

Juridical Review of The Implementation of Criminal Penalties for Acts of Child Sexual Violence

(Case Study Decision Number 989/Pid.sus/2021/PN Bdg Junctis 86/Pid.sus/2022/PT Bdg, 5642K/Pid.sus/2022)

Shinta Zulfa Kurniawati¹, Arista Candra Irawati²
Universitas Ngudi Waluyo^{1,2}
Email Correspondence: shintazk967@gmail.com

Abstract. Indonesia is a legal country that protects all the rights of its people, including children's human rights. Protection of children is of concern to the government because of the increasing number of cases of violence against children, especially cases of sexual violence against children. In this case the author examines the implementation of regulations related to child protection, especially in handling cases of sexual violence against children in judges' decisions, using normative juridical methods the author examines judges' considerations in decisions of the Bandung District Court, Bandung High Court and Supreme Court. In the author's view, there is a disparity in the decisions of the District Court and the High Court and the Supreme Court. Judges must consider the substance of the legal objectives, namely justice, expediency and legal certainty. When making decisions, we don't just look at one statutory provision but also look at other legal provisions that are still relevant, and also look from the perspective of the victim, perpetrator and the wider community.

Keywords: Juridical Review, Sexual Violence, Decisions

Introduction

The due process of law in the implementation of law enforcement stems from the ideals of a state of law (*rechtstaat*) which upholds the rule of law (the law is supreme) and emphasizes that in law enforcement, "we are ruled by law" and "not ruled by people" or "boss." Starting from the principle of due process of law, it is emphasized to investigators, investigators, and public prosecutors to adhere to the provisions of the applicable criminal procedure law (criminal procedure), which in this case is the Criminal Procedure Code. (Irawati, 2023)

In an effort to overcome and handle cases of sexual violence against children, the government has made various efforts, one of which is by enacting a separate law regarding the protection of children, namely Law Number 23 of 2002 concerning Child Protection, criminal acts of sexual violence against children in the Book of Laws. The Criminal Law (KUHP) and Child Protection Law Number 23 of 2002 have explained that it is a crime of morality for which the perpetrator must be given appropriate punishment. The aim and objective is that by imposing sentences on perpetrators, they can reduce and prevent legal violations of sexual violence against children. In order to increase protection for children, the Government feels that it is necessary to make adjustments to several provisions in Law Number 23 of 2002 concerning Child Protection, which was subsequently enacted by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

It's not enough that the government has also established and ratified Law Number 17 of 2016 which regulates additional punishments for perpetrators of criminal acts of pedophilia, one of which is the additional punishment of chemical castration which is made by considering the human rights of the perpetrator and victim and also considering the aspect of justice for victim.

Regulations have been established and promulgated by the government to tackle the problem of sexual violence or which in Law of the Republic of Indonesia Number 17 of 2016 concerning amendments to Law Number 23 of 2002 concerning Child Protection is stated with the term sexual crime

Various efforts have been made by the government but cases of sexual violence against children are still increasing every year, in this case the author will examine how criminal sanctions are imposed for perpetrators of sexual crimes based on Law no. 17 of 2016, and what are the legal considerations regarding Decision Number 989/Pid.Sus/2021/PN Bdg junctis 86/Pid.Sus/2022/PT Bdg, 5642K/Pid.Sus/2022.

Method

The research method used in this research is the empirical juridical method, or what is called field research, namely examining the applicable legal provisions and what happens in reality in society. Research using the empirical juridical method is legal research regarding the application or implementation of normative legal provisions in action at each specific legal event that occurs in society. Or in other words, it is a research carried out on the actual situation or real conditions that occur in society with the aim of knowing and finding the facts and data needed, after the required data is collected it then leads to problem identification which ultimately leads to solving the problem. In this research, analysis of the problem that has been formulated is carried out by combining primary, secondary and tertiary legal materials (which are secondary data) with primary data obtained in the field, namely regarding the imposition of criminal decisions in cases of sexual violence against children.

