

Criminal Responsibility for Children as Perpetrators of the Crime of Sexual Abuse in the Tangerang District Court (Case Decision Study Number: 03/Pid.Sus-Anak/2020/PN.Tgn)

Youngky Fernando

Postgraduate Lecturer in Criminal Law at Universitas Islam Syekh Yusuf, Tangerang, Indonesia

Address: Jl. Maulana Yusuf No.10, RT.001/RW.003, Babakan, Kec. Tangerang, Tangerang City, Banten 15118

Korespondensi Penulis : yfernando027@gmail.com

Abstract. *The aim of this research is to analyze the legal construction of criminal responsibility for children as perpetrators of criminal acts of sexual abuse and to analyze the basic legal considerations in imposing criminal sanctions on children as perpetrators of criminal acts of sexual abuse. The research method uses a descriptive qualitative approach, the data source in this research is primary research field data. Data collection techniques include observation, interviews. Secondary data was obtained from literature studies related to the focus of this research. The results of the research show that the legal construction of criminal responsibility for children who are perpetrators of criminal acts of sexual immorality is that the judge has made an analogy of the actions of children who are perpetrators including the category of criminal acts of sexual immorality, in the Law in Article 76E of the Law which is regulated in Article 82 of Republic of Indonesia Law No. 17 of 2016 concerning Child Protection. The sanctions against child perpetrators are the two main criminal sanctions regulated in article 71 paragraph 1 of the Juvenile Criminal Justice System Law. The basis of the judge's legal considerations in handing down a decision is juridical in nature and is based on the facts in the trial. Non-juridical content contains things that lighten and make things worse. Criminal responsibility applied to children who commit criminal acts must take into account the best interests of the child.*

Keywords: *Accountability, Children who are Not Criminals, Obscenity*

INTRODUCTION

Various cases of children such as sexual abuse involving elementary school and junior high school students who raped a female high school student in Probolinggo, East Java until she became pregnant in April 2019 to cases of physical violence that killed two students at Taruna Indonesia High School in Palembang, Sumatera. South, are some examples of cases where children who bring children have to face the law

Deviant child behavior is often called juvenile delinquency. This behavior is not in accordance with existing norms in society, resulting in violations that tend to lead to criminal acts. Deviant behavior according to W.A. Offense that tends to lead to criminal acts committed by the child in the form of criminal acts is classified as delinquency.

According to: Kartini, Kartono., that what is meant by juvenile delinquency is evil/delinquent behavior or crime/delinquency of young people which is a symptom of social

illness (pathology) in children and adolescents which is caused by a form of neglect. social so that they develop a form of ignoring deviant behavior

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System emphasizes the definition of child, in article 1 point (3) it is stated that: "a child who is in conflict with the law, hereinafter referred to as a child who is 12 (twelve) years old but has not yet 18 (eighteen) years old who is suspected of committing a criminal act."

With criminal sanctions in case decision number: 03/Pid.Sus Anak/2020/PN.Tgn at the Tangerang District Court, which is felt to be very heavy for the defendant who is still in the category of child who can still be fostered, especially when the child is undergoing trial and is currently studying. formal at high school level and non-formal at an Islamic boarding school in Purworejo where the education he takes will clearly guide the child to become a better and more moral person. So it becomes interesting to use as research.

RESEARCH METHODS

Method is a process of principles and procedures for solving a problem, while research is a careful and thorough examination of a symptom to increase knowledge which can be interpreted as a process of principles and procedures for solving problems in conducting research.

- a. The problem approach used in this research is a Sociological Juridical legal approach. This research was carried out by looking at the reality in practice in the field to find out the real problems
- b. The research specifications in this study include descriptive analysis research, namely describing applicable laws and regulations in relation to legal theories and the practice of implementing positive law which concerns the problems raised in the research.
- c. The type of data can be seen from the source, it can be distinguished between data obtained directly from field research and data obtained from library materials.

1.1. Data source

- a. Primary data is data obtained directly from field research. In the context of field research, especially regarding the research subject matter. in this case it was obtained in research by the District Court conducting observations and interviews with respondents

- b. Secondary data is data obtained from library literature materials by conducting document studies, theoretical archives, doctrinal concepts and legal principles related to the subject of citing and studying legislative regulations, theories from legal experts, legal dictionaries and scientific articles.

