

Legal Review of The Acquitting Decision in The Case of Indemnity Against Children in The Context of Protection

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Abstract. *This research is entitled "Juridical Review of the Acquittal Decision in the Case of Indecent Acts Against Children in the Context of Legal Protection". The background of this research is to analyze what considerations the Panel of Judges of the Lubuk Basung District Court had in deciding the acquittal of case Number: 36/Pid.Sus/2023/PN Lbb. Was the evidence provided by the Public Prosecutor in this case not carried out properly or was the value of the Public Prosecutor's evidence unable to convince the Panel of Judges. Method This research uses an empirical legal approach, also known as sociological legal research, which examines law by conceptualizing it as real behavior. The research data is sourced from primary data obtained directly from the field through interviews and secondary data collected through literature review. Then, it is analyzed qualitatively to determine the legal certainty that exists in society. Results Research shows that there are differences of opinion between the Panel of Judges and the Public Prosecutor in viewing the legal facts revealed in court through witness testimony, expert testimony, letters, and the defendant's testimony. Regardless of these differences of opinion, a case must be decided based on at least two valid pieces of evidence and the judge's conviction, as stipulated in Article 183 of the Criminal Procedure Code. This is to ensure that a decision remains within the legal framework and provides legal protection for the public.*

Keywords: *Decision; Evidence; Legal Protection.*

1. Introduction

Children are basically the shoots, potential and next generation of the nation's ideals who have a strategic role in ensuring the existence of the nation and state in the future.¹The hope for the strategic role of children is also stated in the

¹Abu Hurairah, Violence Against Children, Bandung: Nuasa Press, 2012, p. 5.

Constitutional Court Decision Number 6/PUU-XV/2017 which was pronounced on March 13, 2018, so that in the future they will be able to bear this responsibility, children need to be given the widest possible opportunity to grow and develop optimally, both physically, mentally, socially and spiritually.

As children develop, they need to have their rights respected, protected, and ensured well-being. Therefore, all forms of violence against children must be prevented and addressed.²The State's efforts to protect children in a responsive and progressive manner are carried out by the government by establishing Law of the Republic of Indonesia Number 25 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection and being upgraded to the constitutional level, namely the Amendment to the 1945 Constitution of the Republic of Indonesia which states: "every child has the right to survival, growth and development and the right to protection from violence and discrimination." In this case, the State upholds child protection efforts to guarantee children's rights and growth and survival, which is the State's obligation to protect these children's rights.

Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection Article 1 Paragraph (12) which states "children's rights are part of human rights that must be guaranteed, protected and fulfilled by parents, family, society, state, government and regional government". It is explained in the Law that children's rights are included in Human Rights that must be protected and fulfilled by parents who play an important role in protecting children's rights and as the closest people who can protect completely and what the child wants. After that there is the role of the family and society which more broadly supports the fulfillment of children's rights without neglecting children. The government plays a role as a law enforcer who has a role in overcoming if there are children's rights that are not fulfilled. Legal protection for children is a necessary and obligatory protection effort for a decent and prosperous life for children.

A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.³Children are assets and wealth that must be protected and are the future of the family and the nation. From a legal perspective, children hold a strategic position before the law and are legal subjects with rights and obligations that are guaranteed or protected by law.

However, in reality, there are increasingly more unlawful acts in society that ultimately lead to criminal acts. This indicates that the objectives of the law have not been fully realized. The law that specifically regulates and determines which

²Ibid. p. 7.

³Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Article 1 Paragraph 1.

acts are permitted and which are prohibited, regulates the circumstances that allow the application of the law to those who have violated the prohibition, the form of punishment, the threat of punishment, and the method of imposing punishment is criminal law. One of the criminal acts prohibited by criminal law is molestation or the crime of indecency. It is called a crime because society considers molestation to be a heinous act that violates the values and norms of morality in society.⁴ Moreover, if this is done by biological parents or the closest family to the child, who should protect and ensure the child's safety.

In a state based on the rule of law like Indonesia, the court is the judicial body or institution that serves as the primary source of hope for seeking justice. Therefore, the best way to resolve a case in a state based on the rule of law is through this judicial body.⁵ In a judicial body, the judge has the most important role because the judge is the one who has the right to decide a case. Judges in carrying out their duties, especially in deciding a case, must always adhere to the principles of an independent and impartial judiciary as stated in Article 1 of Law Number 4 of 2004, namely: "Judicial power is the power of an independent state to administer justice in order to uphold law and justice based on Pancasila, for the sake of the implementation of the rule of law of the Republic of Indonesia."⁶

Article 1 number 11 of the Criminal Procedure Code states that: "A court decision is a judge's statement made in an open court session, which may be in the form of a criminal sentence or acquittal or release from all legal charges in the case and according to the method regulated in this law" so that there is a possibility that the decision that will be handed down is:

- a. Criminalization or imposition of criminal penalties and/or regulations;
- b. Acquittal; and
- c. The verdict was acquitted of all legal charges.