Results and Discussion

Results

The law enforcement process in the juvenile criminal justice system is a form of protection for children as one of the human resources who are potential and continue the ideals of the nation's struggle and have a strategic role.(Irawati et al., 2021). However, these efforts have not been supported by a strong joint commitment to implement the instruments contained therein.

Based on records from the Ministry of Women's Empowerment and Child Protection (Kemen PPPA), cases of sexual violence against children reached 9,588 cases in 2022, with an increase of 4,162 cases from the previous year. This condition requires protection for children, considering that sexual violence against children will have long-lasting impacts, in addition to health problems, it is also related to prolonged trauma.

The government is making serious efforts to reduce the number of criminal acts of sexual violence against children, this can be seen through the existence of the Criminal Code and Legislative Regulations that regulate criminal acts of sexual violence against children.

In an effort to overcome and handle cases of sexual violence against children, the government has made various efforts, one of which is by enacting a separate law regarding child protection. Amendments to the law on child protection have also been carried out in an effort to reduce the number of sexual violence against children, this is also included in efforts to fight for children's rights, as well as a manifestation of the government's seriousness in creating laws that are just, useful and certain if balanced with implementation of laws in accordance with statutory provisions.

The child protection law requires severe criminal sanctions for perpetrators, but based on data obtained fromThe Ministry of Women's Empowerment and Child Protection cases of sexual violence will still increase in 2022, this of course needs to be reviewed both in terms of legal regulations as well as the implementation or implementation of the law itself.

Discussion

Child Protection Law

The imposition of criminal sanctions for perpetrators of sexual violence against children has been regulated and stated in the Law which is the source of law in the Republic of Indonesia. Provisions regarding the imposition of criminal sanctions are contained in Law No. 23 of 2002 concerning child protection, which in article 82 reads " Any person who intentionally commits violence or threatens violence, coerces, commits deceit, a series of lies, or persuades a child to commit or allow an obscene act to be committed, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years. year and a fine of a maximum of IDR 300,000,000.00 (three hundred million rupiah) and a minimum of IDR 60,000,000.00 (sixty million rupiah)." Then in article 83 it is explained that "Any person who trades, sells or kidnaps children for themselves or for sale, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of Rp. 300,000 ,000.00 (three hundred million rupiah) and at least Rp. 60,000,000.00 (sixty million rupiah)."

The imposition of criminal sanctions on perpetrators of sexual violence against children can include the death penalty, prison sentences and also fines. In 2016, the government issued a Government Regulation in lieu of the Law on child protection, which included additional and heavier criminal

sanctions for perpetrators of sexual violence against children, which was expected to provide a deterrent and educational effect.

Furthermore, the provisions for imposing criminal penalties in Law number 17 of 2016 concerning child protection explain that every person who deliberately commits deception, a series of lies, or persuades a child to have sexual intercourse with him or another person will be punished with a minimum prison sentence of 5 (five)) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah). Of course, the imposition of criminal sanctions remains based on the judge's considerations and jurisprudence.

In certain cases, perpetrators of sexual violence against children can also be punished 1/3 times more severely than the provisions of the criminal sentence if the perpetrator is a parent, guardian, people who have family relationships, child care providers, educators, educational staff, officials who handle protection. child, or carried out by more than one person together.

Provisions for adding or increasing sanctions or what is usually called additional punishment, which is a crime that can only be imposed in addition to the main sentence. Additional punishment is facultative in nature or does not require its imposition, but the imposition of additional punishment must be accompanied by the imposition of the main sentence, so they must be carried out together.

Implementation of the Child Protection Law in Decision Number 989/Pid.Sus/2021/PN Bdg junctis 86/Pid.Sus/2022/PT Bdg, 5642K/Pid.Sus/2022.

Punishment basically always takes into account the sense of justice, certainty and expediency which is the aim of the punishment itself. It can be said to fulfill a sense of justice if the sentence is imposed in accordance with the applicable legal provisions and the contents of that law. The sense of justice does not only look at the side of the victim but also the perpetrator and the wider community. For certain legal purposes, that is, if the punishment is based on applicable legal provisions, then the punishment must have a certain basis, and for benefits, a sentence must provide legal benefits for the victim, perpetrator and the wider community, these benefits can be in the form of educative benefits, rehabilitation, social control, protection, and so on.

