



# Juridical Review of the Crime of Inducing Obscenity Against Children (Case Study in Polres, Bombana Regency)

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## ABSTRACT

Indonesia is a country that was formed based on law and has been used by society in everyday life. So that every movement or action of society has legal values in it. However, as time goes by, the types of acts that violate the law are increasingly diverse in society. The government and the authorities have repeatedly provided outreach to make the public aware of the consequences of a criminal act that they commit, not only harming other people but themselves, but in its development this effort has not been enough to make the public aware. To obtain the data and information needed for the preparation of this thesis, the research will be carried out at the Bombana District Police Headquarters. This place was chosen because the author felt that research data on the crime of persuading children could be obtained at the Bombana Regency Police Station. The application of material criminal law by the Panel of Judges applying Article 81 Paragraph (2) of Law Number 35 of 2014 concerning Child Protection and Article 82 of Law No. 35 of 2014 concerning Child Protection because the victims are children and the basis for its implementation is the *lex specialist* principle. The legal considerations of the panel of judges in imposing criminal sanctions on the defendant were not appropriate because the sentence imposed on the defendant still contained deficiencies that were not by his actions so that it could damage the child mentally and sociologically. It is hoped that judges will be clearer in considering aggravating and mitigating factors for the defendant, this is related to the value of fairness of a decision for all parties and the deterrent effect of the decision. It is hoped that parents will pay more attention and understanding to their children so that children do not get trapped, let alone become victims of criminal acts of sexual abuse that destroy the child's future. An approach from a religious perspective is very necessary because that way people can control their desires so as not to commit wrong actions because this is based on religious values.

**Keywords :** Children, Inducing Obscenity, Polres

## I. INTRODUCTION

Indonesia is a country that was formed based on law and has been used by society in everyday life. So that every movement or action of society has legal values in it. However, as time goes by, the types of acts that violate the law are increasingly diverse in society. The government and the authorities have repeatedly provided outreach to make the public aware of the consequences of a criminal act that they commit, not only harming other people but themselves, but in its development this effort has not been enough to make the public aware.

One of the phenomena of crime that always occurs in society is sexual crime and sexual harassment. This crime is a form of violation of moral norms which is a national legal problem and is also a legal problem in almost all countries in the world.

This discussion about children's problems indicates that there is still affection or love between humans, especially parents. Children must be protected and maintain their honor, dignity, and self-respect appropriately, whether in legal, economic, political, social, or cultural aspects without distinguishing between differences, race, or class. Children are also the future successors of the nation which we usually call the future of the nation. So that children as a part of human rights must be protected and are worth fighting for.

Their quality is largely determined by their form and treatment today. Therefore, as a child, you need to be treated specifically with love so that you can grow and develop naturally physically, materially, and spiritually. For this reason, children need to be protected from everything that can cause them to commit criminal acts that can affect their mental, moral, and spiritual development.

Child protection according to Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning child protection considers that the Indonesian state guarantees the welfare of every citizen, including child protection which is a human right. Every child has the right to survival, growth, and development and the right to protection from violence and discrimination as mandated in the 1945 Constitution of the Republic of Indonesia.

However, in social life, the conditions and problems that accompany children's lives are very complex, both aspects of education, health, and unfair treatment from the perspective of the law itself. Therefore, it would be a shame if the government does not seriously address the various problems that are currently affecting Indonesian children whose fate is less fortunate, such as not receiving care, love, and especially guidance from parents and society or the environment in general.

Cases such as sexual harassment, rape, molestation, violence against children, and even child trafficking, of minors being used as commercial sex workers are also often discussed in the media as if there is not a day without cases involving children that occur in Indonesia.

Looking at the reality of everyday life, it turns out that many Indonesian children often have their rights ignored for the despicable interests of adults. Pedophilia is a heartbreaking example of the neglect of Indonesian children. Children are souls who are unable to resist coercion, harassment, and trauma from adults. Children are the greatest capital and hope for the future of this nation.

A normal child with a complete family environment and sufficient assets will fulfill their needs and rights as a child. This normal Indonesian child can go to school, and get clothing, shelter, and food well by his parents. This group of children also gets adequate security and creative needs from their parents.

