



Implementation of Legal Protection (Study of Decision Number: 5/Pid.Sus/2024/PN.Kng) for Children Who Are Sexually Abused

Maretha Intan Cahyani¹, Frandes Surya Agustinus Sibarani², Adli Muhammad Faishal³, Ismayana⁴, and Waluyadi⁵

¹Universitas Swadaya Gunung Jati; Cirebon, Indonesia, E-mail address: marethaic133@gmail.com

²Universitas Swadaya Gunung Jati, Cirebon, Indonesia Email: adlifaisal993@gmail.com

³Universitas Swadaya Gunung Jati, Cirebon, Indonesia Email: frandes.fsa@gmail.com

⁴Universitas Swadaya Gunung Jati, Cirebon, Indonesia E-mail: ismayana@ugj.ac.id

⁵Universitas Swadaya Gunung Jati, Cirebon, Indonesia Email: waluyadi01@gmail.com

Corresponding Author : waluyadi01@gmail.com

Abstract. The goal of this research is to outline the criminal penalties for those who engage in sexual activity with minors in terms of victim protection. The normative approach method is used in this investigation. Secondary data is used. Documents and literature are examined to implement data collection procedures. In the meantime, the analysis is descriptive and employs qualitative analysis. The study's findings indicated that the criminal penalties meted out to those who engage in sexual activity with minors do not fairly compensate for the victims' protection.

Keywords: Victim Protection, Children, and Intercourse Perpetrators

INTRODUCTION

Children represent the next generation of human resources with the capacity to uphold the country's values. They are characterized as young or immature humans and are a valuable national resource that will greatly influence the nation's future ability to survive. Children should be granted their rights, including legal protection from the government, to accomplish this.

Every citizen must be shielded by the state against all types of criminal activity. One of the things the state must do to provide security and comfort in the survival of the country and state for its residents is to give legal protection. This will enable them to live safe and tranquil social lives and raise the standard of human resources. All groups, including youngsters, should have legal protection since they are still susceptible to cruel treatment from their surroundings.

In Indonesia, the number of cases of sexual abuse remains high. It is simply not possible for the penalty meted out to those who violate children to represent the victims'

sense of justice adequately. The detrimental effects of sexual violence, including sexual harassment, rape, molestation, sexual exploitation, and similar acts, will have a profound influence on children's physical and psychological development well into adulthood. Furthermore, the victim will always carry the effects of the trauma and suffering he endured as a result of this.

The goal of legal protection for children is to uphold the law regarding their many liberties, interests, and welfare-related concerns. The earliest feasible legal protection for children is required, specifically from the moment the embryo is in the womb until the child is deemed old enough to be eighteen (18 years old).

Child protection is defined as "all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally by the dignity and dignity of humanity, as well as receive protection from violence and discrimination" in Article 1 Paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. This specific rule highlights the roles and responsibilities of the state, families, and society in ensuring children's rights are protected. Children are susceptible to criminal activities, including exploitation, rape, sexual harassment, trafficking, persecution, discrimination, and so on, since they are still developing as physical, mental, and social beings.

Children who are sexually abused often have their rights denied. The Law (Law No. 31 of 2014 concerning the Protection of Witnesses and Victims: Author) still only formulates victims' rights about specific issues. No statute expressly states that all victims of sexual assault will have their rights fully realized following the conclusion of the legal system. Children do not always feel secure as victims when sexual predators are punished. Due of trauma, many victims have not received justice or been allowed to return to their communities.

Law Number 35 of 2014 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection regulates the Regulation on Criminal Threats against Children for Perpetrators of Abuse: (1) "Everyone is prohibited from committing violence or threats of violence, forcing a child to have intercourse with him or another person." (Article 76D); (2) "Every person who violates the provisions as intended in Article 76D shall be sentenced to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp 5,000,000,000 (five billion rupiah)." (Article 81 paragraph (1)); (3) If a close person commits the criminal act, the provisions of Article 81

Number 3 add to the penalty to be imposed. Therefore, it is fitting that those who harm children should be held accountable for their actions.

The law above needs to be applied not just to regulations but also to the legal system. The criminal justice system must pay attention to the protection of minors who have been the victims of sexual offenses, including sexual contact. The victim, who is still a child, is being served justice by this.

The primary goal of this research is to investigate whether the criminalization of forced sexual relations between minors, as outlined in Decision Number 05/Pid.Sus/2024/PN.Kng, has served as a means of victim protection and justice.

