
REVIEW JURIDICAL THE CRIME OF SEXUAL VIOLENCE AGAINST A CHILD WITH DECISIONS**(Studies Court ruling Surakarta State Number 92/pid.sus/2020/Pn Skt)**

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ABSTRACT

Children are part of the next generation of the nation's ideals in the future. currently crime against children is rife, one of which is sexual violence by deception of minors by adults. The problem of this research is whether the regulation regarding criminal sexual violence according to criminal law and Islamic law and what is the basis for the judge's considerations in imposing a crime on a court decision Surakarta State Number 92/pid.sus/2020/Pn Skt. The method used is empirical normative. Collecting data with library studies (library research) and interviews (interview). The results of the research are included in the conclusion which shows that the defendant has violated the crime in Article 81 paragraph (2) of RI Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to RI Law No. 23 of 2002 concerning Child Protection became Law Number 35 of 2014 Jo Article 64 paragraph (1) of the Criminal Code. The Panel of Judges sentenced the defendant to imprisonment for 6 (six) years, a fine. Based on the results that the authors obtained after conducting the research, the authors propose a suggestion that is, It is hoped that law enforcement officials will work together with the community in general and parents in particular should play an active role in efforts to prevent sexual violence against children.

Keywords: sexual violence, deception, basic legal considerations

INTRODUCTION

Sexual violence is an act that violates the law and norms and customs which is good, especially regarding a person's genitals (sex). This action relates to the principles/values of right and wrong in behavior and attitude society, as a result society considers this immoral case to be good or bad in related matters with sexual incidents such as rape, obscenity, pornography and other so on (Romi Asmara and Laila M. Rasyid, 2013).

According to the dictionary criminal law is an act that can be done intentionally or even consciously with a specific purpose and is profitable for the perpetrator but detrimental to the victim (Soerjono Soekanto, 2000). Meanwhile, Islamic Criminal Law is oriented towards human welfare and crimes committed by criminals *fuqahareferred* to as *Jarimah*, that is, action by syara' prohibited and will be threatened with had punishment or ta'zir for the perpetrator. In the law There are 7 types of Islamic crimes types of jarimah, namely: apostasy (leaving Islam), rebellion, adultery, qadzaf (accusation of adultery), stealing, robbing and drinking alcoholic beverages (Muhammad bin Abdurahman al-Dimasyqi, 2001).

CaseThe number of sexual violence in the city of Solo has increased rapidly by more than 20% from 2020 to 2021, In 2020, there were 6 cases of violence sexual abuse with details of 1 woman and 5 children. Violence In domestic violence, there were 30 cases of neglect, 16 women and 14 children. In 2020 total violence that occurred in the city Solo has 54 cases with details of 18 affecting women and 36 affecting children. And cases will increase in 2021. From the data obtained, sexual violence reached 17 cases with details the victims were 1 woman and 16 children. There were 8 cases of abuse, with details of 7 children and 1 woman. Domestic violence is increasing to 42 cases with details of 23 affecting children and 19 affecting Woman. There were 4 cases of child custody, 4 cases of dating violence, and 4 cases of

bullying. (<https://mettanews.id/kas-pelecehan-sexual-dan-kekerasan-pada-perempuan-di-solo-meningkat-apa-sebabnya/>)

Decision Number 92/Pid.Sus/2020/PN.Skt Surakarta Court that this case, precisely in 2019, has been proven valid and convincingly guilty take action criminal "with intentionally committing deception, a series of lies, or enticing minors, that is a daughter 16 years old. On In this incident, the suspect was a man who had sexual intercourse with the victim continuously with the promise of buying lipstick, the victim's favorite food, roses and money, and was willing to take responsibility if the victim became pregnant, as regulated and punishable by crime in the single indictment of Article 81 paragraph (2) Republic of Indonesia Law no. 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Republic of Indonesia Law No. 23 of 2002 concerning Child Protection became Law Number 35 of 2014 in conjunction with Article 64 paragraph (1) of the Criminal Code, so that perpetrators must be held accountable for their actions with a prison sentence of 7 (seven) years, minus while the defendant is serving period of arrest and detention with an order the defendant remains are in detention and a fine of Rp. 60,000,000,-

