridical method. Primary data were obtained from statutory regulations. The results of this study indicate that the judges' consideration in imposing a sentence of 10 (ten) years of imprisonment and a fine of Rp. 1,000,000,000 (one billion rupiah), with a subsidiary punishment of 4 (four) months of imprisonment in case of non-payment of the fine, is far from achieving justice for the accused. It is not based on the values of justice, truth, legal certainty, and legal benefit, due to the panel of judges not properly applying the law of evidence in the case. In imposing a criminal sentence on an individual, it must be based on at least two valid pieces of evidence, supported by the judge's conviction in accordance with Article 183 of the Criminal Procedure Code, which states: "A judge shall not impose a sentence upon a person unless, based on at least two valid pieces of evidence, he/she obtains the conviction that a criminal act has indeed occurred and that the accused is guilty of it."*

Keywords: *Child Victim with Disabilities; Judicial Consideration; Sexual Offender.*

1. Introduction

Indonesia is a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, upholding moral values, ethics, morals and the noble character of the nation, believing in and being devoted to God Almighty, and respecting diversity in the life of society, nation and state.¹

The definition of law is a series of regulations related to a person's behavior as a member of society, and aims to achieve happiness, safety, and create order in community life. Every individual in society has various interests, so to fulfill these interests, each member of society must engage in relationships regulated by law to create a balance within society.²

Law cannot be separated from human activities, because law is a provision to control people's behavior in their activities, because the purpose of law is to regulate social life, state life and relationships between one and another, in order to achieve justice and prosperity.³ Because if there were no laws, it is unimaginable what this country would be like, which would cause chaos in society, due to the lack of guidelines and instructions on how to behave in society.⁴

There are various laws in force in Indonesia, one of which is criminal law. This criminal law aims to prevent or inhibit actions by society that violate applicable legal regulations. Because criminal law is part of the overall law in force in a country, it also lays the foundations and rules aimed at determining which actions are prohibited, accompanied by threats or sanctions in the form of certain penalties for anyone who violates these prohibitions.

Everyone has the right to feel safe and secure and protection from the threat of fear, this is regulated in the 1945 Constitution and Law Number 39 of 1999 concerning Human Rights, as in Article 28 G paragraph (1) of the 1945 Constitution which states "Everyone has the right to protection of themselves, their family, their honor, their dignity and their property under their control, and

¹Widayati, September "Implementation of legal principles in the formation of participatory and just legislation", Unissula Law Journal, page 36 No. 2.

²Maidin Gultom, Legal Protection for Children in the Juvenile Criminal Justice System in Indonesia, Rafika Aditama, Bandung, 2013, p. 3.

³Mudakir Iskandar Syah, Introduction to Indonesian Law and Legal System, CV. Sagung Seto, Jakarta, 2008, page 5.

⁴Moeljatno, Criminal Acts and Responsibility in Criminal Law, Bina Aksara, Jarkata, 2009, p.1.

has the right to feel safe and protected from the threat of fear to do or not do something that is a basic human right."

And in Article 30 of Law Number 39 of 1999 concerning Human Rights, hereinafter referred to as the Human Rights Law, everyone has the right to a sense of security and peace and protection from the threat of fear.

Children are an inseparable part of human survival and the survival of a nation and state. The 1945 Constitution of the Republic of Indonesia (hereinafter UUD 1945) explains that children receive special attention, namely in Human Rights (HAM) regarding children, especially in Article 28 B paragraph (2) which states "every child has the right to survive, grow and develop well and has the right to protection from violence and discrimination" and Article 28 D paragraph (1) of the 1945 Constitution which states "every person has the right to recognition, guarantee of protection and fair legal certainty and equal treatment before the law". Therefore, the best interests of children should be internalized as the best interests for the survival of humanity.⁵

In the judicial process, as part of the effort to realize child protection, the juvenile justice process must be carried out by paying attention to the Principle of Proportionality. This principle is emphasized as a means to curb punitive sanctions, in addition to reminding that the response or reaction of society is given proportionally to the perpetrator of anti-social acts, namely not only based on the gravity of the act, but also taking into account the child's environment, such as social status, family circumstances, and other factors that cause the emergence of anti-social acts against children. The essence contained in this provision is that the reaction given to anti-social acts should be fairly and seen on a case-by-case basis for deviant acts and crimes committed against children or adolescents.⁶

