

# JUDGE'S CONSIDERATIONS ANALYSIS TOWARD PERPETRATORS OF CRIMINAL ACTS OF SEXUAL VIOLENCE TO UNDERAGE CHILDREN IN DEMAK DISTRICT COURT REVIEWED WITH LAW NUMBER 35 YEAR 2014 ABOUT CHILDREN PROTECTION

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## Abstract

The welfare of every Indonesian citizen is guaranteed in every their right including the children protection rights which is included as human right. To achieve the protection and welfare of the child, the government issued Law Number: The existence of Law Number 35 Year 2014 on the Amendment of Law Number 23 Year 2002 regarding Children Protection affirms the need for criminal sanction penalty and fines for perpetrators of crimes against children, especially to a sexual crime that aims to provide a deterrent effect, and encourages concrete steps to restore the physical, psychological and social life of the child. The research was conducted at the Demak District Court. This is kind of sociological juridical research, which examines the application of sanctions of sexual violence committed against adults at the Demak District Court. The result of the research shows that the judge of Demak District Court in applying criminal sanction is guided by Law no. 35 Year 2014. Penal sanctions, this is fair for both the public and the justice seeker itself. Judge's consideration in imposing a criminal sanctions imprisonment, is based on the defendant being polite in the court, admitting to the truth and regretting his actions.

**Keywords:** Judge's considerations, sexual violence, underage children

## A. INTRODUCTION

To realize the success of law enforcement in combating the huge cases of sexual violence is necessary to consolidate a serious cooperation all police, prosecutors and judges in court. The judges' judgment of cases of sexual violence in various courts is various. There are even cases of underage children sexual abuse only sentenced to jail with six months of prison. This can be justified because within the maximum and minimum limits (One day to twelve years) the judge is free to get the right criminal judgment.

Various kind of criminal matter is very complex and contains a very deep meaning, both juridical and sociological. As it is known that the offense is the act of a person, basically the creature which is able to commit the crime is a human being (*natuurlijke personen*)<sup>1</sup>. The crime of a person is not sufficient if the person has committed an act that is contrary to law or is unlawful. However,

<sup>1</sup> Sarjono Soekanto, 1983, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Rajawali, Jakarta, p.56

for the existence of punishment, it is necessary a condition that the person performing mistakes or guilty (subjective guilt).

And cases of sexual violence against underage children occur everywhere, one of them is Demak District. This district is categorized quite high of sexual violence. The data from Office of Women Empowerment and Child Protection (KP2PA) Demak District shows that during 2017 recorded there are 17 cases of sexual violence against underage children. This indicates that on average there are more than 3 cases of sexual violence against underage children occurred in Demak District and to prevent this, it need the participation of the government and the community. The elements of criminal acts that must be fulfilled include an act of fulfilling the formulation of the law and is unlawful by any person or group of persons deemed responsible. Criminal acts of sexual violence threatened in Articles 285 & 289 of the Criminal Code decide "Whosoever of

violence or threat. Violence forces a woman to have sex with him outside of marriage, threatened for morality, with a maximum of twelve years prison". So what are the causes of sexual violence to underage children in Demak District. And what are the Judges' Considerations Against perpetrators of Criminal Acts of Sexual Violence against Underage Children in the Demak District Court Reviewed Number 35 Year 2014 on Child Protection.

## **B. Discussion**

### **1. Causes of Underage Children Sexual Violence in Demak District**

National development is a series of sustainable development efforts covering all aspects of community life, nation and state, to carry out the task of realizing national goals as formulated in the Preamble of the Constitution of the Republic of Indonesia Year 1945. The series of development efforts contain ongoing development activities, by raising the level of people's welfare from generation to generation. Implementation of such efforts is done in the context of meeting the needs of the present without compromising the ability of future generations to meet their needs.<sup>2</sup>

In the case of knowing the factors affecting the occurrence of criminal acts of abuse against underage children, it can begin by knowing the increase, the relationship of the offender until the modus operandi of the case of abuse of underage children. In this case, the National Commission on Children Protection of Indonesia related to the children protection problem determines three types of violence against children classified as crimes that disturb children and society such as physical violence, sexual violence and psychological violence.

