
Juridical Review of The Criminal Actions Performed by Children Against Children by Doing Deception and A Series of Lies (Decision Study Number 17/Pid.Sus-Children/2022/Pn Pwt)

Arvina Nur Febriana Putri
Universitas Muhammadiyah Purwokerto

ARTICLE INFO

Article history:

DOI:

[10.30595/pssh.v14i.1071](https://doi.org/10.30595/pssh.v14i.1071)

Submitted:

June 08, 2023

Accepted:

September 29, 2023

Published:

November 16, 2023

Keywords:

child abuse, sexual
intercourse, restorative
justice

ABSTRACT

The development of the world in this era of globalization shows a very rapid development, marked by positive influences, namely more advanced and developed science and technology. In addition to the positive effects that have been received, there have also been many negative effects that have also been received from globalization, in which crime has become more developed and sophisticated both in terms of quantity and quality. Along with the development of the era of globalization, there are also many crimes committed by children, which causes public concern. Crimes committed by these children include rape, obscenity, sexual abuse and sexual acts.. In this research, the problem to be solved is how to consider the decision of the judge issued to the child, from the point of view of restorative justice. The purpose of it is to find out the grounds for sentencing children in the order of restorative justice as a form of settlement of the crime of sexual intercourse committed by a child against a child. The authors used empirical legal and regulatory research with reference to the theoretical nature of the provisions of the applicable law and field research to establish facts about specific legal developments. In this research, the authors use the case approach method. The results of this research will be useful for the development of legal science, in particular to increase knowledge and add references, especially on issues related to the use of punishment against children in Indonesia, especially in cases of child-on-child sexual intercourse.

This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/).



Corresponding Author:

Arvina Nur Febriana Putri

Faculty of Law, Universitas Muhammadiyah Purwokerto

Jl. KH. Ahmad Dahlan, Kembaran, Banyumas, Jawa Tengah 53182, Indonesia

Email: arvnputri25@gmail.com

I. INTRODUCTION

The development of the world in this era of globalization shows very rapid development marked by a positive impact, namely the more advanced and developed science and technology. In addition to the positive impacts that have been obtained, there have also been many negative impacts that have also been obtained from globalization, in which crime has become more advanced and sophisticated, both in terms of quantity and quality. Along with the development of the globalization era, there are also many crimes committed by children, which cause concern for the community. Crimes committed by these children include rape, obscenity, sexual violence, and acts of intercourse.

Children are a very important thing because children are the potential for human destiny in the future, and it is they who play a role in determining the nation's history as well as a reflection of the nation's attitude to life in the future,¹ then the growth and development of children requires coaching, guidance, assistance and protection through education and a good environment so that their physical, mental and social growth and development grow in a balanced way so that the development of children's character can be directed towards a better direction.

As regulated in Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection. intercourse is a part of decency. The crime of intercourse itself is one of the crimes that is very difficult to detect or investigate, because both the perpetrator, the victim, and the victim's family as well as the perpetrator are reluctant to make a report about the occurrence of the crime because one of them, the Indonesian people generally consider the act of intercourse as a crime. disgrace and very taboo to talk about.

The act of sexual intercourse committed by a child against a child which is done voluntarily, which often occurs in society, needs to be investigated in terms of criminal law. Can the perpetrator still be held criminally responsible on the basis of committing acts of intercourse with a minor? And what about the legal process? Meanwhile, in the context of implementing child protection, the government is responsible for providing facilities and accessibility for children, especially in supporting and guaranteeing optimal and directed growth and development of children.

Based on the description listed above, the author decided to raise the title "**Juridical Review Of The Criminal Actions Performed By Children Against Children By Doing Deception And A Series Of Lies, (Study Of Decision Number 17/Pid.Sus-Anak/2022/Pn Pwt)**".

II. RESEARCH PROBLEMS

Based on the description that has been presented previously, the problems that the authors formulate in this study are as follows:

1. Does the consideration of the judge's decision handed down to the child in terms of restorative justice as a form of settlement of the crime of sexual intercourse committed by a child against a child?
2. Does the feasibility of criminal sanctions received by perpetrators of intercourse committed by children in the Decision on the Case "Number 17/Pid.Sus-Anak/2022/PN Pwt" in terms of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 35 of 2014 about Child Protection and the Criminal Code?

