

## APPLICATION OF CRIMINAL SANCTIONS FOR CHILDREN AS PERPETRATORS OF MORAL CRIMES AGAINST CHILDREN

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### ABSTRACT

The court's verdict in the sexual intercourse against children case substituted prison time and fines with vocational education as the primary penalties. The alternative to a fine for a juvenile offender who cannot pay it is either mandatory labor training with a grace period or incarceration. Judgmental decisions involving moral crimes perpetrated against children are based on both legal and non-legal factors. The elements of the articles charged to the juvenile offender must be proven by legitimate evidence in accordance with article 184 of Law Number 8 of 1981 concerning the Criminal Procedure Code and the judge's conviction; this is one aspect of the legal considerations. The presence of a community study report prepared by the Community, the judge's observation during the hearing, and other non-judicial factors Supervisor from the Correctional Center which contains the background, family, social, economic and association of the child defendant in his environment as well as the judge's knowledge and experience in examining cases of moral crimes, especially the crime of sexual intercourse. Community advisors conduct community research only on child defendants and do not conduct community research on child victims, so that the recommendation, according to the judge, sees the best interests of the child defendant but is not necessarily the best thing for child victims. The judge in making his decision, correctly considered and based on the results of the research on the requirements but rarely accommodated the recommendations of the community's research results in his decision. This is because the Judge has an obligation to maintain a sense of justice for child victims and the benefits of sanctions for child defendants so that the verdict can be the best thing for both parties or parties related to the crime.

**Keywords:** Criminal Sanctions, Children, Criminal Punishment of Morality

### INTRODUCTION

Indonesia, especially the people of Medan, North Sumatra, were shocked by the news of the rape experienced by a vocational school student, PJS (15 years old) who was raped by WS (17 years old), at the boarding house on Jalan Jamin Ginting, Kota. Medan, until he died. <sup>1</sup> The news made the public think for a moment whether

boys under the age of 18 (eighteen) years old or in this case according to Indonesia's positive law are children, can do this without paying attention to moral and moral values.

Since children are a nation's future, it is everyone's duty to ensure their healthy development; this includes parents, extended family, neighbors, and the government. This is especially true in Indonesia, a welfare state with a responsibility to protect its citizens' rights. Children, as members of the next generation, are both a source of human capital for national growth and a conduit for the ideas that the nation fought for. Achieving quality human resources in Indonesia those who can guide and uphold the nation's unity in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution requires sustainable development to ensure the well-being of individuals and communities in the face of future threats.

Efficient and effective measures are taken to ensure the safety of children in a way that is reasonable, conscientious, and advantageous. Children should be able to and should be willing to exercise their rights and fulfill their responsibilities, and child protection efforts should not lead to a loss of initiative, inventiveness, and other qualities that make children dependent on others and cause their conduct to spiral out of control. There are two main components to child protection, notably:

1. Child protection inside the realm of public and civil law, which is known as "juridical child protection
2. Child protection outside of the realm of public and civil law, which encompasses areas such as health, education, and social services;

A broader definition of child protection could include initiatives to safeguard children from harm and to help those who have been victims of abuse, exploitation, or neglect recover and thrive in all aspects of their being: physically, psychologically, and socially.

People that work to foster and safeguard children encounter many obstacles in society, which can lead to children exhibiting unusual behaviors. On top of that, there are instances of minors committing crimes without regard to their family's socioeconomic standing. Not to mention the kids who, for various reasons, never get the chance to receive physical, emotional, and social care they need. Inadequate self-statements cause children to act in ways that go against societal ideals and conventions, whether they mean to or not. They put themselves and others in danger by engaging in immoral acts, particularly those involving minors.

There are a number of causes for children to engage in deviant behavior or commit illegal crimes. According to A. Samsudin Meliala and E. Sumaryono, the causes that affect the occurrence of child crime are environmental factors, economic/social factors, psychological factors. Kartini Kartono stated that criminality is generally a failure of the self-control system against instinctive actions and also displays a person's inability to control primitive emotions to be channeled

into useful actions.

Meanwhile, according to Bismar Siregar, child delinquency is caused by modernization, people who are not ready to accept it, abandoned households because both parents support each other to make a living in the household, resulting in wasted children.<sup>2</sup> The detrimental effects of fast development, globalization of communication and information, scientific and technological advancements, and changes in parenting style and lifestyle have resulted in significant societal shifts that influence children's values and conduct.

Furthermore, children who do not receive enough love, care, direction, coaching, supervision, and coaching from their biological parents, guardians, or foster parents are more likely to be swept up by the currents of their community and its unhealthy, debilitating associations.

Considering the situation of children attentively is essential in confronting and overcoming delinquent children's diverse acts and behaviors because children have their own unique traits and properties. Kids can still be influenced by their environment, even though they're getting better at making decisions on their own. Parents and the community at large should take a more active role in mentoring and shaping the conduct of delinquent youth as a means of addressing this issue.

In this study, the author focuses on instances where minors have engaged in sexual actions against other minors. Both the offenders and the victims of sexual assault against children are subject to unique procedural requirements outlined in Law No. 23 of 2002 on Child Protection and Law No. 35 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection.

In this case, officials who have the ability and willingness to handle children are needed. With the specificity of the apparatus that processes the children of the perpetrators of moral crimes against children, they must also provide special treatment to the children of the victims of the moral crimes. If the crime of rape or intercourse is really committed by a child, then how is it according to the law, because a child under 18 years old is not perfect in terms of mature thinking skills.

This requires the specificity of the prosecution or legal process undertaken by the child of the perpetrator of a criminal offense, both from the investigation, prosecution and trial process, even in terms of the implementation of the verdict. One example is the involvement of parents of children who commit crimes at every stage of the judicial process.

