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## **THE IMPACT OF CHILD VICTIMS 'BEHAVIOR ON JUDGES' LIGHT VANTAGES FOR PERSONS OF CRIMINAL ACTS OF ABILITY OR ABUSE**

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**Abstract**

*The Child Protection Act has given severe sanctions to perpetrators of sexual intercourse and obscene acts as regulated in Article 81 and Article 82 of the Child Protection Law with a minimum penalty of 5 years and a maximum of 15 years in prison. This study aims to determine whether the behavior of the victim's child is considered by the judge in passing a verdict on the perpetrator of sexual intercourse/obscenity and what is the basis for the judge's authority to decide cases based on the provisions of the law. The method used in this study is a normative legal research method (juridical normative) using a statute approach, a conceptual approach, and a case approach. The results of the study show that the behavior of the victim's child becomes the judge's consideration in deciding on the perpetrator. If the victim can prove that the child knows that intercourse is prohibited, and there is no attempt to refuse and continue to do, even accept something from the perpetrator, the judge will give a lighter sentence to the perpetrator of sexual intercourse/obscenity, not by the provisions of Articles 81 and 82 of Child Protection, which is at least 5 years in prison. The judge's authority to decide cases of criminal acts of sexual intercourse or obscenity based on the provisions of the law is regulated in Article 24 paragraph (1) of the 1945 Constitution in conjunction with Article 1 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states that judges have the freedom to implement justice for the sake of law and justice.*

**Keywords:** *Child Protection; Victims; Perpetrators Of Sexual Intercourse.*

## INTRODUCTION

There are several reasons why children are often the target of victims of sexual violence, namely children are always in a weaker and powerless position, the morality of society, especially perpetrators of sexual violence against children, is low, the control and awareness of parents in anticipating crimes against children is low.<sup>1</sup>

Children must be protected so that they do not become victims of sexual violence from anyone, including those closest to the child, such as fathers, grandfathers, brothers, uncles; peers or others. Victims are those who suffer losses (mental, physical, social) due to the passive actions or active actions of others. Children cannot protect themselves from various kinds of actions that cause mental, physical, and social harm in various fields of life and livelihood. Children must be assisted by others in protecting themselves, given their situation and condition.<sup>2</sup>

Cases of sexual violence against children committed by irresponsible people can cause deep trauma to victims of sexual abuse and can disturb their souls and damage the future of the child. Most sexual violence is committed against minors and the perpetrators are the people closest to the victim.<sup>3</sup>

The impact of trauma due to sexual violence experienced by children, including betrayal or loss of the child's trust in adults (betrayal); sexually traumatized (traumatic sexualization); feeling helpless (powerlessness); and stigma (stigmatization). Physically, there may not be anything that should be a problem for children who are victims of sexual violence, but psychologically it can cause addiction, trauma, and even revenge.<sup>4</sup>

The state as an institution that has the responsibility to protect children has issued regulations governing the protection of child victims of sexual violence through the Child Protection Law as stipulated in Law Number 23 of 2002 concerning Child Protection in conjunction with Law Number 35 of 2014 concerning Amendments to

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<sup>1</sup> D. Sommaliagustina, "Kekerasan Seksual Pada Anak Dalam Perspektif Hak Asasi Manusia," *Psychopolytan (Journal Psikologi)*, 2018, 76.

<sup>2</sup> M. Gultom, *Perlindungan Hukum terhadap Anak dan Perempuan*, ed. oleh Ed. N. F. Atif, first edit (Medan: PT Refika Aditama Bandung, 2012).

<sup>3</sup> N. N. Humaira, D., & Fathul Lubabin Nuqul, "Kekerasan Seksual Pada Anak: Telaah," *Journal Psikoislamika*, 12.10 (2015).

<sup>4</sup> I. Noviana, "Kekerasan Seksual Terhadap Anak: Dampak dan Penanganannya," *Sosio Informa*, 1 (2015), 13.

the Second Law. Law Number 23 of 2002 concerning Child Protection<sup>5</sup> Jo Law Number 17 of 2016 concerning the Stipulation of Government Regulations in place of Law Number 1 of 2016 concerning Child Protection which further exacerbates criminal sanctions for perpetrators of intercourse and obscenity.

