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Qualitative Analysis of the Rationality of Judges' Considerations in Cases of Sexual Harassment of Minors Case Study Number 10/Pid.B/2024/Pn Kbu

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ABSTRACT
This study examines the urgency of legal protection for child victims of sexual violence which is still often ignored in judicial practice. The purpose of the study is to determine the form of legal protection for child victims of sexual violence in legislation and to analyze the considerations and decisions of judges in the case. This study uses a normative juridical method with a literature study approach, which is sourced from laws and regulations, legal doctrine, court decisions, and relevant scientific literature. The results of the study indicate that legal protection for child victims of sexual violence has been regulated in various national legal instruments, such as the 1945 Constitution, the Criminal Code, the Criminal Procedure Code, the Child Protection Law, the Domestic Violence Law, the Witness and Victim Protection Law, and the Sexual Violence Crime Law. The judge's decision in case Number 10/Pid.B/2024/PN Kbu sentenced the defendant to 6 (six) years in prison based on Article 290 Paragraph (1) of the Criminal Code, with juridical, factual, and sociological considerations. However, this decision is still limited to the repressive aspect, because it does not include restitution or rehabilitation for victims as mandated in the Witness and Victim Protection Law and the TPKS Law.
Keywords: Judgment, Abuse, Child

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INTRODUCTION
The law is regulations made by the institution authorized For arrange behavior man in socialize , with objective For guard order , justice , and protection individual from abuse power . Law is regulate and force people to obey the rules in public as well as give strict sanctions to offender law . Indonesia is a country based on law in accordance with Article 1 paragraph (3) of the 1945 Constitution, which means a state based on law is a country that stands at the top law . As a country of law , then law made into as tool For give order for public .[1]

In language English , law called with the law that can equalized with rules , regulations , or norms, either written and No written , which is basically must obeyed by all society and if violated will charged sanctions . In the current era this , so many people do action criminal offenses that can be harming others. [2]The person who does action criminal the must accountable his actions in order to protect security and order public .[3] Security and order the must enforced by the authorities enforcer deep law system justice criminal started from investigation until to trial in court .

[1] The 1945 Constitution of the Republic of Indonesia
[2] Bernadetha Aurelia Oktavira, Definition of Law and the Elements of Law, accessed from https://www.hukumonline.com/klinik/a/definition-of-law-and-the-elements-of-lawlt64b946ebe617c/ .
[3] Fitri Novia Heriani, Understanding Accountability Criminal in the New Criminal Code, accessed from https://www.hukumonline.com/berita/a/memahami-pertanggung-pidana-dalam-kuhpbaru-lt65da29d97d621/ .

Investigation is a series action investigator in things and according to regulated manner in Constitution For look for as well as gather evidence that with proof That make bright action crimes that occur and in order to find the suspect . Investigation is stage beginning in legal process crime in which the authorities enforcer law own authority investigation . In this process , the victim will give information and during the process the victim was given protection law . According to Article 1 number 1 of the Criminal Procedure Code (KUHAP), the authority investigation given to the Republic of Indonesia National Police or officials Government employees certain given authority specifically by law For do investigation [4]. In this modern era , who just Can become a victim of crime criminal sexual . Not only adults , but also children . Children are grace from God must guarded because inside himself attached dignity , honor and rights as humans who must held in high esteem high . Just like Like adults , children also have right basic For protected . [5]Child born to the world has freedom and must protected by the state because child is asset nation . Children are the shoots, potential , and generation successor ideals a nation that must protected their rights from all form violence and discrimination . The Constitution of the Republic of Indonesia, the 1945 Constitution of the Republic of Indonesia , in particular firm acknowledge and guarantee rights child . Article 28B paragraph (2) states that " Every child entitled on continuity live , grow , and develop as well as entitled on protection from violence and discrimination ." [6]This right Then explained more carry on in various regulation legislation , one of which is Constitution Number 35 of 2014 concerning Change on Constitution Number 23 of 2002 concerning Child Protection .

However , the reality on the ground show that Lots children who are victims of crime violence sexual violence sexual No only leave wound physical , but also deep and prolonged psychological trauma , even can influence grow flower and the future child victims in a significant . Children who should life in safe and comfortable environment precisely become prone to to action heinous things done by adults , even often by those closest to us they [7]. Government and officials enforcer law has make an effort For give protection and justice for child victims of violence sexual through various policies and actions law . Protection efforts child must started since early . According to Article 1 number 2 of Law No. 35 of 2014, " Protection child is all activity For guarantee and protect children and their rights so that they can live , grow , develop and participate optimally according to with dignity and honor humanity as well as get protection from violence and discrimination ." Violence sexual abuse in children is action despicable , so that case This always get attention in society . There are many incident violence sexual to children reported in print media and social media . This case No only happening in cities big , but also in rural areas which even Still uphold tall customs customs .[8] Ironically , violence sexual abuse in children precisely the more increase until moment this . Crime rate This almost always appear every years , including in Medan City. The perpetrators look at children under age as object satisfaction lust Because children considered more easy seduced and controlled .