METHODS

In this study, the author employed a normative methodology. Secondary data were used, and document and literature research was used to execute data collection strategies. In the meantime, the analysis was descriptively presented, and qualitative analysis was employed.

DISCUSSION

Case of Position of Criminal Acts of Abuse (March 4, 2024, Decision Number: 5/Pid.Sus/2024/PN.Kng)

As the criminal indictment submitted by the Public Prosecutor is as follows: (1) The first act of the Defendant began when the Defendant and the Victim's Child were lying on a mattress in the Victim's room in a position facing each other then the Defendant's right hand embraced the left shoulder of the Victim Child and then the Defendant kissed the Victim's Child on the lips for approximately 5 (five) seconds, after that the Defendant overlapped the Victim's child's body then the Defendant immediately lowered the pants and underwear that the Victim Child was wearing until it came off using both hands of the Defendant after that the Defendant lowered the pants and underwear that the Defendant was wearing until it came off, then the Defendant put a condom on the Defendant's genitals in the Defendant's position above and the position of the Victim Child below, then the Defendant inserts the Defendant's genitals into the Victim's child's vagina while being inserted and exited for approximately 10 (ten minutes) until finally the Defendant climaxes and then releases sperm outside the Victim's child's vagina; (2) The second act of the Defendant is when the Defendant and the Victim Child are sleeping on a mattress in the Victim's child's room, then the Defendant asks the Victim Child "MAU GA?" However, at

that time the Victim Child was just silent then the Defendant continued to repeat the question to the Victim Child until finally suddenly the Defendant changed the position of the Defendant from the initial position of the Defendant lying next to the Victim Child then the Defendant 's position became sitting near the Victim's Child's feet facing the Victim's Child after that The defendant immediately pulled the pants and underwear that the victim's child was wearing until it came off, then the defendant lowered the pants and underwear he was wearing until it came off, after which the defendant put a condom on the defendant's genitals, after which the defendant immediately inserted the defendant 's genitals into the Victim's child's vagina while in and out for approximately 5 (five) minutes until the climactic defendant releases sperm outside the victim's child's vagina;

(1) Declaring that the Defendant Enri Sugandi Bin Yakya is legally and convincingly proven guilty of committing a criminal act "deliberately committing deception and persuading a child to have sexual intercourse continuously," as stated in the Public Prosecutor's letter of demand, which demands that the Judge who examines and adjudicates this case decide. As stated in Law Number 35 of 2014 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Jo., as well as in Article 81 paragraph (2) of the second alternative indictment. Following paragraph (1) of Article 64 of the Criminal Code, the defendant Enri Sugandi Bin Yakya is requested to be given a criminal sentence of nine years, which will be reduced while he is in custody. The defendant will also be ordered to pay an Rp fine. 1,000,000,000 (one billion rupiahs) and receive a subsidy of six months' imprisonment. Finally, the judges ask the defendant to be kept in custody for as long as the verdict has not been rendered with permanent legal certainty (Inkracht van gewisjde).

The Public Prosecutor asked the Judge hearing this case to grant the shortest sentence possible, citing the Defendant's admission of guilt and his vow to never do such acts again as justification. Additionally, in this case, the court took into account the aggravating and mitigating factors and reduced the defendant's punishment based on the evidence presented during the trial. Matters that implicate: The defendant used deception to coerce a kid into engaging in sexual activity. Factors that mitigate: The accused has never been found guilty.

The victim's and defendant's families are at peace with one another.

According to the explanation provided above, it is known that in the case of the Defendant, Enri Sugandi Bin Yakya, it has been established and acknowledged that he knowingly committed the crime of deception and convinced a minor to engage in sexual activity with him against the 16-year-old child of the victim with the initials FIMS Binti Supiani (deceased), for him to come to terms with his error.

The basis for consideration of the judge is that the public prosecutor has charged the defendant with an alternative charge. Accordingly, the judges will decide on the second alternative charge based on the abovementioned legal facts. This will be done under Article 81 paragraph (2) of RI Law Number 17 of 2016 concerning the Stipulation of Government Regulations instead of RI Law Number 1 of 2016 concerning the Second Amendment to RI Law Number 23 of 2002 concerning Child Protection to Law Jo Article 64 paragraph (1) of the Criminal Code. The elements of this charge are as follows:

According to the facts of the case, Enri Sugandi Bin Yakya is a person who has been charged by the Public Prosecutor with committing a criminal act; the defendant admits all of his identities through the letter, and based on the testimony of other witnesses, there is no denial that the Defendant is the subject or perpetrator of the criminal act which regarding the truth of the allegations made against him. Every person is defined as an individual or corporation in Article 1 number 16 of Law No. 23 of 2002, where this element refers to an individual or corporation that can be the perpetrator of a criminal act in the Child Protection Law regime.

