

# Punishment of Perpetrators of Criminal Acts Who Commit Copulation with Children (Case Study of Decision Number: 127/Pid.Sus/2021/Pn.Kupang)

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## ABSTRACT

This study aims to determine the punishment of the perpetrator of the crime of committing sexual intercourse with a child in decision No. 127/Pid.Sus/2021/PN. Kupang, and to find out the basis for the judge's decision to impose a lighter sentence on the perpetrator of the crime of sexual intercourse with a child based on the Kupang District Court Decision No.127/Pid.Sus/2021/PN. Kupang. This type of research is normative juridical research, which is a legal research method carried out by examining library materials. The data used in this research is secondary data which is data that is already available and processed based on materials related to the law. The results of this study indicate that the responsibility of the perpetrator of the crime of committing sexual intercourse with a child, has been subject to Article 81 paragraph (2) of Law No. 17 of 2016 concerning Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 Updated into Law No. 35 of 2014 concerning Child Protection has been fulfilled, the defendant must be declared legally proven to have committed the crime of committing sexual intercourse with a child. The basis for the judge's decision to impose a lighter sentence on the perpetrator of the crime of sexual intercourse with a child based on the decision of the Kupang District Court No.127/Pid.Sus/2021/PN. Kupang, is because the panel of judges imposed a sentence on the perpetrator of the crime based on a.

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## 1. INTRODUCTION

Children are an integral part of human survival and the sustainability of a nation and state. In order to be able to be responsible for the sustainability of the nation and state, every child needs to have the widest possible opportunity to grow and develop optimally, both physically, mentally and socially. For this reason, protection efforts need to be made to realize the welfare of children by providing guarantees for the fulfillment of their rights without discriminatory treatment.

Protection of children is a basic right that every child must obtain, because every citizen is equal to his position in law and government must uphold the law and government with no exceptions. The protection of children's rights is essentially directly related to the regulation in the law. Child protection can also be defined as all efforts aimed at preventing, rehabilitating and empowering children who experience acts of mistreatment (child abuse), exploitation and neglect in order to ensure the survival and growth of children naturally, both physically, mentally and socially.

The government itself has guaranteed child protection through the provisions of Law Number 35 of 2014 concerning amendments to Law 23 of 2002 Article 1 number 2 concerning Child Protection states that, child protection is all activities to ensure and protect children and their rights so that they can live, grow, develop, and participate, optimally in accordance with the dignity of humanity, and receive protection from violence and discrimination. The rise of the crime of intercourse that occurs in children, whether the perpetrators are adults or the children themselves, physically the children who are victims of intercourse do not have the sexual attractiveness like adults, this can certainly damage the morals of the next generation of the nation's ideals in the future. Technological developments and globalization in the fields of information and communication are one of the causes of behavioral deviations or unlawful acts committed by the perpetrators of intercourse and the lack of attention, love and supervision from parents, children will easily fall into an unhealthy environment.

In reality, the protection of children that has been carried out so far has not provided guarantees for children to get treatment and opportunities that are in accordance with their needs in various fields of life, because children have often experienced mistreatment and their rights have been violated. As it is known that the problem of sexual violence is a form of crime that harasses and tarnishes human dignity, and should be categorized as a type of crime against humanity (Crime Against Humanity), as well as one of the legal issues that is very important to be studied in depth.

Specifically cases involving children as victims of sexual crimes, the National Commission on Child Protection stated that according to data collected and analyzed at the Data and Information Center of the National Commission on Child Protection in Indonesia, every year victims of sexual crimes against children are increasing, consisting of cases of sexual violence (45 percent), psychological violence (19 percent), and physical violence (18 percent). Based on PPA symphony (online information system for the protection of women and children) throughout 2019-2021, there was an increase in reporting cases of violence against women and children. Specifically, cases of violence against children were recorded to have increased from 11,057 in 2019, 11,278 cases in 2020, and to 14,517 cases in 2021. The types of sexual violence that have occurred over the past three years are rape, sodomy and incest.

