



Criminal Sentence For Child Perpetrators In the Criminal Act of Sexual Interculation

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Article

Abstract

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Children are the next generation of the nation who must be given attention, supervision, rights and protection from all forms of violence. However, child protection has a very important existence, especially in cases of child crime. Children are indeed vulnerable to crime, therefore children need extra supervision from parents and from the government through a law that regulates the protection of children from a crime. One of the criminal acts committed by children is sexual intercourse. Like the case decided by the Kolaka District Court No. 4 / Pid.Sus-Anak / 2020 / PN.Kka concerning the crime of sexual intercourse committed by children. The public prosecutor charged the child with violating Article 81 paragraph (1) and (2) in conjunction with Article 76D of Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law in conjunction with Article 55 paragraph (1) ke-1 of the Criminal Code. Furthermore, the identity of children in conflict with the law must be kept confidential. In the decision of the Kolaka District Court No. 4/Pid.Sus-Anak/2020/PN.Kka which does not obscure the identity of the child. In fact, Article 10 of the Supreme Court Decree No. 144 of 2007 concerning Disclosure of Information in Court regulates the obligation to obscure the identity of children in conflict with the law (ABH). Therefore, this needs to be discussed further. In this study, the author uses a normative legal research type (Legal Research) with a statutory and conceptual regulatory approach. The conclusion of this discussion is that the child perpetrator has fulfilled the elements of "committing violence or threats of violence, forcing children. Furthermore, related to the identity of the ABH, it must be kept confidential in print and electronic media, in order to maintain the confidentiality of the child's identity so that there are no bad assumptions in the public.

Keywords: *Child Intercourse Crime; Child Identity; Child Protection.*



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I. INTRODUCTION

Children are the next generation of the nation who must be given love, attention, rights and protection and supervision from all forms of violence. In the provisions of Article 45 of the Criminal Code, what is meant by a child is every child under the age of 16 (sixteen) years.¹ Meanwhile, according to the Civil Code or *Burgerlijk Wetboek* (BW), as stated in Article 330, those who can be categorized as children are every child under the age of 21 (twenty one) years and have never been married. Looking at some of these explanations, it can be seen that there is no uniformity regarding the age limit that can be categorized as a child. However, from these various definitions, conclusions can be drawn regarding what and who is meant by 'child' and the various consequences of being called a child.²

Crime is still a major problem in almost all parts of the world. Criminal acts can be committed by anyone, both men and women, and can happen to teenagers, adults, the elderly, and even children. Unfortunately, currently there are many criminal acts where the perpetrators are children. One of the criminal acts committed by children is sexual intercourse. The same is true of the case decided by the Kolaka District Court No. 4/Pid.Sus-Anak/2020/PN.Kka concerning a criminal act of sexual intercourse which carried out by a child, precisely in August 2020 at around 15.00 WITA at the house of one of the perpetrators in Aere District, East Kolaka Regency which is still included in the jurisdiction of the Kolaka District Court.

It started on an unremembered day and date, precisely in August 2020 at around 15.00 WITA or at least at another time in August 2020. The victim's child was invited by his female friend to pick up clothes in Atula Village, but in the middle of the trip the victim's friend invited the victim's child to go to her boyfriend's house in Aere District. Upon arriving at the victim's friend's boyfriend's house, the victim's child chatted with the perpetrator's child and his friends, a total of 6 people. Then when the victim's friend and his girlfriend entered the room, a few moments later the child of witness 2 invited the victim's child to enter the room, initially the victim's child refused, but because of coercion from the child of witness 2, the victim's child finally

¹ Criminal Code, Article 45.

² Rini Fitriani, "Peranan Penyelenggara Anak Dalam Melindungi dan Melindungi Hak-Hak Anak", *Jurnal Hukum Samudra Keadilan* 2, No. 2, (2016): 250-261.



entered the room. While in the room, the child of witness 2 invited the victim's child to have sex, but the victim's child refused, then the child of witness 2 immediately pulled the victim's child's stomach and held the victim's child's thigh and immediately opened the victim's child's pants. Next, witness 2's child took off his pants and underwear, and in a squatting position, witness 2 inserted his penis into the victim's child's genitals and shook them for approximately 1 (one) minute, then witness 2 spilled his sperm next to the bed. After that, witness 2 left the room, then witness 3 entered to molest the victim by inserting his middle finger into the victim's child's genitals for approximately 5 (five) minutes, then witness 3 came out. After witness 3 came out, the perpetrator's child entered the room and found the victim standing to put on his pants, but the perpetrator's child pushed the victim until the victim was lying down, then the perpetrator's child raised the victim's legs in a straddled position, then the perpetrator's child inserted his penis into the victim's child's genitals, and shook them for approximately 1 (one) minute and spilled his sperm on the mattress, after that the perpetrator's child left the room.

After the perpetrator's child left the room, it was followed by witness Kasril Bin Karim, witness Tri Saputra and the child of witness Asri Bin M. Asis, who each entered the room in turn and took turns having sex with the victim's child.³Based on the description above, the child perpetrator was punished for violating Article 81 paragraph (2) in conjunction with Article 76 D of Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law in conjunction with Article 55 paragraph (1) ke-1 of the Criminal Code. The punishment given by the judge was imprisonment for 2 (two) years at the Kendari Special Child Development Institution (LPKA) and Job Training at the Kolaka Regency Social Service for 3 (three) months. The demands of the Public Prosecutor are a basis used as a consideration in deciding and trying each case by the judge. In making a letter of demand, the Public Prosecutor will include considerations in submitting a demand consisting of aggravating and mitigating factors for the defendant.⁴

³ Kolaka District Court Decision No.4/Pid.Sus-Anak/2020/PN.Kka, pp. 3-5.

