



Analysis of Judge's Decision in Imposing Child Abuse Crime

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Abstract: The purpose of this research is to know and analyze about how to analyze the Decision of the Gorontalo High Court Number: 2/Pid-Sus-Anak/2020/PT Gto against children as perpetrators of criminal acts of obscenity in the city of Gorontalo and to find out what factors influence the Judge's Decision in Cases of Crime of Child Abuse in Court High Gorontalo Number: 2/Pid-Sus-Children/2020/PT Gto. The type of approach used is Normative Research where the approach used is a statute approach and a case approach. The data obtained are from literature, laws, journals, and thesis. Data analysis or data management in this study was carried out in a deductive way. The results obtained in this study indicate that the judge in imposing a sentence on the perpetrator is still contrary to the principle of proportionality. Then there are several factors that influence the judge's decision, which include: 1.) Factors originating from the judge. 2) Factors originating from the defendant.

Keywords: Analysis. Decision. Judge

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1. Introduction

Indonesia is the highest agreement of the state's formers, even though it has experienced a constitutional test when the 1945 Constitution was amended into the Constitution of the United Republic of Indonesia in 1949, even so the recognition of the regions under the auspices of the State of Indonesia is still recognized.¹An absolute requirement for state sovereignty is the existence of a society that obeys the constitution and its government.²Because the essence of the constitution is the conception of the state which is the basis and limitation of the constellation of the state administration system.³Therefore, in legal politics, a legal discovery and new law-making that is in accordance with the goals of the State is a value that must be implemented in order to achieve legal supremacy and justice.⁴

In our daily lives, even in society, in order to make ends meet, there are often crimes and violations committed by certain people and people who threaten some members of society, which in law is known as criminal acts.⁵At present, not only the crime rate or quantity of crime is increasing but also the type of crime or quality has developed rapidly in Indonesia. Criminal sanctions are seen as an effective solution in tackling this problem. Criminal sanctions are a manifestation of the state's responsibility to maintain security and order as well as efforts to protect the law for its citizens. This is a logical consequence of the concept of forming a state which, according to JJ Rosseau, is based on community agreements. Furthermore, the people agreed to enter into a noble agreement (*modus vivendi*) which was set forth in a basic law in the form of the state constitution.⁶ Legal protection is really needed because of efforts to integrate various needs in associations so

¹Novendri M. Nggilu, "Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo," *Lambung Mangkurat Law Journal*. 5, No. 2 (2020): 109-121., 110

²Mellisa Towadi and Nur Mohamad Kasim, "An Indication of China's Policy towards Uighurs and Its Implications by International Law Aspects." *Jambura Law Review*. 3, No. 01 (2021): 55-71., 69

³Ahmad dan Novendri M. Nggilu Fakultas, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution of the Constitution Through the the Principle of the Guardian of the Constitution." *Jurnal Konstitusi*. 16, No. 4 (2019): 785-808., 791

⁴Mohamad Hidayat Muhtar, "Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum." *Jambura Law Review*. 1, No. 1 (2019): 68-93., 73

⁵Dian Ekawaty Ismail and Mohamad Taufiq Zulfikar Sarson, "Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes," *Jambura Law Review* 3, no. 1 (2021): 57-76., 58

⁶Ramdan Kasim, "Dehumanisasi Pada Penerapan Hukum Pidana Secara Berlebihan (Overspanning van Het Strafrecht)," *Jambura Law Review*. 2, No. 1 (2020): 1-29., 3

that there are no conflicts between needs and can enjoy all the rights granted by law.⁷The state is firmly obliged to try to fulfill the rights of every citizen.⁸

Crime is basically not born from an empty space, crime occurs because it is caused by various surrounding factors. The factors that cause children to commit crimes are due to push factors and pull factors. Driving factors include poverty, dropping out of school, lack of parental attention, curiosity, wrong association, wrong treatment of families and families that are not harmonious. While the pull factors include globalization, bad environment, group pressure, and the mass media. The criminal act of molestation against children that is happening today is no longer only done by adults, but it is even more ironic that the child is the perpetrator of the criminal act of obscenity itself. In general, criminal acts of obscenity can occur because they are driven by various factors, it is undeniable that the rapid factor in the field of technology and information can have a negative impact that changes the pattern and lifestyle of children. The easier it is for children to access readings and films containing pornographic content, both through print and electronic media, causes a decline in morale and negative thinking for children.⁹