Deliberately; "Intentionally," which in this element can be interpreted as the Defendant's (persona) act was carried out with full awareness and had a purpose for his act and could know or realize the consequences of his act; The meaning of intentional (opzet) is not explained in the Criminal Code, but it is explained in the official explanation (memorise van toelichting): it means that a person who commits elements of intentional acts must be willed (willen) and perceive or understand (weten) the consequences arising from their actions;

Committing deception, lying repeatedly, or convincing a child are all included in this element's alternative, meaning that if one of the acts is proven, the article's element will also be proven. As per the Child Protection Law, when a minor is a victim, sexual activity is conducted through persuasion via deception or a series of lies, as they are both considered crimes that put children at risk. This means that the law protects children from

all forms of sexual activity, including coercion and consensual persuasion, especially when there is coercion. Considering the norms and spirit of the Child Protection Law, what needs to be proven in this element is whether the defendant convinced the victim so they could be by the defendant. When going to do or invite the child victim to have sexual relations, the defendant first stated that the defendant was willing to leave the workplace just to meet the child victim and that the defendant also informed the child victim that the defendant no longer had a house and that, should the defendant fail to visit the child victim's home, the defendant would no longer know where he would go to live. These facts were presented during the trial. In the end, the Defendant was permitted to remain at the residence by the Victim's Child. To get the child victim to want to have sex with the defendant, the defendant talked the victim into it before they had sex and paid her money after they did;

Having intercourse with him or someone else; "Coppulation" is a contest between male and female genital members that is usually carried out to have children, so the male member must enter the female member, so as to release semen; Based on the facts of the trial that the Defendant had sexual intercourse with the Victim's Child in a way that was about to do or invite the Victim's Child to have intercourse, the Defendant first said that the Defendant was willing to leave the workplace just to meet the Victim's Child and the Defendant also told the Victim's Child that the Defendant no longer had a house so that if the Defendant did not go to the Victim's child's house, the Defendant would no longer know that he would go home and stay where, in the end, the Victim's Child allowed the Defendant to stay in the house; The Defendant's first act of having sex with the Victim Child began when the Defendant and the Victim Child were lying on a mattress in the Victim's room in a position facing each other, then the Defendant's right hand embraced the Victim's left shoulder and then the Defendant kissed the Victim's child on the lips for approximately 5 (five) seconds, after which the Defendant overlapped the Victim's child's body and then the Defendant immediately lowered the pants and underwear that the Victim Child was wearing until it came off with using both hands of the Defendant after that the Defendant lowered the pants and underwear that the Defendant was wearing until they came off, then the Defendant put a condom on the Defendant's genitals with the position of the Defendant above and the position of the Victim's Child below then the Defendant inserted the Defendant's genitals into the Victim's child's vagina while being inserted and exited for approximately 10 (ten minutes) until finally the Defendant climaxed and then released sperm outside the Victim's child's vagina; As has been made the results of Visum

Et Repertum No.182.2/959/RM-RSUD '45 Medical Record Number 00243879, which was signed by dr. MUHAMMAD REZA MARSIS. Sp.OG. Doctor at the Regional General Hospital "45" who examined FIMS. Continuously: This element refers to an individual who consistently carries out an act that is connected and satisfies the following requirements: Must originate from a single purpose, desire, or choice; His actions ought to be identical or similar; There shouldn't be too much time in between;

Taking into account that the Defendant had sexual relations with the Victim's Child at her home in Tarikolot Hamlet RT 027 RW 011 Maleber Village, Maleber District, Kuningan Regency, during the period of Sunday, November 12, 2023, at about 02.00 WIB to Monday, November 13, 2023, at about 18.30 WIB, which was no longer counted;

In addition to a fine, the Judge sentenced the Defendant to 7 (seven) years and 6 (six) months of jail, deducting the time the Defendant was detained before the verdict became legally enforceable. The fine was Rp 1,000,000,000 (one billion rupiah), with the clause that a penalty of three (three) months in jail would be applied if it was not paid.