⁴ Dimas Indianto Wahyudi, dkk. "Implementasi Dasar Pertimbangan Jaksa Penuntut Umum dalam Menentukan Berat Ringannya Tuntutan Pidana Terdakwa Kasus Tindak Pidana Korupsi", *Diponegoro Law Jurnal* 10, No. 1, (2021): 95-102.



Based on the explanation above, the author is interested in researching the imposition of criminal penalties and legal consequences that will occur if the confidentiality of the identity of children in conflict with the law (ABH) is published in a decision. Therefore, the author discusses and examines in more depth the decision No. 4/Pid.Sus-Anak/2020/PN.Kka.

II. METHODOLOGY

The author uses the Normative Juridical legal research type (legal research), this type of legal research is research conducted to identify solutions and provide resolutions to legal problems by providing guidance on the legal problems raised.⁵ This type of research contains a method by reviewing and analyzing the substance of laws and regulations on legal issues or problems with legal bases. Legal research focuses on the study of the application of rules or norms in applicable positive law.⁶ In addition, the author uses a statutory regulatory approach and a conceptual approach. The statutory approach, a method used to examine legal problems in this thesis, is carried out by reviewing all statutory regulations and regulations that are related to legal problems.⁷ This type of research contains a method by reviewing and analyzing the substance of laws and regulations on legal issues or problems with legal bases. Meanwhile, the conceptual approach is an approach that is carried out when researchers continue to use legal regulations because there is no law for the problem being experienced.

III. THE CONSISTENCY OF THE JUDGE'S DECISION DECLARING THE CHILD PERPETRATOR GUILTY AND VIOLATING

This Child who commits the crime of sexual intercourse, then the law that is applied is the Child Protection Law. More precisely Article 81, which specifically regulates the criminal provisions against perpetrators of sexual intercourse with children. Thus, Article 287 of the Criminal Code no longer applies to perpetrators of sexual intercourse with children. In Article 81 of the Child Protection Law, the principle of *Lex Specialis Derogat Lex Generalis* applies to Article 281 of the Criminal Code, so

⁵ Dyah Ochtorina Susanti & Aan Efendi, *Penelitian Hukum*, (Jakarta: Sinar Grafika, 2018), p. 1.

⁶ *Ibid*, p. 24.

⁷ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada Media, 2016), p. 47.



Article 81 of the Child Protection Law must be prioritized over Article 281 of the Criminal Code.⁸

The juvenile trial process has a goal to be achieved, one of which is to find the actual facts of a criminal act. Therefore, the trial process needs to be carried out sequentially and consistently in accordance with applicable provisions. During the evidence process, trial facts will be revealed, which will then be used by the judge to conclude a crime accompanied by other judges' considerations. As stated in Article 197 letter d of the Criminal Procedure Code which explains the considerations that are shortened between facts and circumstances as the basis for determining the defendant's guilt based on a review of the evidence obtained during the trial. In this case, the judge's legal considerations that are juridical are based on the legal facts revealed in the trial and based on the provisions of the legislation that must be included in the decision.⁹

First, the Public Prosecutor's indictment The indictment is the basis for criminal law proceedings, because the Public Prosecutor's indictment is the beginning of the process in court. In addition to containing formal requirements such as the identity of the defendant, the indictment also contains material requirements such as a description of the crime charged by the Public Prosecutor containing when, where, and who participated in committing the crime. In this case, the perpetrator's child, Andi Lukman alias Lukman bin H. Andi Baruddin, was 15 (fifteen) years old at the time of the incident, was male and had the status of a student. In this case, the act was committed on a day whose date could no longer be remembered, by the victim or at least in August 2020 at around 15.00 WITA. Initially, the victim's child was invited by his female friend to pick up clothes in Atula Village, but in the middle of the trip, the victim's friend invited the victim's child to go to her boyfriend's house in Aere District. Upon arriving at the victim's friend's girlfriend's house, the victim's child chatted with the perpetrator's child and his friends, a total of 6 people. Then when the victim's friend and his girlfriend entered the room, a few moments later the child of witness 2 invited the victim's child to enter the room, initially the victim's child refused, but

⁸AA Risma Purnama Dewi, et.al., "Tindak Pidana Persetubuhan Terhadap Anak Bawah Umur", *Jurnal Analogi Hukum* 1, No. 1, (2019): 1-16.

⁹Rusli Muhammad, *Potret Lembaga Pengadilan Indonesia*, (Jakarta: Raja Grafindo Persada, 2006), p. 124.



because of coercion from the child of witness 2, the victim's child finally entered the room. While in the room, the child of witness 2 invited the victim's child to have sex, but the victim's child refused, then the child of witness 2 immediately pulled the victim's child's stomach and held the victim's child's thigh and immediately opened the victim's child's pants. Next, the child of witness 2 opened his pants and underwear, and in a squatting position, the child of witness 2 inserted his penis into the victim's child's vagina and shook it for approximately 1 (one) minute, then the child of witness 2 spilled his sperm beside the bed. After that, the child of witness 2 left the room, then the child of witness 3 entered to molest the victim's child by inserting his middle finger into the victim's child's genitals for approximately 5 (five) minutes later the child of witness 3 came out. After the child of witness 3 came out, the perpetrator's child entered the room and found the victim's child standing about to put on his pants, but the perpetrator's child pushed the victim's child until the victim was lying down, then the perpetrator's child raised the victim's child's legs in a straddled position and then the perpetrator's child inserted his penis into the victim's child's vagina, and shook it for approximately 1 (one) minute and spilled his sperm on the mattress, after which the perpetrator's child left the room. After the perpetrator's child left the room, it was followed by witnesses Kasril Bin Karim, witness Tri Saputra and the witness's child Asri Bin M. Asis, who each entered the room in turn and took turns having sex with the victim's child.¹⁰

