

## Analysis of the Judge's Decision on Sexual Crimes Against Children (Study of the Decision of the Purwokerto District Court Number: 16/Pid.Sus-Child/2022/PN Pwt)

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### ABSTRACT

*The main problem of this research is how the legal considerations of judges in imposing verdicts on sexual crimes committed by children. The main problem is further elaborated in several sub-problems or research questions, namely: 1) How is the consideration of the panel of judges in handing down a verdict on sexual crimes against children in criminal case Number. 16/Pid.Sus-Child/2022/PN Pwt? 2) Is the decision of the Makassar District Court judge in case no. 16/Pid.Sus-Anak/2022/PN Pwt is in accordance with the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System? The type of research used is Normative Legal Research. The data source of this research comes from secondary data. This research is classified as research with qualitative data types, namely by managing secondary data sourced from related laws. To find out whether the judge in giving a decision has carried out his duties in accordance with the authority given and fulfills a sense of justice for the community, victims, and perpetrators, a fundamental analysis is needed regarding the judge's decision on sexual violence against minors. Based on the background of the problem.*

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## I. INTRODUCTION

In the context of social life, everyone cannot escape from various reciprocal relationships and interrelated interests between one another, which can be viewed from various aspects, such as religious, ethical, socio-cultural, political, and legal aspects. The plurality of interests often leads to conflicts of interest, which in turn give birth to what is called a criminal offense. To protect these existing interests, a rule and or legal norms are made that must be obeyed. For people who violate the rule of law and cause harm to others, action will be taken in the form of compensation or fines, while for someone who has committed a criminal offense, criminal sanctions will be imposed in the form of corporal punishment in the form of imprisonment, confinement and / or fines.<sup>1</sup>

The crime of sexual violence against children needs serious attention from various parties. The maintenance, guarantee and safeguarding of these interests should be carried out by those who care for them under the supervision and guidance of the state, and if necessary by the state itself. Because of this obligation, those

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<sup>1</sup> Lilis Wardani and Jawade Hafidz, 'Jurnal Hukum Khaira Ummah Vol. 12. No. 2 Juni 2017', 12.2 (2017), 387-96.

responsible for the care of children are also obliged to protect them from all disturbances that come from outside and from the child himself, where the protection of children provided will seek the welfare of children.

Violence and violation of children's rights or more popularly known as "child abuse" is basically a term to describe the form of mistreatment experienced by children.

We must realize that children are the next generation of the nation's ideals and are very important human resources for the survival of a nation. So that children can develop properly, care is needed from parents, society, and the government to provide protection, education, and attention.

Judges as officials who have the authority to give decisions on criminal acts of sexual violence against minors must be able to provide firm decisions and can fulfill a sense of justice for the community in general and children who are victims in particular. Judges must also pay attention to factors regarding human rights, as well as making operational punishments that are acceptable from both the position of the victim and the perpetrator. However, in carrying out the duties of their authority, judges encounter many obstacles, especially in the crime of sexual violence against children. Therefore, reliable judges are needed so that they can overcome the obstacles faced.

The purpose of writing is to find out and analyze the considerations of the panel of judges in handing down a verdict on sexual violence against children in criminal case Number. 16/Pid.Sus-Anak/2022/PN Pwt and to find out and analyze whether the decision of the Makassar District Court judge in case No. 16/Pid.Sus-Anak/2022/PN Pwt. 16/Pid.Sus-Anak/2022/PN Pwt.Mks is in accordance with the provisions of Law Number 11 of 2012 concerning the Child Criminal Justice System.

Regarding explanations related to comparison with previous research, it can be seen that the similarities between researcher Muh. Arham Latif and this research are both examining how the suitability of judges' decisions against children in cases of special juvenile crimes. The difference from the previous researcher discusses how the suitability of the judge's decision in the Makassar court while this research is in the Purwokerto Court which basically legal considerations in each region will be different because the basic norms that exist in each region will be different. Then the similarity between Muhamad Alkadrie's research and this research is that both examine how the suitability of judges' decisions against children in special criminal cases. The difference from the previous researcher discusses how the responsibility of the perpetrator of the crime of intercourse against the child in the Court's decision and examines how the consideration of the panel of judges in what is the basis of legal considerations for the judge in imposing punishment on the perpetrator of the crime of intercourse while this study discusses how the consideration and suitability of the decision according to the applicable law.