Based on the explanation of this background, the author has an interest in the study of "Judicial Review of Actions Criminal Cases of Sexual Violence Against Child with Deception Case Study (Number 92/Pid.Sus/2020/Pn Skt)

Several problem formulations based on the previous background description are:(1)How to setup regarding criminal acts sexual violenceto childby deception, according to criminal law? (2) What is the legal view Islam is about actions criminal sexual violence against children by deception? (3) How the judge considers the law in dropping decision? (Number 92/Pid.Sus/2020/PN Skt)

RESEARCH METHODS

The research method in this research is normative-empirical. Study normative-empirical is utilized in analyzing/knowning the extent which regulations or laws and laws are in effect effective. Normative-empirical legal research is often used to conceptualize what is written in statutory regulations (law *in book*) and also law is conceptualized for use in rules or norms so that humans can behave appropriate (Jhonny Ibrahim, 2013). In normative legal research only sourced from secondary data, namely data obtained from materials existing literature or literature its relationship to the qualifications of criminal juridical review. Data collection technique what is applied is to use library study method (library *research*)Next, use the interview method (Interview). Data analysis in this research is by qualitative approach and presented in a way descriptive

RESULTS AND DISCUSSION

Sexual violence generally means sexual activity that involves coercion and pressure on the victim. In general, this crime is committed by adults against minors and often occurs in both boys and girls. Violence This includes all types of sexual violence against a person's own partner, including violence done by the husband towards his wife for satisfy his desires Alone. (Agustanti et al., 2021)

1. Follow settings violent crime sexual towards minors by deception, according to criminal law:

a. Convention on the Rights of the Child

In 1989, the Convention on Children's Rights generally made provisions regarding children's rights which the state must legally protect. Regulation regarding exploitation child sexual regulation in article 34 which mentions various types of sexual exploitation and abuse of minors, including:

- 1) Persuading and forcing children to engage in sexual activity who violates law;
- 2) Sexual practices such as prostitution using children exploitatively violate the law
- 3) Using children in pornographic performances and materials in an exploitative manner

b. According to the Criminal Code

The criminal act of sexual violence listed in the Criminal Code is close to understanding pedophile or someone who gets satisfaction sex against children, the articles on morality crimes can be used to ensnare acts such as pedophilia or other sex crimes, each of these articles is as follows:

- 1) Chapter 287
- 2) Chapter 289 .
- 3) Chapter 290
- 4) Chapter 292
- 5) Chapter 293
- 6) Chapter 294
- 7) Chapter 295

c. According to the 35 Year Law 2014 Concerning Amendments to the Law Number 23 of 2002 concerning Protection Child

- 1) Chapter 81 Everyone who deliberately carrying out threats of violence forcing children to do it sexual intercourse with him or with others..
- 2) Article 82 Every person who intentionally commits violence or threatens violence, forces, commits deception, a series of lies, to or persuade child to do or allowing obscene acts to be committed
- 3) Article 88 Everyone that exploits the economy or child sexual relations with the intention to benefit yourself/others

According to Law No.35 of 2014 regarding amendments to Law no. 23 of 2002 concerning Protection Child, for that matter government and state institutions others are obliged to pay attention to aspects of protection the child. (Hamzah Junaid, 2014)

2. Rules for the crime of sexual violence against children by deception, according to Islamic law

Criminal Law in Islam is called by name finger. Fingers can be shared into several kinds and types according to the aspects highlighted. In general, the scholars divide the fingers based on weight and aspects its light punishment and confirmed or whether or not by the Koranor al-Hadith. On this basis, according to Bagas Adhi(2020)there are three types, namely:

1. Jarimah Hudud

Jarima hudud is action which violates the law the types and threats the punishment is determined by the text, namely punishment had (God's right). Limited punishment what is meant is not has limits lowest and highest

2. Jarima Kisas Diyat

Jarima kisas and diyat are Jarimah who was threatened with kisas punishment or diyat. Both kisas and both diyats are punishment already determined by sharia'. The difference with punishment had is that limited punishment is Allah's right, while kisas and diyat are human rights (individual rights).