Sexual violence against children can also be considered a crime. Sexual violence against children extends beyond sexual acts to other attempts or activities, such as groping. Even if the perpetrator merely looks at the child, the act can be considered child sexual abuse. This is done to satisfy their sexual desires and is carried out by force, which is then acted upon by the child.⁷

Child sexual abuse is a sexual act committed against a child, in which the child is used as a means of sexual gratification by an adult or older person. Forms of child

⁵A. Masyhur Effendi and Taufani Sukmana Evandri, *Human Rights in Legal, Social, Political Dimensions/Dynamics, and the Process of Drafting/Application of Human Rights Law in Society*, Bogor: Ghalia Indonesia, 2007, p. 51

⁶Paulus Hadisuprpto, *International Instrument for the Protection of the Rights of Delinquent Children as quoted in the Book on Juvenile Justice in Indonesia*, Mandar Maju Publisher, Bandung, 1997, page 108.

⁷Ratna Sari, Soni Akhmad Nulhaqim, and Maulana Irfan, *Sexual Harassment of Children*, jurnal.unpad.co.id, Vol. 2, Number 1, 2015, p. 15.

sexual abuse can include direct sexual contact by an adult or older person with a child for the purpose of satisfying their own sexual desires, or asking or pressuring a child to engage in sexual intercourse.

The victims of sexual violence that often occur are mostly children. A child is someone who is not yet 18 years old, including a child who is still in the womb, as stated in Article 1 paragraph (1) of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection.⁸

In relation to this thesis research, the author focuses on cases of criminal acts of sexual harassment committed by adults against children with mental retardation in the city of Semarang and which have been decided by the Panel of Judges.

The case of sexual predators against children with mental retardation has been tried at the Semarang District Court, where the panel of judges sentenced him to 10 (ten) years in prison and a fine of Rp. 1,000,000,000 (one billion rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 4 (four) months, for violating Article 76 E in conjunction with Article 82 paragraph 2 of Law No. 23 of 2002 concerning Child Protection in conjunction with Law No. 17 of 2016 concerning the Determination of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection.

2. Research Methods

The approach method in this research is normative juridical research, therefore the type of data used by the author is secondary data, namely data obtained or collected by researchers from available sources, by examining theories, concepts, and legal principles and regulations in the Law related to this writing. This research utilizes text and library research studies, including using sources of books, journals, media, scientific works, and documents related to the main issues discussed.

3. Results and Discussion

3.1. Judge's Consideration for Case Number:54/Pid.Sus/2022/PN.Smg

Judge's considerations in case Number :54/Pid.Sus/2022/PN.Smg regarding sexual violence against children committed by the defendant, the defendant accused of committing a criminal act as regulated and threatened by Article 76 E in conjunction with Article 82 Paragraph 1 of Law of the Republic of Indonesia Number 35 of 2014 concerning amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, as follows:

⁸Republic of Indonesia Law Number 35 of 2014, Concerning Child Protection.

Considering that the panel of judges will consider the Defendant's Legal Counsel's defense as follows:

Considering that based on the testimony of witness Devi Cici Novitasari and witness Inanas Nilam Sari, they saw witness Ahyaity Shofiyyah being carried behind an unknown defendant, riding a black Honda Astrea motorbike with gold rims whose license plate the witness did not remember, they saw her going down towards the exit alley while the witnesses went in the opposite direction up towards the house alley.

Juridical considerations are the first step a judge takes when considering a case in court. Judges must adhere to applicable laws; as implementers of the law, they must understand the relevant laws in the case they are facing. We already know that in criminal law, there is something known as the principle of legality, usually referred to in Latin as "nullum delictum nulla poena sine praevia lege" (there is no crime, no punishment without prior regulation).⁹

In case number:54/Pid.Sus/2022/PN.Smg judges make legal considerations by using Article 76 E in conjunction with Article 82 Paragraph 1 of Law of the Republic of Indonesia Number 35 of 2014 concerning amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, in accordance with what was charged by the Public Prosecutor in the trial. That the defendant has been proven guilty of violating the provisions in Article 76 E in conjunction with Article 82 Paragraph 1 of the Republic of Indonesia Law Number 35 of 2014 concerning amendments to the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection.