Article 81 of Law No. 35 of 2014, which amends Law No. 23 of 2002, regulates the morally reprehensible act of engaging in sexual intercourse with a kid. As stated in this article, the minimum prison term is 5 years, the maximum is 15 years, and the maximum fine is Rp.5,000,000,000,- (five billion rupiah).<sup>3</sup>

Finding the difference between criminal threats and treatment in procedural

law is important for children's psychological and social development. Regarding this matter, the child's best interests are taken into consideration while deciding whether or not to provide an exception from the requirements of Criminal Procedure Law Number 8 of 1981. The punishment for a child's criminal threat, as determined by the Children's Court (as per articles 26–28 of Law No. 3 of 1997), is half of the maximum punishment for an adult's criminal threat; however, the death penalty and life imprisonment are not imposed on children.

The goal of the juvenile criminal justice system's new regulations, as outlined in Law No. 11 of 2012, is to ensure the safety of all youth so that they can look forward to a bright future. On top of that, the idea behind the differentiation is to give kids a leg up when it comes to guiding them to become self-reliant and responsible adults.

In the General Explanation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the specific sanctions against children are determined by their age. Specifically, children under the age of twelve are only subject to action, while those between the ages of twelve and eighteen can be sentenced to both action and criminal punishment. The general legal environment must have a Children's Criminal Court to hear matters involving children because of the unique traits and qualities of children, as well as to ensure the safety of children. A designated authority with expertise in juvenile justice issues must oversee the arrest, detention, and trial of juvenile offenders. Diversion, which is based on the Restorative Justice method, is an alternative to going to court that law enforcement, families, and the community are required to pursue before getting into the legal system.<sup>4</sup>

Children who are brought to trial with cases of decency against children facing high criminal threats will prevent children from obtaining their basic rights, namely getting formal education that they must leave while serving their sentences. There can be no sense of justice until the judge decides on the juvenile defendant in a decency case against the juvenile by taking into account the rights of both the juvenile and the victim.

As stated in the concluding provisions, Law Number 11 of 2012, which pertains to the Juvenile Criminal Justice System, was enacted on July 30, 2012, and will remain in force for two years from the date of promulgation. Law 3 of 1997, which dealt with the Children's Court, is repealed and declared null and void once this law is put into force. Criminal penalties for juvenile offenders are outlined in Article 69 of the Special Provisions for the Juvenile Justice System (SPPA). Both the primary and secondary offenses make up a crime under the SPPA Law. In addition to the principal crimes of warning and criminal offenses with conditions (such as coaching outside of institutions, community services, or supervision), secondary crimes

include guiding in institutions and prisons and the deprivation of profits obtained from criminal acts or fulfillment of customary obligations, and third crimes include job training. Children are exempt from the minimum special penalty of incarceration, and the maximum criminal limit for restricting their freedom is 1/2 of the maximum prison sentence threatened against adults, as regulated in Article 79 of this law.

A judge's ability to look into the future is essential when conducting an examination during a court hearing and, ultimately, when deciding on a criminal punishment for the offender. Since a judge's ability to assess a criminal's mental and social health is crucial to the selection and imposition of appropriate punishment, it follows that judges should have some idea of the likelihood that a defendant convicted of a given crime will undergo a transformation upon release from prison and go on to contribute positively to society.<sup>5</sup>

Paying close attention to the objective and subjective circumstances of the criminal conduct committed, as well as the act and the perpetrator, is required when deciding on the possible severity of the crime that the judge can impose.<sup>6</sup>

As a result, judges should have the ability to weigh both legally binding and non-legal factors when deciding whether to punish a kid for committing a crime or not. Consequently, everyone is crossing their fingers that the judge's decision is fair and reasonable.

It is still necessary to observe the things that have been explained above in practice. Researching the extent to which judges consider the circumstances of juvenile offenders while deciding on the nature and length of the offense would be an intriguing endeavor. Whether the judge's decision on the type and length of punishment for a specific criminal case is influenced by specific considerations or other variables.

It is also important for the judge to consider the necessary criminal aim when reaching a verdict. The judge's criminal sanctions, including the harshness of the sentence, are dependent on the judge's criminal purpose, therefore understanding the aim of this punishment is crucial. It would be unusual for a judge to operate without a theoretical framework, which, in light of the expanding body of information in criminal theory, must inform his decisions. Naturally, the nature of the crime, its specifics, the offender's motivation, the judge's state of mind, the judge's presumption of the crime, and so on all play a role in determining the extent to which this criminal theory is used. Issue Proposal If a judge finds that a child has been the victim of a moral crime, how will he or she decide to punish the child? Regarding the offense of indecency against a child, how does the judge's decision to impose a criminal penalty align? Purpose of the Studies Investigate and analyze the factors that influence the judge's decision to punish children for immoral crimes

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committed against them. Using the findings of the community research report prepared by the correctional center's community supervisor, we may determine if the judge's decision to impose a criminal sentence was reasonable.

### **Theoretical Framework**

"The State of Indonesia is based on law (rechstaat) and not based on mere power (machstaat)" that is, the explanation of the 1945 Constitution states unequivocally that the Republic of Indonesia is a law-based state. Among the components of a legal state (rechstaat) are:<sup>7</sup>

1. Human rights are safeguarded.
2. The state is structured with a division of powers.
3. a legislation must be passed before the state may do anything
4. The matter will be resolved by the administrative court.

In keeping with the aforementioned components of a just society, particularly as they pertain to the safeguarding of individual liberties, the constitution lays forth a fundamental legal principle: everyone is equal before the law. Everyone has the right to fair legal recognition, certainty, and assurance, as well as equal standing before the law, and this concept involves protecting human rights through securing a free and independent judiciary.