Based on the conclusion of the results of the Visum Et Repertum No. 470/04/II/2021 dated February 10, 2021, which was made and signed by Dr. Widiastuti, as the examining doctor at the Benyamin Guluh Hospital, Kolaka Regency, a tear was found in the hymen at one point five point six and ten o'clock due to blunt force trauma. As a result of his actions, the perpetrator's child was charged with an Alternative charge charging the perpetrator's child with Article 81 paragraph (1) in conjunction with Article 76 D of Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law in conjunction with Article 55 Paragraph (1) 1 of the Criminal Code or Article 81 paragraph (2) in

¹⁰Kolaka District Court Decision No. 4/Pid.Sus-Anak/2020/PN.Kka.



conjunction with Article 76 D of Law No. 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection to Become Law in conjunction with Article 55 Paragraph (1) Ke-1 of the Criminal Code.

Second, the Defendant's statement Article 184 letter e of the Criminal Procedure Code explains that the defendant's statement is categorized as one of the pieces of evidence. The defendant's statement is a statement expressed by the defendant in a court hearing regarding the actions that have been committed by the defendant or that the defendant himself experienced and knew. In the trial, the perpetrator's child provided a statement which in essence was that on a day and date that could no longer be ascertained, or at least in August 2020, at 14.00 WITA, the perpetrator's child with his friends, namely Aan, Kasril, Isal, Asri and Amar were at Isal's house, then they went to Mawan's house, while at Mawan's house, the perpetrator's child saw witness Iis and the victim's child, at Mawan's house there were no Mawan's parents because Mawan's parents were in South Sulawesi. Furthermore, the perpetrator's child together with other witnesses told a story on the terrace of Mawan's house, not long after that, witness Iis entered the living room with Aan. Not long after that Mawan and the victim's child also entered the front room, after that Kasril's child entered and then left the room. Then the perpetrator's son came in and saw the victim's son naked, so the perpetrator's son immediately took off his pants and inserted his penis into the victim's vagina, and shook it for about 1 (one) minute and spilled his sperm on the bed, then the perpetrator's son went home to take a shower. When the perpetrator's son came out of the room, the perpetrator's son saw Isal enter the room. When the perpetrator's son had sex with the victim's son, no witnesses saw it. When he finished having sex with the victim's son, the perpetrator's son returned to tell the story on the terrace of Mawan's house and after the victim's son and witness Iis went home, the perpetrator's son and his friends returned to Isal's house.¹¹

Third, Witness Statement There is witness statement in a criminal case, which is a very important thing to know, this is because almost the entire process of proof

¹¹Kolaka District Court Decision No. 4/Pid.Sus-Anak/2020/PN.Kka.



in a criminal case always relies on the examination of witness statements during the trial. A witness who gives his statement in court will be sworn in according to his beliefs, and the witness will be asked for information about the criminal incident that was seen, heard, or experienced directly. Therefore, it can be classified as evidence. In the trial of this case, 6 (six) witnesses were presented, namely the victim witness, witness 2, witness 3, witness 4, witness 5, and witness 6. Based on the statements of the six witnesses in the trial process, the perpetrator's child gave the opinion that the statements given by the six witnesses were true, and the perpetrator's child did not object to the statements of the witnesses.

Fourth, evidence is all objects confiscated and submitted in court by the Public Prosecutor, namely including all or part of the goods or bills allegedly received by the defendant or by the person accused of committing a crime as a result of the crime, objects that are directly used to commit a crime or have been prepared in advance, objects used to prevent the investigation of a crime, objects made with the aim of committing a crime or with the intention of committing a crime, other objects related to the crime.

Although Article 184 paragraph (1) of the Criminal Procedure Code states that valid evidence includes witness statements, expert statements, letters, clues and statements from the accused.¹²The five pieces of evidence above are not included in valid evidence, but if the public prosecutor mentions the evidence in his indictment, and the judge examines and approves it, then it can be used as additional confidence for the judge, in order to assess whether or not a crime is true.

The trial process reveals one thing, namely the articles in the criminal law regulations. Where these articles will be used as considerations by the judge in making a decision. If the judge considers based on these articles in his decision, then these conditions can be found in the public prosecutor's indictment, as a condition of criminal law violated by the defendant. In this case, based on the indictment from the Public Prosecutor, the judge used criminal regulations in the form of Article 81 paragraph (1) and (2) in conjunction with Article 76 D of the Child Protection Law in conjunction with Article 55 paragraph (1) ke-1 of the Criminal Code.

¹²Article 184 paragraph (1) of the Criminal Procedure Code.



Looking at the verdict that the researcher will analyze, the Public Prosecutor has charged the child perpetrator with an Alternative charge. So in this case to declare whether the charges from the Public Prosecutor are proven or not, it is not necessary to consider all charges as proven or not, but the panel of judges only need to choose one charge that is considered most appropriate and in accordance with the actions of the child perpetrator. In this case, the panel of judges decided that the actions of the child perpetrator were more inclined to the 2nd charge of the public prosecutor, namely violating Article 81 paragraph (2) in conjunction with Article 76 D of Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection in conjunction with Article 55 Paragraph 1 Ke-1 of the Criminal Code, which has elements of the article including, Elements of every person; Intentionally carrying out trickery, a series of lies, or persuading the child to have sexual intercourse with him or with another person; Participating in sexual intercourse.

