

JURIDICAL ANALYSIS OF CRIMINAL ACTIONS CONFLICT AGAINST CHILDREN IN JAYAPURA CITY

Fitriyah Ingratubun¹

¹Faculty of Law, Doctor Husni Ingratubun Papua University, Indonesia
E-mail: fitri211209@gmail.com

ABSTRACT

Criminal activity is defined as an act that is prohibited by law and is accompanied by threats or consequences in the form of certain punishments. A criminal act can also be defined as an activity that is prohibited and threatened by a legal rule, as long as the prohibition is aimed at an act, namely a situation or event created by the person who caused the event to occur. The legal research approach used in this research is research that explores legal problems that actually exist in society and is based on field data that is linked to the subject matter being studied. The research results showed that the application of the criminal law for sexual intercourse with children in imposing sentences on perpetrators of criminal acts of sexual intercourse committed by adults against children in reality rarely found perpetrators who were sentenced to the maximum sentence, in fact more perpetrators were sentenced to less than half the maximum penalty stipulated in law. This indicates that the role of the judiciary in providing a deterrent effect against perpetrators is still half-hearted, this is also one of the reasons why many people are not afraid to commit the crime of sexual intercourse with children. The judge's consideration in imposing a crime on the perpetrator of sexual intercourse is that it must include the basis of the trial, the basis of the decision and the values that exist in society.

Keywords: Children, Crime, Sexual Intercourse

INTRODUCTION

Indonesia is a country that follows the rule of law. Law is an authority that controls and compel, with severe penalties for those who disobey it. In essence, the goal of making laws is to promote societal harmony and peace. However, criminal activities continue to occur in society. This demonstrates that the law's aims have not been completely accomplished.

The evolution of society as a result of the globalization age has an influence on the criminal world. One of them is moral crimes, which bring fear and concern in society, particularly sexual crimes such as rape, obscene actions, and sexual violence, particularly sexual encounters with children.¹

¹ Saraswati, Rika, 2015, *Hukum Perlindungan Anak di Indonesia*, Bandung: Citra Aditya Bakti. p. 24.

The prevalence of crime, particularly rape, is increasingly concerning the community, particularly parents. The offense of sexual intercourse with a minor is a critical legal matter that must be thoroughly investigated. As is well known, sexual intercourse is a crime that breaches societal values such as politeness, religion, and decency, particularly if the person being sexually abused is a youngster who physically does not yet have sexual desire, such as teenage and adult women. Indeed, as we all know, children are national assets that must be safeguarded against all sorts of violence and criminality that risk their safety.

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penalties. Criminal acts can also be defined as activities that are banned and threatened by a legal rule, as long as the prohibition is intended at an act, namely a condition or occurrence created by the person who caused the incident's conduct. Events cannot be forbidden if the person who causes them is not a human being because of a pretty substantial threat, efforts in the future will be taken to prevent others from committing these acts.

Method

The research specification is analytical descriptive, with a normative juridical approach method supported by empirical juridical. The types of data used are secondary data and primary data. Secondary data was obtained from document studies, primary data was obtained by interviews. The data obtained was then analyzed qualitatively.²

Similar research has been carried out by Fariaman Laia with the title *Juridical Review Of The Crimination Of Criminal Acts Of Contract Against Children*. This research discusses the punishment of criminal acts of sexual intercourse committed against children in general, while the author focuses more on those committed in the Jayapura city area.

² Amiruddin dan Zainall Asikin, 2012, *Pengantar Metode Penelitian Hukum*, Jakarta: PT Raja Grafindo Persada, p. 32.

Tongat, Bastianto Nugrono, and Supolo Satyo Wibowo also did study titled Juridical Review of the Crime of Sexual Violence with Children. This study focuses on the illegal act of sexual intercourse against a child that is accompanied by acts of violence, which might result in a harsher punishment being imposed on the perpetrator. The author's research, on the other hand, concentrated solely on examples of unlawful acts of sexual intercourse with children that were not accompanied by additional illegal activities.³

RESULTS AND ANALYSIS

1. RULES FOR THE CRIME OF SEXUAL INTERCOURSE AGAINST CHILDREN ACCORDING TO LAW NO. 35 OF 2014

The child protection law explicitly uses the terminology "intercourse" which is specifically contained in article 81, whereas in article 82 the term "obscenity" is used and article 88 uses the terminology "sexual exploitation".