According to Law Number 11 of 2012 concerning the Juvenile Justice System, child victims are children under the age of 18 (eighteen) years who experience physical, mental and/or economic loss caused by a crime. However, in some cases children who are victims of sexual intercourse or sexual abuse are not as defined in the law, where the child victim consciously commits the act repeatedly and even receives money from the perpetrator.

The child is not only a victim, but the child also plays an active role in the occurrence of the crime of sexual intercourse or obscenity. Seeing the role of the victim that causes a crime to occur, Stephen Schafer states that in principle there are four types of victims, namely as follows:

- a. Someone who has no fault but is still a victim (for this type, the absolute fault lies with the perpetrator).
- b. Victims who knowingly or not have done something that can stimulate other people to commit crimes (for this type, the victim has contributed to the occurrence of the crime so that the fault lies with the perpetrator and the victim).
- c. Those who are biologically and socially have the potential to become victims, such as children, the elderly, people with physical or mental disabilities, the poor, minorities, and so on who are people who easily become victims.
- d. The victim because he is the perpetrator, this is what is said to be a victimless crime. Concrete examples are prostitution, gambling, and adultery, which are some of the crimes that are classified as victimless crimes. The guilty party is the victim because he is also the perpetrator.<sup>6</sup>

The type of child victim as referred to in point b above where the child knowingly or not has done something that can stimulate other people to commit a

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<sup>5</sup> W. Mohammad Taufik Makaro, & Syaiful Azri, *Hukum Perlindungan Anak dan Penghapusan Kekerasan Dalam Rumah Tangga*. (Jakarta: PT Rineka Cipta, 2016).

<sup>6</sup> Akhmad Heru Prasetyo, "Peran Korban Anak Sebagai Pemicu Terjadinya Tindak Pidana Persetubuhan," *Media Iuris*, 2.1 (2019) <<https://doi.org/10.20473/mi.v2i1.11293>>.

crime in this type the victim has a hand in the occurrence of the crime so that the fault lies with the perpetrator and the victim. Regarding this type of victim, will it be a consideration for the Judge in imposing a criminal sentence on the perpetrator of intercourse or obscenity. Based on this, the researcher tried to study the problem boundaries, namely does the judge consider the behaviour of the victim's child in imposing a sentence on the perpetrator of the crime of intercourse or obscenity, and does the judge have the authority to impose a criminal decision that is not by the applicable legal provisions.

### PROBLEMS

The formulation of the problem in this study is as follows:

1. Did the judge consideration for the Judge in imposing a criminal sentence on the perpetrator of intercourse or obscenity?
2. Does the judge have the authority to impose a criminal decision that is not by the applicable legal provisions?

### METHOD

This type of research is normative legal research (normative juridical), because it is done by researching library materials or studying document discussions based on theories, legislation, legal documents, legal journals, reports, and relevant references. The approach method used is the statutory approach (statute approach), a conceptual approach (conceptual approach) and a case approach (case approach).<sup>7</sup>

### RESULT AND DISCUSSION

#### **The Impact of Child Victim's Behavior on the Judge's Decision on the Perpetrators of Sexual Intercourse or Sexual Obscenity.**

To find out the relationship between the behavior of the victim's child and the severity of the judge's decision on the perpetrators of the crime of intercourse or obscenity, it can be seen from several judges' decisions in cases of criminal acts of intercourse or obscenity as follows:

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<sup>7</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2005).

## **1. Court Judgment Bengkulu in Case Number 12/Pid.Sus-Anak/2015/PN.BKL**

Court Judgment Bengkulu with Child Offender Maskur Rahmatullah Als Mamat Als Rizal Bin Haryono aged 16 who by the Public Prosecutor in the First Indictment: The Defendant's actions violated as stipulated and punishable under Article 81 paragraph 2 of RI Law No. 23 of 2002 concerning child protection Jo. Article 64 paragraph 1 of the Criminal Code. Meanwhile, the Second Indictment The perpetrator's child's actions violated as regulated and were subject to criminal sanctions in Article 82 paragraph 1 of RI Law No. 23 of 2002 concerning Child Protection Jo. Article 64 paragraph 1 of the Criminal Code.

