



Criminal Responsibility for The Perpetrator of The Crime of Sexual Abuse Committed by A Child Perpetrator Against A Child Victim Verdict Number: 35/Pid.Sus-Anak/2023/ Pn Mdn

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Abstract - This study examines the criminal responsibility of juvenile offenders involved in sexual abuse cases, focusing on Decision No. 35/Pid.Sus-Anak/2023/PN Mdn. Indonesia's legal framework for child protection is grounded in the 1945 Constitution and laws such as the Child Welfare Law No. 4 of 1979 and the Child Protection Law No. 35 of 2014. These laws aim to ensure children's rights to safety and balanced development, even when they are involved in criminal activities. Using a normative juridical approach, this research analyzes legal materials related to juvenile justice and child protection. The case study involves a juvenile perpetrator convicted of sexual abuse, highlighting the application of restorative justice principles. The research emphasizes that even when children commit crimes, they should receive legal protection that promotes their rehabilitation. In Decision No. 35/Pid.Sus-Anak/2023, the judge sentenced the juvenile offender to formal education and training, reflecting the goal of restorative justice, which prioritizes rehabilitation over punishment. This case illustrates the importance of considering non-juridical factors, such as psychological and social development, in the juvenile justice process. The study concludes that legal protection for children in conflict with the law should aim to foster their development into law-abiding citizens, aligning with the principles of restorative justice.

Keywords: Criminal Responsibility, Child Molestation, Child Protection

I. INTRODUCTION

Child sexual abuse is a serious issue that has far-reaching consequences for both the victims and society as a whole. Ensuring the protection of children from such crimes is a critical concern, particularly in Indonesia, where the rising number of cases has prompted the government to enhance legal safeguards for minors. In addressing this issue, it is essential to explore the legal framework that governs child protection and criminal responsibility. Indonesia's legal system, grounded in the 1945 Constitution and further strengthened by laws such as the Child Welfare Law No. 4 of 1979 and the Child Protection Law, is designed to promote the safety, security, and well-being of all citizens, especially children. The state is responsible for safeguarding the physical, mental, and social development of children to ensure their future as the nation's successors.

In this context, understanding how the legal system handles cases of sexual abuse involving juvenile offenders is crucial, as it raises questions about the balance between protection and punishment. This research focuses on the legal application of criminal responsibility in cases where children are both victims and perpetrators of sexual abuse, with

a specific analysis of Decision No. 35/Pid.Sus-Anak/2023/PN Mdn. God Almighty has given us children as a gift, to be cared for and protected. According to Article 1 number 2 of Law Number 23 of 2002 concerning Child Protection, a child is a mandate in which dignity is inherent in him and he is entitled to legal protection and rights without his requesting. Children's rights must be upheld and protected in order for them to live, grow, develop, and participate in society in a way that best reflects human dignity and is free from prejudice and violence. This includes all actions related to child safety.

The development of law always develops in tandem with the progress of civilization. Similarly, the evolution of societal issues also leads to the creation of legal issues. People in a community are more likely to interact with one another when things are going well and when crime rates are rising. During these interactions, there is frequently behavior that goes against the law or social norms that are in place to maintain safety, harmony, and order. Not everyone in the group is prepared to follow it in this instance, and there are still outcasts who are generally less favored by society, (Soekanto, 1973). According to (Berutu & Rumapea, 2023) Enforcing environmental laws is crucial to achieving the purpose for which the State of Indonesia was established. According to the preamble of the 1945 Constitution, the State's objectives are to safeguard the entire Indonesian people and all acts of bloodshed committed there, advance general welfare, educate the populace, and assist in enforcing international law that upholds social justice, independence, and lasting peace.

The increasing criminality in Indonesia results in the development of diverse methods of operation in the commission of crimes. Additionally, a person can become a criminal offender or a victim of illegal activities due to a lack of public information about criminal law. Criminal offenders typically target youngsters because they lack parental supervision. The process of children's hands' psychological and physical functions maturing, assisted by external influences and learning processes at a specific period, results in development, which is a psychophysical change towards maturity (Kartono, 1982). Experts view that early childhood is the most essential time frame for future growth. Other names for this era include the "golden age," "sensitive era," "sensitive time," "age of initiative and initiative, and "period of self-development." The environment has an impact on a child's growth, among other things. Every individual or group of people who has an impact on us is the environment in question.