Various study previously has discuss protection law to child victims of violence sexual . Research previously by Sari (2020) highlighted weakness implementation Constitution Child Protection in give recovery psychological victim, but No discuss judge's considerations in drop decision . Next Wibowo's research (2021) examined effectiveness sanctions criminal for perpetrator violence sexual to child , but Not yet review aspect victim restitution as arranged in Constitution Protection of Witnesses and Victims.

Compared to with research said , research This own novelty because in a way special analyze judge's considerations and form protection law to child victims of violence sexual in Decision

[4]Mutia Hafina, Investigation Process in System Justice Criminal Investigation Process in the Criminal Justice System, Lex Generalis Legal Journal, Vol.4, No.7 (2023).
[5] Rahmayanti Veny Melisa Marbun and Randa Christianta Purba, Analysis Juridical to Action Criminal Abuse Sexual To Minors , Fair Law Journal , Vol.11, No.1 (2020), p.302.
[6] The 1945 Constitution of the Republic of Indonesia .
[7]Wahana Visi Indonesia, Impact Violence against Children and Efforts to Prevent it , accessed from https://wahanavisi.org/id/media-materi/cerita/detail/dampak-kekerasan-pada-anakdan-upaya-pencegahannya .
[8]Ivo Noviana , Violence Sexual Child Sexual Abuse : Impact and Treatment Hendling , Socio Informa, Vol.01, No.1 (2015).

Number 10/ Pid.B /2024/PN Kbu . Focus study No only on legal norms (de jure), but also on their implementation (de facto), so can seen existence gap between ideality law with practice judiciary . De jure, Indonesia has instrument strong law For protect child victims of violence sexual , but de facto, implementation protection Still limited to aspects repressive in the form of punishment for perpetrator , without consider the victim's right to get restitution and rehabilitation as arranged in the Witness and Victim Protection Law and the TPKS Law.

Based on description above , then formulation problem law consists of of two , namely :

1. How is it? principles protection child in accordance with provision regulation applicable laws and regulations related protection child ?
2. How judge's considerations in cut off case action criminal violence sexual to child in Decision Number 10/ Pid.B /2024/PN Kbu ?

METHOD

Types of research This use approach juridical normative , namely something method research based on studies document with utilizing secondary data in the form of regulation legislation , decisions court , theory law , as well as opinions of relevant scholars . In research Here , the data source consists of on secondary data and tertiary data [9]. Secondary data covers documents official , books scientific , articles scientific , results study previous , online data, as well as the Criminal Code . Temporary that is tertiary data in the form of material support like dictionary law , encyclopedia , and biography that can strengthen runway analysis . Data collection techniques are carried out through study library research, namely search to various source reading like laws , books scientific , report research , articles academic , as well as other documents that have relatedness direct with issues discussed in thesis This .[10]

Data obtained from study literature the Then analyzed use method analysis qualitative , namely with examine content document in a way deep , connecting it with facts found in the field , as well as interesting pattern emerging laws from various source the . Through analysis qualitative research This try identify and explain source problem legal issues that arise in case action criminal violence sexual to child as reflected in Decision Kotabumi District Court Number 10/ Pid.B /2024/PN K BU ?. With approach said , research expected capable give systematic , logical , and relevant overview about aspect juridical in settlement matter , at the same time enrich study academic in the field law criminal .

FINDING AND DISCUSSION

Forms of Legal Protection for Child Victims of Sexual Violence under Statutory Regulations

Legal protection for child victims of sexual violence represents a concrete manifestation of the state's responsibility to guarantee human rights, particularly children's rights, as affirmed in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) as the constitutional foundation, as well as in various national and international legal instruments. Such protection is not solely oriented toward repressive measures in the form of punishing perpetrators, but also emphasizes the fulfillment and restoration of victims' rights from medical, psychological, social, and juridical perspectives. The principle of *the best interest of the child* serves as the primary basis for all child protection policies and practices; therefore, the handling of cases involving sexual violence against children must be carried out in a comprehensive and just manner.

Constitutionally, Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that every child has the right to survival, growth, and development, and is entitled to protection from violence and discrimination. This norm constitutes a fundamental basis affirming that child protection is an imperative obligation of the state. Further protection is regulated in the Indonesian Criminal Code (KUHP), including Article 285 concerning rape, Article

[9]Ravid Aspin Lombu Rizki and Rudolf Stevanus Sitepu, Analysis Decision No. 1977/K.PID.SUS/2020 concerning Action Criminal Money Laundering , Journal Scientific Law Enforcement , Vol.9, No.1 (2022).
[10] Soerjono Soekanto and Sri Mamudji, Normative Legal Research A Brief Review , Raja Grafindo Persada, Jakarta, 2010, p.13.