In the event that a minor commits a crime in violation of article 81 of Law No. 35 of 2014, which amends Law No. 23 of 2002 regarding Child Protection, two parties are involved in the legal system: the minor as the offender and the minor as the victim, who may be called upon to testify as a witness. Legal safeguards are necessary to ensure that these youngsters are able to exercise their fundamental rights as children.

The reason behind this is that children still have a lot of life ahead of them, and they are a nation's most precious resource because they are its future leaders. Differentiating between juvenile offenders and adults is essential when dealing with juvenile offenders in the criminal justice system. The investigation, imprisonment, prosecution, imposition of court decisions, execution, and implementation of the court decision begin the moment the child is admitted into the criminal justice system.

A society's mechanism for dealing with criminal issues is known as the criminal justice system. Here, "tackling" is making an effort to bring crime rates down to a level that members of the community can accept. Success for this system would consist in the majority of victim complaints being "resolved" by bringing the offender to justice and having them convicted of criminal charges.<sup>8</sup>

When it comes to creating welfare, peace of life, and justice, criminal law serves a similar purpose as other areas of law. According to Van Bemmelen, the

criminal law was the final resort. It is limited to the greatest extent feasible; in other words, the criminal law is used to enforce the acknowledged norms of society when other sections of the law are insufficient.<sup>9</sup>

In its form as *the ultimum remedium*, not all deviant acts in society must be regulated in criminal law. This is because crime is like a double-edged knife which protects the interests regulated in it but on the other hand also violates it in terms of criminal imposition which is a misery.

The imposition of a criminal case on a criminal case, especially in the case of a child, must be based on a purpose, which can be classified into several groups of criminal theories. The theories of criminalization against the child include :

1. Deterrence / *deterrence* theory

"Deterrence" is a translation of the original word. Andi Hamzah argues that the purpose of ensnaring or preventing the defendant and others with criminal tendencies is to make them fearful of or discouraged from committing crimes after witnessing the punishment meted out to the offender. Assumption number one in the theory of deterrence is that people are inherently rational individuals who carefully consider all of their options in order to reap the greatest possible advantage from their actions.

Making people afraid to break the law is another tenet of deterrence theory. The threat of a crime and the imposition of a crime are intended to scare away the prospective criminal or criminal concerned, to correct the criminal, to get rid of the criminal, to ensure law order or public prevention. In contrast to the theory of retribution, this theory questions the consequences of criminalizing criminals or interests community. It is also considered for future prevention.<sup>10</sup>

Several literatures on the effectiveness of criminal punishment underline the existence of four major groups of deterrence theories, namely:

1. *Specific deterrence*, involves the effectiveness of punishment on the behavior of certain individuals in the future. The recidivist level is often used to measure the value of a specific deterrent to a crime.
2. *General deterrence*, questions whether criminalizing the perpetrator of a particular crime or offense deters others from committing a crime or offense. The level of comparison of crimes between a certain time or all jurisdictions is usually used to determine the general deterrence value of criminalization.
3. *Marginal deterrence*, focusing on the relative effectiveness of different types of punishment such as general and specific deterrence. For example, if the recidivism rate of a drunk driver is higher than that of a drunk driver who receives a monetary fine than that of a drunk driver, imprisonment will mean a higher level of marginal deterrence value as a specific deterrent for a drunk driver.

4. Partial deterrence refers to a situation where the threat of criminal sanctions has deterrent value even when the threat of sanctions leads to law-abiding behavior. For example, if a thief takes or pickpockets someone's wallet rather than robbing them with a firearm (because the thief is more afraid of more serious penalties for armed robbery), the thief is a successful example of partial deterrence.<sup>11</sup>

1. Rehabilitation / Rehabilitation Theory

The rehabilitation hypothesis follows as the second framework for understanding juvenile delinquency. It was with the belief that physical punishment had run its course that rehabilitation philosophy came into being. Physical punishment has a disabling effect on offenders, making it very unlikely that they will violate the law again.<sup>12</sup>

One name for rehabilitation theory is the theory of repair, and vice versa. Offenders, according to this view, are just sick individuals who require medical attention. Judges, like doctors who write prescriptions, are obligated to impose punishments based on what is expected to be the most successful means of rehabilitating criminals. Sentencing should be based on the offender's health status rather than the gravity of the crime. Thus, criminalization denotes the act of making the crime specific to an individual.<sup>13</sup>

### **Research Methods**

In this study, the research methods used by the author are as follows:

1. Types and Nature of Research

Empirical legal research, which is a kind of field research that relies on primary data collected from community members through interviews, observations, and document-based reports, is employed to address the issues discussed in this research.

2. Data Types & Data Sources

The information that needs to be gathered for this study can be broadly classified into two categories:

Secondary data is backed up by primary data in this study. Information culled from scholarly articles is known as secondary data. The findings of empirical studies constitute primary data. Secondary information derived from a variety of legal sources, including:

1. Primary Legal Materials are binding legal materials related to the object of research, namely:
    1. the Criminal Code
    2. the Criminal Procedure Law
    3. the Judicial Power Law
    4. the Child Protection Law of 2002
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5. the Law of 2014 Amendments to Law of 2002 of Child Protection;
6. the Juvenile Criminal Justice System Law of 2012;
- 1) Other regulations related to the object of research are international conventions.
 

Primary legal materials consist of binding documents such as constitutional amendments and trademark laws, while secondary legal materials provide explanations and analysis, such as legal literature and journals. Tertiary legal materials provide additional guidance, such as dictionaries and legal reference materials (Mustomi et al., 2024)<sup>14</sup>
- b. Secondary Primary legal documents, such as books, articles, journals, periodicals, and other scholarly works pertaining to the subject of study, are referred to as "legal materials."