III. RESEARCH METHODS

This research uses the type of empirical normative legal research, the reason for using this type of research is because it will examine cases of criminal intercourse against children in case decisions No. 17/Pid.Sus-Anak/2022/PN Pwt with reference to the theoretical nature of statutory provisions which regulates and field research to find facts of concrete legal events. In this case the child defendant was found guilty and can be held accountable.

The data obtained were then analyzed qualitatively. Qualitative analysis is carried out by describing and describing data and facts resulting from a research in the field with an interpretation, evaluation, and general knowledge. The data were then analyzed using the inductive method, which is a way of thinking based on general facts followed by specific conclusions to make suggestions. The data obtained by the sources, both written and verbal, were thoroughly researched and studied. After the data has been collected both from the field and obtained from the library, it is then processed and arranged systematically. The approaches that can be used in legal research are the statutory approach, the case approach, the historical approach, and the comparative approach. And the conceptual approach.² As for this study the authors use the case approach method.

IV. RESULT AND DISCUSSION

1. The Consideration Of The Judge's Decision Handed Down To The Child In Terms Of Restorative Justice As A Form Of Settlement Of The Crime Of Sexual Intercourse Committed By A Child Against A Child

In this study, the criminal penalties for child sexual intercourse are analyzed according to the perspective of criminal law and law enforcers use the theory of criminal responsibility. Criminal liability in a foreign language is referred to as "toereken-baarheid", "criminal responsibility", "criminal liability", this criminal responsibility is intended to determine whether a person can be held responsible for his crime or not for the actions committed.³

¹ Wigiati, Soetodjo. 2006. *Hukum Pidana Anak*. Bandung: PT. Refika Aditama.

² Peter, Mahmud Marzuki. 2007. *Penelitian Hukum*. Jakarta: Kencana Predana Media Group.

³ Sintauri, S. R. 1996. *Asas-asas Hukum Pidana di Indonesia dan Penerapannya*. Jakarta: Alumni Ahaem-Patahaem.

A person can be punished depending on two things, namely (1) there must be an act that is contrary to the law, or in other words, there must be an element against the law so there must be an objective element, and (2) the perpetrator must have an element of error in the form of intentional and or negligence, so that the unlawful act can be accounted for to him so there is a subjective element. The occurrence of criminal liability because there has been a criminal act/action committed by someone.⁴

Criminal liability leads to the conviction of the offender, if he has committed a crime and fulfills the elements specified in the law. Seen from the point of view of a prohibited (required) action occurring, a person will be held accountable for his crime if the action is unlawful or rechtsvaardigingsgrond or (justification reasons). From the point of view of being responsible, only those who are "capable of being responsible" can be held accountable for their crimes.

The ability to be responsible is based on the condition and ability of the "soul" (geestelijke vermogens), and not on the condition and ability to "think" (verstanddelijke vermogens), of a person, even though the official term used in Article 44 of the Criminal Code is verstanddelijke vermogens for translation from verstanddelijke vermogens deliberately used the term "state and ability of a person's soul".

1. Types of Accountability

Types of Criminal Liability Various types of accountability, according to Widiyono, are as follows:

a) Individual Responsibility

In essence, only each individual can be responsible. Only they bear the consequences of their actions. Therefore, the term personal responsibility or self-responsibility is actually "redundant". A society that does not recognize that each individual has his own values that he is entitled to follow is unable to respect the dignity of the individual and is unable to recognize the nature of freedom.

b) Responsibility and freedom

Freedom and responsibility cannot be separated. People who can be responsible for their actions and are held accountable for their actions are only people who make decisions and act without pressure from any party or freely.

c) Social responsibility

In political discussions the term social responsibility is often referred to. This term is considered as a special form, higher than responsibility in general. But different from the use of existing language, social responsibility and solidarity arise from personal responsibility and at the same time demand freedom and competition on a high scale.