Based on these three elements, the judge gave the consideration that in the first element, the child perpetrator had fulfilled the element. This is proven in accordance with Article 1 of the Child Protection Law regarding the element of "Everyone" is anyone who must be made a child in conflict with the law who hereinafter referred to as a child (dader) or every person as a legal subject (supporter of rights and obligations) who can be held accountable for every act because there is nothing that eliminates the crime, either a reason for forgiveness or a reason for justification. In the decision that the researcher analyzed, the child perpetrator is seen as a legal subject who is able to be held accountable for his actions. So that the child perpetrator fulfills the element of "Every Person".

Regarding the element of "committing violence or threats of violence, forcing a child" R. Soesilo explained that forcing is putting pressure on someone, so that the person does something that he/she would not do, if there is no pressure, forcing must be accompanied by violence or threats of violence. Meanwhile, according to SR Sianturi, forcing is an act that corners someone until there is no other choice that is more reasonable for him/her other than to follow the will of the coercer, in other words, without the coercer's action, the coerced person will not do according to the will of the coercer. Based on the facts that occurred in the trial that the researcher



analyzed, when the perpetrator's child entered the room, the victim's child was standing about to put on the victim's pants and underwear, but the perpetrator's child "pushed" the victim's child, so that the victim's child fell on the bed, then the perpetrator's child "pressed" the victim's child and inserted his penis into the victim's vagina and moved it back and forth until it spilled his sperm on the bed. Thus, the perpetrator's child's action of "pushing" has fulfilled the element of "committing violence or threats of violence, forcing a child".

The element of "who commits, orders to commit, or participates in committing an act" can be seen in Article 55 paragraph (1) ke 1 of the Criminal Code, where the perpetrators of the crime include the qualifications, namely, those who commit, namely perpetrators of the crime who essentially fulfill all the elements of the crime. In a narrow sense, the perpetrator is a person who commits a crime. In a broad sense, perpetrators can be classified into four types, namely those who commit the crime, those who order to commit the crime, those who participate in committing the crime, and those who encourage the commission of the crime.

Then, those who order to do it, are those who want to commit a crime, but do not want to interfere in the execution. This means someone who wants to commit a crime but is not willing to do it himself. He orders someone else to commit the crime or criminal act. So the one who gives the order will not be punished. but the one who gave the order is considered the perpetrator. Because the crime was committed on his order, he is responsible for the criminal case.

Furthermore, those who participate in doing it are those who are also directly involved in committing the crime. The requirements for those who participate in carrying out the crime are, first, committing the crime does not require an agreement, but there must be conscious cooperation from all parties involved, and there must be an intention to carry out the crime. Second, there is physical cooperation to commit the crime for everyone involved.

The verdict states that the perpetrators of the sexual intercourse were Mawan, Isal, Lukman, Kasril, and Asri. Thus, it can be concluded that the child perpetrators have fulfilled the third element, namely participating in committing acts/crimes. Based on the verdict, the panel of judges decided that the actions of the child perpetrators were more inclined to the 2nd charge of the public prosecutor, namely violating Article



81 paragraph (2) in conjunction with Article 76 D of Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection in conjunction with Article 55 Paragraph 1 Ke-1 of the Criminal Code. Meanwhile, according to the description above, the researcher does not agree with the judge's verdict. Which in 81 paragraph (2) in conjunction with Article 76 D of Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 53 No. 23 of 2002 concerning Child Protection in conjunction with Article 55 Paragraph 1 Ke-1 of the Criminal Code, includes child perpetrators who carry out "trickery, a series of lies, and persuade children", whereas if reviewed from the facts that occurred in court, according to researchers, children more fully fulfill the elements in Article 81 paragraph (1) in conjunction with Article 76 D of Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection in conjunction with Article 55 Paragraph 1 Ke-1 of the Criminal Code, which emphasizes children "committing violence or threats of violence, forcing children".

This is in line with the understanding of experts, namely R. Soesilo who explained that "forcing" is putting pressure on someone, so that the person does something that he would not do, if there is no pressure, forcing must be accompanied by violence or threats of violence, and SR Sianturi who explained that "forcing" is an act that corners someone until there is no other choice that is more reasonable for him than to follow the will of the coercer, in other words without the action of the coercer, the coerced person will not do according to the will of the coercer. This can be seen from the facts revealed in the trial, namely when the perpetrator's child entered the room, the position of the victim's child was standing about to wear the victim's pants and underwear, but the perpetrator's child "pushed" the victim's child, so that the victim's child fell on the bed, then the perpetrator's child "pressed" the victim's child and inserted his penis into the victim's vagina and moved it back and forth, until spilling his sperm on the bed. Thus, the perpetrator's child has fulfilled the elements of "committing violence or threats of violence, forcing a child".



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Based on the description above, the appropriate claim is Article 81 paragraph (1) in conjunction with Article 76 D of Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection in conjunction with Article 55 Paragraph 1 Ke-1 of the Criminal Code.