## **DISCUSSION**

### **Judge's Considerations in Imposing Criminal Sanctions or Actions for Children in Criminal Cases of Moral Offenses Against Children**

The attainment of communal justice is the very essence of this justice as it pertains to criminal justice. Following in the footsteps of its American forerunners, Indonesia's criminal justice system is a direct adaptation of the American model.<sup>15</sup>

Legal scholars agree on a concept for the criminal justice system that incorporates:<sup>16</sup>

1. as Romli Atmasasmita cites Remington and Ohlin, "the criminal justice system" is a way of looking at how the laws, regulations, administrative practices, and social attitudes and behaviors all work together to administer the criminal justice system.
2. "Criminal justice system" and "Criminal Justice Process" as defined by Hagan are not synonymous. While the "Criminal Justice System" refers to the network of agencies that make decisions regarding a suspect's criminal status, the "Criminal Justice Process" describes the steps taken to reach that conclusion.
3. The criminal justice system, as outlined by Marjono Reksodiputro, is a network of organizations, including police, prosecutors, courts, and correctional facilities, that work together to control crime.
4. "The network of Courts and tribunal which deal with criminal law and it's enforcement" is how the Criminal Justice System should be perceived, according to Muladi. The criminal justice system encompasses the interconnected subsystems that work together to achieve its overarching goal: the transformation of inputs into outputs. These subsystems include the police, the prosecutor's office, the courts, and correctional or correctional institutions.

This insight highlights the need of comprehending the role of various institutions in the criminal justice system and the enforcement of criminal law, each of which performs a unique set of responsibilities while ultimately serving the same

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overarching goal.

A system that seeks to "tackle crime" is the criminal justice system, and it's one way communities try to keep crime rates within reasonable ranges. When the majority of public complaints and reports of crime victims result in the criminal prosecution and sentencing of the offender, we may say that this system has been successful. This system is capable of a great deal, including:

1. Making sure that no one becomes a victim of crime
2. Finding solutions to past misdeeds in a way that satisfies the society and ensures that those responsible face punishment
3. Attempting to deter criminals from committing further crimes.<sup>17</sup>

The functional system of the legal system according to Friedmann is as follows:<sup>18</sup>

1. Social control.

In the broadest sense, this control system is a function of the legal system; All other systems are more or less secondary to or subordinate to them. In other words, the legal system is concerned with controlling behavior. The legal system is like an official traffic police. The legal system commands people what to do and what not to do and the legal system obeys its orders by force.

2. Dispute settlement

According to Richard L Abel, a dispute is a public statement about an *inconsistent claim* against something of value. Concrete things (or people) are often disputed by the parties, something you can touch or hug or hug – a child, a bundle of money, a house. Sometimes there are also, more abstract or vague "things": civil rights, a tarnished reputation, indemnity for one's wounds or suffering, virtue or peace of mind.

The phrase "dispute resolution" is usually for the settlement of small-scale local disputes between individuals or private companies. There is also a larger, more fundamental conflict in society – the conflict between groups or groups. These macro contradictions are called conflicts. The courts emerged in connection with this, namely as special institutions to help end conflicts.

The social engineering or redistributive function As a result, the government uses the law to implement societal reforms that it has planned from on high. In contemporary welfare states, social engineering plays a significant role. The wealthy pay taxes, and the government distributes the funds to those less fortunate, often in the form of low-cost housing, food stamps, health insurance, and other forms of assistance. So the law embodies the planned or "engineered" aspect of social policy – everything is done deliberately according to the people's choice.

The *function of social maintenance* The legal system requires and enforces the structure that makes the machine work more or less as it did in the past. After

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all, the "free market" – the "invisible hand" – requires the law to guarantee fair rules of the game.

The function of the legal system according to Friedmann is in line with the opinion expressed by Steven Vago regarding the legal function itself which has 3 functions, namely as follows:<sup>19</sup>

(1) *Social Control* Law exists as a kind of social control in both simple, conventional, homogeneous cultures and complex, diverse ones. There is a distinction between formal and informal forms of social control. Examples of informal social control mechanisms include being the subject of gossip, experiencing the shame effect, or being socially isolated. Explicit norms of conduct, consequences intended to back up the rules, and regulations made and enforced by officers are all hallmarks of a society's formal social control apparatus. Numerous formal and informal means of social control exist in contemporary society, asserts Roscoe Pound. A formal means of social control, law.

(2) *Dispute Settlement*

Conflicts arise frequently in society. The law offers an alternative to other means of conflict resolution by formally allocating power of rights and obligations to resolve disputes. Many individuals now would rather take their disputes to court than employ informal and non-legal processes like talks, mediation, or enforceable measures.

1. *Social Change*

Some scholars' opinions state that the principle function of a law in modern Society exists to foster social progress. It means aiming for social change activities that are led and supported by the law, and that they are planned and directed accordingly. To implement government-sanctioned social reforms, the rule of law is frequently used. A modern welfare state manifests itself clearly in social transformation. The government distributes a portion of its tax revenue to low-income people in many forms, including housing assistance, food stamps, medical and legal benefits, and cash.

One of the social restraints in society is criminal law, which is one of the many functions of the legal system. Particularly in cases involving minors, the criminal justice system is often brought into play only as a last option.

Law No. 11 of 2012, which is set to take effect, defines the Juvenile Criminal Justice System as "the entire process of resolving child cases that are in conflict with the law from the investigation stage to the guidance stage after the child carries out the crime." This definition replaces the unregulated Juvenile Criminal Justice System from Law No. 3 of 1997, which pertains to the Children's Court.