In contrast to street children, their social life is only marginalized because of the crushing pressure of their needs for clothing, food, and shelter, and sometimes they have to find their own. Not to mention, threats to life lurk at all times in his body without anyone having the power to protect him. These street children endure a life of violence and physical labor that is unimaginable for children their age. Apart from that, the news about child molestation that is currently widespread is about child molestation which started from introductions via the social networking site known as Facebook.

Law No. 35 of 2014 concerning amendments to Law 23 of 2002 concerning Child Protection observes the provision of special protection for children in conflict with the law. In Article 64 special protection for children who face punishment as intended in Article 59 paragraph (2) letter b "children who are victims of criminal acts, is an obligation and responsibility of society".

## II. RESEARCH METHODS

### 2.1 Research Location

To obtain the data and information needed for the preparation of this thesis, the research will be carried out at the Bombana District Police Headquarters. This place was chosen because the author felt that research data on the crime of persuading children could be obtained at the Bombana Regency Police Station.

### 2.2 Types and Sources of Data

#### 2.2.1 Data Types

The types of data and data sources collected include:

- a) Primary data, namely data sourced from the results of interviews or interviews with judges who adjudicate and decide on cases that the author raises.
- b) Secondary Data, namely data obtained from decision studies by reading books, scientific works, statutory regulations, the internet, documents, including data sourced from the Bombana Regency Police, and other reading related to the problem being discussed in this research.

#### 2.2.2 Data Source

The data sources in this writing are:

- a) Field Research Source, namely the source of field data as one of the legal considerations of the law enforcers handling this case and the community who were also handed over due to this criminal act.
- b) Library research sources (library research), namely data sources obtained from the results of reviewing several literature and reading sources that can support this author.

### 2.3 Data Collection Techniques

In writing this thesis, I used data collection methods to obtain data and information, namely through library research methods (Library Research) and field research methods (Field Research).

1. Library research method (library research) is carried out by examining various library materials related to the case in this research.
2. Field research method (Field Research), namely research carried out by conducting direct observations in the field to collect data and information needed in this research.

### 2.4 Data Analysis

The method for writing data that is appropriate for legal research in a descriptive manner is to use qualitative analysis, which is a data analysis that reveals and takes the truth from the literature, namely by combining existing information obtained from legislation, regulations, and scientific writings. has something to do with this title. The research is analyzed qualitatively so that the audience can be understood well.

## 2.5 Research Time

The research period was carried out for 3 (three) months, namely September 2022 to November 2022 with the following details:

- a) The first month of conducting library research relevant to this research.
- b) The second month carried out field research to obtain the data needed for this research.
- c) The third month collects research results obtained from both literature and field research and analyzes the data for validity which will then be outlined in the results of this research.

## IV. RESEARCH RESULTS AND DISCUSSION

### 4.1 Application of Material Criminal Law to Perpetrators of the Crime of Inducing Child Abuse

Judges, when examining criminal cases, in the form of finding and proving the truth, must be based on the facts revealed in the trial, and adhere strictly to the indictment formulated by the public prosecutor (JPU). If the indictment contains deficiencies or errors, it will be difficult for the judge to consider, assess, and apply sanctions against the perpetrators of the crime.

To prove whether or not the judge's application of material criminal law is correct, first discuss the position of the case that the author is studying, namely as follows:

#### 4.1.1 Case Position

That the defendant was EDUCATION on Tuesday 2 November 2021 at around 19.30 WIT located on Jalan Poros Tompo, Lameroro Village, Rumbia District, or at least in the jurisdiction of the Bombana District Court, intentionally committing an obscene act by persuading a child to commit or allow the act to be committed. obscene.

The action committed by the defendant was that initially the victim witness Eltarina Sulistyawati alias Lina, who was 5 years old, walked in front of the defendant's house, called the victim witness Eltarina into the defendant's house, and persuaded her by giving her Rp. 20,000 (twenty thousand rupiah). When the victim witness was already in the defendant's house, at that time the victim witness wanted to urinate and then the victim witness went into the toilet which was located in front of the defendant's room, so at that time the defendant saw the victim witness' genitals and felt aroused, so the defendant then called The victim witness went into the defendant's room and then inserted his penis into the victim witness's vagina but the defendant's penis had difficulty entering the victim's vagina. The defendant then rubbed his penis at the base of the victim's vagina, then after the defendant's sperm came out the defendant took the victim witness home and gave him another Rp. 20,000, - (twenty rupiah). After the defendant went home, the victim witness Eltarina told her mother:

*“Basah saya punya celana mama?” and the mother of the victim witness Eltarina said “kenapa bisa” and the victim witness Eltarina answered “om kasi masuk burungnya kedalam ponoren (genitals/vagina)”. After that, the mother of the victim witness, Eltarina, looked for the defendant. Not long after that, the mother of the victim witness, Eltarina, met the defendant and conveyed “ko apai anak ku” and answered “tidak”*

At that time, Timun's brother ran straight from the victim's witness' house and the victim's mother, Eltarina, reported this incident to the authorities for further processing.