The perpetrator of a criminal offense against underage children in conducting his offense is carried out in various ways for the fulfillment or attainment of sexual desire; not only children who become victims but children can sometimes become a perpetrator of abuse.

Based on the results of research in printed media or electronic media and with staff or employees of the Indonesian Children Protection

Commission in Demak district, in the case of abuse of underage children can be done with various modus operandi as follows:

#### **1. Mode 1**

The perpetrator commits a crime of rape against underage children by inviting the children to meet; the offender offers something like delivering them home or promising something. After the victim receives the offer, the perpetrator commits the offense.

#### **2. Mode 2**

The perpetrator commits a criminal act of immorality against underage children in a manner or mode of delivering a drink whereby the drink has been mixed with drugs that make the child asleep or fainted, the medicines are easily obtained at the pharmacy without the need for a prescription such as Ctm (Chlorpheniramin) or Diazepam and other anesthetics that can cause strong drowsiness. After the victim is unconscious then the perpetrator commits the rape.

#### **3. Mode 3**

The perpetrator commits abuse to underage children is the one who has a close relationship to the children or who is often in the neighborhood of children, invites to play or talk with the children and then invites them to a place with the lure of being given some money or gift, after the child agreed the invitation of the perpetrator, after that the perpetrator committed the rape.

#### **4. Mode 4**

The perpetrators makes the child as the object of rape by the way originated from the electronic media in the form of social networks such as yahoo, facebook, friendster, WA and others where the age of a child is able to know and use the technological progress after the perpetrator with the victim's, then the child is invited to meet with the perpetrator and after the perpetrator met with the child who will be the object, then the perpetrator herded the child to a place to commit the rape.

<sup>2</sup> General Explanation UU No. 17 Year 2007.

5. Mode 5  
The perpetrator commits abuse to underage children by kidnapping the child who will be the object of his fornication and bring the child to a place then the perpetrator commits his evil intention of abusing the child.
6. Mode 6  
The perpetrator commits abuse to underage children by hypnotizing or making the child unaware of the subconscious forces made by the perpetrator, so that what the offender says to the child or the victim will always be obeyed by the child. Then, perpetrator does his evil intent by abusing child or victim.
7. Mode 7  
The perpetrator commits abuse to underage children by doing violence and threats against the child or victim, so that the child becomes frightened, and the perpetrator is free to commit sexual abuse against the victim.

From the way of abuse the underage children above, there are a number of ways or methods used by perpetrators in order to achieve their sexual satisfaction. There are many supporting factors that ease the perpetrator to commit his action.

Factors affecting the occurrence of criminal acts of child sexual abuse are as follows:

1. Environmental Factor

Environmental factor is one of the factors that can support the occurrence of violence against underage children. This may occur due to the circumstances and situation of the supportive living environment and provide an opportunity to commit an violence against underage children, which are as follows:

- a. Interactions around the community that sometimes often violate the prevailing norms such as associations or *tongkrongan* that often misbehave. They are not polite such as disturbing women, alcoholic drinks and so forth.
- b. A residential environment that tends to support the occurrence of crime, such as street lighting that is not

sufficient. It causes the area become dark and quiet. This situation supports the occurrence of criminal acts of obscenity.

- c. Lack of efficiency of security system of a region by society and local security apparatus causing the area is prone and often arise crime.
- d. Circumstance in the family environment is less efficient anticipation of the child. For example, the child is allowed to play or travel alone without intensive supervision. The supervision is responsible to watch with whom the children play with, who are their friends and so forth.
- e. Circumstances in the family environment in terms of sexual intercourse husband and wife can support the occurrence of criminal acts of obscenity as a father abuses his daughter (incest) caused by sexual desire. Father's sexual desire cannot be fulfilled by the mother and cause the father out of control and abuse his own child. It is more likely the culprit is stepfather but can also be done by the biological father or brothers of the child.
- f. The circumstances in the education environment can also affect the occurrence of children sexual violence. This action is done by the teacher or schoolmates caused by the lack of morality and mentality of the perpetrator. They cannot create good morality and mentality well, this situation makes the perpetrator cannot control his passions or behavior.
- g. Environmental conditions on the streets for street-living children. It can affect the occurrence of criminal acts of immorality against underage children. The street life can be said to be very violent and potentially relevant to a criminal act of abuse, most of the victims of street children who live as singers and beggars, children should not be in such neighborhood.