The sociological aspect of consideration is that the judge views the defendant's actions based on the values that exist in society. In case number 54/Pid.Sus/2022/PN.Smg The judge assesses the defendant's actions in society by using the defendant's aggravating and mitigating circumstances as follows:

a) Aggravating factors

1. The defendant's actions have caused unrest in society.
2. The defendant has ruined the future and traumatized the victim.
3. The defendant was evasive and did not openly admit his actions.

b) Mitigating factors

- The defendant has never been convicted

⁹Muchamad Iksan, "The Principle of Legality in Criminal Law:" 11, no. 01 (2017): p. 6.

That in philosophical considerations the judge looks at the justice aspect between the defendant and the victim. That justice is obtained from looking at the legal and sociological aspects, namely that the defendant has been proven to have violated the law. Article 76 E in conjunction with Article 82 Paragraph 1 of the Republic of Indonesia Law Number 35 of 2014 concerning amendments to the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection and the defendant has been proven to have violated social aspects in society as seen from the aggravating and mitigating actions of the defendant with the result that the defendant has been proven guilty of his actions with a sentence imprisonment for 10 (ten) years and a fine of Rp. 1,000,000,000 (one billion rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 4 (four) months.

3.2. Legal Analysis of Decision Number: 54/Pid.Sus/2022/PN.Smg.

Every judge's decision in deciding a case must be accountable, meaning that the judge's accountability in deciding a case can be assessed based on the judge's considerations. Therefore, the judge's considerations must be in accordance with the law of reasoning, and the law of reasoning must be accurate.

So that victims who feel their rights have been violated feel that their rights have been returned and the rights of people who violate the rights of others must return the rights they violated. In this case the judge will make considerations using 3 aspects, namely the legal aspect, the sociological aspect, and the philosophical aspect so that the desired justice can be achieved, realized, and can be accounted for in the judge's decision. The justice in question is based on legal justice, moral justice, and social justice which will be explained regarding the judge's considerations in deciding case Number: 54/Pid.Sus/2022/PN.Smg by using the following 3 aspects:

In the author's analysis regarding case number 54/Pid.Sus/2022/PN.Smg regarding the act of sexual harassment against minors committed by the defendant is as follows:

Understanding the concept of proof, M. Yahya Harahap in the book by Eddy OS Hiariej states that: "Proof is the provisions that contain outlines and guidelines regarding the procedures that are permitted by law to prove the guilt of the accused. Proof is also a provision that regulates the evidence that is permitted by law and regulates the evidence that may be used by the judge to prove the guilt of the accused."

Witness testimony is the most important evidence in criminal cases. Almost all criminal case evidence relies on witness testimony. In order for a witness's testimony to be considered valid as evidence that has the value of evidentiary power. Not all witness statements have value as evidence. Witness testimony that has value is information that is in accordance with what is determined by

Article 1 number 27 of the Criminal Procedure Code, namely Witness testimony is one of the evidence in criminal cases in the form of information from a witness regarding a criminal event that he himself heard, he himself saw and he himself experienced by stating the reasons for his knowledge, therefore the basis of the evidence is a descriptive narrative representation of events, incidents or situations that actually took place seen by the eyes, heard by the ears, and experienced by the witness himself.

The evidentiary system adopted in Indonesia is a negative system according to law (*Negatief Wettelijk Stelsel*) as explained in Article 183 of the Criminal Procedure Code which states that: "A judge may not sentence a person unless, with at least two valid pieces of evidence, he or she is convinced that a crime has actually occurred and that the defendant is guilty of committing it."

Evidence in criminal cases is regulated in Article 184 paragraph (1), which states: "(1) Valid evidence is: a. witness statements; b. expert statements; c. letters; d. instructions; e. statements from the defendant."