A legal analysis of the judge's ruling regarding children who have been sexually assaulted.

The Judge disregarded the physical and psychological effects of the victim's circumstances and losses after the Author assessed the victim. Furthermore, the criminal penalties imposed on Defendant Enri Sugandi Bin Yakya did not satisfy the children of the FIMS victims' sense of justice.

Article 1 number (3) of Government Regulation No. 70 of 2020, which governs the procedures for the implementation of castration punishment for perpetrators of sexual violence against children, states that in the absence of such consideration by the judge, the Panel of Judges should be able to apply this provision in its consideration to prosecute the Defendant to get a deterrent effect for his actions.

According to the case mentioned above timeline, the Defendant coerced the Child Victim into having sex with him by taking off the Child Victim's pants and underwear. The Defendant's acts make it evident that they perpetrated an act of compulsion against the victim's child; as a result, the judges should take into account Article 285 of the Criminal Code, which deals with rape. The offender will receive a longer prison term in light of the rape article.

Furthermore, the Judge did not explicitly include in his consideration the amount of compensation for the victim's psychological impact. In this instance, it is deemed that the Rp. 1,000,000,000 (one billion rupiah) fine that was initially intended to be substituted with a three-month sentence of detention if the fine is not paid was not commensurate with the agony that the victim had to endure. Because the punishment has no beneficial effect or influence on the victim's psychology or future—the victim is still alive—it fails to satisfy the child's feeling of justice as a victim of sexual offenses.

Molestation offenders may face criminal penalties; when someone is held responsible for their acts, society tends to view them as reasonable and kind. The fundamental idea of criminal law is that a person's ability to accept full responsibility for their actions is a necessary component of the crime. To verify an individual's mental well-being, a psychiatrist will perform an assessment and provide a certificate certifying that the person is guilty of any actions they take against a minor. A perpetrator of such an act should be held accountable for his deeds.

According to criminal law, criminal offenses are objective criticisms of criminal activity that a person's actions can subjectively justify. The criminal code provides a procedure for dealing with violations of the "specific consent agreement of an act." Criminal responsibility requires all individuals who break the law to be held accountable for their actions based on their guilt. The perpetrators were charged with a crime. Individuals interpret errors when they behave in a way that suggests they have made a mistake, notwithstanding the commonly held belief that the error was committed.

Liability will arise from criminal acts if someone does them. "A person cannot be held accountable unless he commits a crime". According to Moeljatno, if the outcome causes the court to pause, there is still accountability, no blame, and the sentence cannot be carried out.

Criminal culpability extends to criminalization, which tries to stop crimes from happening, uphold the law to safeguard society, settle disputes brought about by crimes, bring the community back into balance, and foster peace. To create a just, affluent, material, and spiritual society, criminal legislation must be effective, and criminal accountability must be considered. Criminal law helps to stop undesirable behavior. One must also consider exorbitant expenses and employment prospects when employing criminal law options with bad consequences. When someone commits a crime, their criminal guilt can be determined using the following formula:

Defendant Enri Sugandi Bin Yakya is a 20-year-old man who possesses the capacity to take responsibility for all the acts he has committed. Enri Sugandi Bin Yakya, the guilty defendant, was found guilty beyond a reasonable doubt of intentionally deceiving a kid and compelling them to engage in ongoing sexual relations with him. The defendant's error cannot be forgiven, nor should it be ignored. Even now, the defendant's actions are illegal.

CONCLUSION

The Public Prosecutor requested an alternative indictment in Article 81 Paragraph (2) of Law Number 35 of 2014 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. Based on the findings of the research and analysis of the application of the law for perpetrators who commit the crime of sexual intercourse in Decision Number 05/Pid.Sus/2024/PN.Kng, the judge decided to sentence the perpetrator to 7 (seven) years and 6 (six) months and a fine of Rp. 1,000,000,000 (one billion rupiah) with the provision that if not paid, it will be replaced with a penalty of 3 (three) months of imprisonment. Nevertheless, the judge continued to give little thought to satisfying the victimized child's feeling of justice. It would be preferable if the judge reexamined the case and gave careful consideration to the effects of the victim's circumstances following the incident, as the trauma and pain the victim endured will not go away and will continue to have a significant impact on the child's development until adulthood, both physically and psychologically.

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