## 2. Cultural Factors

Culture is one of the factors that can influence the occurrence of abuse against underage children. This issue is a result of work created and constantly updated by a particular group of people or in other words the development of a community's characteristic in areas such as the human or community lifestyle. In a developing country, especially Indonesia, has a variety of cultures ranging from the traditional to the growing. According Koentjaraningrat, there are three forms of culture, there are as follows:

- a. Culture is a form of culture, it is as a complex of ideas, values, norms, rules and so on.
- b. Cultural form is a complex and patterned actions of humans in society.
- c. Culture is as a objects of human works.

The three forms mentioned above is a form of a culture in which if it is associated with problems of abuse of children, there are factors that can affect the occurrence of rape in children. With the development of culture can lead to sexual free, such as clothing style, especially the women. This bad style will be imitated by children. The increasing freedom of association, especially in free sexual matters and others that lead to acts violating decency and norms prevailing in Indonesia.

The culture of children's clothing style now sometimes follows the era. This style is no longer cover their body, this is due to the child age is imitating the people around them. This style somehow can be a threatening effect of children to do an act of fornication, because a child who does not cover her body can invite someone else's sexual desire to become a perpetrator of obscenity for the fulfillment of the perpetrator's sexual desire.

## 3. Economic Factors

Economics is a life support of every human, economic or financial can be a factor that can affect the occurrence of a

child against immorality. Furthermore, it can be explained if a person experiencing crush or distress in economic field, it can interfere his/her mind and he/she will experience severe stress. This situation can make the person can do something uncontrolled. This problem tends to be experienced by family life and unemployment. They can take any action that cannot be controlled by themselves due to the economic downturn in their life.

## 4. Media Factor

One of the factors that influence the occurrence of rape criminal act to underage children is the media factor. Media is an efficient and effective means of disseminating information to the public at large, as it is relatively in accordance with the capability and able to reach the community in significant time.

Media factors include print media such as magazines or readings that contain elements of pornography. The other media factors are electronic media such as the internet, films that contain elements of pornography and others. Pornography can affect the crime of rape of underage children, because pornography contains a negative element that can cause a person affected from the media he sees. It can lead to sexual desire, stimulation, and unhealthy thoughts, especially among adults.

Although Law no. 44 of 2008 on Pornography has been applied, but the circulation of media containing elements of pornography can be circulated easily among the public, as if the makers, distributors and consumers of film and porn reading ignores the validity of the law on pornography.

The function of the Internet is not only to know the information but also it can be used as a medium for social interaction from sites such as yahoo, friendster, facebook and others which is a medium of communicating with others. Such social interaction media may influence the occurrence of criminal

act of rape, for example criminal acts of abuse against underage children which originated from electronic media, in the form of social interaction network.

## 5. Psychological Factors

Psychological factors in this case can affect the occurrence of criminal acts of abuse against underage children. Some psychiatrists for perpetrators of abuse of underage children are often referred to as the term pedophilia. It is a term of psychology is pedophile which means it can be concluded is to vent sexual desire to children. In this deviant psychological factor that is one of the factors that influence the occurrence of crime of rape of underage children. The cause of pedophilia disease is very varied, it may be caused by the perpetrator himself was a victim of sodomy action or rape. Moreover, it can also be caused by preference of sexual partner, pedophilia prefers to children under age.

## 2. Judges' Consideration Against perpetrators of Sexual Violence against Underage Children in Demak District Court, Reviewed from Law Number 35 Year 2014 on Children Protection.