The case began with the introduction of the perpetrator's child to the 15-year-old witness victim through a friend a year ago. After getting acquainted, the victim's child often played at the perpetrator's child's house and even stayed at the perpetrator's child's house, because the victim's child was often scolded by his biological mother. The victim's child is a child of a divorce victim and lives with his stepfather.

Intercourse between the perpetrator's child and the victim's child occurred at the perpetrator's child's house when the house was quiet when the perpetrator's child's mother went shopping at the market. The intercourse was repeated because the perpetrator's child promised to marry the victim's child. Finally, the mother of the victim's child found out about the intercourse and reported the perpetrator's child to the Bengkulu Police station.

During the trial, it was revealed that sexual intercourse was carried out repeatedly without any objection from the child of the victim. The child of the perpetrator and the child of the victim both admit that what they did was wrong, even the child of the victim forgave the child of the perpetrator and asked the judge not to detain the child of the perpetrator.

Based on the facts revealed in the trial, the Public Prosecutor demanded that the Child Perpetrator be sentenced to 3 (three) years in prison and a fine of one billion. After paying attention to the defense of the perpetrator's Child's Legal Counsel, the Juvenile Judge decided the case which read:

1. Declare the defendant Maskur Rahmatullah Als Mamat Als Rizal Bin Haryono, has been proven legally and convincingly guilty of committing the crime of "Deliberately Persuading a Child to Have Continuous Sexual Relations with Him";
2. Sentenced punishment against Defendant Maskur Rahmatullah Als Mamat Als Rizal Bin Haryono, with imprisonment for 1 (one) year and 5 (five) months and a fine of Rp. 1,000,000,000.- (one billion rupiahs) provided that if not paid it is replaced with work training for 3 (three) months;
3. Determine that the period of detention the defendant has served is deducted entirely from the sentence imposed;
4. Ordering the accused to remain in custody;
5. Charged court fees to the Defendant of Rp. 3,000,- (three thousand rupiah);

## **2. Court Judgment Tais in Case Number: 79/Pid.Sus/2019/PN.Tas**

The defendant Syarifuddin Bin Tayat was charged by the Public Prosecutor with a single charge of committing a series of lies, or persuading a child to commit or allow obscene acts as referred to in Article 76 e of the Republic of Indonesia Law no. 35 of 2014 concerning amendments to the Republic of Indonesia Law no. 23 of 2002 concerning Child Protection Jo Article 82 paragraph (1) of Republic of Indonesia Law number 17 of 2016 (Perppu number 1 of 2016) regarding the second amendment to Law Number 23 of 2002 concerning Child Protection.

The 16-year-old victim's child knows Defendant through the Facebook network because Defendant sent a message on the victim's child's Facebook on Saturday, January 5 2019 at 1 pm, in essence, Defendant asked to become acquainted with the victim's child. The conversation between the Defendants continued until finally, Defendant asked for the WhatsApp number of the victim's child. After getting the WA number of the victim's child, the conversation continued between the victim's child and the Defendant where the Defendant offered the victim's child if he needed something or needed money to buy a quota. The victim's child could ask the Defendant.

Hearing this offer, the victim's child was very happy and at night around eight in the evening, the victim's child invited his friend (the victim's child in case

number 80) to meet the Defendant to ask for money. After giving some money Defendant took the victim's two children out for a walk and sexually assaulted them.

The sexual immorality continued every time the victim's child came to see the Defendant if he needed money. Until finally the parents of the victim's child found out about the act and reported it to the authorities.

The victim's child who always asked the defendant for money was revealed in court, where the money given by the defendant was used by the victim's child to buy his needs. Apart from that, based on the confession of the victim's son, he had had sexual intercourse with his girlfriend before getting to know the Defendant.

Based on the facts revealed in the trial, the Public Prosecutor demanded that the Defendant be reduced to 6 (six) years in prison while the Defendant was in custody and with an order that the Defendant remains in custody. Besides that, the public prosecutor asked the judge to impose a fine on the defendant in the amount of Rp. 60,000,000.00 (sixty million rupiahs) and a subsidiary of 3 (three) months in prison.