Children and women are groups that are very vulnerable to becoming victims of violence, especially in children. Various cases of violence occur to children in the surrounding environment, be it physical, psychological, or sexual violence in all forms of treatment.¹⁰Child protection is absolutely realized by every element of society and of course its existence is guaranteed by the state so that children can grow and develop normally. In accordance with Law Number 23 of 2002 concerning child protection which includes children aged 18 years including children in the womb and includes the child's rights to live, grow and develop and participate in various aspects of life and receive protection from various forms of violence and discrimination thereby protecting Children cover every area of integrated and comprehensive child protection development that will produce more effective public policies in realizing a decent world for all Indonesian children, both boys and girls.¹¹

According to experts, there are different definitions of obscenity. As stated by Soetandyo Wignjoesobroto, molestation is an attempt to vent sexual desire by a man against a

⁷Jufryanto Puluhulawa, Mellisa Towadi, and Vifi Swarianata, "Leato Underwater Site Legal Protection / Japanese Cargo Wreck The Legal Protection of The Leato Underwater Site" *Journal of Legal Reform* 24. No. 2 (2020): 189-208., 197

⁸ Jufryanto Puluhulawa, Mellisa Towadi, and Vifi Swarianata, "Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck The Legal Protection of The Leato Underwater Site" *Jurnal Reformasi Hukum* 24. No. 2 (2020): 189-208., 197

⁹ Sonia Jasmine, "Tindakan Hukum Terhadap Anak Yang Melakukan Pencabulan," *Jurnal Serviens in Lumine Veritatis* 1, no. 9 (2016): 1.

¹⁰ Nashriana, *Perlindungan Hukum Terhadap Anaka Di Indonesia* (Jakarta: Raja Grafindo Prasda, 2011)

¹¹ Mustiqowati Ummul Fithriyyah, "Studi Implementasi Kebijakan Kota Layak Anak (KLA) Di Kota Pekanbaru," *Jurnal, Ilmiah Administrasi* 9, no. 2 (2017)

woman in a moral manner and or violates applicable laws.¹²From this opinion, obscenity is an act or deed of a man who vents his sexual desires against a woman by force where the act is prohibited according to applicable law. R Sugandi in his assumption said that sexual immorality is: "a man who forces a woman who is not his wife to have intercourse with her with threats of violence which requires that the male genitals enter the woman's genitals which then secretes semen"

From the above opinion, the author can conclude that sexual immorality is a man who makes efforts to coerce and threaten and violence to have intercourse with a woman who is not his wife and from this intercourse results in the release of semen from a man. So the elements are not only violence and intercourse, but there are other elements, namely the discharge of semen, which means that a man has completed his act until it is finished. If a man does not secrete semen, then it cannot be categorized as sexual immorality.

In this connection, the author tries to analyze the decisions of the panel of judges issued at the Boalemo District Attorney, Tilamuta District Court and Gorontalo High Court, because there are differences in the decisions of criminal offenses charged by the public prosecutor of the Gorontalo High Court. According to data obtained by the author, the Boalemo District Attorney and the Tilamuta District Court demanded 6 (six) months in LPKA custody and 3 (three) months of Job Training with an order that the child be detained in the LPKA while After an appeal was filed at the Gorontalo High Court, The court demanded that the child be punished for 1 (one) month in prison and work training for 3 (three) months at the Umm Syahidah Gorontalo Child Welfare Institution, while the Tilamuta District Court has explained that it is not enough for a child who is 16 years old to receive only 1 month of legal education/coaching (Law Education). I also learned from experience with cases involving children who previously received punishment for working in their school but the child and teaching staff did not understand the students studying or being fostered and there was no Child Welfare Institution in Boalemo Regency that was appropriate and good according to the Public Prosecutor and could recommend it for Education/ Legal Development (Law Education) other than the Gorontalo Child Special Development Institution (LPKA). Therefore, the public prosecutor stated that the defendant was guilty of committing the crime of "persuading a child to commit obscene acts" in violation of Article 82 paragraph (1) in conjunction with Article 76E Law No. 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, as well as imposing a criminal penalty prison for 6 (six) months in detention by LPKA and job training for 3 (three) months for children and charged with a case fee of Rp. 2,500. (two thousand five hundred).

