

Juridical Analysis of the Imposing Imprisonment to the Offender of Copulation against Children Caused by the Coercion of the Victim (Study of Padang District Court Decision No. 79 / Pid.Sus / 2018 / PN.PDG)

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Abstract: *The judge's decision is a very important and necessary aspect to resolve a criminal case. Judges' considerations or ratio decidendi are arguments or reasons used as legal considerations that serve as the basis before deciding on a case. Judge No. 79 / Pid.sus / 2018 / Pn.pdg in the Criminal Act of intercourse on a child caused by coercion from the child victim, it is deemed unfair in making a verdict on the defendant.*

Key Words: *Juridical Analysis of decision, Intercourse, Victim coercion, Child.*

1. INTRODUCTION:

As a state of law with social justice, Indonesia is a country that has the moral truth or truth that everyone needs for a fair and impartial rule of law, which is not only fair to victims but also fair to the accused and the community.[1] Criminal is a suffering that is deliberately imposed or given by the state to a person or persons as a legal consequence (sanctions) for his actions that have violated the prohibition of criminal law. The forms of suffering that can be imposed by the state have been determined and regulated in detail, both regarding the limits and how to impose it and where and how to implement it.[2] The act of fulfilling or obeying the law is fair, then all acts of law formation if they are in accordance with the existing rules are fair. Justice as part of social values has a very broad meaning, even at one point it can conflict with the law as one of the social values. even Hans Kelsen emphasized on Plato's philosophy of law, that justice is based on knowledge of something good.

2. THEORITICAL FRAMEWORK:

a. Theory of Justice

According to Kurt Wilk, the form of justice, namely distributive justice, refers to the existence of equality among humans based on the principle of proportionality.

b. Theory of Evidence

According to Martiman Prodjohamidjojo, that proof is containing the intention and effort to state the truth is an event, so that it can be accepted by reason for the truth of the event.

c. Judges' Consideration Theory

Judges are the mouthpiece of the law. Among the most dominant law enforcement officers in implementing law enforcement are judges.

3. LITERATURE REVIEW:

Criminal comes from the word *straf* (Dutch), which is sometimes referred to as punishment. The term criminal is more appropriate than the term punishment, because the law is usually a translation of *recht*. Sexual intercourse according to MH Tirtamidjadja is sexual intercourse inside the male genitalia and female genitalia, which in general can lead to pregnancy, it is not necessary that there has been secretion of semen in the female genitalia. While medical intercourse is a combination of male genitalia and female genitalia with the lightest penetration with or without releasing semen without containing seminal cells.[3] According to Andi Hamzah that "Evidence is something to confirm the truth of a proposition, stance or indictment.

Children according to language are the second offspring as a result of the relationship between a man and a woman. A child is someone born from a relationship between a man and a woman. The relationship between a man and a woman if bound in a marriage bond is usually referred to as husband and wife.[4]

4. METHOD: The method used in this study is a normative juridical approach.

5. DISCUSSION: The main philosophy of the essence of law is justice, without legal justice it is not worthy to be called law. The reality of law in society is sometimes different from what is aspired which causes the law to further distance itself from its essence.

Law enforcement by law bearers faces a dilemma of choice between justice, certainty and order. The dilemma of choice is very complicated because of the impact, where there will be a sacrifice of one or two legal ideals when the choice has been made. The act of fulfilling or obeying the law is fair, then all acts of law formation if in accordance with the existing rules are fair. Justice as part of social values has a very broad meaning, even at one point it can conflict with the law as one of the social values. even Hans Kelsen emphasized on Plato's philosophy of law, that justice is based on knowledge of something good. The form of the implementation of the law is contained in court decisions, court decisions are made by judges after considering many things, while in the application of the law there are legal objectives such as justice, usefulness and legal certainty, the law in its objectives is sometimes contradictory, the form of the application of law must contain values. the value of justice, the birth of a court decision is based on the judge's consideration.

6. ANALYSIS:

- **Proof of the Crime of Sexual Intercourse on Children Caused by Coercion from the Victim in the Padang District Court Decision No. 79/PID.SUS/2018/PN.PDG.**

According to JCT Simorangkir, proof is an attempt by the authorities to present to the judge as many things as possible relating to a case with the aim that it can be used by judges as material for making decisions such as those cases. Meanwhile, according to Darwan, proof is proof that it is true that a criminal event has occurred and it is the defendant who is guilty of doing it, so he must be held accountable for it.

- **Judges' Considerations in Imposing Prison Sentences Against Perpetrators of Criminal Acts of Sexual Intercourse on Children Caused by Coercion from the Victim in District Court Decision No.79/PID.SUS/2018/PN.PDG.**

According to Wiryono Kusumo, Considerations or what are often called *considerans* are the basis for a judge's decision or a judge's argument in deciding a case. If the legal argument is not true and not appropriate (*proper*), then people can then judge that the decision is not true and unfair.[5]

7. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- The judge in his evidence related to the crime of sexual intercourse with a child uses the system or theory of proof *negative wettelijk*, the judge in proving the crime of sexual intercourse with a child caused by coercion from the victim does not make the testimony of the Child Victim witness as a strong and relevant evidence, because the statement of the Child Victim has a very significant evidentiary value because the child in his statement has been sworn in and is in accordance with Article 160 paragraph (3) of the Criminal Procedure Code.
- The judge's consideration in imposing a sentence on the defendant in case no. 79/Pid.sus/2018/Pn.pdg based on juridical considerations and non-juridical considerations.

8. SUGGESTIONS:

The suggestions given by researchers are as follows:

- The judge in his decision needs to be careful, clear and thorough in giving legal judgment, so as to be able to describe the position of juridical judgment and non-juridical judgment of the judge to each interested person. against the judge's decision. In addition, judges are expected to understand the latest developments in the legal world so as to strengthen the understanding and belief of judges related to a crime, especially the crime of sexual intercourse against a child caused by coercion from a child victim witness.
- Law of the Republic of Indonesia No. 35 of 2014 on Changes to Law No. 23 of 2002 on Child Protection needs to be revised, so that the Law provides an exemption for perpetrators in sexual offenses against children caused by coercion from child victim witnesses, and not only from the victim's side but also from the defendant's side.

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