IV. LEGAL CONSEQUENCES IF DECISION NUMBER 4/PID.SUS-ANAK/2020/PN.KKA DOES NOT COMPLY WITH ARTICLE 19 PARAGRAPH (1) OF LAW NO. 11 OF 2012

This Child is the next generation of the nation who has dignity, honor and rights that must be fulfilled and protected so that children can grow and develop. According to Law Number 23 of 2002 concerning Child Protection which has been amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which was then amended in Law Number 17 of 2016 concerning Stipulation of Perpu Number 1 of 2016 concerning Second Amendment to Law Number 23 of 2002 concerning Child Protection (Child Protection Law), the definition of a child is a person who is not yet 18 (eighteen) years old, including



children who are still in the womb.¹³In their growth and development, children do not only live as social beings, so they need to socialize and interact in the community. Children as social individuals who also have the right to socialize are still unstable in acting.¹⁴

Child interaction has positive and negative impacts. The positive impact of children's social interaction can help their growth and development and influence the way children think. It can be seen when children study at school to seek knowledge and children's forum activities that can train children's creativity. However, there are negative impacts of child interaction that are influenced by an unhealthy social environment, so that it can influence children's behavior which can result in violations of the law. Based on data collected by the Indonesian Child Protection Commission (KPAI) from 2016 to 2020, there were 655 children who faced the law for committing acts of violence, consisting of 506 children committing physical violence and 149 children committing psychological violence.¹⁵ It can be seen that the level of child crime in Indonesia is quite high. The perpetrators of child crimes are children who are in conflict or facing the law (ABH). In addition, according to records from the KPAI, the number of cases of children involved in the law from 2011 to 2019 reached 11,492 cases, exceeding the number of cases of children related to health problems, narcotics, and pornography and cyber crime as well as trafficking and exploitation¹⁶.

In this increasingly sophisticated technological era, the majority of people use the internet or digital media to always access information or interact online. This is proven by the many cases of reporting criminal acts reported on social media. This phenomenon is what causes the rapid spread of information about a particular situation. In cases of criminal acts that attract public attention, the spread of information about the identity of the perpetrator in digital spaces such as social media

¹³Law Number 23 of 2022 concerning Child Protection which has been amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2022 concerning Child Protection.

¹⁴Article 1 paragraph (3) of the SPPA Law.

¹⁵Dinas Pemberdayaan Masyarakat dan Pemerintahan Desa Provinsi Kalimantan Timur, *Forum Anak Kampung Maluang Biasakan Kegiatan Positif Masyarakat Setempat*, (Jakarta: PT Raja Grafindo Persada, 2018), p. 37.

¹⁶Abintoro Prakoso, *Kriminologi dan Hukum Pidana*, (Yogyakarta: Laksbang Grafika, 2013), p. 87.



is also rampant.¹⁷ As with several cases of children who have gone viral until their identities are known to the public, of course this is very detrimental to the future of children.

Protection of children in conflict with the law is important. Every child involved in conflict with the law must be given the same rights without discrimination from anyone. Law enforcement against child crimes must prioritize the best interests of the child.

Fulfillment of the rights to protection of children involved in conflict with the law, as previously explained, is the responsibility of the state and the Indonesian people as a whole. Protection of children who are still in the criminal process is also regulated in special regulations regarding juvenile justice, namely the SPPA Law. In this case, Article 19 of the SPPA Law regulates the protection of children's identities, which explains that the identity of children, child victims, and/or child witnesses must be kept confidential in news reports in print or electronic media. This means that the child's identity consists of the child's name, the child victim's name, the child witness's name, the parents' names, address, face, and other things that can reveal the identity of the child, child victim, and/or child witness.¹⁸

Then, the provisions related to the confidentiality of the identity of children involved in legal conflicts are regulated by Article 61 paragraph (2) of the SPPA Law. This article stipulates that the identity of children, both child victims and child witnesses, must remain confidential by the mass media in accordance with Article 19 of the SPPA Law. The mass media may only use initials without images.¹⁹ Furthermore, the sanctions for disclosing a child's identity are stated in Article 97 of the SPPA Law, namely, Any person who violates the obligations as referred to in Article 19 Paragraph (1) will be subject to a maximum prison sentence of 5 years and a maximum fine of IDR 500,000,000.00 (five hundred million rupiah).²⁰

The provisions of Article 19 and Article 61 paragraph (2) of the SPPA Law explain that all personal information that can reveal the identity of a child in conflict

¹⁷Ni Putu Ari Setyaningsih, et.al., "Perlindungan Terhadap Informasi Pribadi Anak Berkonflik dengan Hukum dalam Ruang Digital", *Jurnal YUSTITIA* 17, No. 1, (2023): 17-30.

¹⁸Article 19 of the SPPA Law

¹⁹Article 61 of the SPPA Law

²⁰Article 97 of the SPPA Law



with the law is confidential, so that no one can reveal such personal information through print or electronic media, and if publishing in the mass media must use initials without a title. In relation to the provisions of Article 19 and Article 61 paragraph (2) of the SPPA Law, the prohibition on the dissemination of information regarding the identity of a child in conflict with the law, either through electronic media or print media. The dissemination of personal information of a child in conflict with the law on digital media such as social media is prohibited by laws and regulations as a form of child protection.

The child's right to privacy must be respected to avoid harm caused by inappropriate publication or by the "labeling" process. In principle, no information that can lead to the identification of a juvenile offender will be published. Therefore, protecting the child's identity is important to obtain protection from actions that can harm the child because it concerns the child's growth and development and future.²¹

The identity of a child is a human right that must be kept confidential and not to be disseminated either in print or electronic media, so there needs to be strict protection and no discrimination that reveals the child's identity to the public, especially law enforcement officers who should understand and enforce legal protection better. As in a decision, the identity of a child, whether a child perpetrator, a child witness, or a child victim, must be kept confidential. In the regulation of the Supreme Court of the Republic of Indonesia Number 9 of 2017 concerning the format and writing of decisions/determinations of the Supreme Court (MA), it does not specifically discuss the writing of the name of a special crime for children, only the format in the form of cassation.²² Therefore, writing the child's name in the decision can be said to be an effort to reveal the child's identity, which should be protected and whose identity must be kept confidential.