We are all familiar with the names of the agencies that make up the criminal justice system, including the police, the prosecutor's office, the courts, and the

penitentiary service, as stated by Mardjono Reksodiputro. Administrative autonomy is a hallmark of each of the four agencies. Within the criminal justice system, the Attorney General's Office serves as the highest authority, the several courts operate autonomously under the direction of the Supreme Court, and the Ministry of Law and Human Rights oversees the penitentiary service. Each of these four agencies must work together as one system. In addition, according to Mardjono Reksodiputro, there are three main components to the criminal justice system's procedural design:

1. How to Help With Adjudication (*Ajudication*)
2. The stage of adjudication and
3. *Post adjudication stage*

It is called the Integrated Criminal Justice System in Indonesia. Ensuring a seamless flow from inquiry to prosecution, judge's decision, and execution is one of the aims of the criminal justice system. It is believed that the criminal justice system can operate more efficiently, impartially, and objectively if this integrated criminal system is successful in its primary goal of preventing and/or reducing institutional legal interests.<sup>20</sup>

The Criminal Justice System is comprised of interconnected and cooperative parts, such as the Police, the Prosecutor's Office, the Courts, and (Correctional Institutions).<sup>21</sup>

In reality, the necessity of these four components working in an *integrated* manner to achieve the purpose of the system is easier said than implemented. If the integration in working the system is not carried out, there will be three foreseeable losses:

- (1) Each agency has a hard time judging how well it did in respect to the tasks they were jointly tasked with.
- (2) Challenging tasks in resolving primary issues within each agency (as a component of the criminal justice system)
- (3) The overall efficacy of the criminal justice system is mostly ignored by each agency due to the lack of clarity on their respective roles.

The three losses above will be the main obstacle in the management of the entire system in realizing the tasks to achieve the goals of the system mentioned above.<sup>22</sup> However, a good criminal justice system must be aware of its limitations and convey to the public that their task is indeed only to maintain public order (*public order maintenance*). In the sense of public order here, it is also intended to protect the community against crimes that have actually harmed and disturbed the community.<sup>23</sup>

To protect children, Law No. 23 of 2002 was enacted. According to Law No. 35 of 2014, which amends Law No. 23 of 2002 on Child Protection, special protection is an integral part of child protection initiatives. All children, without exception, are safeguarded by child protection efforts that aim to guarantee the fulfillment of children's rights.

**The judge's decision in imposing a criminal sentence is in accordance with the criminal act of decency against a child.**

Judge's Decision in Criminal Cases of Morality

Law Number 11 of 2012, pertaining to the Juvenile Criminal Justice System, was enacted because Law Number 3 of 1997, pertaining to Children's Courts, is out of date and fails to adequately safeguard juvenile offenders. Therefore, a paradigm change is necessary when dealing with children who are in trouble with the law. This change must take into account the responsibilities and roles of the community, the government, and other state institutions that have a duty to improve children's welfare and offer extra protection to these children.

Also, the Special Children's Development Institution (LPKA) can house children who are involved in the legal system, thanks to a new statute governing the Juvenile Criminal Justice system. Restorative justice and diversion are the cornerstones of this law, with the primary goal of preventing the further stigmatization of juvenile offenders and facilitating their reasonable readjustment to society after their time in the system has ended.

Consequently, everyone's help is absolutely necessary to make this a reality. Restorative justice must be the end goal of the procedure, for the benefit of the victim as well as the kid. By bringing together those responsible for a crime, victims, and members of the community, Restorative Justice seeks to divert attention away from retributive justice and toward solutions that heal broken relationships and restore broken hearts.

Children should not be sentenced to prison for two reasons: first, they will lose their freedom, and second, they will be removed from their normal social milieu. In reality, this will severely hinder the child's development and future prospects.<sup>24</sup>

The social stigmatization of juvenile offenders is another problem they encounter. Some individuals still believe that convicted juveniles will reoffend at some point in their lives. The public's perception of this stigmatization is extremely hard to change. According to Labelling's thesis, which is central to criminology, illegal acts do not matter much on their own but the societal response to them does. The process of social definition involves the other party's response to the subsequent behavior and the individual's perspective of themselves, which in turn

involves social control over the deviation.<sup>25</sup>

That is, the fact that youngsters experience stigmatization may actually play a role in their ability to continue engaging in antisocial behavior as adults. Because of this, it is preferable that alternatives to using criminal punishments in jail be exhausted before resorting to them in cases involving juveniles. On the other hand, its use is temporary.

Remember that the state has a responsibility to safeguard children, thus any measures taken against them because they have obtained an action are the state's fault. In light of the foregoing, it is quite evident that the purpose of imposing penalties on children is to attain legal protection, with a focus on what is best for the child's welfare.

In order to address the issue of juvenile delinquency, the court, as an institution with the power to punish criminals, must play an active role. In addition to trying to punish those responsible, the judge's ruling should serve as a deterrent to would-be offenders and anybody else considering engaging in criminal activity.

In Indonesia, the judiciary's "mission sacree" is clear: not to uphold the law merely because the law requires it, as Oliver Wendell Holmes put it, "The Supreme court is not court of justice, it is a court of law." Rather, it is to do so in the interest of justice, which includes justice for individuals, communities, nations, and states and yes, even justice for God Almighty in order to establish a society free from fear and chaos. This is mirrored in every Indonesian judge's ruling, which starts with a highly religious phrase, specifically: Seeking Fairness Predicted on the Unity of Godhead.<sup>26</sup>

The judge must, of course, know the standards by which he made his decision and be able to assess with certainty if his ruling was accurate. The defendant and his family are the first targets, followed by the victim and their family, and finally the community as a whole, in terms of whether or not the verdict has satisfied their sense of justice.

Adjudicating a matter for a judge is an arduous internal process. In the end, the judge's decision is influenced by a range of emotions. It is extremely difficult to determine the boundaries or measurements that motivate a judge to render a verdict against a defendant when the requirements of normative legislation that must be enforced are received with hatred, rage, frustration, and pity.

