



Analysis of Decision No 61/Pid.Sus Anak/2021/Pn Mdn On the Case of a Child as A Violator of The Crime of Abuse Rodiatus Adawiyah¹, O.K. Isnainul², Muhammad Arif Prasetyo³, Jane febrision br. Manurung⁴, Edward halim⁵, Tamarsa Adea Putri Br Sitepu⁶

Universitas Prima Indonesia

Email: rodiatusadawiah@unprimdn.ac.id, janemanurung42@gmail.com,
edwardhalim22@gmail.com, adeatamarsa@gmail.com

Phone: +62 812 6231 7380

Abstract - Considering that the country's future generation, children have a crucial role in ensuring the survival of both the state and the country. Every child has to be given every opportunity to grow and develop as best they can, physically, spiritually, and socially would enable him to fulfill his obligations as the nation's heir. The purpose of this research is to ascertain how Law No. 35 of 2014, which amends Law No. 23 of 2002 on child protection, is being implemented in Decision No. 61/PID.SUS ANAK/2021/PN MDN. Research methodology in this study is normative. Normative research, also known as doctrinal research, focuses on the study of legal norms, principles, and rules as they are written in laws and judicial decisions. The result of this study is that according to the provisions of the Child Protection Law, children must be protected both as perpetrators of criminal acts, victims of criminal acts, and witnesses to criminal acts. In general, the purpose of the legal protection of children is to maintain the rights and obligations of children so that they can grow and develop naturally both physically, mentally, spiritually, and socially.

Keywords: Children, Child Molestation, Child Protection

I. INTRODUCTION

In Indonesia, the dignity and welfare of each and every citizen, as well as children's human rights, are highly protected. The divine gift of children is equivalent to that of adults in terms of status, dignity, and education. As the same rank, value, and education as adults, children are the gift of God Almighty. Umum Undang-Undang Nomor 23 Tahun 2002, elucidate, eraturan Pemerintah). Young people have significant responsibilities for the survival of their nation and state, as they constitute the future generation of successors to the land. Give kids plenty of chances to grow and develop more ideally, mentally, socially, and physically, so they can be responsible adults and the country's heirs' aspects, Seomitro (Soemitro, 1990).

Not only that, The development and growth of children must also be protected from the negative impact of the surrounding environment because the environment is one of the causes that can affect their growth and development, (Makarim, 2022). This includes the emotional bonds created by parents and the impact of where they live. One of the triggers for children's involvement in sexual abuse cases both as victims and perpetrators is the lack of parental supervision of the use of social media such as YouTube, Facebook, Twitter, Instagram, Telegram, and others, (Andika, 2010). So that children easily open pornographic content. This of course has implications for the widespread criminal offense of sexual abuse from time to time. The number of publications in print and electronic media that discuss pornography, pornographic practices, sexual abuse, and other immoral crimes shows signs of this growth, (Chazawi, 2007).

In the 80s and 90s, children and teenagers interacted very differently and even in the 2000s, watching television, social media, and vulgar content was considered taboo and not by social norms. These things are commonplace in today's society. The change in values can trigger abnormal behavior in children. In obtaining information, most children or adolescents utilize it for negative things, thus leading to promiscuity or free living, (Soetodjo & Melani, 2006).

Sexual abuse is an act that goes against the principles of decency and is highly inappropriate. Sexual abuse can affect anyone, either a child is the perpetrator and the victim are a child, or an adult is the perpetrator and the victim is a child. Sexual abuse is a serious issue that can affect anyone. It can occur when an adult abuses a kid or when a child abuses an adult, (Dirwansyah et al., 2021). The advancement of communication media and the rapid development of information communication technology have greatly encouraged the spread of obscene and pornographic materials. According to a survey, there are 72 million visitors to pornography sites each year. There are about 28,000 internet users to access pornographic content, the most users are in the age group of 12-17 years, (Ardiansyah, 2022).