Before imposing a decision, the judge considered several things, including that the victim's child was considered an adult because he already knew the consequences of his actions consciously and even received money from the defendant. The judge also considered that the victim's child had had sexual intercourse with his girlfriend before getting to know the Defendant.

Furthermore, the Judge passed a Decision whose Amar read:

1. Declare that Defendant Syarifuddin Bin Tayat has been legally and convincingly proven to have "Persuaded Children to Continue Obscene Actions." As stipulated in the Public Prosecutor's Single Indictment.
2. Sentenced punishment on the Defendant referred to above with imprisonment for 1 (one) year and a fine of Rp. 60,000,000.00 (sixty million rupiahs) provided that if the fine is not paid it is replaced with imprisonment for 3 three months.
3. Determine the period of arrest and detention that has been served by the Defendant to be deducted entirely from the sentence imposed.
4. Ordered to impose a sentence on the defendant for 1 year reduced as long as the defendant is in temporary detention and by order, the defendant remains detained.

### 3. Court Judgment Tais in Case Number: 80/Pid.Sus/2019/PN.Tas

The defendant, in this case is the same as the defendant in Case Number 79/Pid.Sus/2019/PN Tas namely Syarifuddin Bin Tayat aged 60 was charged by the Public Prosecutor with a Single Charge of committing a series of lies, or persuading a child to commit or allow an action to be committed obscenity as referred to in Article 76 e of the Republic of Indonesia Law no. 35 of 2014 concerning amendments to the Republic of Indonesia Law number 23 of 2002 concerning the Protection of Children Jo Article 82 paragraph (1) of the Republic of Indonesia Law number 17 of 2016 (Perppu number 1 of 2016) regarding the second amendment to Law Number 23 of 2002 concerning Child Protection.

The 17-year-old child victim knew the Defendant because he was invited by the victim's child in Case Number 79/Pid.Sus/2019/PN Tas. to meet the Accused. The purpose of the victim's child meeting Defendant was to get some money to meet his needs. The defendant even bought the victim's child a cell phone. Each victim's child received money, and the Defendant took the victim's child out for a walk and sexually abused him. Until finally the action was known by the parents of the victim's child.

The behavior of the victim's child who always asked the defendant for money was revealed in court, where the money given by the defendant was used by the victim's child to buy his needs. Apart from that, based on the confession of the victim's son, he also had sexual intercourse with his girlfriend before getting to know the Defendant.

Based on the facts revealed at trial, the Public Prosecutor demanded that the Defendant be reduced to 6 (six) years in prison while the Defendant was in custody and with an order that the Defendant remains in custody. Besides that, the prosecutor asked the judge to impose a fine on the defendant in the amount of Rp. 60,000,000.00 (sixty million rupiahs) and a subsidy for 3 (three) months in prison.

Before imposing a decision, the judge considered several things, including that the victim's child was considered an adult because he already knew the consequences of his actions consciously and even received money from the

defendant. The judge also considered that the victim's child had had sexual intercourse with his girlfriend before getting to know the defendant.

Furthermore, the Judge passed a Decision whose Amarnya read:

1. Declare that Defendant Syarifuddin Bin Tayat has been legally and convincingly proven to have "Persuaded Children to Continue Obscene Actions." As stipulated in the Public Prosecutor's Single Indictment.
2. Sentenced punishment against the Defendant referred to above with imprisonment for 1 year and 6 months and a fine of Rp. with imprisonment for 3 months.
3. Determine the period of arrest and detention that has been served by the Defendant to be deducted entirely from the sentence imposed.
4. Ordered to impose a sentence on the defendant for 1 year reduced as long as the defendant is in temporary detention and by order the defendant remains detained.

#### **4. Court Judgment Bengkulu in Case Number: 20/Pid.Sus-Anak/2020/PN.Bgl**

The defendant's child perpetrator Rizki Farhan Als Eki bin Musiardanis, 16 years old by the Public Prosecutor has been charged in the First Indictment: The Defendant's Act of intentionally committing deception, a series of lies, or persuading the child to have intercourse with him or with another person as stipulated and punishable by crime in Article 81 paragraph 2 of RI Law No. 23 of 2002 concerning child protection Jo. Law of the Republic of Indonesia Number 17 regarding the stipulation of Government Regulation instead of Law Number 1 of 2016 concerning the Second Amendment to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection.