The criminal act committed by the defendant was a crime of decency which harmed the victim both materially and morally, even so, the Criminal Code, hereinafter referred to

¹² Cahyaningsih Santi, "Tinjauan Yuridis Sosiologis Pemidanaan Terhadap Tindak Pidana Pemerkosaan Anak (Studi Kasus Pengadilan Negeri Tegal)" (Universitas Islam Sultan Agung, 2019).

as the Criminal Code, has regulated obscene crimes listed in Articles 289 to 296. In Article 290 stated that it is punishable by imprisonment for a maximum of 7 (seven) years:¹³

- a) Any person who commits obscene acts with a person when it is known that the person is unconscious or helpless.
- b) Whoever commits an obscene act with a person when he knows or should reasonably suspect that he is not yet fifteen years of age or that his age is not clear, the person concerned is not yet ready for marriage
- c) Whoever persuades someone who he knows or should reasonably suspect that he is not yet 15 years of age or if the age is not clear or that he is not yet ready to marry, to commit or allow obscene acts, or to have intercourse outside of marriage with another person.

It is emphasized again that if the act of obscenity is committed by a doctor, teacher, employee or person whose care is entrusted to him or entrusted to him, then that person is also subject to the same punishment as stated in Article 290 paragraph 1 "anyone who commits an obscene act with his child, his stepson , his adopted child, a child under his supervision who is not yet an adult whose care, education or care is left to him or to his servants or subordinates who are not yet an adult shall be punished by a maximum imprisonment of 7 years.

More specifically, if the obscene crime is committed by a child or child as a victim, it is regulated in Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning child protection. In article 81 of Law No. 23 of 2002 states "everyone who deliberately commits violence or threats of violence to force a child to have intercourse with him or with another person shall be punished with imprisonment for a maximum of 15 years and a minimum of 3 years and a maximum fine of Rp. 300,000,000 (three hundred million rupiah) and a minimum of Rp. 60,000,000 (sixty million rupiah) and continued in article 82 that "everyone who deliberately commits violence and threats of violence, forcing a ruse, a series of lies, or persuade a child to commit or allow obscene acts to be committed, shall be punished with imprisonment for a maximum of 15 years, a minimum of 3 years and a maximum fine of Rp. 300,000,000 (three hundred million rupiah) and a minimum of Rp. 60,000,000 (sixty million rupiah) " but in one of the decisions that became a case study of criminal acts not being punished according to the law stipulating in Law No. 35 of 2014 amendments to Law No. 23 of 2002 concerning child protection there is already a weighting of criminal acts of obscenity committed against children or children as victims.

As is known in the judge's decision No 2/PID.SUS-Anak/2020/PT GTO the judge charged the defendant with Article 82 paragraph (1) jo article 76E Law No. 23 of 2002 concerning child protection which has now been amended into Law no. 35 of 2014 at the Gorontalo High Court claiming that the defendant legally committed sexual abuse

¹³ Rim Redaksi, *Himpunan Lengkap Kitab Undang Undang Hukum Pidana, Kitab Undang Undang Hukum Acara Pidana* (Yogyakarta: Laksana, 2014).

against a 4-year-old child. He was charged with Article 82 paragraph 1 in conjunction with Article 76E by committing obscenity by persuading the victim to use a mobile phone (trick). Sentenced to a minimum of 5 years in prison and a maximum of 15 years and a maximum fine of 5 billion Rupiah.

Where previously the public prosecutor, the Boalemo District Attorney, gave a verdict of 6 months in prison and 3 months of job training. Subsequently, an appeal was submitted to the Boalemo District Court demanding 6 months in LPKA custody and 3 months of Job Training and being charged with court fees of Rp. 2,500. It did not stop there that the defendant's family appealed the decision to the Gorontalo High Court and the Gorontalo High Court further lightened the defendant's decision by sentenced to 1 month in prison plus 2 months of work training,¹⁴

Thus, researchers are interested in conducting research related to Analysis of Gorontalo High Court Decision Against Children as Actors Criminal Acts of Obscenity in the City of Gorontalo (Study of Decision No. 2/PID.SUS-Anak/2020/PT GTO)

2. method

This type of research is normative research. In legal research there are several approaches, with this approach you will get information from several aspects regarding the issue that is being tried to find an answer. Method This approach is a statutory approach (statue approach). The data collection method in this study was carried out by literature study, namely the method of collecting data by searching and reviewing library materials.