From the witness statement above, it states that the result of the defendant's violence is in accordance with the results of the Visum et Repertum at Bombana Regional Hospital Number: Ver/5/XI/2021 dated 6 November 2021, the results of the examination. ELTARINA SULISTYAWATI, with examination results:

- a. There were reddish abrasions on the pubic atrium.
- b. There was intact blood membrane on examination.
- c. There were no abnormalities in the sexual canal at the time of examination.
- d. The victim looked anxious, sad and afraid when talking about the incident of abuse.

#### 4.1.2 General Prosecutor's Indictment (JPU)

In the case involving the defendant DIDIK, the prosecutor charged him in the form of an alternative indictment, the charges being:

- a) Violates Article 81 Paragraph (2) of Law Number 35 of 2014 concerning Child Protection;
- b) Article 82 of Law Number 35 of 2014 concerning Child Protection;

#### 4.1.3 Public Prosecutor's Claims

The Public Prosecutor's demands in the case basically asked that the panel of judges examine and try decide:

- a) State that the defendant DIDIK intentionally committed violence or threatened violence, forced or persuaded him to commit obscene acts as regulated in Article 82 of Republic of Indonesia Law Number 35 of 2014 concerning Child Protection.
- b) Sentencing the defendant DIDIK, therefore reducing the prison sentence to 8 (eight) years while the defendant is in detention. Fine of Rp. 60,000,000, - (sixty million rupiah) subsidiary 2 (two) months in prison.
  - 1) Declare evidence in the form of money in the amount of IDR 40,000 (forty thousand rupiah).
  - 2) Decide that the defendant be charged with paying court costs of IDR 2,000 (two thousand rupiah).

#### 4.1.4 Verdict

##### 4.1.4.1 Adjudicate

- a) Declare that the defendant DIDIK has been legally and convincingly proven guilty of committing the crime of "Inducing a child to commit obscene acts;
- b) Sentencing the defendant to imprisonment for 5 (five) years and 6 (six) months;
- c) Determine that the period of detention that has been served by the defendant is deducted entirely from the sentence imposed;
- d) Order the defendant to remain in custody; State that the evidence is in the form of: Money amounting to IDR 40,000 (forty thousand rupiah) was confiscated for the state.
- e) Sentencing the defendant to pay court costs of IDR 2,000 (two thousand rupiah).

##### 4.1.4.2 Author's Analysis

In the indictment above, it is known that the prosecutor has an alternative indictment, namely the first indictment, Article 81 Paragraph (2) and Article 82 of Law No. 35 of 2014. This means that the judge can choose which article to apply because the indictment is in an alternative form. In this thesis, it is about the criminal act of molestation of a child committed by an adult. Where the defendant was Didik who had committed an act of sexual immorality against a daughter named ELTARINA SULISTYAWATI.

In applying criminal law in the case above, the public prosecutor applied Article 82 No. 35 of 2014 concerning child protection in the indictment rather than articles in the Criminal Code. What is the reason and legal basis, based on the results of an interview with one of the judges who handled and decided this case, the author can draw the conclusion that the reason the judge chose Article 82 was because of the Law on Child Protection, namely:

- First, the victim in this case was a child who was only 5 years old. This means not yet an adult according to the Criminal Code, where the age of adulthood according to the Criminal Code is 18 years.
- Second, based on the *Lex Specialis* principle. The principle of *lex specialis* in the Criminal Code is regulated in Article 63 paragraph (2) book I of General Provisions which reads:

"If for an act threatened by general criminal provisions a special criminal provision is included, then only that special criminal provision is used."

This is the incarnation of the slogan which reads "*Lex specialis derogat legi generalis*" which means special laws cancel general laws, therefore the judge chose Article 82 of the Law on Child Protection.