2. Elements of Criminal liability

Criminal liability must meet several elements, namely:

- a) The existence of the ability to be responsible for the creator, the ability to be responsible can be interpreted as a normal or healthy mental condition and the ability of one's mind to discriminate between good and bad things or in other words being able to realize the unlawful nature of an action and in accordance with the realization that it is able to determine the ability to be responsible, namely the factor of reason and the factor of will.
- b) The inner relationship between the maker and his actions in the form of intentional (dolus) or negligence (culpa) is referred to as a form of error.
- c) Reasons for erasing errors or reasons for forgiving, In the third element it is stated that there is no reason for erasing mistakes or there is no reason for forgiving. Regarding this matter, there are times when under certain circumstances a person cannot do anything else which results in a crime occurring even though he does not want to. And there are times when the occurrence of a crime cannot be avoided by a person, because of something that comes from outside himself, this factor causes that person to be unable to avoid the crime which results in his mistakes being erased.

3. The Feasibility Of Criminal Sanctions Received By Perpetrators Of Intercourse Committed By Children In The Decision On The Case "Number 17/Pid.Sus-Anak/2022/PN Pwt" In Terms Of Law Number 11 Of 2012 Concerning The Juvenile Criminal Justice System, Law Number 35 Of 2014 About Child Protection And The Criminal Code

1. Definition of Crime

The discussion within the scope of criminal law is inseparable from what causes a person to be said to have committed an act that is considered unlawful. From a legal point of view, someone's actions that are not in

⁴ Hiariej, O. S. E. 2014. *Prinsip-Prinsip Hukum Pidana*. Yogyakarta: Cahaya Atma Pustaka.

accordance with the provisions of criminal law are referred to as a criminal act. More than that, in order to be said as an act that is categorized as a criminal act, the law requires that certain elements must be fulfilled. For the sake of explaining an act as a crime, it is necessary to explain the meaning of a crime and its elements.

The definition of a crime, in terms of its formulation, there are differences in the terms used in the context of interpreting what is actually meant by a crime. The Criminal Code (KUHP) in interpreting criminal acts uses the Dutch language with the term *strafbaar feit*. The term crime in criminal law uses the term offense. In general, a crime is defined as a criminal event, or a criminal act.

The term "crime" in Dutch is known as "*strafbaar feit*". The word "*strafbaar feit*" consists of the word "*feit*" which means "a part of a reality" or "*een gedeelte van de werkelijkheid*" and the word "*strafbaar*" means "punishable". Literally, the word "*strafbaar feit*" is translated as "a part of a reality that can be punished. Based on this statement, it can be understood that what can be punished is actually a human being as a person and not reality, actions or actions.⁵

2. Elements of Criminal Acts

The doctrine of "*strafbaar feit*" was put forward by Simons who formulated that *strafbaar feit* as a behavior (*handeling*) that is punishable by crime that is against the law related to mistakes and that is carried out by people who are capable of being responsible.⁶ Based on Simons' opinion, it can be seen that the elements of a crime include:

- a. Human behavior (doing or not doing)
- b. Threatened with criminal
- c. Against the law
- d. Done by mistake
- e. By responsible people

The meaning of "human action" is not only in the form of carrying out an act that is prohibited by law, but includes actions that by law want to be done but are not done. In other words, the "human action" is an act that is against the law, contrary to the law, or violates the law, whether it is an act that is committed (*een doen*) or allows/ ignores (*een nalaten*). The element against the law and the element of being subject to criminal punishment means that the act has been regulated in laws and regulations as the basis for whether a person can be punished.

The formulation of a crime that pivots on the fulfillment of the elements of the offense as stated in the Law does not simply cover what is actually meant by a crime. The existence of an act that is against the law and the elements of offense regulated in the law have been fulfilled, the act has not been said to be a crime if without any elements a person can be punished. So that in addition to fulfilling the elements of the offense regulated in the law, the element of being able to punish a person is the main point of whether or not it can be said as a crime.

4. Definition of Child

According to the language, children are the second offspring as a result of the relationship between men and women. In the consideration of Law Number 23 of 2002 concerning Child Protection, it is said that children are trusted and blessed by God Almighty, in whom dignity and dignity are inherent as whole human beings. It was further said that children are shoots, potentials, and the younger generation to continue the ideals of the nation's struggle, have a strategic role and have special characteristics and characteristics that guarantee the continued existence of the nation and state in the future. Therefore, in order for every child to be able to assume this responsibility in the future, he or she needs to get the widest possible opportunity to grow and develop optimally, both physically, mentally and socially, and to have noble character, it is necessary to make efforts to protect and to realize child welfare by guarantee the fulfillment of their rights and the existence of treatment without discrimination.