3. Jarima Congratulations

Linguistically takzir means al-Man'u (prevention). According to term, takzir means at-Ta'dib (education) and at-Tankil (restraint). The takzir finger is a finger the punishment is left to the judge or ruler. Judge in case this is given authority to overthrow punishment for the perpetrator gratitude. Takzir is punishment against criminal acts for which there is no provision in the text regarding punishment

In Islam, no known obscene terms, however what is known is the term More specifically, adultery is an act or sexual activity husband and wife who done outside marriage bond. While the term obscene is a term directing action an action on adultery, not on adultery itself. Like groping, kissing other things that can cause lust / lust

Violence sexual is a form jarimah ta'zir because it relates with honor. In the law Islam does not

regulate specific about punishment for perpetrators of harassment sexual. However sexual harassment is categorized as approaching action adultery (A. Djazuli, 2010).

3. Considerationlaw by the judge in handing down the decision (Number 92/Pid.Sus/2020/PN Skt)

a. Case chronology

Surakarta District Court Decision Number 92/pid.sus/2020/Pn Ska form of sexual violence committed by a 20 year old perpetrator who was proven guilty of committing a criminal act by deliberately committing deception, luring the child/victim, namely 16 year old Anis Oktavia Binti Sarwedi; having sexual intercourse with him or another person continuously. The first time the defendant committed this act was on Sunday 20 January 2019 at a time he can no longer remember with certainty at the Orchid Hotel Jl. Gajah Mada No. 29, Timuran, Banjarsari District, Surakarta City, initially around the beginning of January 2019, the defendant first became acquainted with the witness through the social media Instagram until the defendant and the witness gave each other their cell phone numbers and then started dating, then on Sunday, January 20 2019 The defendant sent a message via WA using his cellphone and asked him to go to the hotel, then the defendant immediately booked a room at the Orchid Hotel Jl. Gajah Mada No 29, Timuran, Kec. Banjarsari, Surakarta City via Online traveloka, from there the defendant gave the lure of deception, and persuaded the witness to have sexual relations, not only once did the defendant still try to repeat his actions as he had done when the defendant first committed the same act with the witness where The defendant committed the next act 7 (seven) times on days, dates and times that he could no longer remember with certainty. As a result of the actions of the child perpetrator who had sexual intercourse with the victim's child, she became pregnant, this is supported by the evidence of the Visum Et Repertum letter Number VER/67/IKF-ML/RSDM/XI/2019 dated 12 November 2019 which was signed by Dr. Yudhistya Ngudi IK, Sp. OG, doctor at RSUD Dr. Moewardi Surakarta, for examining a female child with an estimated gestational age of thirty-five weeks. (Surakarta District Court Decision Number 92/pid.sus/2020/Pn Skt concerning Determination of the Suspect)

b. Author's Analysis

The judge's decision that has been given to the suspect still does not fulfill justice, especially for the victim and his family because he is a minor, so the judge needs to consider the following:

1. Element Criminal act Accidental Intercourse Committing Deception Deception and Sequence Lie

The application of the article uses Article 81 Paragraph (2) UU Number 23 of 2002 concerning Protection A special child protects children's rights crime victims, remember also the legislative principle "lex specialis derogat legi generali" namely more specific statutory regulations override more general statutory regulations. Article 81 Paragraph (2) of Law Number 23 of 2002, namely: "every person who with intentionally committing deception, a series of lie, or persuade children have sexual intercourse with him or with someone else."