Furthermore, to prove whether or not the application of the article is correct by the Panel of Judges that the defendant has been legally and convincingly proven to have committed the crime of sexual immorality as regulated in Article 82 of the Child Protection Law, the elements of the crime must be fully fulfilled.

Based on the facts revealed in the trial examination related to the proof of the elements of the indictment, according to the public prosecutor, using the alternative indictment that was charged against the defendant was declared proven, namely Article 82 Number 35 of 2014 concerning Child Protection, with the following elements:

- a) Everyone;
- b) Deliberately committing deception, a series of lies, or persuading the child to have sexual relations with him or another person.

Below the author will describe the elements of Article 82 paragraphs (1) and (2) of the Child Protection Law.

##### 1) Elements of each person

What is meant by "everyone" as explained in articles 1 to 16 of Law no. 35 of 2014 concerning Child Protection whether they are individuals or corporations, each of these people is a subject that can be held accountable by ELTARINA SULISTYAWATI.

Whereas based on the facts at the trial and according to the testimony of witnesses and the defendant's statement, it is true that the defendant is named with full identification as in the indictment, and the defendant is in good physical and mental health and there are no signs of memory impairment so that the defendant can be held accountable. for his actions.

Based on the facts above, the element "every person" has been proven legally and convincingly according to the law.

- 2) The element of intentionally committing violence or threatening force, using deception, a series of lies, or persuading a child to commit or provide obscene acts.

In a decency offense, the perpetrator's intention must be shown to result in the desired result. The element of intention (*dolus*) contains an element of will and the perpetrator knows. In Law No. 35 of 2002 concerning Child Protection and also the Criminal Code does not define the meaning of "intentionally" but to look for clues it can be seen from "mood" which means that intentionality means knowing and wanting the action carried out so that deliberately means wanting and knowing what action what he did.

Whereas in Article 1 Paragraph (1) No. 35 of 2014 concerning Child Protection, what is meant by a child is someone who is not yet 5 (five) years old, including children who are still in the womb. That followed the facts revealed before the court according to the testimony of witnesses and the defendant's statement, which stated that it was true that the defendant had committed an obscene act against the victim. ELTARINA SULISTYAWATI, where the victim is still 5 (five) years old and was born on 6 November 2009 based on a baptism certificate dated 6 November 2009, based on this, the victim ELTARINA SULISTYAWATI is qualified as a child who must receive

guarantees and protection for her rights so that can live, grow, develop and participate optimally by human dignity, and receive protection from violence and discrimination.

That the defendant's actions on Sunday 2 November 2021 at around 19.30 WIT took place inside the defendant's house, then when he saw the witness urinate, the defendant laid the witness on the wooden floor in his house and then persuaded the witness by giving him Rp. 20,000,- (twenty thousand rupiah), then after that, the defendant opened the witness's underwear and also opened her panties, at that time the defendant tried to insert his penis (genitals) into the vagina of the victim witness but the defendant's penis could not enter until finally the defendant just rubbed -rubbed his penis on the victim witness's genitals until the defendant's sperm came out, and after that, the defendant came out, and after that the defendant then took the victim witness home to his house and then gave the victim witness more money in the amount of Rp. 20,000, - (twenty thousand rupiah).

The defendant's actions are contrary to morality, in general, the defendant's actions are obscene, and the defendant who is an adult should protect minors.

From the descriptions that we have put forward in the legal analysis above, it can be concluded that the defendant's actions have been legally and convincingly proven to fulfill the formulation of the criminal act charged in Article 82 of Republic of Indonesia Law No. 35 of 2014 concerning Child Protection. Thus, this second element has been proven.

#### **4.2 Judges' Considerations in Imposing Criminal Sanctions for the Crime of Sexual Insulting a Child**

The judge needs to decide to determine the status of a defendant in the trial. Decision-making certainly requires considerations, both juridical considerations and sociological considerations. The judge's considerations in handing down a decision after the examination and trial process are complete must make an appropriate decision. For this reason, before imposing criminal sanctions, the judge takes action to first examine the truth of the events presented to him by looking at the existing evidence (trial facts) accompanied by his beliefs, after that he considers and provides an assessment of the events that occurred and relates them to the applicable law. and then provide a conclusion by determining a criminal sanction for the defendant.

The Panel of Judges at the Bombana District Court who examined and tried the defendant in this case after listening to statements from witnesses, the defendant's statements, evidence at the trial, and post-mortem et repertum, obtained the following legal facts.