In the provisions of Article 160 paragraph (3) of the Criminal Procedure Code, it states that: "Before giving a statement, a witness must take an oath or promise according to their respective religion, that they will give the truth and nothing but the truth." In addition to the provisions of Article 160 paragraph (3) of the Criminal Procedure Code mentioned above, there are several other provisions in the Criminal Procedure Code, which relate to the evidence of witness statements which provide direction or guidance regarding what kind of witness statements have evidentiary value and strength.

Article 185 paragraph 1 of the Criminal Procedure Code stipulates that: "the testimony of one witness alone is not sufficient to prove that the defendant is guilty of the act of which he is accused." The provisions of the Criminal Procedure Code are:

Article 1 number 27 of the Criminal Procedure Code regulates that a witness's statement which is considered valuable as evidence or which has the power as evidence in a criminal case is a witness's statement regarding a criminal event which the witness saw himself, heard himself and experienced himself and states the reasons for his knowledge. Furthermore, Article 185 paragraph (5) of the Criminal Procedure Code regulates that: "Neither opinions nor conjectures, which are obtained from the results of thinking alone, do not constitute witness statements."

From the provisions of the Criminal Procedure Code in Article 160 paragraph (3), Article 185 paragraph (1), Article 1 number 27, Article 185 paragraph (5) of the Criminal Procedure Code above, we obtain clear references regarding evidence in the form of witness statements, namely as follows:

1. Even though a witness's statement is declared valid because it was given under oath and before a court hearing, not all of the valid witness's statement has evidentiary value and power.

2. That a witness's statement is not seen by himself, not heard by himself, or not experienced by himself in the criminal incident that occurred, then such witness statement cannot be used as evidence of witness testimony.

Such witness statements have no evidentiary value.

1. That a witness's statement which was not seen by himself, not heard by himself or experienced by himself in the criminal incident which occurred, can be a statement which the witness obtained as a result of hearing from another person or source, namely a statement which is of the nature of "Testimonium de auditu" which clearly has no valid value.

2. In addition, it can also be an opinion or a fabrication that the witness obtained from the witness's own thoughts, whether in whole or in part colored by the witness's personal opinions or thoughts. Such witness testimony must be set aside if it is used to prove the defendant's guilt.

Furthermore, Article 185 paragraph (6) of the Criminal Procedure Code stipulates that: "In assessing the truth of a witness's statement, the judge must really pay attention to several things, namely:

a. The agreement between the statements of one witness and the statements of another witness;

b. Consistency between witness statements and other evidence;

c. Reasons that might be used by the witness to provide this information;

d. The witness's lifestyle and morals, as well as everything that can generally influence whether or not the testimony can be believed."

From the provisions of Article 185 paragraph (6) of the Criminal Procedure Code, if linked to the provisions of the Criminal Procedure Code as mentioned above, we obtain a clear reference regarding evidence in the form of witness statements, namely as follows:

That Article 185 paragraph (6) of the Criminal Procedure Code, begins with a firm sentence and reads as follows: "In assessing the truth of a witness's statement, the judge must be serious."

This indicates the commitment of judges and other law enforcers, including public prosecutors, to pay attention to this when preparing their criminal charges.

Thus, even though a witness's statement has fulfilled the requirements for validity as evidence, namely because it has been stated under oath and stated before a court hearing and the statement is not a "testimonium de auditu" and is not an opinion or fabrication from the results of thinking, however, according to Article 185 paragraph (6) of the Criminal Procedure Code, the truth of a witness's statement must still be assessed, or in other words, a witness's statement has the power of proof if it is formally valid and has value and proof power, but materially its truth must still be assessed.

Article 185 paragraph (6) of the Criminal Procedure Code determines the method or procedure for assessing the truth of a witness's statement which should be used by the judge in deciding a criminal case or by the public prosecutor in filing criminal charges against a defendant.

By using the method of assessing the truth of a witness's statement as stipulated in Article 185 paragraph (6) of the Criminal Procedure Code, the judge can believe or not believe or doubt or even disregard the statement of a witness who has been sworn in and stated in court.