In Kel. Kota Matsum III, Kec. Medan Kota, on Amalium Street, there was an instance of an obscenity case at the OYO Pondok Istana Hotel. In accordance with ruling No. 61/Pid.Sus Anak/2021/Pn Mdn, defendant JS, who was 17 years old, was legally guilty of conducting an indecent act in which he intentionally used violence or threatened to use violence in order to coerce victim SM, who was 16 years old, into having sex with him. JS was fined Rp. 600,000,000 (sixty million rupiah) and given a five-year prison sentence for his actions. In the community, there is a debate on how "child molestation offenders are subject to Law No. 35 of 2014 (Undang-undang Nomor 35 tahun 2014), concerning the amendment of Law No. 23 of 2002 (Undang-undang Nomor 23 tahun 2002)."

The researcher conducted a study with the above backdrop in mind title "ANALYSIS OF DECISION NO 61/PID.SUS ANAK/2021/PN MDN ON THE CASE OF A CHILD AS A VIOLATOR OF THE CRIME OF ABUSE".

Based The research problem is formulated based on the background information provided above. 1) How is the application of "Child Protection Legislation Number 35 of 2014 amending Legislation Number 23 of 2002 against children as perpetrators of criminal acts of sexual abuse? 2) How is the factors taken into account by the judge while making a decision in a case where a kid is the offender Since the problem formulation above serves as the foundation for this research's purpose, it can identify a solution. The goals of the study are as follows: 1) As determined by Decision No. 61/Pid.Sus Anak/2021/Pn Mdn, to ascertain the manner in which the implementation of "Law Number 35 of 2014 on the amendment of Law Number 23 of 2002 concerning Child Protection" is being carried out. In accordance with Decision No. 61/Pid.Sus Anak/2021/Pn, to ascertain the judge's thoughts on the penalties meted out to the child sexual abuser Mdn.minal offense?

The usefulness of this research is to be used in the context of legal research with the aim of obtaining appropriate information for legal research. The data collected can be in the form of symptoms, frequency of occurrence, the community under study, and the behavior of community groups. It is hoped that this research will be useful for answering and collecting the main issues raised in legal research.

1. Theoretical Benefits:

This research aims to increase insight and understanding of the decision-making process regarding the criminalization of child abuse.

2. Practical Benefits

- a) As a recommendation to increase understanding of the criminal offense of child sexual abuse.
- b) Providing to parties who need sources of information and reference materials.
- c) Fulfill the requirements to take an undergraduate study (S1) at the Faculty of Law, Prima Indonesia University.

II. METHOD

A normative legal research method was used in this study is employed. Normative research, also known as doctrinal research, focuses on examining the application of positive law. This method investigates how legal principles are applied, analyzes the systematic structure of the law, examines the synchronization of regulations both vertically and horizontally, and utilizes secondary legal resources to investigate, including books and law journals issues through previous research, (Soekanto, 2015). The research is descriptive in nature, as it aims to present problems using existing data and legislation related to situations of kid sexual offenses. The data sources for this research consist of primary and secondary legal sources:

1. "Law Number 11 of 2012 concerning the Child Criminal Justice System, Law of the the principal legal sources used in this study are Republic of Indonesia Number 35 of 2014 concerning Amendments to the "Child Protection Law Number 23 of 2002". Section 61/Pid.Sus Anak/2021/Pn Mdn of the Medan District Court, the Criminal Procedure Code, and the Criminal Code, and literature studies are used by researchers in conjunction with research data.

2. And secondary legal sources, namely data that has been completed in the form of documents, research reports, books, and articles in scientific journals), (Azwar, 2009). In this study, researchers used a literature study or document study (library research) which means studying, reading, recording books, documents, laws and regulations, and important articles from social media related to the subject matter. This research uses qualitative data analysis which is basically used to systematize written research material. Data analysis produces descriptive and analytical information that is used to describe the facts in this research proposal. This research method uses a deductive approach, which means drawing conclusions and suggestions from general matters and towards specific matters.

III. RESULT AND DISCUSSION

A. Application of Child Protection Law No. 35 of 2014 Against Children as Perpetrators of Sexual Abuse in Decision No. 61/Pid.Sus Anak/2021/PN Mdn

Protection is to provide emotional peace and a real sense of security felt by the protected party, both abstract (indirect), namely emotional, as well as concrete (direct) can also be enjoyed in real terms such as the release of threats or humiliation of human dignity, (Arief, 2007). (Raharjo, 1981) opinion regarding legal protection is the provision of protection to legal subjects in the context of rights that feel harmed by other people (other legal subjects) by providing protection to the community so that they can feel the fulfillment of the rights given by the law to them. then in CST Kansil's view of legal protection, it is a legal effort that cannot but be given by law enforcers, both in mind and physically so that people feel comfortable from various dangers from certain parties, (Kansil, 1989).