Second Indictment The Defendant's actions committed a series of lies, or persuaded the child to commit or allow obscene acts as referred to in Article 76 e of the Republic of Indonesia Law no. 35 of 2014 concerning amendments to the Republic of Indonesia Law number 23 of 2002 concerning Child Protection Jo Article 82 paragraph (1) Law of the Republic of Indonesia number 17 of 2016 (Perppu number 1 of 2016) concerning the second amendment to Law Number 23 of 2002

concerning Child Protection violates what is regulated and is punishable by crime in Article 82 paragraph 1 of RI Law No. 23 of 2002 concerning Child Protection Jo. Article 64 paragraph 1 of the Criminal Code.

From the series of trials, facts were revealed. The victim's 16-year-old son was an orphan who lived with his older brother. The victim's child often skips school based on a certificate issued by the victim's child's homeroom teacher, and the school has summoned the victim's child's guardian regarding the behavior of the victim's child who often skips school. During the trial, the victim's child admitted that he often missed class because he was playing at the perpetrator's child's house during school hours.

The sexual relationship between the perpetrator's child and the victim's child was first carried out in the Sungai Suci Tourism area during school hours, where previously the victim's child picked up the perpetrator's child at his house on a motorcycle. After that, the sexual intercourse continued for approximately 6 (six) times in different places without any rejection from the victim's child, because according to the statement of the victim's child, the perpetrator's child would be responsible for the victim's child and promised to marry.

Based on the facts revealed at the trial based on the evidence and witness testimony, the Juvenile Prosecutor stated that the First Charge was proven and demanded that the Child Perpetrator be served 8 (eight) months plus 3 (three) months of job training.

The Juvenile Judge in his consideration stated that the actions of the perpetrator's child had fulfilled the elements referred to in the Public Prosecutor's First Indictment, namely the Element of Every Person, the Element of Deliberately, the Element of Committing Deception, a series of lies or persuading the Child to have intercourse with him or with another person, so that The second indictment does not need to be proven anymore.

The consideration of the Juvenile Judge further stated that the child of the perpetrator and the child of the victim knew and realized that the act of intercourse committed by them was prohibited by religion and the laws in force in Indonesia, and they also knew that the act of intercourse would result in harm, that would

affect their psychology, so it is not appropriate for the act to be carried out for any reason.

The Juvenile Judge stated "because all things have been considered by the Judge in this decision, the imposition of a sentence on the Offender's Child has been deemed fair and fulfills a sense of justice for both the Offender's Child and society. offenders, but it gives a deterrent effect on the offender's child so that after the perpetrator's child has undergone a crime he can change his behavior in a better direction.

The Child Judge ruled on the matter whose warning read:

1. Declare Rizky Farhan's child Als Rizky Als Eki Bin Musiar Danis, guilty of committing a crime "intentionally committing deception, a series of lies, or persuading the child to have intercourse with him or with another person as charged in the first indictment violating Article 81 Paragraph (2) of the Law RI Number 17 of 2016 concerning the second amendment to RI Law Number 23 of 2002 concerning Child Protection.
2. Sentence to Rizky Farhan's Child Als Rizky Als Eki Bin Musiardanis with imprisonment for 6 months and 1 month of job training.
3. Determine the period of arrest and detention that has been served by the perpetrator's child to be reduced entirely from the sentence imposed.
4. Sets the offender's child to remain on Hold.