1. That the incident indeed occurred on Sunday, November 2, 2021, at around 19.30 WIT, on Jalan Poros Tompo, Lameroro Village, Rumbia District, precisely at the post where Br. Mansyur rested.
2. It is true that the defendant explained how the defendant committed the obscene act by first calling the victim witness into the defendant's house, then when he saw the witness urinate, after the defendant then laid the witness down on the wooden floor in his house and then persuaded the witness by giving him money. Rp. 20,000,- (twenty thousand rupiah), then after that the defendant opened the witness's underwear and also opened her panties, at that time the defendant tried to insert his penis (genitals) into the vagina of the victim witness but the defendant's penis could not enter until finally the defendant only rubbed his genitals over the victim witness's genitals until the defendant's sperm came out, and after that, the defendant then took the victim witness home and then gave the victim witness money again amounting to Rp. 20,000 (twenty thousand rupiah).
3. That it is true that as a result of the defendant's violence according to the results of the Visum et Repertum Number: Ver/5/XI/2021/Rumkit dated 6 November 2021 at the Bombana Regional Hospital during the examination of witness (victim) Eltarina Sulistyawati, she experienced:
  - a) There are visible sliding abrasions on the pubic atrium which are reddish.
  - b) Visible intact blood membranes during examination.
  - c) There were no abnormalities in the sexual canal at the time of examination.
  - d) The victim looks anxious, sad, and scared when telling the story of what happened.

After all the elements of a criminal act have been successfully proven, the Panel of Judges then considers the reasons for exceptions, reductions, or additions to the sentence. The reasons for criminal exclusion are generally listed above:

1. Justification:
  - Relative overmacht;
  - Emergency defense (noodweer);
  - Carry out statutory provisions and;
  - Carry out office orders from authorized officials.
2. Forgiving Reasons:
  - Not able to take responsibility;
  - Absolute overmacht;
  - Excessive defense; And
  - Carrying out unauthorized office orders.

In this case, the Panel of Judges considered that the defendant Didik was a person who could take responsibility for his actions, and there was no reason to exclude prosecution, reasons for forgiveness, or reasons to justify himself, so he was still found guilty and responsible for his actions. Furthermore, the considerations that aggravate and mitigate the defendant in this case are:

**Aggravating Matters**

- The defendant's actions are contrary to religious norms and moral norms;
- The defendant's actions caused the victim to become traumatized.

**Mitigating Matters**

- The defendant behaved politely during the trial and admitted his actions.
- The defendant has never been convicted.

According to the author, the thief's intentions should also be taken into consideration. Based on the known position of the case above, it can be understood that the fraud intends to have sexual intercourse with the victim. It can be seen that the intention of theft did not occur because the thief tried to insert her genitals, but because it was difficult to enter, the attempt was only to rub outside the vagina. According to this author, the judge must also take part in considering the lawyer's sentence. Then what is damaged is not only the victim's mental state, but it can also threaten the victim's future. Apart from that, as a result of this incident, the victim's family also feels embarrassed because this incident has become a family disgrace.

After considering the matters mentioned above, the panel of judges-imposed sanctions on the defendant DIDIK with imprisonment for 5 years and 6 months. Based on the description of this case, the author concludes that the considerations of the legal panel of judges in handing down this decision still contain shortcomings.

## V. CONCLUSIONS AND RECOMMENDATIONS

### 5.1 Conclusion

1. Application of material criminal law by the Panel of Judges applying Article 81 Paragraph (2) of Law Number 35 of 2014 concerning Child Protection and Article 82 of Law No. 35 of 2014 concerning Child Protection because the victims are children and the basis for its implementation is the lex specialist principle.
2. The legal considerations of the panel of judges in imposing a criminal sentence on the defendant were not appropriate because the sentence imposed on the defendant still contained deficiencies that were not by his actions so that it could damage the child mentally and sociologically.

### 5.2 Suggestions

1. It is hoped that judges will be clearer in considering aggravating and mitigating factors in forgiveness, this is related to the value of fairness of a decision for all parties and the deterrent effect of the decision.
2. It is hoped that parents will pay more attention and understanding to their children so that children do not get trapped, let alone become victims of criminal acts of sexual abuse which are detrimental to the child's future. An approach from a religious perspective is very necessary because that way people can control their desires so as not to commit wrong actions because this is based on religious values.

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