287 paragraph (1) concerning sexual intercourse with a minor, and Articles 290–292 concerning indecent acts against children. Moreover, Article 65 of the KUHP provides a basis for aggravating punishment for perpetrators who commit criminal acts repeatedly (*concursus*), as reflected in Decision Number 10/Pid.B/2024/PN KBU, in which the panel of judges imposed a sentence by referring to Article 290 paragraph (1) of the KUHP due to the defendant's conduct.

In addition to the KUHP, child protection is further regulated in various special laws. Law Number 35 of 2014 in conjunction with Law Number 23 of 2002 on Child Protection affirms that the government is obliged to provide special protection to child victims of sexual crimes (Article 59 paragraph (2) letter j) and to guarantee children's right to be free from sexual violence (Article 69A). Furthermore, Law Number 11 of 2012 on the Juvenile Criminal Justice System guarantees special protection for child victims or witnesses of criminal acts, including protection from physical and psychological threats (Article 90 paragraph (1)). Law Number 31 of 2014 on the Protection of Witnesses and Victims further provides guarantees in the form of personal security, confidentiality of identity, legal assistance, temporary living expenses, and relocation. Most significantly, Law Number 12 of 2022 on Sexual Violence Crimes (the TPKS Law) strengthens victims' rights by affirming the right to handling, protection, and recovery from the investigation stage onward (Article 67), access to health services, rehabilitation, legal assistance, and educational guarantees (Article 68), as well as the right to restitution and compensation (Article 69).

In judicial practice, legal protection is manifested through medical evidence (*visum et repertum*), the return of physical evidence, legal assistance for victims, and the imposition of imprisonment on perpetrators. Decision Number 10/Pid.B/2024/PN KBU demonstrates efforts to provide protection through medical proof and legal assistance. Nevertheless, aspects of restitution and compensation have not yet been included in the operative part of the judgment, rendering the protection afforded to the victim still partial.

An evaluation of legal protection indicates that the orientation of protection for child victims of sexual violence should not merely emphasize the punishment of perpetrators, but must also encompass physical, psychological, and social rehabilitation, as well as the comprehensive restoration of victims' rights. The National Commission on Violence Against Women (Komnas Perempuan, 2013) emphasizes the importance of providing long-term rehabilitation services, while Barda Nawawi Arief asserts that victim protection must form an integral part of criminal law and social policy through the involvement of both the state and society. Therefore, consistent implementation of the TPKS Law is crucial to ensure that legal protection for child victims of sexual violence is carried out in a holistic, integrated, and just manner.

Judicial Considerations and Decisions in Handling Cases of Sexual Violence Crimes Against Children

In every criminal case, particularly those involving sexual violence against children, judicial considerations play a crucial role as they form the basis for determining the operative part of the judgment. Such considerations are not solely grounded in the legal facts revealed during trial, but must also comply with statutory provisions and take into account child protection aspects as the victim. This is clearly reflected in the Decision of the Paringin District Court Number 10/Pid.B/2024/PN KBU, which constitutes the object of this study.

a) Case Background of Decision Number 10/Pid.B/2024/PN KBU

This case involved a defendant named Sudibyanto bin Samino, a 43-year-old male agricultural laborer residing in Gunung Sadar Village, RT 001 RW 001, Abung Tengah District, North Lampung Regency. Based on trial facts, from 2018 until April 2019, the defendant—who served as a martial arts instructor at the Tri Bakti Darul Falah Islamic Boarding School in Pekurun Barat Village, Abung Tengah District, North Lampung Regency—committed sexual abuse against a victim who was still underage.

The acts were carried out in the afternoon when the defendant contacted the victim via WhatsApp messages, requesting the victim to come to the boarding school to discuss the opening of a Pagar Nusa martial arts branch at Pekurun Barat Elementary School. After the victim agreed, at approximately 3:30 PM the defendant went to an empty dormitory at Darul Falah Boarding School

and contacted the victim, stating that he had arrived. At around 4:00 PM, the victim arrived at the boarding school, where the defendant influenced the victim to follow his orders due to the victim's fear of refusing.

The trial facts were corroborated by evidence in the form of the victim's testimony stating that the victim was forced to engage in sexual intercourse, as well as *visum et repertum* medical evidence (Medical Resume) Number 353/1413.BKFM/15-LU/IX/2023 dated 25 September 2023, signed by Dr. Muhammad Azzibaginda Ganie, which revealed signs of violence in the victim's vital organs. Additionally, the victim's clothing was submitted as physical evidence in court.