In relation to the main discussion in Decision Number 4/Pid.Sus-anak/2020/PN.Kka, there is a child's identity that is still included in the decision. This legal issue concerns the child's identity that is included in electronic media, namely on

²¹M. Hufon Faki, Subekti, "Perlindungan Hukum Atas Pengungkapan Identitas Anak Oleh Aparat Penegak Hukum", *Jurnal Recidive* 10, No. 2, (2021): 100-112.

²²Chairul Bariah, et al., "Perluasan pertanggungjawaban Terhadap Tindakan Pidana yang Dilakukan Oleh Anak", *Syahkuala Law Jurnal* 1, No. 3, (2017): 11-25.



the decision page of the Supreme Court Decision Directory. Which violates the provisions of the SPPA Law which prohibits publishing a child's identity.

In the juvenile criminal justice process, the confidentiality of the child's identity must be maintained, especially after the trial is completed, all of which are stated in the final decision. The definition of a court decision is a judge's statement made in a trial open to the public. The decision can be in the form of a sentence, acquittal, or a decision to be free from legal charges.²³ The writing of the final decision by the judge who tries the child's criminal case must meet the formal requirements in the proceedings in accordance with the provisions of the Law. The requirements for the procedure for writing the decision are listed in Article 197 paragraph (1) of Law Number 8 of 1981 concerning the Criminal Code. The judge as a law enforcement officer is required to include the entire process that occurs in the trial. One of them, except for those related to the child's identity as stated in Article 19 paragraph (2) of the SPPA Law, must be kept confidential.

The issue that is the main topic of discussion is that if the child's identity is published in a court decision through electronic media, then this violates several provisions of the SPPA Law. Where the SPPA Law prohibits the publication of a child's identity, while there are decisions in the Supreme Court Decision Directory that still reveal the child's identity in the decision.

Writing a criminal verdict in Indonesia is indeed required to explain completely and in detail regarding the identity of the accused, in Article 197 paragraph (1) of the Criminal Procedure Code. In addition to being related to the completeness of identity, the trial must also be open to the public, in order to have binding legal force. As a manifestation of the principle of "open trial to the public", which means that all processes related to the process of evidence and trial must be completely transparent without anything being covered up.²⁴ This principle is the basis for courts in Indonesia.

Referring to the previous explanation, regarding the completeness of the decision requirements in Article 197 paragraph (1) of the Criminal Procedure Code, all

²³Wulandari Putri Hutami, et.al., "Problematika Pelaksanaan Putusan Pengadilan pada Kasus Tindak Pidana Anak di Kejaksaan Negeri Surakarta", *jurnal VERSTEK* 10, No. 3, (2021): 1-10.

²⁴Achmad Ratomi, "Penyelesaian Anak yang Berkonflik dengan Hukum dalam Konteks Masyarakat", *Jurnal Fakultas Hukum Universitas Lambung Mangkurat Banjarmasin* 5, No. 2, (2023): 1-20.



judicial procedures must be stated including completeness of identity. In addition, regarding the principle of being open to the public so that a decision has legal force as stated in Chapter IV of the Decree of the Chief Justice of the Republic of Indonesia Number 2-144/KMA/SK/VIII/2022 Concerning Information Service Standards in Court. In chapter four, the category of public information consists of Information that must be available and announced periodically, Information that must be announced, and Information that must be available at all times. Public Information as explained must be available in the form of electronic or printed documents and must comply with data interoperability standards. Furthermore, Public Information in electronic form will be provided in printed documents based on the request of the Information Applicant.

Based on the description, it can be seen that both decisions at the first level and appeal level that have permanent legal force must be announced and published on the website or site of the Supreme Court Decision Directory. In addition, Information that Must be Announced periodically by the Supreme Court, among others related to information on the acceptance of prospective state civil servants, prospective judges, ad hoc judges, senior high-ranking and junior high-ranking positions, and/or the need for supreme court judge formations, Supreme Court policies in the form of Supreme Court Regulations, Supreme Court Circulars, Supreme Court Chief Justice Decisions, and other policies that have been issued, List of drafts and stages of formation of Supreme Court regulations that are in the process of being formed, Supreme Court jurisprudence, Supreme Court decisions, annual reports of the Supreme Court and the Supreme Court's strategic plan.

Based on the description, it can be seen that not all of the information announced can be announced through the Supreme Court Decision Directory website. In particular, decisions in child criminal cases that contain all of the child's identities must be kept confidential as stated in Chapter VIII of the Decree of the Chief Justice of the Republic of Indonesia Number 2-144/KMA/SK/VIII/2022 Concerning Information Service Standards in court, which explains that in cases of child criminal acts, the court must disguise information that states the identity of the victim, defendant, or convict before placing a copy of the verdict or court decision on the



website.²⁵In the eighth chapter, it is explained about the Procedure for Obscuring Part of Certain Information in Information That Must Be Announced and Information That Can Be Accessed by the Public, namely regarding Personal Data, such as population registration numbers, which will be obscured in the entire contents of the decision or determination. Before providing a copy of the Information to the Applicant or including it on the website, the PPID Implementer is required to obscure information that can identify the party concerned in a judge's decision or ruling.

Obscuring the identity of witnesses, victims and other witnesses in cases of crimes against morality, Criminal acts concerning acts of domestic violence, Criminal acts that must protect the identity of witnesses and victims according to the law on the protection of witnesses and victims and other criminal acts committed in closed trials according to the law. Furthermore, disguising or obscuring the identity of the judge, court clerk, public prosecutor, investigator, witnesses, and experts in cases of terrorism both in the entire contents of the decision, SIP, and other information systems. Then, disguising the identity of children involved in conflict with the law. Not only that, but also disguising the identity of the parties to the conflict, witnesses and other parties such as marriage, adoption, wills and civil cases. The identity of the individual concerned must be kept confidential. Including images related to violations of morality cases must be disguised.