The elements of a criminal offense are based on the quote from the article above, namely:

- a. Do cheating ruse, series lie, or persuade a child to have sexual intercourse with him or with others.
- b. Persuading (verleiden) is used to influence another person's will to conform to the perpetrator's wishes, at this moment the perpetrator attracts his or her desires by giving lures, this is the same as persuading and underage children are very vulnerable to things like this, because the child's mind and psychology are still innocent. Innocent people are easily lied to and influenced

Some things that the judge needs to consider are as follows:

1. There isn't any at all the matter that was discovered excuses or excuses self-justifier and the defendant's actions

2. The defendant's actions have damaged the victim's future and caused trauma and he has committed a form of sexual violence against the child based on a letter that as a result of the defendant's actions the victim's child has become pregnant, this is supported by evidence from the Visum Et Repertum letter Number VER/67/IKF- ML/RSDM/XI/2019 dated 12 November 2019 which was signed by dr. Yudhistya Ngudi IK, Sp. OG, doctor at RSUD dr. Moewardi Surakarta, for examining a girl with the conclusion that there were pregnancy products with an estimated gestational age of thirty-five weeks;
3. Article 287 of the Criminal Code (KUHP): Whoever has sexual intercourse with a woman outside marriage, even though it is known or should be expected that he is not yet 15 years old or if he is not it turned out that if they were not able to marry, they were threatened with a maximum prison sentence of nine years

Based on from this, so the author believes that application of criminal law material applied to the perpetrator is appropriate but necessary considered by the judge in making a decision need to remember some rules that might be possible be a consideration in passing a fairer decision against the perpetrator

c. Legal consideration by the judge

A court decision is a judge's statement made in an open court session. The decision handed down by the judge is made to resolve or end an ongoing criminal case. In deciding on a criminal act, the judge has the right to thoroughly examine the case with both juridical and non-juridical considerations. In providing an assessment of justice relating to sexual violence, the judge as an officer in the court has the duty to uphold justice, because in criminal cases the justice must be fair justice. for the defendant/perpetrator in particular and victims in general and in general to fulfill justice in the interests of societywide

The judge's decision reflects Justice is not easy to achieve used as a benchmark for the parties concerned. Because it's fair for one party is not necessarily fair for the other party. Judges in facing a case related to fighting for justice also often experience external pressure or influence or threats which may influence the decision here. Judges have freedom in handing down decisions, judges must not and cannot be influenced in any way by the decision that has been handed down, they must not be influenced by external factors because Judges are independent and cannot intervene. If there is pressure/threats, they can be reported to the authorities, if there are threats they can be resolved through legal channels. Meanwhile, the court is the last place for escape searchers justice, so that the judge's decision should be able to fulfill it the demands of the seekers justice (Setyanegara, E. 2013)

In the context of upholding justice, decisions judge at the Surakarta District Court Decision Court Number 92/pid.sus/2020/Pn Sktregarding the determination of suspects must be appropriate and provide equal opportunities in the eyes of the law for litigants in court. That the decision in this case has fulfilled justice because of the judge has given the appropriate decision with the prosecutor's demands. In Article 81 paragraph (2) it is stated that the criminal penalty is 6 years in prison. In the judge's consideration, there were several aggravating circumstances, namely, the suspect's actions had traumatized the victim, causing pregnancy, causing embarrassment and tarnishing the family's name and these actions were categorized as disturbing in society, while the mitigating circumstances were that the child was not being complicated and honest with him in court, willing to take responsibility, the child admits the mistakes he has made and regrets his actions and the child has never sentenced (Results of interviews with Surakarta District Court Judge Sunaryanto, SH, MH, May 2023)