The judge's decision in this study can be seen in the following table:

No.	Case Number	Actor Status	The alleged article	Penalty
1	12/Pid.Sus-Anak/2015/PN.BKL,	Child	81 sentence (2)	1 year 5 months
2	79/Pid.Sus/2019/PN Tas	Mature	82 sentence (1)	1 year
3	80/Pid.Sus/2019/PN Tas	Mature	82 sentence (1)	1 year 5 months

4	20/Pid.Sus- Anak/2020/PN.Bgl	Child	81 sentence (2)	6 months
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As seen from the table above the Judge has handed down a criminal verdict on the perpetrators of the crime of intercourse or obscenity in Case Number 12/Pid.Sus-Anak/2015/PN.BKL, Case Number: 79/Pid.Sus/2019/PN Tas, Case Number: 79/Pid.Sus/2019/PN Tas and Case Number 20/Pid.Sus-Anak/2020/PN.Bgl is not by the provisions as referred to in the Child Protection Act.

The Child Protection Act already stipulates the minimum limit of criminal sanctions for perpetrators of sexual intercourse as regulated in Article 81 and Obscenity as referred to in Article 82 of Law Number 17 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection which reads:

Article 81

- (1) *Everyone who violates the provisions referred to in Article 76D shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiahs).*
- (2) *The criminal provisions referred to in paragraph (1) also apply to anyone who intentionally commits deception, a series of lies, or persuades a child to have intercourse with him or with another person.*
- (3) *If the crime as referred to in paragraph (1) is committed by parents, guardians, people who have family relations, caregivers, educators, educational staff, apparatus in charge of child protection, or is committed by more than one person jointly the same, the penalty is added 1/3 (one third) of the criminal threat as referred to in paragraph (1).*

Article 82

- (1) *Everyone who violates the provisions referred to in Article 76E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiahs).*
- (2) *If the crime as referred to in paragraph (1) is committed by parents, guardians, people who have family relations, caregivers, educators, educational staff, apparatus in charge of child protection, or is committed by more than one person jointly, the penalty is added to 1/3 (one third) of the criminal threat referred to in paragraph (1).*

Law Number 17 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection exacerbates the sanctions for perpetrators of

sexual intercourse crimes contained in Article 81, namely the addition of criminal sanctions of at least 10 years if the child victim is more than 1 (one) person, resulting in serious injury, mental disorder, infectious disease, impaired or loss of reproductive function, and/or the victim dies, said non-criminal perpetrator is subject to the death penalty, life imprisonment, or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (two) twenty) years. In addition, it is subject to additional punishment in the form of announcing the identity of the perpetrator. And the most serious addition is that these perpetrators can be subject to action in the form of chemical castration and installation of electronic detection devices.

Then for perpetrators of criminal acts of sexual abuse, Article 82 of Perpu Number 1 of 2016 also adds criminal witnesses to perpetrators of sexual abuse 1/3 of the law if the perpetrator has already been convicted of committing the same crime. If the crime of sexual abuse causes victims of more than 1 (one) person, results in serious injury, mental disorder, infectious disease, disruption or loss of reproductive function, and/or the victim dies, the penalty is added to 1/3 (one-third) of the criminal threat in addition to In addition, the perpetrator can be subject to additional punishment in the form of announcing the identity of the perpetrator, can be subject to action in the form of rehabilitation and installation of electronic detection devices.

### **Basic Authority of Judges to Decide Criminal Cases of Sexual Intercourse or Obscenity Outside the Provisions of the Law**

The authority of judges to impose sentences that are not by the provisions of the law is called discretion which is regulated in Article 24 paragraph (1) of the 1945 Constitution in conjunction with Article 1 number (1) of Law Number 48 of 2009 concerning Judicial Power which states that judges have the freedom to administer justice to uphold law and justice. A judge has a very crucial and critical role in trying a case because he has to carry out the tough task of separating right from wrong.<sup>8</sup>

The discretion of judges in adjudicating a case among practitioners and academics is still being debated. Especially concerning whether a judge may decide a

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<sup>8</sup> M. Syuib, "Kewenangan Hakim Menerapkan Diskresi dalam Permohonan Dispensasi Nikah (Studi Kasus di Mahkamah Syar'iyah Jantho)," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 2.2 (2018).

case by setting aside the law and determining his law which is fair according to the judges who try it.

Believers of legalism (the flow that upholds the law) will firmly oppose it because this understanding views that the law is only limited to the law and judges may not depart from the provisions outlined by the law and even the consequences are null and void.

