

BASIS OF JUDGES AT THE LEVEL AGAINST THE PERSONNEL OF THE CRIMINAL ACTION OF RAPE UNDER THE AGE OF CHILDREN CONTINUOUSLY

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Abstract

There is an appeal filed by the Public Prosecutor against the decision of the Blambangan Umpu District Court Number: 81/Pid.Sus/2021/PN Bbu, Decision regarding the criminal act of rape which was carried out continuously with underage victims. The decision of the Blambangan Umpu District Court was carried out as a continuation of the submission of a letter of cassation from the Way Kanan District Attorney who felt that he did not fulfill the value of justice in passing a decision on the period of detention to investigators . defendant. In this article, what will be discussed is: what are the factors that cause the defendant to commit the crime of rape against a minor and what is the basis for judges' considerations at the appellate level in making decisions on criminal cases against children that are carried out continuously. This research uses a normative and empirical juridical research method, using secondary and primary data, obtained from library research and field studies, and data analysis with qualitative juridical analysis. The results of the study show that the factors that cause the defendant to commit the crime of rape of a minor which is carried out continuously are environmental factors that provide opportunities to commit crimes. Basic considerations of judges at the appellate level in cases of rape of minors which are carried out continuously by taking into account the guidelines for sentencing regarding the degree of guilt of the accused, the impact of the crime and the value of the sentence. assets obtained by the defendant from the crime and the aggravating and mitigating laws and regulations.

Keywords: *Basis of Judges's Consideration, Rape Crime, Minors.*

I. INTRODUCTION

It can be explained that the law is presented to give trust to society (humans) in the different interests that humans have from one human being with another human being whose goal is to achieve prosperity. The presence of law hopes to achieve the goals of humans (legal subjects). Guaranteed to get justice is very far from public expectations. This resulted in the emergence of an apathetic attitude from the community as a result of the difficulty in obtaining justice.

Law enforcement starts from paying attention to the role of law enforcers. The main key in understanding good law enforcement is understanding the principles

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contained therein. Apeldoorn said that legal certainty has two aspects, namely the ability to determine the law in concrete matters and legal security. This can be interpreted that the parties seeking justice want to know what is the law in a certain matter before starting a case and protection for the parties in the arbitrariness of the judge.³

Criminal law enforcement, from a material and formal perspective, the parties involved need to pay attention to legal certainty (*rechtszekerheit*), expediency (*zweckmassigkeit*), and justice (*gerechtigheit*). The regulations contained in the Criminal Code are general principles because they are regulated in a law. As a general rule, matters regulated in the Criminal Code are not submitted to certain people or parties, but to those who are in the formulation of general rules.⁴

Parties who seek and fight for many things to get justice are commonly called *justiciablen*. The persistence of the struggle of a number of *justiciablen*, assisted by concerned community groups, has often succeeded in correcting legal errors and irregularities. In the Dutch dictionary, *Justitiablen* is defined as a person who is subject to the law. Sometimes it is also known as *rechtzoekend*, which means people seeking justice. Derived from *recht* (law, right) and *zoken* which means to seek. People who search for something are called *zoekers*.⁵

At the prosecutor's office and the judiciary, if a decision from a judge is deemed not in accordance with the existing provisions or exceeds an authority, the Public Prosecutor will fight back in the form of legal remedies in accordance with the existing provisions. Legal remedy is an effort given by law to a person or legal entity in certain cases to fight against a judge's decision. In theory and practice, it is known that there are 2 (two) kinds of legal remedies, namely, ordinary legal remedies and extraordinary legal remedies. The difference between the two is that, in principle, ordinary legal remedies suspend execution (unless a decision is immediately granted), whereas extraordinary legal remedies do not suspend execution.

It can be explained that the usual legal remedies are in the form of appeals and cassation. An appeal is made on the right of the accused or the Public Prosecutor to be re-examined at a higher court because they are not satisfied with the decision of the District Court Article 67 in conjunction with Article 233 of the Criminal Code, and cassation is the right of the accused or the Public Prosecutor to request cancellation of the decision of the District Court or High Court because it does not authorized or exceeded the limits of authority, misapplied or violated the applicable law, the judicial process was not carried out in accordance with the law. Meanwhile, extraordinary legal remedies are in the form of cassation legal remedies for the sake

³ A.Madjedi Hasan.2009. *Kontrak Minyak dan Gas Bumi Berazas Keadilan dan Kepastian Hukum* , Fikahati Aneska, Jakarta, p.20.