According to Undang-Undang (UU) Nomor 23 Tahun 2002 Tentang Perlindungan Anak (2002), child protection is a set of measures meant to preserve and defend children's interests in their lives so they can grow, develop, and participate as best they can. These measures also provide security from violence and discrimination. Children have a duty to be protected as criminals, victims of crime, and witnesses to crime, according to "Law No. 35 of 2014 amending Law No. 23 of 2002 concerning providing protection to children." Mainly, the goal of children's legal protection is to uphold their rights so that they can grow up in a physically, mentally, and socially healthy manner.

Regarding decision No. 61/Pid.Sus Anak/2021/Pn Mdn, the judge sentenced the juvenile offender based on the lawsuit submitted by the public prosecutor (Jaksa Penuntut Umum), which contained the following contents:

1. Decide that the child defendant JS has been proven legally guilty of intentionally inducing a child to commit an obscene act with him;
2. Sentenced the juvenile JS to a maximum imprisonment of 5 (five) years minus the sentence and a fine of Rp. 60,000,000 (sixty million rupiah), and 90 (ninety) days of

- work training at the Social Service for Children and Adolescents (PSAR/ Pelayanan Sosial Anak dan Remaja) in Tanjung Morawa;
3. Stipulate that the period of arrest and detention of children in conflict with the law shall be fully deducted from the punishment imposed;
 4. Determine the evidence in the form of:
 - a) 1 (one) piece of orange female clothing
 - b) 1 (one) CD-R 80MIN/700MB containing CCTV footage of OYO Hotel Pondok Wisata Istana XI with a duration of 5 seconds
 - c) 1 (one) mobile phone brand Oppo A12 gray color
 5. JS was ordered to pay Rp 5,000 (five thousand rupiah) in court charges.

"Article 81 Point (2) Jo. Article 76D of Law of the Republic of Indonesia No. 35 of 2014 concerning amendments to RI No. 23 of 2002 concerning child protection," which states, "For every person who deliberately deceives, a series of lies, or induces a child to have sexual intercourse with him or her," served as the basis for the prosecution of the juvenile defendant. with another person." The public prosecutor had charged the child offender. Based on Points (1) and (3) in "Article 81 of Law No.35 of 2014, as for the punishment for child those who violate article 76D will face the following penalties: (1) Criminal punishment with a minimum of five (five) years in prison, a maximum of fifteen (15) years in prison, and a maximum fine of Rp5,000,000,000.00 (five billion rupiah)." the research findings on cases of criminal acts of sexual abuse committed by children in decision no. 61/Pid.Sus Anak/2021/Pn Mdn. (3) If the criminal conduct mentioned in Point (1) is committed by parents, guardians, child caregivers, educators, or education professionals.

According to Marlina (2010), diversion refers to the power that law enforcement officers with jurisdiction over criminal cases have to either proceed with the case or cease it altogether. Diversion is only permitted for crimes that carry a sentence of less than seven (seven) years, according to Article 7 Point (2) of the Juvenile Criminal Justice System Law of imprisonment and do not repeat the criminal offense. Thus, diversion can be carried out with a qualified law. These requirements are cumulative and must be met and if not then diversion cannot be implemented.

In cases where children violate Article 76E of the Child Protection Law (Undang-Undang Perlindungan Anak/ UUPA), diversion cannot be done, this is because by Article 82 Point (1) of the UUPA, in these cases anyone who violates Article 76E of the UUPA will be subject to criminal sanctions of up to 15 (fifteen) years imprisonment and compensation of up to Rp 5,000,000,000, - (five billion rupiah). Therefore, in decision number 61/Pis.Sus Anak/2021/Pn Mdn, regarding the criminal case of sexual abuse committed by a child, the judge decided that diversion could not be sought.

