

## APPLICATION OF SANCTIONS TO CHILDREN AS PERPETRATORS IN THE CRIMINAL ACTS OF CHILD MASSAGE (Study of Decision Number 4/Pid.Sus/2024/PN.Tbt)

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### ABSTRACT

Children are offspring, children are also defined as small humans. Apart from that, essentially a child is someone who is at a certain stage of development and has the potential to become an adult. Children who are in conflict with the law can also be said to be children who are forced to conflict with the criminal justice system. Obscene acts as explained in Article 390 of the Criminal Code Bill which is taken from Article 289 of the Criminal Code are within the realm of genital lust. Sexual abuse of children is included in a number of moral offenses, while the offense itself is an act that is prohibited by law, whereas morality is about good customs in relations between various members of a particular community, which is more or less about a person's genitals. The basis for the judge's consideration in imposing a crime on the crime of child molestation in decision case Number: 4/Pid.Sus-Anak/2024/PN.Tbt is based on the elements in the Child Protection Law. The defendant has also been legally and convincingly proven to have fulfilled the elements contained in Article 81 paragraph (2) of Republic of Indonesia Law no. 23 of 2002 concerning Child Protection Jo Article 81 paragraph (2) Republic of Indonesia Law no. 35 of 2014 concerning Amendments to Republic of Indonesia Law no. 23 of 2002 concerning Child Protection in conjunction with Article 55 paragraph (1) 1st of the Criminal Code).

### 1. Introduction

Indecent acts are acts committed by someone that violate morality or other despicable behavior. One example of this indecent act occurred in Tebing Tinggi City. The perpetrator of this indecent act was a child, and the victim was also a child. The factor that led to this indecent act was a heightened curiosity after the child saw pornographic videos widely circulated in today's media.

The connection to the aforementioned criminal act of indecent assault is found in Decision Number 4/Pid.Sus/2024/PN.Tbt. In this case, the defendant committed the indecent act due to frequent viewing of pornographic videos at home and a lack of parental supervision. For these actions, the public prosecutor stated legally

and convincingly that he was guilty of committing the crime of "committing violence or threats of violence, forcing, committing deception, committing a series of lies or persuading the Child Victim (who was 15 years old at that time) to commit or allow indecent acts to be committed" as in the Single Indictment in violation of Article 82 Paragraph (1) of the Republic of Indonesia Law Number 17 of 2016 concerning the Determination of Perppu Number 1 of 2016 concerning the Second Amendment to the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection in conjunction with Law Number 11 of 2012 concerning the Child Criminal Justice System. And sentenced the Defendant Child to a prison sentence of 5 (Five) Years minus the time the Defendant Child was in detention and job training for 3 (Three) Months at the Medan LPKA. Article 82 paragraph (1) of the Juvenile Criminal Justice System Law states, "Any person who violates the provisions referred to in Article 76 E shall be punished with imprisonment for a minimum 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)."

However, in the verdict, the judge stated that the child had been legally and convincingly proven guilty of committing the crime of "persuading a child to commit indecent acts" as stated in the Single Indictment, and therefore sentenced the child to 2 (two) years' imprisonment in a Class I Medan Special Child Development Institution (LPKA) and 3 (three) months of job training."

If we look at the provisions on Restrictions on Freedom in Article 79 paragraph (2) of the Child Criminal Justice System Law, it states that "the maximum sentence of restriction of freedom that can be imposed on a child is  $\frac{1}{2}$  (one half) of the maximum prison sentence for adults." Meanwhile, the minimum prison sentence does not apply to children (Article 79 of Law Number 11 of 2012 concerning the Child Criminal Justice System). And Article 81 paragraph (2) states "The maximum prison sentence that can be imposed on a child is  $\frac{1}{2}$  (one half) of the maximum prison sentence for adults."

If the defendant's sentence in the decision is compared with the provisions on the minimum prison sentence in Article 82 paragraph (1) of the Child Protection Law, then it can be seen that the defendant's sentence in the decision does not comply with the provisions of Article 81 paragraph (2) of the Child Criminal Justice System Law. Because with a minimum prison sentence of 5 (five) years, the defendant's sentence in the decision should be at least 2 (two) years and 6 (six) months. And This is beyond the sense of justice obtained by the victim and family, and causes very deep trauma

for them, especially for the mental state of the victim who is still a 15 year old child looking to his future.

## 2. Research Method

The type of research used in this study is normative legal research. Normative legal research is legal research that positions law as a system of norms. The normative system in question concerns the principles, norms, and rules of legislation, court decisions, agreements, and doctrines (teachings).

The research used by the author in writing this thesis is descriptive analysis, which describes and explains all data obtained from literature studies related to the legal writing title in a clear and detailed manner, then analyzes it to answer the research problem.