The phrase "intercourse" is used directly in article 81 of the child

³ Tongat, Bastianto Nugrono, Supolo Satyo Wibowo, Tinjauan Yuridis terhadap Tindak Pidana Persetubuhan dengan Kekerasan pada Anak, *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam* Vol. 4, 2 (Desember, 2022), pp. 297-306.

protection law, whereas the term "obscenity" is used in article 82 and "sexual exploitation" is used in article 88:

1) There is sexual intercourse

Sexual intercourse must actually occur in the form of penetration of the penis into the vagina, which is generally done to obtain sexual satisfaction or to have children. If there is no penetration of the penis into the vagina then the act falls within the scope of obscene acts which are specifically regulated in article 82 of the Child Protection Law.

2) Must be done to children

Sexual intercourse must be carried out on a child, namely someone under 18 years of age. The child referred to here can mean either a boy or a girl. The term "child" in article 81 paragraph (1) of the Child Protection Law must automatically be considered a girl, because the perpetrator must be a man.

3) Committing violence or threats of violence or committing deception, a series of lies or persuasion.

Adami Chazawi stated that deception is defined as an act in such a way that gives the impression or belief about the truth of the act that is actually not true.⁴

⁴ Adami Chazawi, 2008, *Pelajaran Hukum Pidana I Stelsel Pidana, Tindak Pidana, Teori-Teori*

According to R. Soesilo, deception is a deception that is so cunning that someone with a normal mind can be deceived. A series of lies shows that the lie or untruth said as if it were true to the victim, so that because of the series, one lie and another lie have a connection or link where one gives the impression of confirming or strengthening the other.⁵ A series of lies has elements in the form of words that are not true, more than one lie and one lie strengthens another lie.

Persuading is attempting to convince someone to agree with the wishes of someone who persuades or exerts crafty influence on someone, so that the person does something that they would not do if they understood the true circumstances.

4) With himself or with others

A male offender can be held accountable for using or threatening violence to compel a female into having sexual relations with himself or someone other than the coercer. Male offenders can be held accountable for deceit, a series of falsehoods, or convincing a girl to have sexual relations with herself or someone other than herself, or persuading a boy to

have sexual relations with another woman. Article 81 paragraph (1) of the Child Protection Law prohibits sexual intercourse based on violence or the fear of violence with force, whereas paragraph (2) prohibits sexual intercourse based on deceit, a series of falsehoods, or persuasion.

2. APPLICATION OF THE CRIMINAL LAW FOR SEXUAL INTERCOURSE AGAINST CHILDREN

Normatively, the criminal act of sexual intercourse with children has been regulated in the Criminal Code, namely Article 287 of the Criminal Code, the original formulation of which reads as follows:⁶

Hij die buiten echt vleselijk gemeenschap heeft met ene vrouw van wie hij weet of redelijkerwijs moet vermoeden dat zij indien van haar leeftijd niet blijkt, nog niet huwbaar is, wordt gestraft met gevangenisstraf van ten hogste negen jaren

(Prosecution will not be carried out if there is no complaint, unless the woman has not reached the age of twelve or if things occur as regulated in Article 291 and Article 294.)

The close relationship between the opposite sex (a man and a woman who is

Pemidanaan & Batas Berlakunya Hukum Pidana, PT Raja Grafindo Persada, Jakarta. p. 25.

⁵ R. Soesilo 1991, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-komentarnya Lengkap Pasal Demi Pasal*, Politeia, Bogor.