The social environment has an impact on us directly, for example, through our regular encounters with family, friends, and other individuals. And there are indirect ones such as through radio, television, by reading books, magazines, newspapers, and so on. And there are many forms of crime in cyberspace that can be accessed easily using technology. One of them is pornography. Children can easily access pornographic sites due to lack of supervision from parents. One example of a case of child abuse and becomes a research and resolves the issue of child abuse Decision number 35/Pid.Sus-Anak/2023/PN Mdn. This research took place in the city of Medan, precisely on Jalan setia Budi, Pemda alley, Tanjung Sari sub-district, Medan Selayang sub-district, where the child coerced the victim's child by inserting his hand into the victim's pants.

Cases of child sexual abuse and violence against women continue to occur. Because of the large number of cases, the Minister of Child Empowerment and Protection (Kemen PPPA) identified child sexual abuse as an emergency in Indonesia. According to kemen PPPA records, there were 9588 cases of sexual violence against minors in 2022; this is a rise from the 4162 occurrences that occurred the year before. According to the summary given above, the author is curious to learn more about and investigate the form of scientific work.

II. METHOD

This writing is done in a normative juridical way. Normative juridical research is a step used in order to obtain provisions in terms of law, legal principles, and teachings that are also, (Soekanto, 2018)). based on law whose purpose is to get answers to legal problems at hand, (Marzuki, 2017).

The application of data sources in this research is secondary data consisting of:

Primary Legal Materials, there are two legal experts, namely Mukti Fajar and Yulianto Achmad. The legal expert strengthens his opinion regarding primary legal material is legal material that has an authoritative nature where these activities are handled directly by institutions that have the right to do so, (Dewata & Achmad, 2010). This primary legal material is obtained from Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2011 concerning Child Protection, Secondary Legal Materials, this research analysis by interpreting some of the sources contained in primary legal materials which is the meaning of secondary legal materials. Is a source used to conduct analysis by interpreting from several sources contained in primary legal materials is the meaning of secondary legal materials.

This secondary legal material can also be interpreted as an embaran or notification regarding the law but is not included as an official file. Included in secondary legal materials are legal dictionaries, textbooks, legal journals and comments on court decisions, (Sunggono, 2005). Tertiary Legal Materials, the tertiary legal material in this research is the Big Indonesian Dictionary (KBBI). Data Collection Technique, this research collects all the data with library research techniques, namely the author completes this research with various kinds of reading references starting from laws, books, journals, and legal opinions related to the discussion of the criminal offense of maltreatment committed by a child which resulted in death based on the study of the decisions contained in this study. Data Analysis, the writing in analyzing data is through literature and then organized in one pattern. The analysis used by the author is descriptive qualitative by bringing up the data then the data is analyzed using a summary as the income from the research.

III. RESULT AND DISCUSSION

A. Criminal Liability for Perpetrators of Sexual Abuse Committed by Child Perpetrators Against Child Victims in Decision No. 35/Pid.Sus-Anak/2023/PN Mdn

Criminal responsibility can be interpreted as an act that is asked to be responsible based on a criminal offense committed. The basis for the existence of a criminal act is the principle of legality, we can say that this principle applies to anyone and a person can be punished based on a *pri* The legality principle is what gives rise to a criminal act nciple called guilt, (Rusianto, 2018) . Basically, a criminal offense or crime arising from a person's actions will have an impact and lead to a sanction or punishment. This punishment is one of the real forms in order to achieve a legal certainty, the form of criminal liability for children in conflict with the law is regulated in the law on the system of juvenile criminal justice, which seeks to give legal clarity when applying punishment. Basically, this law's intent is to establish restorative justice for both child perpetrators and victims by implementing a diversion pattern that involves all parties involved in order to overcome the problem by repairing a good situation.

Therefore, it is possible to distinguish the system of application of punishment for children from punishment for adults. This is in line with Article 69, paragraph 2, which sets out the age limit for juvenile offenders. If the child offender is older than 12 but under 14 years old, action will be taken against him; if he is older than 14 years old, punishment will be meted out. However, the imposition of punishment is also governed by Article 82, paragraph 1 of the juvenile justice system; however, the criminal responsibility of juvenile offenders is also governed by the Criminal Code, which is governed by Articles 289–296. Additionally, on October 17, 2014, the law on child protection was passed, serving as a guide to apprehend those who commit the crime of sexual abuse. Due to the existence of *lex specialis derogat legi poenali generalis*, which supersedes general laws, sexual abusers are no longer charged under the Criminal Code.