The research method used in writing this thesis is a normative legal approach. This normative legal approach means that in this study, only library materials or secondary data are examined, which may include primary, secondary, and tertiary legal materials.

## 3. Results And Discussion

Decision-making is essential for the judge in making a decision regarding the defendant. In making this decision, the judge must carefully consider the appropriateness of the existing factors with the evidence presented at trial so that the decision does not deviate from what is required and does not violate the defendant's human rights.

Based on the facts presented in the trial, evidence was presented regarding the elements of the charges charged by the Public Prosecutor. The elements fulfilled in this case are the single charge of Article 82 Paragraph (1) of Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection as Law in conjunction with Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, the elements of which are as follows:

- a. Every Person;
- b. Committing violence or threats of violence, coercion, deception, a series of lies, or persuading a child to commit or allow an indecent act to be committed;

The author concludes that, in relation to Decision Number 4/Pid.Sus/2024/PN.Tbt, the severity of a sentence imposed must be adjusted by a judge to reflect the defendant's intent, motivation, and consequences.

In the author's opinion, the application of the law stipulated in Article 82 Paragraph (1) of Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child

Protection as Law in conjunction with Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, as charged against the defendant, could allow the judge to impose a higher prison sentence, as the judge in this decision only imposed a prison sentence of 2 (two) years for the defendant. The judge's application of criminal penalties as a consideration in deciding the crime of child molestation in Decision Number 4/Pid.Sus/2024/PN.Tbt, which was committed by a child, takes into account the Public Prosecutor's indictment, the Public Prosecutor's demands, witness testimony, expert testimony, the defendant's testimony, and evidence. The application of criminal penalties related to the principal penalty is further examined to ensure a just punishment for the child. One factor, the child's status as a school child, is also a factor in the judge's decision. Among the factors that contribute to a reduction in sentence in the judge's decision are aggravating and mitigating circumstances.

The judge's freedom to examine and adjudicate a case is a crown jewel for the judge and must be protected and respected by all parties without exception, ensuring that no party can interfere with the judge's performance of his or her duties. In rendering a decision, the judge must consider numerous factors, including the case under investigation, the level of the perpetrator's actions and culpability, the interests of the victim, their family, and the community's sense of justice.

The author cites Gustav Radbruch's legal theory, that law enforcement must essentially achieve three goals: justice, expediency, and legal certainty. Considering the aforementioned factors, the panel of judges considered the objectives of these factors to make the right decision that aligns with the objectives and application of the law.

According to the author, the Tebing Tinggi District Court judges in sentencing have considered legal, sociological, and philosophical considerations, therefore the imposition of a 2 (two) year prison sentence at the Medan Class I Special Child Development Institution (LPKA) and 3 (three) months of job training is appropriate and effective, because all elements in Article 82 Paragraph (1) of the Republic of Indonesia Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become Law Jo. Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System have been fulfilled. Through sociological considerations, the judge examined the defendant's aggravating and mitigating factors. The defendant also openly admitted and regretted his actions. Philosophical considerations addressed truth and justice for the victim, including

the imposition of a two-year prison sentence at the Medan Class I Children's Special Development Institution (LPKA) and three months of job training. Therefore, the philosophical considerations aimed to create a sense of justice for both the victim and the defendant, with the imposition of a two-year prison sentence at the Medan Class I Children's Special Development Institution (LPKA) and three months of job training for the child defendant. This decision embodies a sense of justice for the victim and, in particular, the community at large.

Based on this description, the author concludes that the judge's considerations clearly demonstrate that the handling of children in conflict with the law differs from that of adults. The juvenile criminal justice system prioritizes restorative justice in handling juvenile cases.

#### 4. Conclusion

The judge's application of criminal penalties as a consideration in deciding the crime of child molestation in Decision Number 4/Pid.Sus/2024/PN.Tbt, which was committed by a child, took into account the Public Prosecutor's Indictment, the Public Prosecutor's Charges, witness statements, expert testimony, the defendant's testimony, and evidence. The application of criminal penalties related to the principal punishment was again examined in terms of fair punishment for the child.

The judge's considerations in imposing a sentence for child molestation in Decision Number 4/Pid.Sus-Anak/2024/PN.Tbt were based on the elements of the Child Protection Law. The defendant has also been legally and convincingly proven to have fulfilled the elements contained in Article 81 paragraph (2) of Law No. 23 of 2002 concerning Child Protection in conjunction with Article 81 paragraph (2) of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code, namely the element of every person, intentionally carrying out trickery, a series of lies or persuading a child, to carry out or allow sexual intercourse with him or another person, has carried out, ordered to be carried out or participated in carrying out the act, has been proven in court. The Panel of Judges also considered the aggravating and mitigating factors for the defendant.

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