⁴ Purnadi Purbacaraka dan Soejono Soekanto. 1993. *Perihal Kaedah Hukum*, Citra Aditya, Bandung, p.31.

⁵ Marjanne Termorshuizen. 1999. *Kamus Hukum Belanda Indonesia* , Penerbit Djambatan, Jakarta, p.189.

of the law proposed by the Attorney General and legal remedies for judicial review are the convicts.⁶

In court decisions that are deemed not or do not fulfill the sense of justice, in Law Number 8 of 1981 Concerning Criminal Procedure Code (hereinafter abbreviated as the Criminal Code), given the opportunity to file objections through legal action against, appeal, cassation or review. This principle is in line with the principle adhered to in criminal procedural law, namely equality before the law.

In addition, it is also determined that every person who is suspected, detained, prosecuted and or presented before a court hearing, must be considered innocent until a court decision is declared guilty and obtains permanent legal force, which is known as the principle of presumption of innocence. This principle is regulated in Article 8 of Law Number 4 of 2004 concerning Judicial Power, as well as the general elucidation of number 3 letter c of the Criminal Code.

This means that as long as a decision has not yet obtained permanent legal force (*inkracht van gewijsde*), the judicial process will continue up to the highest level of court, namely the Supreme Court. And the defendant also cannot be considered guilty and given a guarantee by law to obtain his rights.

Indonesia as a constitutional state based on Pancasila and the 1945 Constitution, provides opportunity and freedom for justice seekers based on law and through proper legal means to try to express dissatisfaction or dissatisfaction with a judge's decision by asking for a re-examination. This effort in law is referred to as Legal Remedies.

The legal remedy that will be discussed in this article is the Appellate Legal Remedies. An appeal is one of the usual legal remedies filed by one or both parties in a case against a District Court decision. The parties submit an appeal if they are not satisfied with the District Court's decision and submit it to the High Court through the District Court where the decision was made. In accordance with the principle by submitting an appeal, the implementation of the contents of the District Court decision cannot be implemented, because the decision does not yet have permanent legal force so that it cannot be executed.

Regarding Appeal Level Legal Remedies, there is an Appeal Legal Remedies filed by the Public Prosecutor against the decision of the Blambangan Umpu District Court Decision Number: 81/Pid.Sus/2021/PN Bbu, the decision is a decision regarding the crime of rape which was carried out continuously committed by an elderly man aged 77 years with the victim being underage. The decision of the Blambangan Umpu District Court was carried out as a continuation by submitting an appeal statement from the Public Prosecutor's Office of the Way Kanan District Court against the decision which was deemed to lack justice in imposing a decision on the period of detention for the defendant.

⁶ Frence M. Wantua. 2011. *Idee Des Recht Kepastian Hukum, Keadilan, Dan Kemanfaatan*, Pustaka Pelajar, Yogyakarta, p.10.

II. DISCUSSION

Factors Causing the Defendant to Commit the Crime of Rape of a Underage Child which was Continued

A person committing a crime is basically inseparable from the causative factors that led to the crime. These factors can come from within the perpetrator (internal) or from outside the perpetrator (external), both of which have an inseparable relationship and influence each other, as well as the factors that cause the perpetrator to commit the crime of rape of minors which is carried out continuously.

Factors causing the perpetrator to commit the crime of rape of a minor which is carried out continuously because of the interests and close relationship between the perpetrator and the victim, the perpetrator can read the situation that the victim has an intelligence level that tends to be below normal, and there is no resistance from the victim as well as other factors. perpetrators commit crimes because of a lack of religious sense or low morals that exist so that they can be influenced by things that are not good for themselves or for others, namely for victims.

The factors that cause the perpetrator to commit the crime of rape of a minor which is carried out continuously are basically factors that influence a person to commit a crime as stated by D. Soedjono, one of which is environmental factors that provide opportunities to commit crimes. The form of the criminal act of rape is a criminal act of a sexual nature that occurs when a human being forces another human being to have sexual intercourse in the form of penetration of the vagina with a vital organ, by force or by means of violence.

Based on the description above, it can be analyzed that the background to the ongoing criminal act of rape against minors is inseparable from the factors that encourage the perpetrators to commit acts of rape, namely environmental factors that provide opportunities to commit crimes. Thus the factors that cause the perpetrator to commit the crime of rape against minors are carried out continuously in accordance with the theory of factors that cause a person to commit a crime according to D. Soedjono.