In rendering its decision, the panel of judges considered juridical, factual, sociological, and aggravating and mitigating factors. From a juridical perspective, the defendant's actions were proven to fulfill the elements of Article 290 paragraph (1) of the KUHP concerning sexual abuse of a minor. The judges emphasized that the defendant, as an instructor who should have protected and guided students, instead committed sexual crimes against several students at the boarding school. Factually, the panel found that the victim was still a child when the acts began, that the incidents involved not only one victim but also other students who were afraid to report the abuse, and that witness testimonies were consistent and supported by valid evidence. Sociological and psychological considerations were also emphasized, including the severe trauma suffered by the victim due to the perpetrator being a trusted authority figure, the lasting negative childhood memories, and the social stigma endured by the victim's family.

Aggravating factors included the repetitive nature of the defendant's actions against more than one underage student and the physical, psychological, and social suffering inflicted on the victim. Mitigating factors included the defendant's polite behavior during trial, his admission of guilt, and the fact that he had no prior criminal record. Based on these considerations, the court declared the defendant legally and convincingly guilty of committing sexual violence against a child within the domestic sphere. The defendant was sentenced to six years of imprisonment, with time already served deducted in full. The court also ordered that the defendant remain in detention, return the victim's clothing to the victim's family, and pay court costs of five thousand rupiah.

b) Juridical Analysis

An analysis of Decision Number 10/Pid.B/2024/PN KBU indicates that the panel of judges rendered a decision based on lawful evidence in accordance with Article 290 paragraph (1) of the KUHP, namely the judge's conviction supported by at least two valid pieces of evidence. In this case, the elements of the offense as regulated in Law Number 1 of 2023 on the Criminal Code, Article 81 paragraph (1), and Law Number 17 of 2016 have been fulfilled. The element of "every person" is satisfied as the defendant is a legally responsible subject under criminal law. The element of "committing sexual violence against a minor" is proven through victim and witness testimonies and *visum et repertum* evidence confirming forced sexual intercourse against an underage child. The element of "continuous conduct" is also proven, as the criminal acts were committed more than once, as described in the indictment and supported by trial evidence.

However, substantively, the orientation of the judgment remains focused on the repressive aspect of punishing the perpetrator without balancing the restorative dimension for the victim. Based on the theory of corrective justice proposed by Aristotle and further developed by John Rawls, justice in criminal law is not only intended to punish offenders, but also to restore social balance and protect victims' rights. This decision does not reflect that principle, as the court did not stipulate restitution, compensation, or psychological and social rehabilitation for the victim, as guaranteed under Articles 7 and 34 of Law Number 31 of 2014 on the Protection of Witnesses and Victims and Article 66 of Law Number 12 of 2022 on Sexual Violence Crimes (TPKS Law).

From the perspective of the legal protection theory articulated by Philipus M. Hadjon, the law should function to protect the rights of individuals violated by the actions of others, including crime victims. However, in this decision, legal protection for the victim remains suboptimal, as psychological, social, and educational recovery were not considered by the panel of judges. Consequently, the function of law as a means of protection and restoration has not been fully achieved. Thus, although *de jure* the decision is correct in applying criminal law elements and fulfilling the principle of legality, *de facto* its implementation does not yet conform to the modern

legal paradigm that positions victims as subjects entitled to justice and recovery. Therefore, going forward, Indonesia's criminal justice system must more consistently integrate a restorative justice approach, so that judicial decisions not only uphold legal certainty but also deliver substantive justice for victims of sexual violence.

CONCLUSIONS

Types of research This use approach juridical normative , namely something method research based on studies document with utilizing secondary data in the form of regulation legislation , decisions court , theory law , as well as opinions of relevant scholars . In research Here , the data source consists of on secondary data and tertiary data [11]. Secondary data covers documents official , books scientific , articles scientific , results study previous , online data, as well as the Criminal Code . Temporary that is tertiary data in the form of material support like dictionary law , encyclopedia , and biography that can strengthen runway analysis . Data collection techniques are carried out through study library research, namely search to various source reading like laws , books scientific , report research , articles academic , as well as other documents that have relatedness direct with issues discussed in thesis This .[12]

Data obtained from study literature the Then analyzed use method analysis qualitative , namely with examine content document in a way deep , connecting it with facts found in the field , as well as interesting pattern emerging laws from various source the . Through analysis qualitative research This try identify and explain source problem legal issues that arise in case action criminal violence sexual to child as reflected in Decision Kotabumi District Court Number 10/ Pid.B /2024/PN K BU ?. With approach said , research expected capable give systematic , logical , and relevant overview about aspect juridical in settlement matter , at the same time enrich study academic in the field law criminal .

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