## II. RESEARCH PROBLEMS

Based on the background that has been set, several problems can be formulated in this study, namely:

1. How is the consideration of the panel of judges in handing down a verdict on sexual crimes against children in criminal case Number. 16/Pid.Sus-Child/2022/PN Pwt?
2. Is the verdict of the Purwokerto District Court judge in case no. 16/Pid.Sus-Anak/2022/PN Pwt is in accordance with the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System?

## III. RESEARCH METHODS

The type of research that will be used in this research is Normative Juridical research. Normative juridical research is used in legal research by examining existing literature. Or in other words, research conducted on the actual or real situation that has occurred in society with the aim of knowing and finding the facts and data needed.<sup>2</sup>

The research specification used is descriptive research, where this research aims to obtain a complete picture (description) of the state of positive law in society.

The approach method used in this research, namely the statutory approach (statue approach), a legal approach by examining the laws and regulations discussed, with the legal issues being handled by the approach, the legal approach to informative legal research has many practical and academic applications.

Secondary data is data obtained through research in several libraries, including official documents, books, research results in the form of reports, and so on.<sup>3</sup> In this study, the data source used is secondary data supported by primary data. In this case the secondary data that the author uses consists of 3 types of legal materials, namely primary legal materials, secondary legal materials, tertiary legal materials.

<sup>2</sup> Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi*, ALFABETA, Cv, 2017.

<sup>3</sup> Ammirudin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: Rajawali Pers, 2004), hlm. 30.

#### IV. RESULT AND DISCUSSION

##### 1. How are the considerations of the panel of judges in handing down a verdict on sexual crimes against children in criminal case No. 16/Pid.Sus-Child/2022/PN Pwt? 16/Pid.Sus-Child/2022/PN Pwt?

Consideration The judge's decision is the highest result of a case that is being examined and tried by the judge. The judge gives his decision on the following matters,<sup>4</sup> a decision on the incident, whether the defendant has committed the act charged to him. Then there is a decision on the law, whether the actions committed by the defendant constitute a criminal offense and whether the defendant is guilty and can be punished. And the final decision on the crime, if the accused is indeed punishable. The appointing authority has a lot of contemplation in making a choice on a continuous crime, taking into account several points of view, so that the choice can be known by the local area and can be known to the perpetrator and victim. Judges' contemplation in making choices is separated into three classes, more specifically: Juridical reflection which has the thought of the judge's reflection in looking at the juridical reality revealed in the introduction and by the general guidelines chosen as things to be kept in mind for the choice. Humanistic reflection is a consideration that uses ways of managing the establishment, monetary circumstances and values contained according to society. What is certain is that children who are far enough away with legitimate information are still examined, this relies on the many rules that govern children and give different cutting focuses. Although the farthest age that a youngster can be delegated has transformed, in the realm of criminal law will straightforwardly.

##### 2. Is the decision of the judge of the Purwokerto District Court in case no. 16/Pid.Sus-Anak/2022/PN Pwt is in accordance with the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System?

The choice of designated authority must contain circumstances that must be combined with the choice. He separated the choice of designated authority into two kinds, specifically the condemning choice and the non-condemning choice. The condemning option is the option that contains the support of the lawbreaker against the respondent, while the non-criminal option is the option that contains the rejection and deviation from all charges.

In this case, if further detailed about the formal efficient requirements for the validity of the judge's choice as follows: Valid requirements that must be remembered for the imposing option: An imposing option is an option that contains punishment for the respondent, thus the division of the two standards between a punitive option and a non-punitive option has various implications. in the legitimate circumstances that must be kept in mind for an option, the legitimate circumstances that must be kept in mind for a non-punitive decision, as opposed to a punitive option, a non-punitive option is an option that contains a quitting option or justification for the litigant, then at that point, the difference in standards makes the legitimate prerequisites that must be met contained in the non-punitive option unique.