3. Analysis And Discussion

Factors Influencing the Decision of the Gorontalo High Court number 2/Pid.Sus-Anak/2020/PT Gto

The judge is a state court official who is authorized by law to try a case before him.¹⁵ Judges in carrying out their duties and functions are obliged to maintain the independence of the judiciary, all interference in judicial matters by other parties outside the jurisdiction of the judiciary is prohibited, except in matters as referred to in the 1945 Constitution of the Republic of Indonesia. Judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society.¹⁶ Judges must have integrity and personality that is beyond reproach, honest, fair, professional, and experienced in the field of law, and must comply with the code of ethics and code of

¹⁴ Gorontalo High Court Decision No 2/PID.SUS-Children/2020/PT GTO. Accessed on February 28, 2022. 17.00

¹⁵ Artji Judiols Lattan, "Pertimbangan - Pertimbangan Hakim Dalam Memutuskan Perkara Pidana," *Jurnal Ilmiah Hukum Dan Dinamika Masyarakat* 12, no. 1 (2016).

¹⁶ Law 48 of 2009

conduct of judges.¹⁷Based on this, the duties of a judge are to receive, examine, and adjudicate and settle all cases submitted to him. In deciding a case, the judge must pay attention to things that can be a consideration, both juridical considerations, sociological, psychological, philosophical and age of the perpetrators, although all of them were not included in the decision.¹⁸In accordance with the principle of a crime without fault (geen straf zonder schuld), a sentence can only be imposed if there is a mistake by the defendant, which is proven at trial, namely the guilt of the defendant as referred to in the public prosecutor's indictment. The guilt of the accused can be sentenced to a crime must be supported by some valid evidence, this is in accordance with Article 183 of the Criminal Procedure Code that, "a judge may not impose a sentence on someone unless with at least two valid pieces of evidence he obtains confidence that a crime is true." - actually happened and that the defendant is guilty of committing it".

The juridical considerations consist of the indictment of the public prosecutor, statements of witnesses, statements of the accused, evidence and articles that were violated. Meanwhile, non-juridical considerations consist of the background of the defendant's actions, the condition of the defendant at the time of committing the crime, the consequences of the defendant's actions, as well as other matters that are included in the circle of criminal acts committed by the defendant. Judges are required to have faith by associating that belief with legal means and means of evidence so that they can create laws based on justice which certainly do not conflict with the source of all laws, namely Pancasila. The judge's decision must fulfill a sense of justice for all parties. For this reason, before making a decision, the judge must pay attention to the aspects of justice, namely from the side of the perpetrator,

The judge's decision must also be accountable to all parties, not only to the litigating parties, as for several parties who are the target of accountability for the judge's decision. These parties include the following:

1. The parties
In general, the judge will try to make his decision acceptable to the parties. The judge's decision is considered a correct, fair and satisfactory decision. For this reason, the judge must realize that his decision will be presented to the party as a human being who has a pluralistic nature.
2. Society
Ideally the judge will try to make his decision accepted by the community. Judges must be able to follow legal developments that occur in society and understand the social structure and legal culture.
3. Court of Appeal

¹⁷ Abdul Halim Talli, "Integritas Dan Sikap Aktif-Argumentatif Hakim Dalam Pemeriksaan Perkara." *Al Daulah*, *Jurnal Hukum Pidana Dan Ketatanegaraan* 3, no. 1 (2014): 2.

¹⁸ Noer, "Putusan Harus Disertai Pertimbangan Hukum Yang Benar," Komisi yudisial, 2020.

Basically, the judge's decision can reasonably be accepted by the court of appeal. The judge's decision must have a strong legal basis and be supported with proper and complete reasons

4. Science

Basically, the judge's decision must be scientifically justified. The judge's decision is endeavored to be acceptable, especially according to legal knowledge.