CONCLUSION

As for qualifications acts of violence sexual activity against children from the perspective of criminal law, which is contained in Law 35 of 2014 concerning Upper Change Law Number 23 of 2002 concerning Protection Child Article 81, Art 82 and Art 88. In the Criminal Code articles about crime decency, each article is as follows: Article 287, Art 289, Art 290, Art 292, Art 293, Art 294 and Article 295. Application of the law to perpetrators of criminal acts of sexual violence against minors, namely by providing sanctions in accordance with Article 81 paragraph (2) of Republic of Indonesia Law Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning Second Amendment of Republic of Indonesia Law Number 23 of 2002 concerning Child Protection into Law in conjunction with Article 64 paragraph (1) of the Criminal Code, including the imposition of prison sanctions for 6 (six) years, and a fine amount of IDR 60,000,000,-. Women in Islam must be respected and have their dignity maintained, especially if the woman is not yet an adult. Islam prohibits all forms of violence and oppression, including sexual crimes. Law enforcement officers are expected to be able to follow up firmly on all cases related to sexual violence against minors, and parents must provide special supervision to children to avoid undesirable things like what happened in this case. Imposing sanctions to the perpetrator criminal act especially criminal acts of sexual immorality against child to be given decisive action, in order to provide protection and overcome the trauma experienced by the victim.

REFERENCES

1. Djazuli. (2010). Kaidah-kaidah Fikih: Kaidah-kaidah Hukum Islam dalam Menyelesaikan Masalah-masalah yang Praktis. Jakarta: Kencana
2. Jhonny Ibrahim, Teori dan metodologi penelitian hukum normatif (Malang: Bayumedia, 2013) h. 118
3. Muhammad bin Abdurrahman al-Dimasyqi, *Fiqh empat Mazhab*, (Bandung: Hasyimi, 2001), 451.
4. Soerjono Soekanto, Pengantar Penelitian Hukum, Penerbit Universitas Indonesia-UI Press cetakan ke-3 tahun 1984, hlm 54.
5. Soerjono Soekanto, *Sosiologi Suatu Pengantar* (Jakarta: Rajawali Pers, 2000),
6. Agustanti, R. D., Satino, ., & Bonauli, R. R. (2021). Indonesia Perlindungan Hukum terhadap Pekerja yang Mengalami Pelecehan Seksual dalam Rangka Mewujudkan Bela Negara. *Jurnal Supremasi*, 11, 42–56. <https://doi.org/10.35457/supremasi.v11i1.1092>
7. Hamzah Junaid. 2014. Azaz Dan Landasan Pendidikan. *Jurnal Sulesana* Vol. 7 No. 2
8. Romi Asmara dan Laila M. Rasyid, “Perlindungan Terhadap Anak Perempuan Korban Kejahatan Kesusilaan di Kota Lhokseumawe”, (*Jurnal Ilmu Hukum FH UNRI* Vol.3 No.2, 2013), 205.
9. Setyanegara, E. 2013. Kebebasan Hakim Memutuskan Perkara dalam Konteks Pancasila (Ditinjau dari Keadilan “Substantif”). *Jurnal Hukum Dan Pembangunan Tahun*, 43(4), hlm. 434– 468.
10. Sungkono, Bagas Adhi (2020) *TINDAK PIDANA PEDOFILIA DALAM PERSPEKTIF HUKUM PIDANA ISLAM DAN HUKUM PIDANA POSITIF*. Other thesis, Skripsi, Universitas Muhammadiyah Magelang.
11. <https://mettanews.id/kasus-pelecehan-seksual-dan-kekerasan-pada-perempuan-di-solo-meningkat-apa-sebabnya/>
12. Kitab Undang-Undang Hukum Pidana (KUHP)
13. UU 35 Tahun 2014 Tentang Perubahan Atas UU Nomor 23 Tahun 2002 tentang Perlindungan Anak
14. Pasal 34 Konvensi Hak Anak 1989
15. Putusan Pengadilan Negeri Surakarta Nomor 92/pid.sus/2020/Pn Skt tentang Penetapan Tersangka