⁶ A.F Lamintang dan Theo Lamintang, *Delik-delik Khusus Kejahatan Melanggar Norma Kesusilaan dan Norma Kepatutan* (Edisi Kedua), Sinar Grafika, Jakarta, 2011, p.113.

not his wife or not his mahram) is a factor that is quite influential in the occurrence of sexual crimes. The perpetrator is indeed guilty, but the mistake committed could have been caused by a mistake indirectly made by the victim.⁷

The problem with imposing criminal penalties on perpetrators of the crime of sexual intercourse by an adult against a child is that in reality, perpetrators are rarely sentenced to the maximum penalty, and more often than not, they are sentenced to less than half of the maximum penalty stipulated in the law.⁸ This implies that the judiciary's role in delivering a deterrent impact to criminals is only half-hearted, which is one of the reasons why many individuals are not frightened of committing immoral acts against children. half the maximum threat regulated by law. This suggests that law enforcement operations directed against perpetrators of illegal actions including sexual intercourse with minors tend to favor children as victims less, without neglecting the humanitarian aspect of the perpetrator's rights.

⁷ Abdul Wahid dan Muhammad Irfan, *Perlindungan Terhadap Korban Kekerasan Seksual (Advokasi atas Hak Asasi Perempuan)*, Refika Aditama, Bandung, 2011, p.69.

⁸ Ana Rahmatyar dan Joko Setiyono, "Pertanggungjawaban Pidana Anak Sebagai Pelaku Kejahatan Kesusilaan Terhadap Anak", *Jurnal Penelitian Hukum* Vol. 29 No.2, (2020).

Case Number 64/Pid.Sus/2016/PN. Jap, namely the criminal act of sexual intercourse against a child as intended in Article 81 paragraph (2) of Law Number 35 of 2014 as an amendment to Law Number 23 of 2002 concerning Child Protection, which was committed by the suspect Muhammad Pakalessy alias Ahmad against the Ipah victim on November 23, 2015, falls under the jurisdiction of the Jayapura City Police.

Based on the Public Prosecutor's Indictment No. Case Reg: PDM-29/Jpr/Epp.2/04/2016 the defendant was charged with violating the following acts:

Firstly, intentionally inducing a child to have sexual intercourse with him or another person which is regulated and punishable by Article 81 paragraph (2) of Republic of Indonesia Law Number 35 of 2014 concerning Child Protection.

Second, taking away a minor woman not with the will of her parents or guardian, but with the woman's own will with the intention of marrying or not marrying, which is regulated and punishable by Article 332 paragraph (1) of the Criminal Code.

According to Public Prosecutor Obeth Ansanay, the charges made against the defendant Muhammad Pakalessy alias Ahmad were in accordance with

procedures and the defendant admitted all his actions. The prosecutor argued that the defendant was proven to have deliberately committed sexual intercourse with a minor (the victim was 14 years old). In this case, the Public Prosecutor demanded a prison sentence of 7 (seven) years.

1) Actions

- a) Fulfill the formulation of the offense in the law as a criminal act.
- b) Is against the law (no justification).

2) Person/Actor

The person must have made a mistake, namely:

- a) There must be the ability to be responsible.
- b) Dolus or Culpa (no excuses).

According to Chief Judge Syafruddin, the panel of judges had considered the indictment, the evidence of which was more in the direction of Article 81 paragraph (2) of Law Number 35 of 2014 which states "any person who deliberately commits deception, a series of lies or persuades a child to have sexual intercourse with him or persuading a child to have sexual intercourse with him or another person is subject to imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years and a fine of a

maximum of IDR 300,000,000 (three hundred million rupiah) and a minimum of IDR 60,000,000 (sixty million rupiah).

Furthermore, the defendant's conduct were determined to have met all of the conditions of article 81 paragraph (2) of Law Number 35 of 2014. Thus, the defendant's acts of "inducing a child to have sexual intercourse with him" completed the crime as defined by the law as a criminal act.

Soedarto said that if an act meets the definition of a crime, it is a sign or indication that the act is against the law, but this can be removed if there is a justification.

Furthermore, Syafruddin claims that in the case of the defendant Muhammad Pakalessy alias Ahmad's sexual intercourse with a minor, no legal facts were shown at trial that could be used as justification. The defendant committed sexual intercourse not because he was forced to defend himself or others, nor because he was forced to carry out legal orders and legal office orders, so the judge concluded that the defendant was legally and convincingly proven to have committed a criminal act and should be sentenced to a crime, because there were no reasons that could eliminate the unlawful nature of the criminal act.