Information that must be disguised relating to the identity of the party includes, among others, Full name or alias, Population Identification Number (NIK)/passport, Occupation, place of work and related employee identity and School or Educational institution. Related to identity obscuration can be done in the following ways, the information in question is changed to be unreadable through the process of obscuring printed documents or by blackening, The information in question will not be displayed to the public through SIP and other information systems used by the Court, Replacement of the Information in question with another term in electronic documents (softcopy). Furthermore, special protection is given to ABH.²⁶

²⁵Alfian Mahendra, et al., "Perlindungan Hukum Terhadap Identitas Anak Sebagai Pelaku Tindak Pidana Dalam Proses Peradilan Pidana", *jurnal Kertha Semaya* 8 No. 10, (2020): 1631-1641.

²⁶Article 59 paragraph (1) and paragraph (2) letter b of the Child Protection Law.



Procedures for obscuring a child's identity in accordance with the Decree of the Chief Justice of the Republic of Indonesia Number 2-144/KMA/SK/VIII/2022 concerning Standards of Information Services in Court,

Information	Procedures	Example
CHILD	1. "DEWI" is disguised by writing their status in the case. 2. Numbering is done based on order of appearance in the verdict text.	1. "DEWI" as the child victim in the first case was changed to "CHILD VICTIM I" 2. "DEWI" as the second child victim in a case was changed to "CHILD VICTIM II".

If the disclosure of the child's identity written in the judge's decision is a criminal act because it has violated the laws and regulations that protect the right to confidentiality of the child's identity which must be protected. The difference in writing the term child's name in the judge's decision found by the author has 3 versions, the first is the child's name written clearly, namely the child's full name, the second is the child's name written with the initials of the Defendant, and the third is the child's name written with the term child.²⁷ The version of the writing of the child in the draft of the judge's decision is not explained in detail regarding the writing of the child's name, but in the SPPA Law it states that a child in conflict with the law or a child as a perpetrator of a crime is referred to as a Child. The term child in writing the child's name if applying the provisions of the SPPA Law is written with the term Child, not the full name of the child or the defendant. In the criminal justice process for children, it regulates the judge who will try the child. This provision is contained in Article 1 number 10 of the SPPA Law, which states that the judge is a child judge and is strengthened by Article 43 Paragraph (2) of the SPPA Law.²⁸

If a child's identity is disclosed, this can cause moral harm, namely harm that cannot be assessed in a definite amount. For example, fear, loss of pleasure or disability of limbs. The right to compensation in criminal cases is contained in Law Number 48 of 2009 concerning Judicial Power in Article 9 Paragraph (3) which states

²⁷Chairul Bariah, et.al., Op.cit, "Perluasan Pertanggungjawaban Terhadap Tindakan Pidana yang Dilakukan Oleh Anak", *Syahkuala Law Jurnal* 1, No. 3, (2017): 11-25.

²⁸Article 1 number 10 of the SPPA Law



that provisions regarding the procedures for claiming compensation, rehabilitation, and imposing compensation are regulated by law. The right to request compensation is contained in Article 95 and Article 96 of the Criminal Procedure Code, in practice the term compensation in criminal law is not found in material criminal law but is found in formal criminal law. Children who are victims of identity disclosure should have the right to compensation because they have suffered moral losses, but this can only be done during a trial according to formal criminal law.

Looking at the provisions of Chapter VIII of the Decree of the Chief Justice of the Republic of Indonesia Number 2-144/KMA/SK/VIII/2022 Concerning Standards of Information Services in Court, it is a way for the Supreme Court to protect the identity of children in conflict with the law by providing an exception to the prohibition of publication regarding criminal cases of children in conflict with or in conflict with the law. In this case, the Supreme Court plays a role in processing information on criminal decisions for children by obscuring the identity of the child, the role of mass or electronic media through the dissemination of information and materials that are beneficial to the social, cultural, religious and health aspects of children by considering the interests of the child.²⁹

Electronic media has a big role in the dissemination of information that should protect the interests of children to avoid labeling from the community. Therefore, the Supreme Court Decision Directory website plays an important role in not publishing the identity of the child. But it is important to remember, the success or failure of law enforcement efforts for child protection cannot be separated from the credibility and competence of law enforcement. In Lawrence FM's theory, it states that the success or failure of law enforcement depends on the law enforcers themselves.³⁰

Next, discuss the sanctions for parties who publish decisions containing the identity of children in electronic media. Where in this case the party who publishes is the Information and Documentation Management Officer (PPID) of the Supreme Court who is responsible to the PPID Superior and the Advisory Council as the manager of court decisions. The PPID publishes decisions to provide legal certainty and

²⁹Gultom Maidin, *Perlindungan Hukum Terhadap Anak dan Perempuan*, (Jakarta: Refika Aditama, 2018), p. 68.

³⁰Teguh, Harrys Pratama, *Teori dan Praktek Perlindungan Anak dalam Hukum Pidana*, (Yogyakarta: Penerbit Andi Yogyakarta, 2018.), p. 18.



transparency regarding court information. The management of court information related to the Supreme Court Directory's decisions is managed by the Supreme Court PPID, which is tasked with publishing all court decisions as a manifestation of the principle of openness or transparency. The Information and Documentation Management Officer (PPID) is an official responsible for coordinating the storage, documentation, provision, and/or service of information in public institutions.