Judge's Judicial Consideration In Criminalizing to Abusers Against a Child is based judicial. The judges shall not impose the penalty unless there are at least two valid evidences, so that the judge obtains the conviction that a crime is true and the defendant is guilty of doing so (Article 183 of KUHAP).

Legal evidence in question is: (a). Description of Witness; (b). Expert Description; (c). Letter; (d). Hints; (e). Statement of the Accused or things generally known so it is not to be proven (Article 184). Based on the interview with Judge Veni Mustika ETO, SH, MH, she stated that the judge's freedom to examine and adjudicate a case is a crown to the judge and must be guarded and respected by all parties without exception, so that no party can interfere judges in performing certain duties. The judge in deciding the judgment must consider many things, whether it is related

to the case being examined, the level of acts and mistakes committed by the perpetrator, the interests of the victim, his family and the sense of community justice.

Speaking of judges and decisions, we will talk about the criminal justice system and the process of law enforcement. The criminal justice system is the functional relationship between law enforcers in accordance with their respective authority, in an attempt to find out the material truth in a criminal proceeding process. According to the Block's Law Dictionary, as quoted by Marwan Effendy, the integrated criminal justice system is: .... the collective institutions through which an accused offender possess until the accusations have been disposed of or the assessed punishment concluded.<sup>3</sup>

The enactment of Law no. 8 of 1981 on the Criminal Procedure Code has led to fundamental changes, both conceptually and implementation of the procedure of settlement of criminal cases in Indonesia. Law no. 8 of 1981 on the Criminal Procedure Code has laid the foundation of humanism and is a new era in the world of justice in Indonesia. In this law it seems that the goal of attaining order and legal certainty is no longer the ultimate goal, but the primary and the basic problem is how to achieve that goal in such a way that rape of human dignity as far as possible can be avoided.<sup>4</sup>

In accordance with article 64, paragraph 2 letter (d) of RI Law Number: 23 Year 2002 regarding child protection then the right witness for the best interest for the child. And according to the existence of Law No. 35 of 2014 on the amendment to Law No. 23 of 2002 on child protection, reaffirms the need for eradication of criminal sanctions and fines for perpetrators of crimes against children, especially to sexual crimes that aims to provide a deterrent effect, and encourage there are concrete steps to recover them back.

If reviewed carefully, the contents of the provisions in Law no. 8 of 1981 on the Criminal Procedure Code, the "criminal justice system" in

<sup>3</sup> Marwan Effendy, *Sistem Peradilan Pidana Bahan Kuliah Sistem Peradilan Pidana*, p.7-8.

<sup>4</sup> Romli Atmasasmita, 1996, *Sistem Peradilan Pidana Perspektif Eksislenisisme dan Abolisionisme*, Binacipta, Bandung, p. 30.

Indonesia consists of components of the police, prosecutors, district courts and correctional institutions as law enforcement officers. The four officers have a very close relationship with each other. Even it can be said to determine each other<sup>5</sup>. It is not easy for the judge to make a decision, because ideally the decision should include the idea des recht, which includes 3 (three) elements:

1. Justice (*Gerechtigkeits*);
2. Legal Certainty (*Rechtsicherheit*)
3. Utilization (*Zweckmässigkeit*).

The above elements should be considered and applied by the judge proportionally, so that in turn, it can produce quality decisions and meet the expectations of the seekers of justice.<sup>6</sup>

The law has a hidden “functional” function dimension that has been so rare to be embodied in police investigation reports, *requisitoir* prosecutors and judges’ verdicts. The function is “liberation, humanization and transcendence”. When the law is understood as a system of rules for humanity and humanity, the law is embodied in its function. To liberate man, to place man in the *fitrah* of his dignity as part and cosmos, with his credo absolutely requires ethos and logos. In the context of the verdict of judges who absolutely must be accountable to Allah SWT al-Khaaliq (the Creator).<sup>7</sup>

The issue of judge expertise and judge independence is increasingly important considering that in boasting a verdict, the judge does not merely base himself on the sounds of articles of legislation. The process of making a decision is a process of processing, intellectual ability, substantive technical mastery, legal procedures and judge knowledge of social values that exist and develop in society. Furthermore, under certain circumstances, the judge is required to make a legal discovery, ie in the case of a matter not found to be found in the existing legislation.<sup>8</sup>

<sup>5</sup> *Ibid.*

<sup>6</sup> Bambang Sutyoso, 2006, *Metode Penemuan Hukum Upaya Mewujudkan Hukum Yang Pasti dan Berkeadilan*, UII Press, Yogyakarta, p.5-6.