B. Consideration of Judges in In the Matter of Minors Accused of Criminal Offenses, Decision No. 61/PID.SUS ANAK/2021/PN MDN

It is very important for the judge to consider the decision before determining the action to be given to the defendant, (Suryani, 2020). Judges have the right to weigh the severity and lightness of the sentence of imprisonment for the decision they make. The judge's right to decide cases is absolute and cannot be interfered with by other parties. This is done to ensure that the court's decision is truly objective, (Verawati, 2020). Judges must have a sense of justice towards both the perpetrator and the victim when they decide on the severity of the imprisonment sanction. Judges are state judicial officials who are given the power by law to hear cases submitted to them, (Rifai, 2010).

In handing down a decision, the judge must rely on evidence and statements from witnesses that support evidence and conviction as stated in Article 183 of A court cannot sentence someone unless he is persuaded—by the presentation of at least two credible pieces of evidence—that a criminal offense has been committed and that the defendant is guilty of it, according to the Criminal Procedure Code (KUHP/ Kitab Undang-Undang Hukum Acara Pidana). Taking into account 61/Pid.Sus Anak/2021/Pn Mdn is the decision number. the judge considered a criminal case involving a minor who was in conflict with the law due to sexual

abuse committed by both the defendant, JS, and the victim, SM. JS was 17 years old and SM was 16 at the time of the offense. The judge heard case 61/Pid.Sus Anak/2021/Pn Mdn at the public prosecutor's request. She concluded that the defendant, JS, had been proven true and convincingly guilty of the crime of "intentionally committing deception, a series of lies, or inducing a child to have sexual intercourse with him or with another person" in accordance with Article 81 Point (2) Jo. Regarding the modification of Law No. 23 of 2002 (UU RI Nomor. 23 Tahun 2002) regarding child protection, see Article 76D of Law of the Republic of Indonesia No. 35 of 2014 (Pasal 76D UU RI Nomor. 35 Tahun 2014). 23 of 2002, which deals with kid safety.

The judge took into consideration the evidence presented by the public prosecutor in addition to the admissible evidence, as per judgment No. 61/Pid.Sus Anak/2021/Pn Mdn. Article 183 of the Criminal Procedure Code (KUHP) was satisfied by the judge's consideration while punishing the offender in decision No. 16/Pid.Sus Anak/2021/Pn Mdn. Based on the evidence presented during the trial, the judge determined that defendant JS was guilty of sexually abusing SM. The judge also took into consideration Article 81 Point (2) of The elements of Law Number 76D, which relates to the prosecutor's charges, are as follows: 1. Any person; 2. committing violence or threat of violence, forcing, deceiving, committing a series of lies, or inducing a child to commit or allow obscene acts to be committed, in the case of" 35 of 2014 concerning the amendment of Law No. 23 of 2002 concerning Child Protection of a combination of several acts which must be considered as independent acts so that they constitute several crimes".

According to the research results, the first element "every person" has been fulfilled. The meaning of every person is the legal subject of a criminal offense, which is defined as the person charged with committing the criminal offense listed in the article. In this case, the element has been fulfilled because the perpetrator of sexual abuse in Decision No 61/Pid.Sus Anak/2021/Pn Mdn is a 17 (seventeen) year old boy by the name of JS. The next element, namely "committing violence or threats of violence, forcing, deceiving, committing a series of lies, or inducing a child to commit or allow obscene acts to be committed, in the case of a combination of several acts which must be considered as independent acts so that they constitute several crimes." The judge also considered that committing only one crime due to the existence of one or more persons who commit several similar crimes is considered a combination of several acts.

At the end of the trial the judge decided that the actions of the child had fulfilled both elements. Therefore, in decision No. 61/Pid.Sus Anak/2021/Pn Mdn the judge decided that the defendant JS had been found legally guilty of committing the crime of intentionally forcing SM to commit obscene acts with him several times, because this crime fulfills all the requirements of Article 76D Jo Article 82 Point (2) of Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 (UU RI No. 23 tahun 2002) concerning child protection.

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. According to the decision No 61/Pid.Sus Anak/2021/Pn Mdn, 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. Every citizen is expected to gain an understanding of the consequences of violating the law that results in punishment through government attention to legal and educational needs, especially for children.

- Judges must thoroughly consider the elements of the charges against the defendant and have a sense of justice towards the defendant. In deciding criminal sanctions for child abuse, judges must consider the mental condition of children and their rights when imposing sanctions as stipulated in Article 81 paragraph (2) UUSPPA.

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