The Criminal Procedure Code also regulates district court decisions handed down in criminal cases, which can take the form of:

1. The decision acquits the defendant (Article 191 paragraph (1) of the Criminal Procedure Code);
2. Decision to acquit the defendant of all legal charges (Article 191 paragraph (2) of the Criminal Procedure Code); and
3. Criminal decision (Article 193 paragraph (1) of the Criminal Procedure Code).

⁴Ella Wahyu Lestari, Acquittal in the Crime of Indecent Act, Jurnal Lentera Hukum, Vol. 3 Issue 1, 2016, p. 1.

⁵ Oemar Seno Aji, 1984, Criminal Judge Law, Bumi Aksara, Jakarta, p.12.

⁶Ibid, p. 13.

That the decision to acquit the accused (*vrijspraak*) according to the Criminal Procedure Code is regulated in Article 191 paragraph (1) which states that: "If the court is of the opinion that, based on the results of the examination at trial, the defendant's guilt in the act of which he is accused has not been legally and convincingly proven, then the defendant is declared acquitted."⁷

That the judge in deciding a case must be based on at least 2 pieces of evidence and the judge's conviction, this is in accordance with Article 183 of the Criminal Procedure Code "The judge may not sentence a person unless with at least two pieces of valid evidence he obtains the conviction that a crime actually occurred and that the defendant is guilty of doing it". That the verdict of acquittal (*vrijspraak*), all legal charges for the actions committed by the defendant that were accused by the Prosecutor/Public Prosecutor in the indictment were not legally and convincingly proven according to law. In other words, the provisions of the minimum principle of proof (namely with at least 2 pieces of valid evidence) and accompanied by the judge's conviction were not fulfilled.

Decision of the Lubuk Basung District Court Number: 36/Pid.Sus/2023/PN Lbb with Defendant BUDI SATRIA alias BUDI who committed an obscene crime against his own biological child, namely ADELINA KAYLILA BUSRA (aged 10 years). In the indictment submitted in court by the Public Prosecutor on behalf of the defendant BUDI SATRIA who violated Article 82 paragraph (2) Jo Article 76 E of Law Number 35 of 2014 concerning Child Protection Jo Law Number 17 of 2016 concerning Government Determination in Lieu of Law Number 17 of 2016 concerning Government Determination in Lieu of Law Number 1 of 2016 concerning Second Amendment to Law Number 23 of 2002 concerning Child Protection Becoming Law.

In the demands of the Public Prosecutor, the defendant BUDI SATRIA was charged with committing a crime "by intentionally committing violence or threats of violence, forcing, committing deception, committing a series of lies, or persuading children to commit or allow indecent acts to be committed, which were committed by parents." However, the panel of judges at the Lubuk Basung District Court argued in its decision that the defendant BUDI SATRIA alias BUDI was not legally and convincingly proven guilty of committing a crime as charged in the single indictment of the Public Prosecutor. Because the evidence proven by the public prosecutor in the trial was not enough to convince the Panel of Judges at the Lubuk Basung District Court.

Based on the description above, the author is interested in discussing in more depth the criminal act of indecency against children by analyzing the Decision of

⁷Law Number 8 of 1981 concerning the Criminal Procedure Code (State Gazette of the Republic of Indonesia 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209). Article 1, Article 191, Article 192, and Article 193.

the Lubuk Basung District Court Number: 36/Pid.Sus/2023/PN Lbb. By creating a thesis entitled: Legal Review of the Acquittal Decision in the Case of Indecent Acts Against Children in the Context of Legal Protection (Case Study of the Decision of the Lubuk Basung District Court Number: 36/Pid.Sus/2023/PN Lbb).

2. Research Methods

Legal research is basically a scientific activity based on certain methods, systematics and thinking which aims to study one or several specific legal phenomena by analyzing them, apart from that, an in-depth examination of the legal facts is also carried out to then attempt to find a solution to the problems that arise in the phenomenon in question.⁸

According to Soerjono Soekanto, legal research is a form of scientific activity based on specific methods, systems, and thinking, aimed at studying one or several specific legal phenomena through analysis. Furthermore, an in-depth examination of the legal factors is also conducted, and then efforts are made to find solutions to the problems that arise within the phenomenon in question.

The research method used by the author in this research is

3. Results and Discussion

3.1. Evidence Conducted by the Public Prosecutor in Case Number: 36/Pid.Sus/2023/PN Lbb

In the Indonesian criminal justice system, evidentiary proceedings are strictly governed by the negative statutory evidentiary system (Negatief Wettelijk Stelsel) as stipulated in Article 183 of KUHAP, which dictates that a judge may not impose a sentence unless at least two valid pieces of evidence produce a judicial conviction that a crime occurred and the defendant is guilty. The Public Prosecutor bears the primary burden of proof to substantiate every element of the indictment against an accused party. In Case Number: 36/Pid.Sus/2023/PN Lbb, the Public Prosecutor indicted the defendant Budi Satria alias Budi under Article 82 paragraph (2) jo. Article 76E of Law Number 35 of 2014 concerning Child Protection.