1.2. Method of collecting data

Data collection in this research was carried out using two methods, namely as follows:

- a. Literature study is a series of activities carried out by the author with the aim of obtaining secondary data by reading, noting and quoting from various literature, legislation, books, mass media and other written materials that are related to the research carried out.
- b. The Lpanagan study is research carried out by means of observation and interviews as an effort to collect data. 1). Observation is direct observation of the object of ongoing study to obtain information and information as accurate data. 2). Interview, namely a data collection technique through a direct question and answer process with the source directly in connection with the research problem.

1.3. Data analysis method

After data collection and management is complete, data analysis is carried out. The data obtained was qualitative analysis, which means that the results of this research are described in the form of explanations and descriptions of sentences that are easy to read and understand to be interpreted and drawn conclusions regarding the implementation of criminal responsibility for children as perpetrators of criminal acts of sexual abuse at the Tangerang District Court in the Decision on Case Number: 03/Pid.Sus-Anak/2020/PN.Tgn. so that a clear picture of the problem under study can be obtained. From this analysis, it can be continued by drawing conclusions.

2. Results and Discussion

2.1. Legal Construction of Criminal Responsibility for Children Perpetrating the Crime of Obscenity at the Tangerang District Court

The criminal responsibility of children is different from the criminal responsibility of adults as perpetrators of criminal acts, criminal acts of children and criminal acts of adults are more focused on the criminal system, the criminal system for children as specifically regulated in the law on the juvenile criminal justice system. Indonesia, as a country that has ratified the Convention on the Rights of the Child, which regulates the principles of protection for children, has an obligation to provide special protection for children who are in conflict with the law. The treatment of child crimes must be different from adult crimes.

The article that regulates the ability to be responsible is in Article 44 of the Criminal Code which reads:

- a. Anyone who commits an act that cannot be accounted for, because his soul is disabled in its growth (*gebrekkige ontiwikkeling*) or is disturbed by disease, will not be punished.
- b. If it turns out that the person's actions cannot be held accountable because his or her mental development is disabled or disturbed due to illness, then the judge can order that the person be admitted to a mental hospital, for a maximum of one year as a probationary period.

In Islamic law, criminal liability is the imposition of a person due to the consequences of an action or lack of action carried out of his or her own volition, where the person knows the intent and consequences of his or her actions. Factors that cause criminal liability are immoral acts, namely committing acts that are prohibited by sharia. What is meant here is a person's fault for an action that has been determined not to be carried out.

Then, during the trial process, the Public Prosecutor submitted a claim which was essentially as follows:

- a. Declaring the child in conflict with the law, Ahmad Rozakun Bin Abu Yahya, guilty of committing the crime of "committing violence or threatening violence, forcing, committing deception, committing a series of lies, or persuading the child to commit or allow obscene acts to be committed", as in the First Indictment Letter, violates Article 82 of Republic of Indonesia Law no. 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law no. 1 of 2016 concerning the Second

Amendment to Republic of Indonesia Law no. 23 of 2002 concerning Child Protection Becomes Law;

- b. Sentencing a child in conflict with the law Ahmad Rozakun Bin Abu Yahya in the form of imprisonment for 2 (two) years with the order that the child in conflict with the law be detained at the Special Children's Development Institute (LPKA) in Kutoarjo and the fine replaced with 6 (six) month work training at BRSAMPK (Social Rehabilitation Center for Children Requiring Special Protection) "Antasena" in Magelang;
- c. Determine evidence, in the form of: 1). 1 (one) piece of white and brown hem shirt with batik pattern, one piece of pink t-shirt, brown shorts, white trousers with cartoon animal character motifs. 2). 1 (one) piece of black t-shirt with a skull image. 3). 1 (one) piece of red jacket. Used for cases of children in conflict with the law a.n. Sa'adukallah Ahmad Bin Hamdi.
- d. Determine that the Defendant pay court costs of Rp. 2,000.00 (two thousand rupiah).

2.2. The Judge's Basic Considerations in Imposing Criminal Sanctions on Children as Perpetrators of the Crime of Obscenity at the Tangerang District Court

The judge's decision is the crown and culmination of a case that is being examined and tried, therefore, when giving a decision on a criminal case, the judge's decision must contain reasons and considerations that can provide a sense of justice for the defendant. Where in these considerations one can read a clear motivation for the purpose of the decision taken, namely to uphold the law (legal certainty) and provide justice. Judges have complete freedom to determine the type of punishment and the severity of a crime. Judges have the freedom to move to the minimum and maximum limits of punishment as regulated in the law for each criminal act.