In the case of sexual intercourse with a child, the defendant Muhammad Pakalessy alias Ahmad found no signs of mental disability or disturbance caused by illness, so he should have been able to know or realize that his actions were illegal and could determine his will and avoid it based on this awareness. This demonstrates that he is deemed capable of responsibility, and hence mistakes may be put on him.

According to Abdul Gafur in judgment Number 64/Pid.Sus/2016/PN Jap, the defendant Muhammad Pakalessy alias Ahmad's crimes were *Dollus* (deliberate), not *Culpa*, because the defendant's sexual intercourse with a minor was wanted, recognized, and realized by him. Because the defendant intended to have sexual relations with the victim from the start, it was not because the defendant was reckless, careless, or careless.

Furthermore, no legal facts were discovered during the trial that could be used as justifications for forgiveness. The defendant is responsible, does not go beyond the scope of emergency defense, and is not carrying out illegal office orders. So the panel of judges concluded that the defendant was legally and convincingly proven guilty of committing

a criminal act and that he should be sentenced to a crime because there were no reasons that could absolve the defendant's guilt.

Thus, the defendant's actions met the requirements for punishment, the actions met the formulation of the law, are against the law (there is no justification), the defendant is capable of responsibility, he committed the act on purpose, and there is no excuse.⁹

JUDGE'S CONSIDERATIONS REGARDING PERPETRATORS OF CHILD SEXUAL RELATIONS.

1) Basic legal considerations for judges in imposing sentences

A court decision must include the basis for judging, the basis for deciding, and the societal values.

a. Judicial Basis

In relation to the basis for adjudicating a criminal case, in this case article 84 of the Criminal Procedure Code concerning the authority of the District Court, in paragraph (1) it is formulated that "the District Court has the authority to try all cases of criminal offenses committed within its jurisdiction". In paragraph (2) it is formulated "The District Court in whose jurisdiction the

⁹ Ngawiardi, 2017, *Kajian kriminologi Terhadap Kejahatan Persetubuhan Anak di Bawah Umur di Parigi Moutong*, Jurnal Universitas Moutong.

defendant resides, last resided, at the place where he was found or detained, is only authorized to try the defendant's case if the residence of the majority of the witnesses summoned is closer to the District Court location than the location the position of the District Court in whose area the crime was committed."

In case Number 64/Pid.Sus/2016/PN Jap, the place where the sexual intercourse occurred was the PTC Entrop employee mess. And the residence of the victim witness and other witnesses resides in Entrop so that the authority to examine and adjudicate cases of sexual intercourse is the Jayapura Class 1A District Court. This means that it is in accordance with article 84 paragraph (2) of the Criminal Procedure Code.

b. Basis for Decision

In addition, the judge's decision is based on the relationship between material and formal criminal law. In terms of material criminal law, the judge considers the terms of punishment when making a decision, namely:

a) Action: fulfills the formulation of the law, is against the law (no justification). The first element of a criminal act is a person's actions or actions. This person's actions are the

connecting point and basis for the imposition of punishment

b) Person/Perpetrator: must have a fault, namely the ability to take responsibility, *Dollus* or *Culpa* (no excuse). Mistakes contain an element of condemnation of someone who has committed an act. Which actions can be blamed on him if:

- 1) Able to be responsible
- 2) The presence of *Dollus* or *Culpa*
- 3) There is no excuse for forgiveness

According to the evidence presented at trial, the defendant was responsible, did not go beyond the scope of emergency defense, and was not carrying out illegal office orders. Then we obtain legal evidence that can be used to justify forgiveness. Based on an examination of the terms of punishment, both in terms of the act and the perpetrator, they have all been met. This means that the defendant can be sentenced to a crime under material criminal law.¹⁰

According to the Panel of Judges in the decision in case Number 64/Pid.Sus/2016/PN Jap, the panel of judges had paid attention to mitigating and aggravating factors for the defendant.

¹⁰ Maidin Gultom. 2010. *Perlindungan Hukum Terhadap Anak*, Cetakan Kedua. Refika Aditama. Bandung. p. 32.