5. Indonesian State and Nation

Based on the provisions stipulated in the law, especially the Law on Judicial Power, which states that judges as executors of judicial power have a responsibility to the state and nation of Indonesia. Thus the judge's decision must fulfill or be in line with the ideals of the Proclamation of Independence of the Indonesian Nation and the National Goals based on Pancasila.

6. The One Almighty God

Consequences as creatures of God Almighty, the judge's decision can be accountable to God Almighty. This accountability is a form of final and highest responsibility to God Almighty.

In terms of criminal law in force in Indonesia, as in Article 340 of the Criminal Code (KUHP) that is adhered to, it stipulates a maximum penalty of 20 years for adults, but in crimes committed by children the penalty is half of the criminal threat done by adults. Within this range, judges have the opportunity to adjudicate in accordance with predetermined rules. However, apart from matters originating from the law itself, there are factors that influence the legal decision itself, namely those originating from within a judge, both internal and external, which cannot be separated because they are fixed as a person's character. referred to as human justice (human equality) in a broad sense,

Based on the results of the researcher's analysis, there are several factors that the researcher raises as the formulation of the problem in this study as follows:

Factors Sourced From Judges Judges as judicial officials are very important in running a system in criminal justice to exercise legal power. for this, it is only natural that the appointed officials in carrying out their obligations must be truly proficient and consistent in maintaining the law and the quality of the law. Judicial power itself is one of the factors outside the judge's self which is the reason for the criminal decision. The position of judges as a profession is strong and has its own authority in passing decisions without having to interfere with the judicial power as in Law Number 48 of 2009 concerning Judicial Power in Article 1 "judicial power is the power of an independent state to administer justice in order to uphold the law and justice based on the 1945 Constitution of the Republic of Indonesia for the sake of the implementation of the rule of law of the Republic of Indonesia. The freedom of the judge is the opportunity to make a decision in accordance with the character, characteristics, peculiarities of the case, the characteristic is that the judge has freedom, the judge becomes possible to try or carry out his functions objectively and can position himself to try cases impartially. The characteristic of the freedom of judges is related to the authority to try judges who are

not responsible to their superiors. As in the verdict it is often written "for the sake of justice based on the one and only God". However, the freedom of judges is carried out in the corridor of law enforcement. There are rules that must be implemented. However, this does not limit the freedom of judges, precisely with the aim that this freedom of judges can exercise their authority properly.

Factors Sourced From the DefendantThe judge in imposing a decision focuses on matters that are used as considerations in imposing the type and seriousness of sentencing. Such as aggravating matters and mitigating matters for punishment are both contained in the law and outside the law. Before deciding how light and serious the wrongdoing of a child is in court, judicial officials should base themselves and examine the conditions that exist in a child offender. The appointed judicial official must check whether the accused has previously been convicted, whether the accused has been friendly during the trial process, whether he will admit his actions and repent, the role of the suspect also needs to be taken into account. this is intended as a protagonist or just to participate in ongoing criminal acts as well as the size of evidence submitted to the court which in turn affects the severity of the decision handed down to the defendant. Therefore, the uniqueness of sentencing against perpetrators of criminal acts in several courts is sentencing.

As for the things that were aggravating to the defendant, the child's actions were included in serious crimes; Children's actions are carried out against children who are still toddlers; The child's actions caused the victim's genitals to swell and hurt; The child's actions do not support the government in efforts to protect children;

As for the mitigating factors for the defendant, the child is still in school; The child has apologized to the victim's child's family and is forgiven; The child regrets his actions and has never been punished;

Based on the data it has been concluded that the sentencing decision can occur due to several factors, and these factors cannot be avoided due to the several factors described above, so this is what happened in the decision on case number 2/Pid.Sus-Anak/2020/PT Gto.

4. Conclusion

Based on the results of the analysis and discussion that have been described above, it can be concluded that the problem based on the analysis in case number 2/Pid.Sus-Anak/2020/PT Gto raises a conflict with the principle of proportionality because the crime of sexual abuse is a serious crime so when referring to The characteristic of the principle of proportionality is that the higher the crime, the heavier the criminal sanction that becomes a threat to the perpetrator. Factors influencing the judge's decision, factors originating from the judge; Factors originating from the defendant.

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