In decision number 86/Pid.Sus/2022/PT Bdg, Junto 5642K/Pid.Sus/2022 the panel of judges sentenced the defendant to the death penalty, detention of the defendant, and imposition of restitution. The application of criminal sentences is based on the Child Protection Law and the Criminal Code.

In the imposition of crimes from Decision Number 86/Pid.Sus/2022/PT Bdg, to the decision of Number 5642K/Pid.Sus/2022 by the Supreme Court, of course there are many considerations that greatly influence the substance of the law itself. The imposition of a crime is of course based on the objectives of the law itself, namely, justice, certainty and legal benefits. In resolving this case, there are differences between the decisions of the District Court and the decisions of the Timggi Court and the Supreme Court of Cassation. If in the District Court the Judge only imposes a sentence of life imprisonment, however in the High Court and Cassation Court the Judge sentences the defendant in the form of the death penalty. Of course, this is normal, but in terminating a crime the panel of judges must minimize the existence of legal disparities and the fulfillment or non-fulfillment of legal objectives. Gustav Radbruch gives the view that legal certainty is legal certainty itself. Legal certainty is the application of law or, more specifically, of legislation. (Irawati & Wijaya, 2023)

In cases of sexual violence against children, it is very clear that the sanctions that will be imposed on the perpetrator have been stated in the Child Protection Law, which should implement criminal impositions based on the applicable law and taking into account the theory of the substance of the legal objectives, in this case strict sanctions. in the form of the death penalty is legal and does not violate the law if it is imposed on a perpetrator where all the provisions of the death penalty sanction in the child protection law have been fulfilled. Furthermore, regarding the imposition of restitution which in the district court decision was imposed on the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia, based on Article 129 of the Criminal Code, that the imposition of the death penalty or life imprisonment may only coincide with the revocation of certain rights and/or confiscation of property. goods that have been previously confiscated and/or the announcement of the judge's decision. Therefore, the Panel of Judges is of the opinion that the payment of restitution is outside the provisions regarding additional penalties so it must be transferred to another party. As a result of this, the Panel of Judges is of the opinion that because the State's duty is to protect and prosper its citizens, in this case, namely the children of the victims and the children of the victims' children, the Panel of Judges is of the opinion that the payment of restitution should be handed over to the State.

Furthermore, in decision 86/Pid.Sus/2022/PT Bdg, 5642K/Pid.Sus/2022 the judge decided that the costs of restitution for the victim were borne by the perpetrator. In the researcher's opinion, this is legal and is based on Article 66 paragraphs (2), (3), and (4) of the New Criminal Code which explains that additional penalties can be imposed in the event of a criminal sentence if the main penalty alone is not sufficient to achieve the aim of the sentence. 1 (one) or more types can be imposed, and additional penalties for attempt and assistance are the same as additional penalties for the criminal act. In Article 1 number 15 of the Supreme Court Regulation Number 1 of 2022 concerning Procedures for Requesting and Providing Restitution and Compensation to Victims of Crime, the Party charged with paying restitution based on this regulation is the perpetrator or third party, which is again confirmed by Article 1 number 15 of the Regulation Supreme Court Number 1 of 2022 concerning Procedures for Requesting and Providing Restitution and Compensation to Victims of Crime that "A third party is a party other than the perpetrator of the crime who is willing to pay restitution". Furthermore, Article 71D paragraph (1) of the Child Protection Law also explains that the responsibility for paying restitution is placed on the perpetrator of the crime, namely "Every child who becomes a victim as intended in Article 59 paragraph (2) letter b, letter d, letter f, letter h, "Letters i and j have the right to apply to the court for the right to restitution which is the responsibility of the perpetrator of the crime."