The principle of legality is a principle that determines that criminal acts must first be regulated in a law or a rule of law before someone commits an offense or act. The presence of the principle of legality in legislation can be found in Article 1 paragraph (1) of the Criminal Code which explains that an act cannot be punished except based on the provisions of existing criminal legislation.<sup>5</sup>

According to Moeljatno, "A criminal offense is an act prohibited by a rule of law, which prohibition is accompanied by threats (sanctions) in the form of certain punishment for those who violate the prohibition". In order to be able to know the existence of a criminal offense, it is formulated in criminal legislation on prohibited acts and accompanied by sanctions. The formulation is determined by several elements or conditions that characterize the nature of the act, which can be prohibited by criminal sanctions if violated.<sup>6</sup>

Crimes that are very disturbing to the community are the crimes of sexual abuse and sexual intercourse. Sexual abuse is a type of crime that has a very bad impact, the Criminal Code classifies the crime of sexual abuse as a crime of decency, the Criminal Code has not defined sexual abuse itself because it does not seem to mix it with sexual intercourse or rape. The crime of sexual intercourse is one part of the crime of decency committed by a man against a woman by inserting his genitals. The crime of defilement is a crime that contradicts and violates the decency and morality of a person regarding and relating to the genitals or other parts of the body that can stimulate sexual desire. For example, stroking or rubbing the penis or vagina, holding breasts, kissing a woman on the mouth.

There are several forms and types of terms regarding sexual abuse, namely:<sup>7</sup>

1. Sexual exhibitionism, namely, deliberately showing off the perpetrator's genitals to other people.
2. Voyeurism, where the perpetrator kisses the person with lust.
3. Fondling i.e. stroking or groping someone's genitals.
4. Fellato, which is forcing someone to make oral contact.

A human behavior that at a certain time has been rejected in a certain association of life and is considered as a behavior that must be eliminated by criminal law using various means that are coercive in nature.<sup>8</sup>

The phenomenon called crime basically occurs in a process where there is social interaction between the parts of society that have the authority to formulate crimes and those who do commit crimes.<sup>9</sup>

The issue of the age limit of a child can be said to be very important in juvenile criminal cases, because it is often used to determine whether or not a person who commits an act which results in him becoming at fault is represented by a young person. Being conscious of the farthest age of children, there are various countries that regulate the time when children can be rejected. In Switzerland, it is possible for children to be rejected when they turn 6 years old, in Germany it is 14 years old which is known as *ist muchtstraf bar* or culpable.<sup>10</sup>

## V. CONCLUSION

Referring to the explanation of the problem above, the conclusions can be obtained as follows: The consideration of a person who gives a verdict, namely the judge in handing down a verdict on an act that tends towards child abuse which leads to a crime based on several elements to determine the final decision to be taken. The judge considers the case to have several bases, namely the element of every person, the element of committing violence or threatening violence to force a child to have sexual intercourse with him or with another person, all of which have been explained in detail. The judge's consideration was in accordance with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, as well as Article 81 Paragraph (2) Jo. Article 76D of Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning Child Protection Jo. Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016, Law No. 3 of 1997 concerning Juvenile Courts and Law No. 8 of 1981 concerning Criminal Procedure Law, PERMA number 4 of 2020 concerning Electronic Criminal Trials, SEMA No.1 of 2020 concerning Guidelines for the Implementation of Tasks During the Period of Prevention of the Spread of Corona Virus Disease 2019 (COVID-19), Letter of the Director General of Badilum Number. 379/DJU/PS.00/3/2020 Dated March 27, 2020 Regarding the Trial of Criminal Cases by Teleconference and other relevant laws and regulations;