On the surface, it may seem like judges are the only ones concerned with punishment. Indeed, if we limit our definition of a crime to what is stated in Article 10 of the Criminal Code, then the judge is the only one concerned with imposing punishment. However, this is not entirely accurate. For instance, when deciding on prison sentences, the judge only decides on the limits; the execution of the crime depends on the Correctional Institution, which can also grant conditional release to

the convict.<sup>27</sup>

In order to examine the crime and determine the proper criminal sanctions for the culprits, the judge conducting the court hearing must possess the quality of foresight. The ability to assess a criminal offender's mental and social health is crucial for judges who are deciding on punishments. It is their job to ensure that, given the nature of the offense, the defendant will undergo a transformation upon release from prison and return to society with a more positive outlook.

Paying close attention to the objective and subjective circumstances of the criminal conduct committed, as well as the act and the perpetrator, is required when deciding on the possible severity of the crime that the judge can impose.<sup>28</sup>

For example, the decisions of the North Jakarta District Court judge on the child defendant who committed the crime of sexual intercourse with a child can be presented, including:

1. Decision Number 11/Pid.Sus-Anak/2019/PN Jkt.Utr dated April 8, 2019 an. Muhamad Adam Pratama Bin Sukman.
2. Decision Number 26/Pid.Sus.Anak/2022/PN Jkt.Utr dated November 3, 2022. Child Perpetrators.

In the decision, the Judge has considered elements other than juridical but also non-juridical, namely can be obtained from the Community Research Report from the Center for Community Research (Bapas), before issuing a verdict in the form of a criminal or action against a child as a perpetrator of a criminal act. So it is hoped that the verdict handed down by the Judge will be appropriate and in accordance with the sense of justice.

The existence of various considerations by judges in imposing criminal sanctions against defendants who commit crimes, according to Oemar Seno Adji, occurs because legal science and doctrine do not provide a firm grip and there is even no agreement on which criminal law theory should be used as the basis for criminal punishment and to determine *the Straftoemeting*.<sup>29</sup>

In making a ruling, the judge must take societal norms into account so that the verdict can be accepted and put into action. Rummelink argues that air is irrelevant to the standards of a lawful society. These standards stem from commonly held beliefs in what is good and true, and so deserving of pursuit, or from a sense of communal appreciation (*singebungen*). The concepts of legal interest and legal materiality are central to legal dogmatics. The legislators' goal in creating a criminal provision is to safeguard these principles from both actual and perceived threats.

When reaching a decision, courts must also consider the penalty's intended function. The judge's criminal theory determines the criminal sanctions, including the harshness of the sanction, therefore understanding the objective of this punishment is crucial. In criminal law, it is peculiar when a judge renders a decision

that does not adhere to the idea of criminal prosecution.

Roeslan Saleh argues that this form of automatism develops when people stop thinking about philosophical and criminal goals. That the criminal penalty is meted out without regard for the potential negative outcomes for any breach of a legal provision.<sup>30</sup>

The specifics of the crime, the offender's motivations, the judge's state of mind, the judge's presumption about the nature of the crime, and other factors all play a role in determining whether this criminal theory is applicable. Another factor that determines how good a judge's decision is is how much weight they give to criminal theory. How well a judge applies existing criminal law theories to a particular criminal offense, or how he or she uses no theory at all when making a decision, is an indication of the decision's quality.

That is to say, the judge's ruling is based on more than just the lawful evidence presented during the trial. There are other factors than the defendant's guilt and the judge's personal feelings that go into criminal punishment. In order for the judge to explain his ruling, there needs to be some theoretical basis.

Furthermore, the rights of the accused and the victim are also connected to the application of criminal theory. Even though a person has done something horrible in this instance, a crime his rights as a citizen are not entirely taken away, says Mardjono Reksodiputro. Also, according to Mardjono, the State of Law's Criminal Justice System has as its primary goal the proper application of justice through "due process of law" that is, defending the freedom of citizens.<sup>31</sup>

The decision-making process is structured around three main components: the head of the choice, consideration, and judgment. They form an unbreakable trio. Out of the three components, one stands out as crucial to the decision making process: the deliberation phase. There are two components to the decision-making process: reviewing the relevant legal facts and applying the law. at get at the facts, you have to look at the evidence in the trial in an empirical way. After the trial, the reporter used his or her theory of truth to draw conclusions about the law based on the facts that were presented. Verification tests between legal facts and different theories, laws, and regulations are part of legal considerations. Legal factors determine the sufficiency of evidence to establish a criminal offense.

A decision is considered null and invalid if it fails to take into account the factors outlined in article 197 paragraph (1) of the Criminal Procedure Code. These factors include, but are not limited to, the failure to take into account the facts and circumstances, as well as the evidentiary tools obtained from the trial examination, which form the basis for determining the defendant's guilt. All court decisions are required to include the reasons and basis for the decision, as well as specific articles of the applicable laws and regulations or unwritten legal sources that were used for

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adjudication, according to Article 25 paragraph (1) of Law Number 4 of 2004 jo. Article 197 paragraph (1) of the Criminal Procedure Code. The relevant justification is a well-organized and methodical set of judicial reasoning. A well organized and well-constructed argument will reveal its thought process in a logical and consistent fashion .

There is a high relationship of dependence between factual considerations and legal considerations. Mistakes in obtaining legal facts affect their legal considerations. In an effort to obtain accurate legal facts during the trial, the judge tries to dig up the facts through the examination of the question and answer stage by applying the dialectical method and examining the evidence submitted in the trial. The dialectical method is applied by judges to obtain formal facts and truths, and has not entered the subject matter of the case. The facts revealed at the trial were recorded in the minutes of the trial. These facts are used to compile considerations of legal facts.