To support the indictment, the prosecutor presented nine witnesses, including the child victim, child witness AN, and mother RH, alongside two expert witnesses, four documentary letters, and the defendant's testimony. Practical obstacles emerged during trial prosecution: as revealed through interviews with the Public Prosecutor (Alinisfi Bonardo, SH), the child victim's testimonies exhibited inconsistencies during courtroom examinations, complicating efforts to establish a cohesive chain of evidence (kettingbewijs) that harmonized with adult

⁸Bambang Sunggono, *Legal Research Methodology*, Jakarta, Rajawali Pers, 2010, p.38.

testimonies which functioned merely as *testimonium de auditu*, while the defendant persistently denied the allegations. Furthermore, the expert medical testimony from the forensic doctor confirmed old hymenal tears but could not definitively attribute them solely to the defendant's alleged acts, and the documentary letters lacked a direct causal nexus due to a two-month examination gap. Consequently, while the prosecutor formally fulfilled the minimum evidentiary requirements under Article 184 of KUHP, the qualitative persuasiveness and total denial of charges by the defendant failed to generate the requisite judicial conviction under the law.

3.2. Judge's Legal Considerations in Deciding the Acquittal and Legal Protection Framework

The panel of judges at the Lubuk Basung District Court evaluated the trial facts under the mandate of Article 191 paragraph (1) of KUHP, which dictates that if the defendant's guilt is not legally and convincingly proven, the defendant must be acquitted (*vrijspraak*). In their legal considerations, the judges scrutinized witness testimonies pursuant to Article 185 paragraph (6) of KUHP, noting that adult witnesses were not present at the *locus delicti* and their statements constituted hearsay (*testimonium de auditu*). Furthermore, while the child victim and child witness AN provided aligned accounts, their statements were unsworn, and the lack of independent corroborating eyewitnesses prevented the formation of a valid chain of evidence.

Regarding the *Visum et Repertum*, expert testimony established the presence of an old hymenal tear exceeding three to five days and a sexually transmitted infection. However, the expert could only confirm that the injury was caused by a blunt object passing through the vaginal canal, unable to conclusively link it exclusively to the defendant's alleged acts occurring months prior.

Lacking a definitive causal nexus and failing to meet the minimum threshold of convincing proof, the panel of judges ruled that the core element of committing violence or threats of violence under Article 76E jo. Article 82 paragraph (2) of Law Number 35 of 2014 was unproven. From the perspective of legal protection theory and the purpose of punishment, the acquittal decision aligns with the relative (goal) theory of punishment articulated by Muladi, which asserts that penal sanctions and judicial processes must serve constructive societal goals and safeguard fundamental rights rather than function as arbitrary retribution, while concurrently fulfilling repressive legal protection by ordering the defendant's release and restoring his dignity pursuant to Article 95 of KUHP.

3.3. Implications of the Acquittal Decision on the Protection of Child Rights and Legal Certainty

The intersection between the acquittal of the defendant and the imperative protection of child victims highlights a fundamental tension within the criminal

justice system: balancing the protection of a child's constitutional right to safety with the strict evidentiary safeguards required to protect an accused citizen from wrongful conviction.

While Law Number 35 of 2014 mandates robust protection and specialized handling for children encountering the legal system, substantive justice cannot bypass the procedural safeguards embedded in KUHAP.

When evidentiary gaps, uncorroborated testimonies, and procedural limitations prevent the establishment of material truth (*materiele waarheid*), the judiciary is legally bound to prioritize the principle of *in dubio pro reo* that all doubts must be interpreted in favor of the defendant.

Nevertheless, an acquittal (*vrijspraak*) does not invalidate the real trauma experienced by child victims, nor does it negate the state's overarching obligation to provide non-penal interventions, psychological rehabilitation, and social support.

Moving forward, optimizing the investigative phase through cross-disciplinary collaboration among law enforcement, medical professionals, and child psychologists is vital to secure contemporaneous forensic evidence and reliable testimonies, thereby preventing evidentiary vulnerabilities that compromise child protection cases at the trial level.

At the same time, legal certainty requires that institutional frameworks bridge the gap between specialized child-protection mandates and rigorous forensic standards, ensuring that future prosecutions can effectively substantiate hidden offenses without compromising due process.

Ultimately, harmonizing these competing imperatives protects the integrity of the judicial institution, safeguarding vulnerable minors through integrated social welfare systems while upholding the strict standards of proof necessary to prevent judicial errors.

4. Conclusion

The evidentiary process executed by the Public Prosecutor in Decision Number: 36/Pid.Sus/2023/PN Lbb adhered formally to Article 184 of the Criminal Procedure Code but failed to satisfy substantive conviction standards under the negative statutory evidentiary system (*Negatief Wettelijk Stelsel*) due to inconsistent victim testimony, hearsay evidence, and inconclusive medical causality. The Lubuk Basung District Court judges acted within legal bounds by issuing an acquittal (*vrijspraak*) pursuant to Article 191 paragraph (1) of KUHAP, successfully balancing the principles of criminal proof with constitutional legal protection by restoring the defendant's rights and dignity. Ultimately, while this verdict underscores the critical importance of robust and consistent evidence to

prevent miscarriages of justice, it simultaneously highlights the ongoing challenge of protecting vulnerable child victims when preliminary investigations face structural and evidentiary constraints.

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