As a result, in line with Article 76 E, paragraph 1 of Article 82 covering child protection, those who abuse children sexually are charged. Legal protection of child perpetrators is all forms of efforts to provide a guarantee of rights and obligations for the benefit of the growth and development of children in a reasonable manner both in terms of physical, psychological

and social. Even when children commit crimes, they are still children, therefore providing legal protection for them is a step toward achieving justice. Legal protection for children is essentially the allocation of all interests from a power to actualize in the form of legal certainty, allowing them to exercise the rights granted as legal protection. The presence of the law Since the goal of the law is to safeguard children who are vulnerable to rights abuses, the criminal justice system offers legal protection for kids. In order to ensure child welfare based on accepted principles, the juvenile criminal justice system is enforced to maintain the child's best interests.

The criminal justice system provides a protection that aims to fulfill the rights of children so that there is no misappropriation that will lead to unwanted negative impacts in the implementation both from the police, prosecutor's office, and court level,(Gultom, 2013) . Therefore, the existence of a protection for children does not make a tendency for children from discriminatory treatment against children that often occurs during the process, such as arrest, detention and punishment, (Raharjdo, 1981). This juvenile criminal justice system has a very basic substance, which is a regulation that explicitly prioritizes restorative justice and through diversion to avoid stigmatization of children as perpetrators, which is expected when children return to the social environment there is no labeling of the community, (Marlina, 2012).

Regarding decision No. 35/Pid.Sus Anak/2023/Pn Mdn, the judge sentenced the juvenile defendant based on the following decision:

1. Stating that the child defendant MISAEEL PRATAMA PURBA Als TAMA has been proven guilty of committing the crime of "committing violence or threat of violence to force a child to commit or allow obscene acts" as stated in the Single Indictment;
2. To impose measures by sending the child in conflict with the law to the UPT Social Services for Children & Adolescents (PSAR) at the North Sumatra Provincial Social Service in Tanjung Morawa to attend Formal Education and Training for 4 (four) months.

IV. CONCLUSION

Based on the results of research on decision No 61/Pid.Sus Anak/2021/Pn Mdn, the researcher concludes that:

1. Children are a clear example of the growth of the nation's development regeneration. When a child experiences sexual abuse as a child, it is very unfortunate because of the psychological and mental trauma they experience, and their future will be destroyed. Therefore, the government passed the UUPA and UUSPPA to protect the rights of Indonesian children in conflict with the law.
2. The judge sentenced the child involved in the crime of sexual abuse to imprisonment by the legal protection provided by Law Number 11 of 2012, namely imprisonment for 4 (four) years and training for 3 (three) months.
3. Keeping children in conflict with the law in action;
4. Declared the evidence: NIL;
5. Determined that the child in conflict with the law pay court costs in the amount of Rp. 5,000 (five thousand rupiah).

Child offenders who breach article 76E face the following penalties: (1a minimum and maximum prison sentence of five (five) years and fifteen (15) years, respectively, and a maximum fine of Rp5,000,000,000.00 (five billion rupiah). These conclusions on criminal acts committed by juveniles are based on the research conducted for decision number 35/Pid.Sus Anak/2023/Pn Mdn, which was made based on paragraph (1) and article 82 of Law No. 35 of 2014. Article 81 paragraph (1) Jo. Article 76E of the Law of the Republic of Indonesia No. 35 of 2014 concerning the amendment of the Law of the Republic of Indonesia No. 23 of 2002 concerning child protection served as the foundation for the judge's trial of the child perpetrator. This provision prohibits the use of force, deception, and repeated lies.

The research findings indicate that the judge took non-judicial issues into account when making the decision to imprison the prisoner. The last measure (ultimum remedium) in the

judge's ruling is to imprison youngsters. Furthermore, the Article 1 number 6 article 5 paragraph 1 jo, paragraph 3 of the juvenile justice system discusses restorative justice, which is an out-of-court settlement in which the victim, the offender, the victim's family, and other related parties work together to seek a just settlement with an emphasis on recovery back to the victim's original state rather than retaliation. The judge made her judgment to put the defendant in jail based on this. In essence, restorative justice takes into account not only the legal aspects but also the moral, social, economic, religious, and cultural components, among other factors. The foundation for the judge's decision to imprison the juvenile offender was the child's behavior, and the goal was to mold him into a good citizen who would follow the law and uphold moral, social.

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