PPID is held by a junior legal clerk. PPID (Information and Documentation Management Officer) in carrying out its duties in managing the electronic site of the Supreme Court Decision Directory website, to provide supervision and guidance of the Supreme Court's direct superiors for the courts below it as stated in the Regulation of the Supreme Court of the Republic of Indonesia Number 8 of 2016 Concerning Supervision and Guidance of Direct Superiors in the Supreme Court and the Judicial Bodies Below It, which is required to supervise structural officials in carrying out their authority so that there are no deviations in carrying out their duties.³¹In this case, the PPID (Information and Documentation Management Officer) has an obligation to carry out his duties, responsibilities, and authority under the supervision of the PPID Superior. If in the future a performance violation is found by a structural or functional official under the Supreme Court Clerk, in accordance with Article 5 paragraph (6) concerning the duties of the Supreme Court Clerk, the Echelon I Official/Main and/or Middle Leader must temporarily suspend the official. This enforcement is carried out if there is an alleged violation of work discipline, code of ethics, and behavioral guidelines, to then propose further investigation by the Supervisory Body. However, if supervision and guidance are not effective, the PPID of the Supreme Court can provide appropriate sanctions as explained in Article 9,³²"If the obligation of supervision and guidance by the direct superior is not fulfilled according to the provisions, the violation will be subject to light, medium, or heavy administrative sanctions after being examined by an authorized official."

³¹Vito Sheridan Prayitno, et.al., "Pertanggungjawaban Pidana Pencantuman Identitas Anak dalam Putusan Pengadilan oleh Aparat Penegak Hukum", *jurnal SABTIDA* 1, No. 3, (2023): 15-25.

³²Article 9 of the Decree of the Chief Justice of the Republic of Indonesia Number 144/KMA/SK/VIII/2007 Concerning Disclosure of Court Information.



The Decree of the Chief Justice of the Republic of Indonesia Number 2-144/KMA/SK/VIII/2022 Concerning Standards of Information Services in Courts does not explain the sanctions for violating the obscuration of a child's identity. The word "every person" is a legal subject. Legal subjects consist of individuals and legal entities (corporations). Where a legal entity or corporation is a collection of rights and can carry out acts and have its own wealth. But what distinguishes the two is that criminal law deprives freedom. However, a corporate legal entity can still be held accountable for its actions in accordance with Article 23 of PERMA Number 13 of 2016, Challenges to Handling Criminal Cases by Corporations.

Thus, based on the discussion that has been outlined by the author regarding Decision Number 4/PID.SUS-ANAK/2020/PN.Kka regarding the identity of the child that is not obscured is an omission by the PPID (Information and Documentation Management Officer). Where the PPID (Information and Documentation Management Officer) is responsible for managing court decision files, especially related to electronic documents on the Supreme Court Decision Directory website based on the Decree of the Chief Justice of the Republic of Indonesia Number 2-144/KMA/SK/VIII/2022 Concerning Information Service Standards in Court. The PPID (Information and Documentation Management Officer) is responsible to the superior of the PPID (Information and Documentation Management Officer) and the Advisory Council which is held by a junior clerk. The legal consequences if the child's identity is published can result in criminal sanctions. For this negligence, the PPID (Information and Documentation Management Officer) can also be subject to sanctions in accordance with Article 97 of the SPPA Law with a maximum imprisonment of 5 years and a fine of at least IDR 500,000,000 (five hundred million rupiah). Therefore, the rules related to the standards of public information services regarding the obscuration of children's identities have been regulated in Chapter VIII of the Decree of the Chief Justice of the Republic of Indonesia Number 2-144/KMA/SK/VIII/2022 Concerning Standards of Information Services in Court as an implementation of Article 19 of Law 11 of 2012 Concerning the Juvenile Criminal Justice System. In this case, there is actually a certainty and consistency of good law, but in its implementation it is less than optimal.



V. CONCLUSION

The judge's decision stating that the child perpetrator was guilty and violated Article 81 paragraph (2) of Law No. 17 of 2016 does not correspond to the facts contained in the trial. Based on the facts that occurred in the trial that the researcher analyzed, when the child perpetrator entered the room, the position of the child victim was standing about to wear the victim's pants and underwear, but the child perpetrator "pushed" the child victim, so that the child victim fell on the bed, then the child perpetrator "pressed" the child victim. The child perpetrator has fulfilled the elements of "committing violence or threats of violence, forcing a child". Because the elements of "intentionally carrying out trickery, a series of lies, persuading a child" with the elements of "committing violence or threats of violence, forcing a child" are two different entities. So the actions of the child perpetrator fulfill the elements of Article 81 paragraph (1) of Law No. 17 of 2016 as indictment 1 of the Public Prosecutor.

The legal consequences that arise if Decision Number 4/Pid.Sus-Anak/2020/PN.Kka does not comply with Article 19 paragraph (1) of Law No. 11 of 2012, namely giving rise to criminal sanctions. For this negligence, the PPID (Information and Documentation Management Officer) held by the junior clerk can also be subject to sanctions in accordance with Article 97 of the SPPA Law with a maximum prison sentence of 5 years and a fine of at least IDR 500,000,000 (five hundred million rupiah). Therefore, this has been regulated in Chapter VIII of the Decree of the Chief Justice of the Republic of Indonesia Number 2-144/KMA/SK/VIII/2022 concerning Public Information Service Standards in Court as an implementation of Article 19 of Law 11 of 2012 concerning the Juvenile Criminal Justice System. There is already good legal certainty and consistency, if the child's identity is disclosed in a decision or electronic media, but in its implementation it is less than optimal. The identity of children in conflict with the law (ABH) must be hidden and kept confidential in print and electronic media.



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