The aggravating and mitigating factors in this case are:

The things that are aggravating are that the defendant's actions are contrary to religious norms and the values that exist in society. Meanwhile, the things that make things easier for the defendant are that the defendant behaved politely in court and frankly admitted his actions, the defendant is still young and is expected to improve his behavior in the future.

Based on the explanation above, it can be seen from the perspective of material criminal law and formal criminal law, all the conditions for imposing a crime on the defendant have been fulfilled.

2) Norms that apply in society

When a judge imposes a sentence, he or she still ensures the upholding of truth, justice, and legal certainty for a person, so it is not simply retaliation or a formality. As a result, when making decisions, judges must investigate, follow, and comprehend societal values.

This is the judge's opinion on the values that exist in society. The judge considers the defendant Muhammad Pakalessy alias Ahmad's sexual intercourse with a child to be a highly reprehensible act in society. This act is

against the law and morality, and the defendant should not commit it because the victim is a minor with a bright future.

Based on the foregoing analysis, the researcher believes that the judge's consideration in issuing a criminal decision against the defendant in Decision Number 64/Pid.Sus/2016/PN Jap was appropriate in that he considered the basis of the trial, the basis of the decision, and the values that exist in society. The defendant Muhammad Pakalessy alias Ahmad was sentenced by a panel of judges at the Jayapura Class 1A District Court to imprisonment for 5 (five) years minus the time the defendant was in custody and a fine of 60,000,000 (sixty million rupiah) provided that the fine was not paid was replaced with imprisonment for 2 (two) months. determining that the defendant's time in detention should be deducted in full from the sentence imposed and ordering the defendant to remain in detention.

According to researchers, the sentence of 5 (five) years is relatively light in comparison to the Public Prosecutor's demands. This demonstrates that the judge is hesitant to impose a sentence on a defendant who has been clearly proven to have committed a

prohibited act.¹¹ When imposing punishment on perpetrators, one should not simply impose punishment on the basis of vengeance, but the punishment can be a lesson to improve, a deterrent effect, and something that makes people not do it, so efforts should be made to provide opportunities to improve themselves, of course. It is also important to consider the victim's reaction to the perpetrator's actions when determining a sentence.¹²

CONCLUSION

In imposing the crime, the Panel of Judges at the Jayapura Class 1A District Court applied the elements in Article 81 paragraph (2) of Law Number 35 of 2014 concerning child protection in decision Number 64/Pid.Sus/2016/PN Jap concerning the crime of sexual intercourse with children:

- a) Elements of each person. In this case, what is meant by person is Muhammad Pakalessy alias Ahmad as the defendant.
- b) Element on purpose. In accordance with legal facts, the defendant persuaded the victim witness to have

intimate relations with him like husband and wife. This is an intention, desire or willingness of the defendant to have sexual intercourse with the victim in order to serve the defendant's biological desires. In this way, the element of deliberate action has been fulfilled.

- c) The element of persuading a child to have sexual intercourse with him. In accordance with legal facts, the defendant persuaded the child to commit sexual intercourse by using the words of a promise to marry and take responsibility if the victim witness became pregnant. So that the element of persuading a child to have sexual intercourse with him has been fulfilled.

In the decision on case Number 64/Pid.Sus/2016/PN Jap, the panel of judges considered the basis for judging, the basis for deciding and the values that exist in society. The conditions for imposing a criminal sentence have been fulfilled, namely the fulfillment of the elements of Article 81 paragraph (2) of Law Number 35 of 2014 concerning Child Protection, the fulfillment of the conditions of punishment either on the person or on his actions as well as taking

¹¹ Mahrus Ali, 2012, *Dasar-dasar Hukum Pidana*, cet.2, Sinar Grafika, Jakarta. p. 20.

¹² Soekanto, Soerjono, 2013, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, Jakarta:PT Raja Grafindo Persada. p. 15.

into account aggravating matters and circumstances.

Based on this, the Jayapura Class 1A District Court's Panel of Judges sentenced the defendant Muhammad Pakalessy alias Ahmad to imprisonment for 5 (five) years, minus the time the defendant was in custody, and a fine of 60,000,000 (sixty million rupiah).

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