Furthermore, Article 185 paragraph (7) of the Criminal Procedure Code states: "Statements from witnesses who are not sworn in, even if they are in accordance with each other, do not constitute evidence, but if the statement is in accordance with the statement from a sworn witness, it can be used as additional valid evidence." Therefore, it can be concluded that all witness statements as stipulated in Article 185 paragraph (7) of the Criminal Procedure Code which are given without an oath do not constitute valid evidence, which automatically means that the witness statement without an oath does not have any evidentiary value.

Article 171 point b of the Criminal Procedure Code, which states: "people who are mentally ill or have mental illness, even though their memory sometimes returns", thus as stipulated in Article 171 point b of the Criminal Procedure Code, people who are mentally ill or have mental illness, even though their memory sometimes returns, cannot be held fully responsible in criminal law, so they cannot be sworn in or given a statement, therefore their statement is not considered to be valid evidence, but their statement is only used as an indication.

Statements at the trial according to the statements of Witness Mustholih Bin, (Alm.) Abu Subur, Witness Ruwiyatul Farida Binti Sahri, Witness Warno Bin (Alm.) Mulyareja, Witness Widiyanto Bin (Alm.) Sutarman, Witness Devi Cici Novitasari Binti Indra Saputra, Witness Inanas Nilam Sari Binti Indra Saputra, Witness Joko Supriatno Bin Suparman; as follows:

1) Witness Musholih Bin (Alm.) Abu Subur, stated under oath before the trial on Tuesday, March 15, 2022, in essence as follows:

- The witness stated that he was in good physical and mental health, correctly and without coercion, willing to provide truthful information regarding the incident of obscene acts against the witness' child named Ahyaity Shofiyyah Als Ahya;
- The witness explained that at the time of the incident the witness did not know directly because at that time he was working and suddenly received a call from the witness RUWIYATUL as his wife to come home because he had received news that his child had been kidnapped;
- The witness explained that when he was about to go home, he saw a lot of people gathered in Greenwood and finally stopped. After that, he realized after hearing from Witness Warno Bin (Alm.) Mulyareja that it was related to the kidnapping of his child, namely Ahyaiti Shofiyyah Binti Mustholih;
- The witness explained that at that time he just kept quiet, and was advised by Witness Joko Supriatno Bin Suparman to take him to the Police Headquarters;
- The witness explained that he accepted and followed the advice of Witness Joko Supriatno Bin Suparman to take him to the Police Headquarters;
- The witness explained that when he made the first complaint on October 19, 2021, his wife, Ruwiyatul Farida Binti Sahri;
- The witness explained that he learned about the act of molestation against his child from the police;
- The witness explained that it was only when I (the witness) made the second report or police report on October 20, 2021;

2) Witness Warno Bin (Alm.) Mulyareja, stated under oath before the trial on Tuesday, March 15, 2022, in essence as follows:

- The witness states that he is in good physical and mental health, and is willing to provide truthful information without coercion;
- The witness explained that at that time the witness was at home and heard news from Witness Ruwiyatul Farida Binti Sahri that her child named Ahyaiti Shofiyyah Binti Mustholih had been kidnapped and asked for help in looking for her;
- The witness explained that when he was asked for help on October 19 2021 around midday or twelve (12) o'clock;
- The witness explained that after that the witness looked for neighbors who were there, saw Widiyanto Bin (Alm.) Sutarman and finally decided to invite him to look for the kidnapper together;

- The witness explained that he was looking together with Widiyanto Bin (Alm.) Sutarman in the direction of SMA 7 Semarang, not long after because the distance between the witness's area and SMA 7 Semarang was not too far, the witness found the Defendant carrying the child victim;
- The witness explained that he stopped both the Defendant and the Child Victim, ordered the Child Victim to move to the Witness' motorbike and Widiyanto Bin (Alm.) Sutarman was riding pillion with the Defendant, then directed them to Greenwood;
- The witness explained that when Greenwood arrived at the location, he interrogated the defendant because he was carrying the victim witness and the defendant answered that he was only helping;
- The witness explained that he accompanied the child victim's parents in their car to take the defendant to the Semarang Police Headquarters;
- The witness explained that he did not know what happened next;

3) Witness Widiyanto Bin (Alm.) Sutarman, stated under oath before the trial on Tuesday, March 15, 2022, in essence as follows:

- The witness states that he is in good physical and mental health, and is willing to provide truthful information without coercion;
- The witness explained that he was invited by Warno Bin (Alm.) Mulyareja because there was news that Ahyaiti Shofiyyah Binti Mustholih had been kidnapped;
- The witness explained that when he was invited on October 19 2021 around midday time or twelve (12) o'clock;
- The witness explained that he was searching together with Warno Bin (the late) Mulyareja in the direction of SMA 7 Semarang, not long after because the distance between the witness's area and SMA 7 Semarang was not too far, the witness found the Defendant carrying the Child Victim;
- The witness explained that he stopped both the Defendant and the Child Victim, ordered the Child Victim to move to the motorbike of Witness Warno Bin (Alm.) Mulyareja and the witness rode with the Defendant, then directed him to Greenwood;
- The witness explained that he accompanied the child victim's parents in their car to take the defendant to the Semarang Police Headquarters;
- The witness explained that he did not know what happened next;

From the statements of the witnesses and the child witnesses, they did not directly see what actions the Defendant had committed. **BIMO CAHYO HANINTYO Bin SOERBIANTO to AHYAITY SHOFIYYAH Daughter of MUSHOLIH**ic Child Victim, where did the incident occur? How did the Defendant molest the Child Victim? What the witnesses know is that the Child Victim was being carried by someone, namely the Defendant, who was initially suspected of kidnapping as revealed in the trial facts which can be concluded as follows:

- At that time, the child witness was Anisa Ayu Sya'rani Binti Imam, Child Victims Ahyaity Shofiyyah, daughter of Musholih, and child witness Alika Hasna Rizkiani, daughter of Warno were playing together (drawing using chalk) in the front yard of the house of witness Anisa Ayu Sya'rani Binti Imam, suddenly a man came riding a motorbike wearing red clothes, stopped and called the child witnesses, but only Child Victims Ahyaity Shofiyyah Binti Musholih who responded to the Defendant's call, and it was known that at that time he asked for the address of house number 40;
- When Child Victims Ahyaity Shofiyyah Binti Musholih and the Defendant chatted, Child Witness Anisa Ayu Sya'rani Binti Imam and Child Witness Alika Hasna Rizkiani Binti Warno entered the house of Witness Anisa Ayu Sya'rani Binti Imam then the Child Witnesses peeked and saw from the window that Child Victims Ahyaity Shofiyyah Binti Musholih got on the Defendant's motorbike and left;
- At the intersection of the alley into Sukorejo RT 002 RW 002, Sukorejo Subdistrict, Gunungpati, Semarang, Witness Devi Cici Novitasari Binti Indra Saputra and Witness Inanas Nilam Sari Binti Indra Saputra met the Defendant who was riding pillion. Child Victims, upon arrival Witness Devi Cici Novitasari Binti Indra Saputra at her home, Child Witness Anisa Ayu Sya'rani Binti Imam as her biological child said that Child Victims Ahyaity Shofiyyah Binti Musholih taken and carried by an unknown person, however, Witness Devi Cici Novitasari Binti Indra Saputra was still calm and relaxed;
- Child Witness Anisa Ayu Sya'rani Binti Imam also told the same thing to Witness Ruwiyatul Farida Binti Sahri, a few moments later Witness Ruwiyatul Farida Binti Sahri shouted for help and ran to ask for help from the neighbors who basically said that her child had been kidnapped, then told her husband, Witness Mustholih Bin, (Alm.) Abu Subur via telephone, basically saying "come home quickly, Ahya has been kidnapped.....";
- Neighbors who heard the news and asked for help Witness Ruwiyatul Farida Binti Sahri is Witness Warno Bin (Alm.) Mulyareja and Witness Widiyanto Bin (Alm.) Sutarman, who then rushed to look towards SMA 7 Semarang and not far from the location of the SMA Witness Warno Bin (Alm.) Mulyareja and Witness Widiyanto Bin (Alm.) Sutarman found and stopped the Defendant who was

carrying the Child Victim, then directed both of them to the greenwood bridge, not long after Witness Mustholih Bin, (Alm.) Abu Subur came and a few moments later Witness Joko Supriatno Bin Suparman came to the location of the greenwood bridge where at that time there were quite a lot of residents because they were informed by telephone by one of the RT whose residents felt that their child was missing;