The data above shows the seriousness of immoral crimes against children in society. The increasing number of victims of sexual crimes against children is one indication and evidence of the weak protection and protection of women's human rights, especially children from sexual violence in Indonesia. The interest of adults (perpetrators) in recreational sex that places children as objects of stimulation and libido in the Criminal Code is categorized as a prohibited act and is threatened with criminal punishment. Children must be protected so that they do not become victims of anyone's actions (individuals or groups, private or government organizations) either directly or indirectly. Victims are those who suffer losses (mental, physical, social), due to passive actions, or active actions of other people or groups (private or government), either directly or indirectly. In essence, children cannot protect themselves from various kinds of actions that cause mental, physical, social harm in various fields of life and livelihood. Children must be assisted by others in protecting themselves, given their situation and conditions.

This research will focus on Case No. 127/Pid.Sus/2021/PN.Kpg on behalf of the defendant Reynaldi Djibrael Ndoi alias Adi together with Irma Manu Padja (case files filed separately) on Friday, February 7, 2020 at approximately 11:00 p.m. Wita or at least in February 2020 or at least in 2020, at the defendant's house in Eban RT.017 RW.005, or at least at another place which based on Article 84 paragraph 2 of the Criminal Procedure Code, the Kupang District Court has the authority to examine and try this case, has deliberately committed deceit. West Miomafo Subdistrict, North Central Timor District or at least at some other place which, pursuant to Article 84 paragraph 2 of the Criminal Procedure Code of Kupang District Court, has the authority to examine and try this case, has intentionally committed deceit, a series of lies or induced a child to have sexual intercourse with him, namely against the child victim GETRUDIS NOVITA RAJA who is 16 years old based on Birth Certificate Excerpt Number: 6324/DTL/DKCS. KK/2008 dated September 25, 2008 signed by the Head of the Population and Civil Registration Office of Kupang City BERNADUS BENU, SH. The act was committed by the defendant.

The public prosecution charged the defendant with only 7 years and 3 months imprisonment, and the verdict from the court was only charged with 6 (six) years and 3 (three) months. According to the author, this decision is very unfair because the sentence is very light, which is known that the

criminal act of committing sexual intercourse with minors is very troubling and also harms the community, if the sentence is only 6 (six) years and 3 (three) months, then the punishment is very far from deterring the next perpetrator. In Law Number 35 of 2014 concerning Protection of Children, in article 81 that is threatened for the perpetrators of the criminal act of committing intercourse with minors with a maximum sentence of 15 years and a maximum fine of 5,000,000,000.00 (five billion rupiah).

## 2. METHOD

This type of research is normative juridical, which is a legal research method carried out by examining library materials. The data used in this research is secondary data which is data that is already available and processed based on materials related to the law. Secondary data consists of 3 (three) types of legal materials, namely: Primary legal material (Primary Law Material), Secondary legal material (Secondary Law Material), Tertiary legal material. (Tertiary Law Material). Primary legal material (primary Law Material) is a law that is authoritative, that is, it has authority, primary legal materials consist of legislation, and judicial decisions. Secondary law material is a publication about the law which is an official document. Tertiary law material is legal material that supports primary and secondary legal materials by providing understanding and understanding of other legal materials. In this study, the primary legal materials used are decision No. 127/pid.sus/2021/PN,Kpg, Law No.35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and the Criminal Code (KUHP). Secondary legal materials used are scientific books in the form of literature books related to the issues discussed. Tertiary legal materials used are the Big Indonesian Dictionary (KBBI), Tools used for secondary data collection

## 3. RESULTS AND DISCUSSION

### 3.1. Criminal Liability of the Perpetrator of the Crime of Committing Copulation with a Child in Kupang Court Decision No. 127/Pid.Sus/2021/PN. Kupang

A criminal offense is a human behavior formulated in the law, against the law, which should be punished and committed with fault. A person who commits a criminal act will be held criminally responsible if he has a mistake, a person has a mistake if at the time of committing the act in terms of society shows a normative view of the wrongdoing committed. In criminal responsibility there is a main element of guilt, Muladi and Dwidja Priyatno stated that guilt contains an element of reproach against someone who has committed a criminal offense. So, a person who is guilty of committing an act means that the act can be reproached to him, therefore it can be said that guilt is the basis of criminal responsibility.