The basis for the judge's consideration in imposing criminal sanctions on children as perpetrators of criminal acts of sexual abuse at the Tangerang District Court in case number: 03/pid.sus-anak/2020/pn.Tgn. including:

- a. The public prosecutor's indictment, regarding the Public Prosecutor's indictment, the perpetrator's child and the perpetrator's child's legal advisor stated that they understood and would not raise any objections.

- b. Witnesses, To prove his accusations, the Public Prosecutor has presented witnesses including 1). The child victim, without being sworn in, basically explained as follows 2). That at that time the Child Victim and Child Witness I wanted to go to buy snacks on foot then the Child Victim and Child Witness I were intercepted by the Child Perpetrator and Child Witness V then the Child Victim was forced to follow the Child Perpetrator and Child Witness V by holding hands. The victim's child, while the child of Witness I was told to wait outside. 3). That at that time the Child Victim was taken by the Child Perpetrator and the Child Witness V into the toilet of the Kauman Mosque and when they arrived in the toilet the Child Perpetrator locked the toilet door then said he would give Rp. 2,000.00 (two thousand rupiah) to the Child Victim and told the Child to The victim must obey the words of the perpetrator's child. 4). Then the Child Perpetrator opened the Child Victim's pants while the Child Witness V held both hands of the Child Victim, then the Child Perpetrator headbutted (stabbed) the Child Victim's buttocks with a hard object such as wood once.
- c. Evidence, that in the trial the Public Prosecutor presented the following evidence: 1 (one) piece of white and brown hem shirt with batik pattern. 1 (one) piece of t-shirt in pink color. 1 (one) brown shorts. 1 (one) white pair of underwear with cartoon animal character motifs. 1 (one) black t-shirt with a skull on the front. 1 (one) piece of red and black combination jacket with the inscription Head Benk Squad Kehed.

Conclusion: A child was examined with abrasions on the anus and redness on the inside of the anus. That the judge next considers whether based on the legal facts mentioned above, the perpetrator's child can be declared to have committed the criminal act for which he is accused. Whereas in the judge's consideration, the perpetrator's child has been charged by the public prosecutor with alternative charges, so that the judge, taking into account the legal facts mentioned above, first considers the first alternative charge as regulated in Article 82 of Republic of Indonesia Law No. 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law no. 1 of 2016 concerning the Second Amendment to Republic of Indonesia Law no. 23 of 2002 concerning Child Protection Becomes Law, the elements of which are as follows:

- a. The "Everyone" element.
- b. The "intentional" element.
- c. The element of committing violence or threats of violence, coercion, deception, a series of lies, or persuading a child to commit or allow obscene acts to be committed.

Elements on purpose. The Criminal Code does not define the meaning of the word "intentionally" therefore referring to *Memorie van Toelichting* which defines intention (*opzet*) as "wanting or knowing" (*willens en wetens*) (Pompe: 166). So it can be said that intentionally means wanting and knowing what to do. The person who performs an action deliberately wants that action and besides that knows or is aware of what is being done. That this element is closely related to the element of the accompanying act as referred to in the third element so that if the third element of the first alternative indictment has been declared proven and fulfilled then the *a quo* element itself has also been proven and fulfilled according to law.

That in order to impose a crime against the child perpetrator, it is necessary to first consider the aggravating and mitigating circumstances of the child perpetrator;

- a. Aggravating circumstances: The actions of the child perpetrator have caused the child victim to become traumatized and feel sick. The perpetrator's son did not admit his actions.
- b. Mitigating circumstances: The perpetrator's child behaved politely during the trial. The perpetrator's child is still included in the child category. The perpetrator's child is still school age. The child perpetrator has never been punished.