Of course, criminal decisions will take into account the legal construction that has been formed and in their consideration apply the meaning of statutory regulations based on events that occurred in a case and tend to bring out the spirit and purpose of these statutory regulations so that in the decision 86/Pid.Sus/2022/ PT Bdg, 5642K/Pid.Sus/2022 restitution costs are charged to the perpetrator.

Researchers assume that the imposition of restitution on perpetrators is aimed at avoiding legal disparities based on the facts revealed in the trial where there are no mitigating circumstances for the perpetrator. Of course, the imposition of restitution on the state is felt to relieve the defendant for the serious crime that has been committed, and if the sentence for a serious crime is not incriminating the perpetrator then allowing similar crimes to occur because there is no educational effect from a criminal sentence.

A sentence of detention was also imposed on the perpetrator. As for detention according to Law no. 8 of 1981 is the placement of suspects or defendants in certain places by investigators, or public prosecutors or judges with their determination, in terms and according to the methods regulated in the Criminal Procedure Law.

Referring to article 21 of the Criminal Procedure Code, it can be concluded that there are at least 3 conditions that must be taken into account when detaining, including Evidence Requirements, Threat of Legal Sanctions Requirements, and Necessity Requirements.

a. Evidence Requirements

Detention must be carried out prior to the presence of sufficient initial evidence held by the detaining official. This is sufficient evidence to ensure that the detaining official is very confident that if the case is brought to court, the suspect/defendant will be found guilty and the court is expected to sentence the suspect to prison.

b. Requirements for Threat of Legal Sanctions

This condition looks at the conditions that are threatened/imposed on the suspect.

One of the conditions included in this is that the criminal offense committed is punishable by imprisonment for five (5) years or more.

c. Requirements

This requirement considers the need for detention based on the suspect's circumstances. These conditions are also called subjective conditions. There are at least 3 indicators in this requirement, namely the existence of circumstances that give rise to concerns that the suspect will run away, the existence of circumstances that give rise to concerns that the suspect will damage or lose evidence, the existence of circumstances that raise concerns that the suspect will repeat the crime.

Referring to Decision 86/Pid.Sus/2022/PT Bdg, 5642K/Pid.Sus/2022 regarding the detention of the defendant, according to the author, this is the right decision which has fulfilled the conditions for detention as regulated in Article 21 of the Criminal Code, namely a criminal act committed can be threatened with imprisonment of five (5) years or more, which in the Government Regulation in lieu of Law Number 1 of 2016 which has been stipulated as Law through Law Number 17 of 2016 concerning child protection explains that sexual violence against children is causing more than one victim, resulting in serious injury, mental disorders, infectious diseases, disruption or loss

of reproductive function, and/or the death of the victim, the perpetrator shall be sentenced to death, life imprisonment, or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years, and considering the substance theory of legal objectives, namely legal benefits, of course the detention carried out against the defendant provides benefits in the form of limiting the movement of the defendant which makes it possible to carry out acts of disappearance of evidence, escape, and repeat similar criminal acts, so that detention can provide benefits in the form of the realization of a legal process with legal certainty and the realization of justice in the decisions obtained based on the ongoing legal process.

Conclusion

The Indonesian government considers the increase in the number of sexual violence against children to be a serious problem that must be immediately stopped by imposing serious criminal sanctions on the perpetrators. The government also invites the participation of the wider community as stated in Law number 23 of 2002 on child protection, Chapter X concerning the Role of the Community. The development of law enforcement regarding the protection of children from sexual violence in Indonesia seen from Decision Number 989/Pid.Sus/2021/PN Bdg junctis 86/Pid.Sus/2022/PT Bdg, 5642K/Pid.Sus/2022 is considered good, where the judge in deciding cases takes into account the substance of legal objectives, namely justice, benefit and legal certainty for victims, perpetrators and the wider community. This judge's decision can certainly have a deterrent effect and is a step to prevent the emergence of new, similar cases. This judge's decision, which is fair, useful and has legal certainty, can become jurisprudence for similar cases that may arise in the future.

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Interview

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