Considering that the crime of sexual intercourse with children causes considerable losses both in physical and psychological forms. Therefore, the judge is expected to impose punishment on the perpetrator to be proportional to his actions. Based on decision No.127/Pid.Sus/2021/PN Kupang, the defendant named Reynaldi Djibrael Ndoi als ADI, was alternatively charged with committing a criminal offense, namely sexual intercourse as regulated and punishable under Article 81 paragraph (2) of Law Number 23 of 2002. After the examination of the court session, and the description of the legal considerations in relation to the facts of the trial, the defendant was legally and convincingly proven guilty of committing the crime as set out in Article 81 paragraph (2) of Law Number 23 of 2002 concerning child protection, namely every person who intentionally deceives, lies, or induces a child to have sexual intercourse with him or with another person. And the defendant was finally sentenced to 6 years imprisonment. The panel of judges was of the opinion that the defendant committed the sexual intercourse without committing violence against the victim, therefore the panel was of the opinion that because one of the elements of Article 81 paragraph (2) of Law No. 17 of 2016 on the Stipulation in Lieu of Government Law No. 1 of 2016 on the Second Amendment to Law No. 23 of 2002 on the protection of children.

The judge considered that every person, namely anyone as an individual or corporation supporting the rights and obligations based on sufficient preliminary evidence, has been brought by the public prosecutor as a defendant and charged with committing a criminal act of committing sexual intercourse with a child. In the trial, the public prosecutor presented a man who in the trial stated that his name was Reynaldi Djibrael Ndoi Als ADI with all his identity as stated in the indictment which was read out at the trial and the defendant confirmed his identity.

### **3.2. The basis for the judge's decision to impose a lighter sentence on the perpetrator of the crime of sexual intercourse with a child based on the decision of the Kupang District Court No. 127/Pid.Sus/2021/PN. Kupang**

In considering the severity of the imprisonment sanction against the verdict he signed has independent freedom. The judge's consideration in imposing a decision must solely be based on a sense of justice not only based on legal considerations but must be in accordance with the facts in the trial. The legal facts in the form of the defendant's testimony, witness testimony and evidence found can only then be known about the defendant's motive for committing a criminal offense, how the defendant committed the criminal offense and what the consequences of the criminal offense were. The judge's freedom to determine the severity of the imprisonment sanction must also be based on a sense of justice for both the defendant and the community and is responsible to God Almighty.

As the implementation of judicial power is the judge, who has the authority in the applicable laws and regulations, and this is done by the judge through his decision. The function of the judge is to give a decision on the case submitted, where in a criminal case, it is inseparable from the negative proof system, which in principle determines that a right or event or error is considered proven, in addition to the existence of evidence according to the law, it is also determined by the judge's belief based on good moral integrity. According to Article 1 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), judges are state judicial officials authorized by law to adjudicate. The word "adjudicate" is a series of actions by judges to receive, examine, and decide cases based on free, honest, and impartial principles in criminal trials. Judges as people who enforce the law for the sake of justice when they want to make a decision are still based on the applicable rules in the law and use considerations based on valid evidence and witnesses who have been sworn in front of.

#### **4. CONCLUSION**

The responsibility of the perpetrator of the crime of committing sexual intercourse with a child in the district court decision No. 127/Pid.Sus/2021/ PN. Kupang has been charged with Article 81 paragraph (2) of Law Number 23 of 2002 concerning child protection. With the following elements: Every person, with intent to commit carnal knowledge of a child, as well as a series of lies, deceit. All elements of Article 81 paragraph (2) of Law No. 23 of 2002 have been fulfilled. With a maximum imprisonment of 15 (fifteen years). In the verdict the panel of judges sentenced the defendant to imprisonment: Reynaldi Djibrael Ndoi Als ADI for 6 (six) years imprisonment with 3 (three) months imprisonment. The judge considered the mitigating and aggravating circumstances of the crime and the background of the defendant's crime. The basis for the judge's decision to impose a lighter sentence with Article 81 paragraph (2) of Law Number 23 of 2002 concerning child protection, for the crime of committing sexual intercourse with a child based on district court decision No. 127/Pid. Sus/2021/PN.Kupang, is that the panel of judges sentenced the perpetrator of the crime based on evidence and evidence obtained from legal facts at trial, such as witness testimony, expert testimony, letters, instructions and testimony of the defendant. In imposing a sentence, the panel of judges must be based on two valid pieces of evidence then from both of them.