5. Definition of Children as Perpetrators of Criminal Acts

The definition of a child as a perpetrator of a crime refers to Law Number 3 of 1997 concerning Juvenile Courts, the age limit for children varies, but with the Constitutional Court Decision Number 1/PUU-VIII/2010, the age limit for children who can be accounted for is no longer 8 years old and not yet 18 years old but has reached the age of 12 years and not yet 18 years old. Talking about children is very important, because children are the potential for human destiny in the future, it is he who plays a role in determining the history of the nation as well as a reflection of the nation's attitude to life in the future. In Indonesia there are several Patrons of Legislation that regulate children, for example Law No. 4 of 1979 concerning Child Welfare, Law No. 3 of 1997

⁵ P.A.F, L. 2011. *Dasar-Dasar Hukum Pidana Indonesia*. Bandung: PT Citra Aditya Bakti.

⁶ Simons, 1992, *Leerboek Van Het Nederlandsche Strafrecht*. Bandung: Pionier Jaya.

concerning Juvenile Courts, Law No. 39 of 1999 concerning Human Rights, Law No. 23 of 2002 concerning Child Protection, and various other regulations related to child problems.

6. Definition of Intercourse

In the complete modern Indonesian dictionary⁷ the word "coitus" means as follows:

“berhubungan badan, hubungan intim, kontak badan (hubungan suami istri, hubungan sepasang manusia)”.

The Indonesian-English dictionary⁸ is as follows:

“copulation, have sexual intercourse, copulate with person, with a body certain characteristics”.

Yan Pramadya Puspa⁹ in the Law Dictionary added that the meaning of the word coitus "coitus" or "coition" is a process of intercourse between a man and a woman.

V. CONCLUSION

The Childrens are a very important thing because children are the potential for human destiny in the future, and it is they who play a role in determining the nation's history as well as a reflection of the nation's attitude to life in the future,¹⁰ then the growth and development of children requires coaching, guidance, assistance and protection through education and a good environment so that their physical, mental and social growth and development grow in a balanced way so that the development of children's character can be directed towards a better direction.

Criminal liability leads to the conviction of the offender, if he has committed a crime and fulfills the elements specified in the law. Seen from the point of view of a prohibited (required) action occurring, a person will be held accountable for his crime if the action is unlawful or rechtsvaardigingsgrond or (justification reasons). From the point of view of being responsible, only those who are "capable of being responsible" can be held accountable for their crimes.

REFERENCES

- Ali, Muhammad. 2004. *Psikologi Remaja Perkembangan Peserta Didik*. Jakarta: Bumi Aksara.
- Hiariej, O. S. E. 2014. *Prinsip-Prinsip Hukum Pidana*. Yogyakarta: Cahaya Atma Pustaka.
- John M. Echols dan Hasan Shadili. 1993. *Kamus Inggris Indonesia*. Jakarta: Gramedia.
- P.A.F, L. 2011. *Dasar-dasar Hukum Pidana Indonesia*. Bandung: PT Citra Aditya Bakti. Puspa, Yan Pramadya. 1977. *Kamus Hukum*. Semarang: Aneka Ilmu.
- Soetodjo, Wigiati. 2006. *Hukum Pidana Anak*. Bandung: PT. Refika Aditama.
- Sugiyono. 2010. *Metode Penelitian Administrasi (XVIII)*. Bandung: Alfabeta.
- Sintauri, S. R. 1996. *Asas-asas Hukum Pidana di Indonesia dan Penerapannya*. Jakarta: Alumni Ahaem Patahaem.
- Simons. 1992. *Leerboek Van Het Nederlandsche Strafrecht*. Bandung: Pioner Jaya.

⁷ Ali Muhammad. 2004. *Psikologi Remaja Perkembangan Peserta Didik*. Jakarta: Bumi Aksara.

⁸ John M. Echols dan Hasan Shadili. 1993. *Kamus Inggris Indonesia*, Jakarta: Gramedia.

⁹ Puspa Yan Pramadya. 1977. *Kamus Hukum*. Semarang: Aneka Ilmu.