Then about the judge's decision which regarding the juvenile criminal justice system, has no obstacles, where the choice is equivalent to the principles that speak of the Juvenile Law Enforcement Framework. One of the places in his choice, the judge chose to imprison for quite a long time with a probation period of half a year in prison, deducted from the period of confinement and a monetary fine of Rp. 2,000,000, - (2,000,000 rupiah) with the provision that if the fine cannot be paid, it is replaced by detention for more than 90 days. Whereas in article 71 paragraph (3) it is stated that assuming the penalty is a financial fine, the total penalty will be imposed as detention and the fine replaced by work preparation. This implies that fines for children who struggle with the law should be fixed on the assumption that they cannot meet the agreed fine, for example, work preparation.

## REFERENCES

- Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak.
- Undang-Undang Nomor 35 tahun 2014 tentang perubahan atas Undang-Undang Nomor 23 tahun 2002 tentang Perlindungan Anak Jo. Undang Undang Republik Indonesia Nomor 17 tahun 2016 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016.
- Undang-undang Nomor 3 Tahun 1997 Tentang Pengadilan Anak
- Undang-undang Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana
- PERMA nomor 4 Tahun 2020 tentang Sidang Pidana Secara Elektronik
- SEMA No.1 Tahun 2020 Tentang Pedoman Pelaksanaan Tugas Selama Masa Pencegahan Penyebaran Corona Virus Disease 2019 (COVID-19)
- Surat Dirjen Badilum Nomor. 379/DJU/PS.00/3/2020 Tanggal 27 Maret 2020 Tentang Persidangan Perkara Pidana Secara Teleconference
- Amir Ilyas. *Asas-asas Hukum Pidana*. Yogyakarta : Rangkap Education Yogyakarta & PuKAP-Indonesia. 2012.
- Ammirudin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Jakarta: Rajawali Pers, 2004.
- Arbijoto, *Kebebasan Hakim Analisis Kritis Terhadap Peran Hakim Dalam Menjalankan Kekuasaan Kehakiman*,

<sup>4</sup> Sudarto, 1986, *Hukum dan Hukum Pidana*, Bandung, Alumni.

<sup>5</sup> Amir Ilyas. 2012. *Asas-asas Hukum Pidana*. Yogyakarta : Rangkap Education Yogyakarta & PuKAP-Indonesia.

<sup>6</sup> Nikmah Rosida, *Asas Asas Hukum Pidana*, Semarang: Penerbit Pustaka Magister Semarang, (2011), hlm. 10

<sup>7</sup> Kartini Kartono, *Psikologi Abnormal dan Abnormalitas Seksual*, Bandung: Mandar Maju, (1985), hlm. 264

<sup>8</sup> P.A.F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia*, Bandung: Citra Aditya Bakti, (2011), hlm. 181.

<sup>9</sup> Topo Santoso dan Eva Achjani Zulfa, *Kriminologi*, Jakarta: Raja Grafindo Persada, (2001), hlm. 15.

<sup>10</sup> Arbijoto, 2010, *Kebebasan Hakim Analisis Kritis Terhadap Peran Hakim Dalam Menjalankan Kekuasaan Kehakiman*, Diadit Media.

Diadit Media, 2010.

Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi*, ALFABETA, Cv, 2017.

Kartini Kartono, *Psikologi Abnormal dan Abnormalitas Seksual*, Bandung: Mandar Maju, 1985.

Lilis Wardani and Jawade Hafidz, 'Jurnal Hukum Khaira Ummah Vol. 12. No. 2 Juni 2017', 12.2 (2017).

Nikmah Rosida, *Asas Asas Hukum Pidana*, Semarang: Penerbit Pustaka Magister Semarang, 2011.

P.A.F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia*, Bandung: Citra Aditya Bakti, 2011.

Sudarto, *Hukum dan Hukum Pidana*, Bandung, Alumni. 1986.

Topo Santoso dan Eva Achjani Zulfa, *Kriminologi*, Jakarta: Raja Grafindo Persada, 2001.