It is different if the problem mentioned above is studied based on a legal understanding progressive (understanding that aims to improve conditions) as initiated by Satjipto Rahardjo, that law should follow the development of the times with all the foundations in it. For adherents of the progressive ideology, it is not illegal for judges to deviate from the law if justice can be obtained by deviating from it and injustice will arise if the rules of law are applied.

Child Judge in Case Number 12/Pid.Sus-Anak/2015/PN.BKL, Case Number: 79/Pid.Sus/2019/PN Tas, Case Number: 79/Pid.Sus/2019/PN Tas and Case Number 20 /Pid.Sus-Anak/2020/PN.Bgl has insight progressive, because in deciding on the Defendant the Judge was not fixated on the standard rules of the Child Protection Act. If the judge sticks to the standard rules of the law, then the legal objectives, namely legal certainty, justice, and benefits, will not be achieved.

The judge has considered that the occurrence of the crime of sexual intercourse or obscenity was not solely the fault of the Defendant. However, there is the participation of the victim's child who allows the criminal act of sexual intercourse or obscenity to occur repeatedly. The victim's child knows that intercourse is prohibited by religion, law and society, but continues to do so without any effort to prevent it.

As for the consideration of the panel of judges in passing the decision because the results of the examination at trial revealed that the victim's child had had sexual intercourse with another man before being raped by the perpetrator. Apart from that, from the fact that at trial the victim admitted that he received a sum of money from the perpetrator every time he was raped, and there was no rejection from the victim for the perpetrator's actions against the victim so the perpetrator had committed the sexual abuse many times. Therefore the Judge concluded that the victim knew the consequences of his actions and the victim had the goal of getting money from the perpetrator.

## CONCLUSION

The results of the study show that the behavior of the victim's child is considered by the judge in planning the perpetrator. If it can be proven that the child of the victim knows that intercourse is prohibited, and there is no attempt to refuse and continue to do so, even accepting something from the perpetrator, the Judge will sentence the perpetrators of intercourse or sexual abuse to a lighter level not by the provisions of Articles 81 and 82 of the Child Protection Law, namely at least 5 years in prison.

The judge's decision can be seen in Case number 79/Pid.Sus/2019/PN Tas which sentenced the perpetrators of sexual abuse to 1 (one) year in prison and Case number: 80/Pid.Sus/2019/PN Tas, which sentenced the perpetrators of sexual abuse to 1 (one) year years and 5 (five) months. The perpetrators of sexual abuse in both cases are adults. Whereas in Case Number 12/Pid.Sus-Anak/2015/PN.BKL which sentenced the perpetrator to 1 (one) year and 5 (five) months in prison and Case Number 20/Pid.Sus-Anak/2020/PN.Bgl punished the perpetrator for 6 months of imprisonment. Different from the two previous cases, in this case, the two perpetrators were still children.

The Judge's decision on the 4 (four) cases considered the behavior of the Child Victim, where the Child victim knew that the act was prohibited both religiously and legally and the victim also knew the consequences of the act but the victim continued to commit the act repeatedly, even from some victims receiving money from the perpetrator.

The judge has the freedom to sentence the perpetrator of the crime of intercourse or obscenity, even though the decision handed down is not by the provisions of the law. The decision fulfills the community's sense of justice more than if the judge decides according to the provisions of the law. The authority of the Judge is contained in Article 24 number (1) of the 1945 Constitution in conjunction with Article 1 number (1) of Law Number 48 of 2009 concerning Judicial Power which states that Judges have the independence to carry out trials to uphold law and justice.

The judge in passing a decision on the perpetrator of the crime of intercourse or obscenity must pay attention to the facts that were revealed in court. Judges must actively seek the testimony of witnesses in court. Especially for perpetrators who are

not accompanied by legal advisors. The perpetrator who was not accompanied by legal counsel did not understand his rights as a suspect so he was unable to reveal what happened.

A judge has a very crucial and critical role in adjudicating a case, both criminal and civil cases. In criminal cases, judges must actively dig up material truth. Judges have a tough task because they must carry out the task of separating right from wrong. The judge's courage in passing a decision that satisfies the sense of justice in society is highly dependent on the material truth revealed before the trial.

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