In accordance with the rules laid out in the Criminal Procedure Code, a criminal judgment must include either the statute or regulation that provides the legal groundwork for the verdict, which may include both aggravating and mitigating factors. We will talk about two topics related to this provision, specifically:<sup>32</sup>

1. Regarding the mention of articles and laws and regulations that are the basis for the decision.

Indeed, the provisions covered in the final consideration of the decision which has been a standard model until now, which reads: Paying attention to the articles of laws and regulations number and this and that law. Mention like this, in essence, is considered to have been fulfilled. However, without reducing such validity, there should be a firm mention of the articles of the criminal procedure law regulated in the Criminal Code as well as a clear explanation of the material legal articles regulated in the Criminal Code. For example, the article of the basis of proof used by the judge. If the defendant is ordered to be released or remain in custody, it is called the legal basis of Article 193 and so on, so that those who read the verdict can test the basis in the articles mentioned in the verdict. It is not appropriate for the decision to be solely based on the description of laws and regulations in general, as only found at the end of the deliberations, even though such a method has fulfilled the provisions of the law, formally or "minimumly", but "not sympathetic" among the justice-seeking community. They consider that such a decision, not based on legal articles, even deviates from the provisions of the law.

1. Regarding aggravating circumstances and mitigating punishments. This concerns the consideration of the verdict on *sentencing* or sentencing (*straftoemeting*), in Indonesia terms it is called "criminalization". In developed countries, several grounds for sentencing have been developed. The severity of the sentence is not

solely based on the judge's subjective assessment, but is based on the objective circumstances obtained and collected around the defendant's social life, reviewed from a sociological and psychological perspective. For example, by tracing the cultural background of the defendant's social life, household, and education level. This is obtained from the defendant's curriculum vitae, the foundation where the defendant has been treated, the defendant's close friends, the educational environment, and so on. Also regarding the reasons that drive and motivate the defendant to commit a criminal act, whether it is solely motivated to commit a crime, for example, really motivated to enrich himself or take revenge and so on. Or whether it is due to socio-economic impulses or circumstances that are beyond the will of the defendant's consciousness. Similarly, it is necessary to pay attention to the report of the official where the defendant was detained about his attitude and behavior while in custody. All of these circumstances are also considered as factors determining the penalty.

In the development of law in Indonesia until now, judicial practice in sentencing is still traditional and conventional. Considerations regarding criminalization are still the starting point of the matters and circumstances encountered around the examination of court hearings.

It is still a subjective assessment of the judge. The issue of the severity of the sentence is only expressed in the standard sentence of consideration which reads: because the defendant during the trial examination showed a good and frank attitude and regretted his actions, therefore there are sufficient reasons to mitigate the sentence that will be imposed on the defendant. On the other hand, if the judge wants to impose a severe sentence, the reason for the consideration used as the basis is always expressed in the sentence: because the defendant gives convoluted answers and information, so that it is difficult to conduct the examination, it is appropriate to impose a severe sentence on the defendant. If you look at the conventional basis above, sometimes it is very irrelevant. It is time for the court to abandon the conventional method of punishment, and try to get complete input materials about the background and behavior of the defendant in daily life in the midst of public life. All of these circumstances are examined as far as possible by relating them in a series of facts and circumstances as well as evidence.<sup>33</sup>

In theory, when deciding whether or not a defendant is guilty, the content of the Child Judge's Decision on "Legal Considerations" and the requirements of Article 197 paragraph (1) letter d of the Criminal Procedure Code serve as limiting factors. These considerations are concise summaries of the relevant facts and circumstances, as well as the evidence gathered during the trial. Next, as stated in the official interpretation of Article 197 paragraph (1) letter d of the Criminal Procedure Code, "facts and circumstances here" encompass all evidence presented

during the trial by all parties involved, including the state's prosecution, expert witnesses, defendants, attorneys, and potential witnesses from victims.

Viewed from the aspect of judicial practice, the systematics and content of the Child Judge's decision on "Legal Considerations" contain the following matters:<sup>34</sup>

1. Elaboration of the statements of witnesses, defendants and evidence.  
Judicial practice is dynamic, ever-changing, and characterized by the development and expansion of witness, defendant, and evidence testimony. While this is going on, a closer look reveals that the theoretical requirements of Criminal Procedure Code Article 197 paragraph (1) letter d fail to provide a satisfactory illustration of how the verdict's editorial technicalities should incorporate the statements of witnesses, defendants, and evidence.
2. Juridical considerations of the alleged criminal acts and the judge's response and consideration to the criminal charges and pleidooi from the Public Prosecutor/Legal Advisor.

An important setting in the judge's ruling is the element of "juridical considerations of the alleged crime". Then why is that said? Judgmental consideration boils down to proving that the defendant's acts conform to and satisfy the components of the criminal offense that the prosecutor or public prosecutor has charged. Further, these legal factors will likely play a significant role in shaping the judge's decision.

In a typical judicial proceeding, the judge will typically consider and rule on these "juridical considerations" after the "facts in the trial" have been exhausted, which include the testimony of the witnesses, the child defendant's testimony, and the evidence presented and examined during the trial. In essence, the aspects that "facts in the trial" revolve around include the following: the location and time of the offense, the defendant's method of operation, the background or cause of the crime, the consequences, both direct and indirect, of the defendant's actions, the evidence that the defendant utilized, and so on. Finally, the judge must limit his "position" after he has mastered the theoretical and practical components, doctrinal views, case law, and jurisprudence of the alleged criminal act.