- Because I feel worried and to get clarity Witness Joko Supriatno Bin Suparman suggested that the child be taken and handed over to the Semarang Police, the witnesses followed the direction of Witness Joko Supriatno Bin Suparman, even the parents of the child witness, namely Witness Mustholih Bin, (Alm.) Abu Subur and Witness Ruwiyatul Farida Binti Sahri knew about the incident of indecent assault as a result of the explanation from the police;

Although the 7 (seven) witnesses were sworn in, because the knowledge of these witnesses regarding the indecent acts committed by the defendant was only from the testimony of Child Witnesses or even the police according to the testimony of Witness Mustholih Bin, (Alm.) Abu Subur and Witness Ruwiyatul Farida Binti Sahri, the witnesses who were presented and brought before the a quo trial by the Public Prosecutor did not fall into the category as explained in Article 1 point 26 of the Criminal Procedure Code, which states: "A witness is a person who can provide information for the purposes of investigation, prosecution and trial regarding a criminal case that he himself heard, saw and experienced himself." So according to the law, the quality of the testimony of these witnesses is classified as *testimonium de auditu* (witness based on hearing) and does not have value as valid witness evidence;

Meanwhile, Child Witness Anisa Ayu Sya'rani Binti Imam aged 9 (nine) years and Child Witness Alika Hasna Rizkiani Binti Warno aged 6 (six) years when giving testimony in court, both were not sworn in, so according to the explanation Article 185 paragraph (7) of the Criminal Procedure Code states that: "statement from a witness who is not sworn in is not evidence, however, if the statement is in accordance with the statement from a sworn in witness, it can be used as additional valid evidence."

The IQ test results of the Child Victim were 48 or according to the standards of the Ministry of Health of the Republic of Indonesia, in other words in the range of 40-54, which is included in the IQ group with moderate disorders or delays or moderate retardation.

That the Criminalistics Laboratory Evidence Number: 2910/FKF/2021 dated November 19, 2021, examination by Toto Tri Kusuma R, S.Si, Buyung Ode Fajar, ST., M. Fauzi Haryadi, S.Kom, known to the Head of the Criminalistics Laboratory Division Ir. H. Slamet Iswanto, SH, from the conclusion: BB-6483/2021/FKF: 1 (one) DVD Recorder; Color: Black; BNN Vision Model 3604T-LM, Serial Number

201812120001, information was found related to the examination in the form of a video recording of cam 03 dated October 19, 2021 at around 10:30 WIB to 11:30 WIB and backed up into 2 (two) video files, only showing the Defendant when going up to the alley area alone and when going down together with the Child Victim, not at all indicating any irregularities or anything strange that could strengthen the belief that the Defendant was the perpetrator of the crime

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4. Conclusion

1. The judge's considerations in case Number: 54/Pid.Sus/2022/PN Smg dated May 24, 2022, the judge in considering the case by looking at the first 3 stages, the stage of analyzing criminal acts, the stage of analyzing responsibility, the stage of determining punishment after looking at the three stages above, the judge in using Article 76 E in conjunction with Article 82 Paragraph 1 of Law of the Republic of Indonesia Number 35 of 2014 concerning amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, it's right.
2. Analysis of the decision 54/Pid.Sus/2022/PN Smg dated May 24, 2022 by looking at the legal aspect, according to Hemat, the author feels sad about the decision given by the Panel of Judges to the defendant icBIMO CAHYO HANINTYO Bin SOERBIANTO very far from justice and the accused has denied what he did not do, not based on the values of justice, truth, certainty and legal benefits because the Panel of Judges did not apply the law of evidence in the case, namely that in imposing a sentence on a person it must be based on 2 (two) valid pieces of evidence and added to the judge's conviction according to Article 183 of the Criminal Procedure Code, which states: "A judge may not sentence a person unless, with at least two valid pieces of evidence, he is convinced that a crime has actually occurred and that the defendant is guilty of committing it."

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