<sup>7</sup> Amzulian Rifa’i, Suparman Marzuki, Andrey Sujatmoko, tanpa tahun, *Wajah Hakim dalam Putusan Studi Kasus Pulusan Hakim Berdimensi Hak Asasi Manusia*, PUSHAM UII, Yogyakarta, p.9.

<sup>8</sup> *Ibid.* p.73-74

The Judicial Authority and the 1945 Constitution (amendment) emphasize the judicial power in a narrow sense. It is seen and editorial that put forward the notion of judicial power as “the power of an independent state to administer the judiciary”. Thus, “judicial power” is identified with, judicial power “or” judicial power “. Thus, the law of Judicial Power and the 1945 amendment of the Constitution only limit the notion of judicial power in the strict sense of the rule of law and justice in the judiciary. “<sup>9</sup>

Independence of judicial power in Indonesia is the freedom or independence of judges to carry out their duties to administer the judiciary impartially. It is solely on the basis of facts and laws, without limitation, influence, inducement, pressure or direct or indirect intervention, and any party and/or for any reason, for the purpose of justice based on Pancasila.<sup>10</sup>

The legal considerations underlying the court verdict will look like woven mats of matching and related *pandan* mats. The relation between the same considerations and the other can also be seen as a series of stories, so that if one of the serials is not visible or omitted, it will appear a verdict that is inconsistent with legal reasoning. According to Dr. Artidjo Alkostar if a judgment is not enough to consider (*Ovoldoende Gemotiveerd*), it will feel awkwardness that, it will lead to death of common sense (the death of common sense). An illogical court ruling will be felt by the most apologetic community of the law, as the court’s verdict concerns the conscience of humanity. Law enforcement is not a slave of words made by the legislator, but deeper and it embodies justice based on legal norms and common sense.<sup>11</sup>

### C. CONCLUSION

There are several factors that support sexual violence to underage children in Demak Regency, namely the lack of available jobs and the problems of demands for life (economic) in society led

<sup>9</sup> Barda Nawawi Arif, 2007, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, Kencana Predana Media, Jakarta, p.32-33

<sup>10</sup> Khudzifah, J.Djohansiah, Alexander Lay, 2010, *Potret Profesionalisme Hakim dalam Putusan*, Komisi Yudisial Republik Indonesia, Jakarta, p.28

<sup>11</sup> *Ibid.* p 36-37

to the emergence of various acts of violence. It is triggered by mass media both printed and electronic media, they have many contributions to decency by perpetrators by using violence or the threat of violence. Compels a person who is not his wife to have intercourse or with underage children and the permissiveness of the community related to the culture of social life.

Judges' Consideration Against perpetrators of Criminal Acts of Sexual Violence to Underage Children at the Demak District Court reviewed in Law Number 35 of 2014 on the Children Protection that in the event of a crime of sexual violence against a child shall be punished with the greatest weight, as a learning punishment so that the accused may be aware of his guilt and arise a sense of justice in the community. In order to avoid similar events within the community and in accordance with Article 64 paragraph 2 letter (d) Law RI No. 23 of 2002 on child

protection then the right witness for the best interests for children.

Prioritize and improve mentality, morality, as well as faith and self-devotion that aim for self-control, so that they do not easily tempted to do something that is not good, and also to prevent in order to avoid thoughts and intentions that are not good in the heart and mind and manifested in my man.

Regulation of access that the government seeks to eradicate films or readings containing pornography elements because rape to children under the age is rooted from these things. If it is done at least to prevent or reduce the increase in crime of rape to underage children and protection of victims who suffered psychological and material losses. This research still have much lackness, so for increas the research in the future, more dept in the research.

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