That because the child perpetrator was sentenced to a crime, he must also be burdened with paying the court costs. Pay attention, Article 82 of Republic of Indonesia Law no. 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law no. 1 of 2016 concerning the Second Amendment to Republic of Indonesia Law no. 23 of 2002 concerning Child Protection Becomes Law, Law Number 3 of 1997 concerning Children's Courts and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant statutory regulations, then the judge's decision is basically as follows:

- a. Determining that the child perpetrator remains in custody.
- b. Determine the evidence in the form of: 1 (one) piece of white brown hem shirt with batik pattern. 1 (one) piece of t-shirt in pink color. 1 (one) brown shorts. 1 (one) white pair of underwear with cartoon animal character motifs. Returned to the Child Victim through Witness Qodir Al Abdul Qodir Bin Abdurahman. 1 (one) black t-shirt with a skull on the front. Returned to the perpetrator's child. 1 (one) piece of red and black

combination jacket with the inscription Head Benk Squad Kehed. Returned to Witness V's children.

- c. Charge the perpetrator's child to pay court fees in the amount of Rp. 2,000.00 (two thousand rupiah).

The decision handed down by the judge against the child perpetrator is basically no different from the demands of the public prosecutor regarding the articles applied as well as the length of the sentence and the fine which is replaced with job training at a job training center. Looking at the judge's considerations in case number 3/Pid.Sus Anak/2020/PN.Tgn in handing down the judge's decision based on the facts revealed in the trial where the judge's decision is based on the indictment, witnesses, letters and evidence (juridical considerations) as well as several non-juridical considerations as contained in mitigating and aggravating matters, and referring to the laws relevant to the case being examined. Based on the considerations contained in the decision, it can be concluded that juridical considerations are more dominant than non-juridical considerations.

In the trial, the child perpetrator is not only accompanied by legal advisors and the victim's family but is also accompanied by officers from the correctional center. From the results of the client's recidivism risk assessment, it can be seen that the child perpetrator, as in this case, has a low risk of committing a crime with a total score of 6 from the range of values. 116 However, the judge in giving sanctions to the child perpetrator does not take into account the recommendations submitted by the supervising officer from the correctional center.

3. Conclusion and Suggestion

3.1. Conclusion

Based on the results and discussion of juvenile crime and its problems, several conclusions can be drawn, namely as follows:

- a. The legal construction of criminal liability for children who are perpetrators of criminal acts of sexual abuse at the Tangerang District Court, is that the actions of children who are perpetrators are included in the category of criminal acts of sexual abuse and the law applied by the judge in giving sanctions for criminal acts of sexual abuse against children is as regulated in article 76E of the Law. Number 35 of 2014 concerning Child Protection, so that the sanctions imposed on children who commit

sexual abuse as regulated in Article 82 of Republic of Indonesia Law No. 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law no. 1 of 2016 concerning the Second Amendment to Republic of Indonesia Law no. 23 of 2002 concerning Child Protection Becomes Law. Because the perpetrator's child is still 16 years old, he is still in the category of child, so the perpetrator's child is subject to basic criminal sanctions as stipulated in Article 71 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. criminal sanctions for children of perpetrators with two main criminal witnesses, namely prison sanctions (article 71 paragraph 1 letter e) and job training sanctions as a substitute for fines if they are not paid (article 71 paragraph 1 letter c), Law Number 11 of 2012 concerning juvenile criminal justice system.

- b. The basis for the judge's legal considerations in imposing sanctions on children who commit sexual abuse as in 3/Pid.Sus-Anak/2020/PN. Tgn are considerations of a juridical nature, namely the indictment of the public prosecutor, witnesses, documentary evidence and material evidence as well as several considerations of a non-juridical nature as stated in aggravating and mitigating circumstances. It can be concluded that juridical considerations are more dominant. rather than non-juridical considerations

3.2. Suggestion

Based on the discussion and conclusions regarding criminal acts, recommendations can be made in the form of suggestions as follows:

- a. Judges in examining children who are not criminals must be more careful and more observant so that in giving sanctions to children who are not criminals in accordance with the actions they have committed, the judge must also be more careful in applying the laws relevant to criminal acts committed by children. perpetrators, which will be used as the basis for imposing sanctions on children who are non-criminal perpetrators, as well as being wiser in giving sanctions to children who commit criminal acts, bearing in mind that the issue of child criminal acts focuses more on behavioral problems related to mental health (psychological), and in general acts

Crimes committed by children are not based on evil motives and imprisonment will have a negative impact on children's development.

- b. In imposing sanctions on children who have committed criminal acts, it would be wiser if the judge also considered non-judicial matters such as the condition of children who are still in the category of minors, who of course are still immature in their thinking. And also consider recommendations submitted from the community center based on the results of research relating to children who commit criminal acts.

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