The following is an analysis of a North Jakarta District Court decision about a juvenile offender's conviction for the offense of sexual intercourse, which carries the weight of law in Indonesia:

1. Decision Number 11/Pid.Sus-Anak/2019/PN Jkt.Utr dated April 8, 2019 an. Muhamad Adam Pratama Bin Sukman.

Position Cases :

That he was the perpetrator of Muhamad Adam Pratama Bin Sukman (16 years old) on Friday, March 1, 2019 at around 21.00 WIB or at least at some time in March 2019 at the Ring Reservoir, precisely the Bedeng Rented by Sdri. KARIDAH aka IDA

Beside PT. Himalaya Abadi Jl.Papanggo Rw.05 Kel.Papanggo, Kec.Tanjung Priok, North Jakarta or at least somewhere that is still within the jurisdiction of the North Jakarta District Court, committing violence or threats of violence to force the child to have intercourse with him or with another person, which is done by the child offender by first looking for a lease until 17.00 WIB, and finally the child offender gets the lease on Jl. Papanggo Rw. 05 Kel. Papanggo, Tanjung Priok District, North Jakarta region. Sdri. Apriliyanti Binti Maswandi was invited to engage in physical intercourse in the rented house by the Child Perpetrator.

First, the charges against the juvenile offender are based on their actions, which are regulated and criminally threatened according to Article 76 D of UURI No. 35 of 2014, which amends Law No. 23 of 2002, and Article 81 paragraph (1) of UURI No. 35 of 2014, which amends Law No. 23 of 2002. Second, the charges against the juvenile perpetrator are based on their actions, which are regulated and criminally threatened according to Article 76 e and Article 82 paragraph (1) of Law of the Republic of Indonesia No. 35 of 2014, which amends Law No. 23 of 2002.

Judgment of the Judge:

1. State that MUHAMMAD ADAM PRATAMA bin SUKMAN's child has been proven guilty of "committing violence or threat of violence, forcing a child to have intercourse with or another person" by legal and convincing evidence;
2. A juvenile offender is subject to a 4-year and 8-month prison term, with the possibility of a 1-year work-study at the Handayani Social Rehabilitation Center for Children in Need of Special Protection (BRSAMPK) on Jalan PPA Bambu Apus Cipayung, East Jakarta;
3. The sentence is reduced by the entire amount of time the juvenile has already served in prison.
4. Deciding that the child must remain in custody;
5. Using evidence such as:
  1. 1 (one) pcs of salted egg blue jacket;
  2. 1 (one) pcs black top with floral motifs;
  3. 1 (one) pcs of black trousers;
4. Charging the child to pay a case fee of Rp 5,000 (five thousand rupiah);

Judge's Considerations :

In deciding the verdict, the judge's decision is based on the judge's consideration, both from a juridical and non-juridical perspective. From a juridical point of view, it is as described in the verdict. The child defendant ABP where the court considers the first indictment charged against the defendant, namely violating Article 76 D of UURI No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, whose elements are as follows:

1. Everyone

2. It is forbidden to place, allow, do, order to do, or participate in committing violence against children.

Then the court considers the memorandum of defense (pledoi) of the defendant's legal advisor who basically asks for leniency.

The consideration of the judge's decision from a non-judicial perspective is as follows:

1. Polite child perpetrators are on trial;
2. Child offenders have never been convicted
3. Decision Number 26/Pid.Sus.Anak/2022/PN Jkt.Utr dated November 3, 2022. Child Offenders

Position Cases :

That the Child Perpetrator Child Perpetrator (age 12 years) together with the Child Witness Child Witness I (separate case file), Child Witness Child Witness II (separate case file) and Child Witness Child Witness III (separate case file) on Thursday, September 1, 2022 at around 17.30 WIB or at another time in September 2022, or at any other time in 2022, located in the Park or forest of Rawamalang Semper Timur City, Cilincing, North Jakarta, or somewhere else who perpetrates, encourages, or takes part in violent acts or threats of violent acts with the intent to coerce a child (about 12 years old) into engaging in sexual intercourse with him or another person, and who is thus subject to the jurisdiction of the North Jakarta District Court.

Case in point: Indictment under Criminal Code Article 55 paragraph (1) 1 and UURI Article 81 paragraph (1) of 2016 on the substitution of government regulations for Law 1 of 2016 regarding the Second Amendment to Law 23 of 2002 regarding Child Protection.

### **Conclusion**

1. The primary punishment for sexual intercourse against a minor, as determined by the judge, is typically jail and a fine that can be substituted with work training. The alternative to a fine for a juvenile offender who cannot pay it is either mandatory labor training with a grace period or incarceration. This is in line with the rules laid out in the Child Criminal Justice System Law (No. 11 of 2012) and the Criminal Threat Limit (Article 81 of Law No. 23 of 2002), which state that if a cumulative criminal threat in the form of fines and imprisonment is present in material law, the penalty for fines is substituted with job training.
2. When making a decision on instances involving moral offenses committed against children, the court takes both legal and non-legal factors into account. The elements of the articles charged to the juvenile offender must be proven by legitimate evidence in accordance with article 184 of Law Number 8 of 1981 concerning the Criminal Procedure Code and the judge's conviction; this is one aspect of the legal considerations. Non-legal factors include the following: the judge's personal

observations during the hearing; the presence of a community research report compiled by the Correctional Center's Community Supervisor, which details the juvenile offender's familial, social, economic, and environmental context; and the judge's familiarity with and expertise in handling cases involving moral crimes, particularly those involving sexual intercourse.

1. Suggestion
1. When handling cases involving minors who commit moral offenses against other minors, it is important for law enforcement to take into account the psychological aspects of the child, as well as the victim, to ensure that they are treated with sensitivity and consideration, considering the unique traits and characteristics of children.
2. It's true that engaging in sexual intercourse is a felony that doesn't just break the law in Indonesia; it also disrupts society's religious, social, and moral order. While the author recognizes the importance of protecting the rights of the child victim, she believes that if a juvenile commits a crime as a first offense (rather than a recidivist), the child should face consequences rather than incarceration.

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