Basis for Considerations of Judges at Appellate Level in Cases of Underage Rape Crimes that are Continued

Based on the Decision of the Blambangan Umpu District Court Case Number 81/Pid.Sus/2021/PN. Bbu and seeing the decision handed down by the Panel of Judges, the Public Prosecutor filed a Memorandum of Appeal against the Court's Decision by stating: First, in the Decision of the Blambangan Umpu District Court, the panel of judges did not pay attention to the facts revealed at the trial so that the panel of judges was wrong in applying the article that was proven at trial while according to the provisions of Article 185 paragraph (1) of the Criminal Procedure Code it explains that witnesses as evidence are what witnesses state at court

hearings. Second, that the panel of judges did not follow the principle of *Lex Specialis Derogot Legi Generalis*. Third, that the assembly of judges is inconsistent in the application of Article 64 paragraph (1) of the Criminal Code.

With the matters mentioned above by the Public Prosecutor described in the memorandum of appeal, the Public Prosecutor submitted a request to the Panel of Judges of the Tanjung Karang High Court and the memorandum of appeal was accepted by the Tanjung Karang High Court.

As for the Tanjung Karang High Court Decision regarding the Appellate Level legal effort against the rape case of a minor which was carried out continuously which had previously been sentenced to a criminal sentence by the Blambangan Umpu District Court Case Number 81/Pid.Sus/2021/PN. Bbu, the Panel of Judges is adjudicating to accept the appeal request from the Defendant and the Public Prosecutor and amend the Decision of the Blambangan Umpu District Court dated August 31, 2021 Number 81/Pid.Sus/2021/PN. Bbu merely regarding the sentence handed down to the defendant so that the full injunction reads: first, Declare the Defendant H. Rusdi Bin Alm. H. Musofa is legally and convincingly guilty of committing the crime of rape which was carried out continuously. Second, namely, Convicting the prisoner for 6 (six) years. thirdly, Sentence the defendant to pay restitution to the witness the victim Mega Okanami binti Saripudin in the amount of Rp. 8,575,000.00 (eight million five hundred seventy five thousand rupiah). fourthly, Determining the period of arrest and detention that the defendant has served is deducted in full from the sentence imposed, fifthly, Imposing the defendant to remain in detention and finally imposing case costs at both court levels to the defendant, which at the appeal level is Rp. 2000.00 (two thousand rupiah).

Based on the description of the judge's decision described above, it is understood that the Tanjung Karang High Court received an appeal memory from the Public Prosecutor and decided the case in the form of amending the decision of the Blambangan Umpu District Court Number 81/Pid.Sus/PN.Bbu simply regarding the imposition of a criminal sentence imposed on the Defendant, which was originally in the form of a prison term of 4.9 four) years to 6 (six) years of detention.

A judge is deemed to know the law so that he may not refuse to examine and adjudicate an event submitted to him. According to Andi Hamzah, an independent and impartial judge has become a universal provision, this is a feature of a rule of law state. Judges in deciding cases according to Lilik Mulyadi must consider several things, namely: the demands of the public prosecutor, the evidence presented in court, things that strengthen and mitigate the defendant, other instructions and evidence.

in the statement of appeal explained that the Panel of Judges did not adhere to the principle of *Lex Specialis Derogot Legi Generalis*, namely, if an action is included in a general criminal provision, but is also included in a special criminal provision, then only that special one shall be applied. What is meant by the *Lex Specialis Legi*

Generalis principle referred to in this case is, in 2018 when the first time the defendant had intercourse with the victim-witness, the victim-witness was under the age of 18, to be precise, 16 years old as proven by the Family Card which was proven by the victim's family, therefore the witness-victim will be protected by the Child Protection Law which is regulated in the Law of the Republic of Indonesia Number 17 of 2016 concerning Child Protection.

Furthermore, explaining the reason for the statement of appeal submitted by the Public Prosecutor that the panel of judges was inconsistent in determining Article 64 paragraph (1) of the Criminal Code, namely, in considering the decision the panel of judges acknowledged the fact that the intercourse occurred 4 times or the last intercourse was on Friday 'at April 24, 2020, the facts of the trial were derived from the testimony of the witnesses, the facts and indications were obtained that intercourse had occurred since 2018 and the change in the defendant's treatment of the victim-witness changed starting in 2018 since the defendant's wife died.