#### **REFERENCES**

- Afita, C. O. Y., & Setiawan, M. N. (2022). *Perlindungan Hukum Terhadap Anak Sebagai Saksi Dalam Perkara Tindak pidana*. *Datin Law Jurnal*, 3(1).
- Agus Rusianto, 2016, *Tindak Pidana & Pertanggungjawaban Pidanan, Tinjauan Kritis Melalui Konsistensis antara Asas, Teori dan Penerapannya*, EdI, Prenadamedia Group, Jakarta.
- Amir Ilyas, 2012, *Asas-asas Hukum Pidana*, Rangkaian Education, Makasar.
- Andi Hamzah, 1994, *Asas-asas Hukum Pidana*, Edisi Revisi, Rineka Cipta
- Andi Hamzah, 2001, *Bunga Rampai Hukum Pidana dan Acara Pidana*, Ghalia Indonesia, Jakarta
- Ahmad Rifai, 2010, *Penemuan Hukum oleh Hakim dalam Progresif*, Sinar Grafika, Jakarta
- Azkiya, Z., & Is, M. S. (2018). *Perlindungan Hukum Terhadap Hak Asasi Anak Yang Menjadi Korban Kekerasan*. *Nurani: Jurnal Kajian Syari'ah dan Masyarakat*, 18(1), 151-162.
- Bambang Purnomo, 1982, *Asas-asas Hukum Pidana*, Ghalia Indonesia, Jakarta.
- Erdianto Efendi, 2011. *Hukum Pidana Indonesia*. Refika Aditama, Bandung.
- Ibrahim, R. S. (2018). *Hak-Hak Keperdataan Anak dalam Perspektif Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak*. *Lex Privatum*, 6(2).
- Henny Saida Flora, 2020, *Krimonologi Faktor Penanggulangan Kejahatan*, USU Press, Medan.

- Husna, F., Yunus, N. R., & Gunawan, A. (2019). Hak mendapatkan pendidikan bagi anak berkebutuhan khusus dalam dimensi politik hukum pendidikan. *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 6(2), 207-222.
- KHALALIYAH, R. (2024). PENANGANAN PERKARA ANAK BERHADAPAN DENGAN HUKUM PADA SISTEM PERADILAN PIDANA ANAK (Doctoral dissertation, Universitas Pancasakti).
- Leden Marpaung, 2005, Asas teori praktik hukum pidana, sinar grafika, Jakarta.
- Lubis, M. A. (2019). Perlindungan Hukum Terhadap Anak Nakal Berdasarkan Uu Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak. *Jurnal Retentum*, 1(01).
- M. Nasir Djamil, 2013, Anak Bukan Untuk Dihukum, Sinar Grafika, Jakarta.
- Mahrus Ali, 2011, Dasar-dasar Hukum Pidana, Sinar Grafika, Jakarta.
- Maidin Gultom, 2008, Perlindungan Hukum terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia, Refika Aditama, Bandung.
- Moeljatno, 2015, Asas-asas Hukum Pidana, Rineka Cipta, Jakarta.
- Muladi dan Barda Nawawi Arief, 2005, Teori-teori dan Kebijakan Pidana. Alumni, Bandung.
- Nashriana, 2012, Perlindungan Hukum Pidana Bagi Anak di Indonesia, Rajawali Pers, Jakarta.
- Nim, T. J. (2020). Kendala Penyelesaian Perkara Anak Melalui Diversi (Studi Kasus Putusan Nomor Put. No. 1/Pidsus-Anak/2015 Pengadilan Negeri Mempawah). *Jurnal Fatwa Hukum*, 3(3).
- P. A. F. Lamintang, 2014, Dasar-dasar Hukum Pidana Indonesia, Catatan keempat, P.T. Citra Aditya Bakti, Bandung, hal.48
- Peter Mahmud, 2010, Penelitian Hukum Revisi, PT. Kencana Prenada Media Grup, Jakarta.
- Ratuliu, M. E. (2017). Tanggung Jawab Hukum Terhadap Anak Dalam Perceraian Menurut Undang-undang Nomor 23 Tahun 2002 Jo. Undang-Undang Nomor 35 Tahun 2014. *Lex Privatum*, 5(7).
- Ubwarin, E., Pasalbessy, J. D., & Taufik, I. (2022). PENDIDIKAN ANTI-KORUPSI TERHADAP ANAK PADA LEMBAGA PEMBINAAN KHUSUS ANAK KELAS II AMBON. *Community Development Journal: Jurnal Pengabdian Masyarakat*, 3(3), 1375-1377.