Based on these facts, according to the Public Prosecutor, if the panel of judges decides on Article 64 paragraph (1) of the Criminal Procedure Code for the actions of the defendant, the rules that should be used are the Child Protection Act. With the filing of an appeal filed by the Public Prosecutor of the Blambangan Umpu District Attorney, the Tanjung Karang High Court received the appeal and examined and decided on the case which was decided by the Blambangan Umpu District Court.

Tanjung Karang High Court Judge, the judge in deciding the appeal case imposed an additional sentence of 2 (two) years with a total detention of 6 (six) years even though it was far from the demands of the Public Prosecutor, namely 10 (ten) years, the Judge took into account the condition of the defendant who was very aged 77 (seventy seven) years. Judges decide cases from the aspect of justice and conscience, what is meant by fairness is fairness for perpetrators and fairness for victims. At the age of 77 years which is very, very old which should have been used for rest and worship, on the basis of his guilt the defendant had to carry out a sentence in the form of imprisonment for 6 (six) years.

Judges in deciding cases have a Penal Guideline which has the principle of ensuring all judges use the same or consistent stages in determining the severity of a sentence (Consistency of Approach). The nature of the guidelines for sentencing of judges is that they are flexible and do not eliminate the independence of judges (Judiciary Independence), judges are given the freedom (Independence) to consider the severity of the sentence to be imposed (with the ranges of sentencing). In the sentencing guidelines the judge considers, among other things, namely: The degree of guilt of the accused; The impact resulting from a criminal act; The value of property obtained by the defendant from the crime; Aggravating and mitigating circumstances.

then it can be analyzed that the basis of the judge's consideration of the perpetrators of the criminal act of rape of minors which is carried out continuously is that it is felt that there is aggravation and considers mitigating circumstances which in the end the Panel of Judges of the Tanjung Karang High Court decides the defendant with imprisonment for 6 (six) years.

furthermore regarding the Restitution provisions handed down in the Tanjung Karang High Court Decision Number 133/Pid/2021/PT. TJK. The judge is obliged to inform the victim about his rights regarding restitution and compensation as regulated in Article 98 of the Criminal Procedure Code and other provisions. Implementation of restitution for child victims of crime to apply for restitution rights to the court which is the responsibility of the perpetrator of the crime. Restitution of children as victims of crime is considered to be able to reduce the burden on the victim, especially the family and as a form of responsibility for the perpetrators of crime to replace losses, both material and immaterial that have caused children to suffer.

Restitution is a compensation payment that is charged to the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or their heirs (Article 1 number 1 PP Number 43 of 2017). Children as victims of criminal acts who have the right to obtain restitution are children who are in conflict with the law, children who are exploited economically and/or sexually, children who are victims of pornography, children who are victims of kidnapping, selling and/or trading, children who are victims of physical and/or psychological violence and child victims of sexual crimes.

The form of demands for restitution is in the form of compensation for loss of wealth, for suffering as a result of a criminal act and/or psychological. Parties who can apply for restitution, including parents or guardians of children who are victims of criminal acts; heirs of children who are victims of criminal acts; a person authorized by a parent, guardian or heir of a child victim of a crime with a special letter; or authorized institution.

Then it can be analyzed that the basis for the judge's consideration at the appellate level in the case of the ongoing criminal act of rape of a minor, which was decided at the Blambangan Umpu District Court, is by looking at Article 241 paragraph (1) of the Criminal Procedure Code which explains: after all the things as referred to in the aforementioned provisions are considered and carried out, the high court decides, strengthens or changes or in the case of canceling the District Court's decision, the high court makes its own decision.

Guided by the provisions of Article 241 paragraph (1) of the Criminal Procedure Code, the forms of decisions that the High Court can impose on cases it examines at the appellate level: Strengthen the District Court's decision; Changing or amending the District Court's verdict; Cancel the decision of the District Court. In this case, the Tanjung Karang High Court at the appellate level changed or corrected

the decision of the Blambangan Umpu District Court to be precise in the sentence of imprisonment by the defendant which was terminated by the Panel of Judges of the Blambangan Umpu District Court.

III. CONCLUSION

Factors Causing the Defendant to continuously rape a minor, namely factors that influence a person to commit a crime as stated by D. Soedjono, namely environmental factors that provide opportunities to commit a crime. The form of crime in this case is rape, which is a sexual crime that occurs when a person forces another human being to have sexual intercourse in the form of penetration of the vagina with the penis, by force or by means of violence. And the basis for consideration of judges at the Appellate Level in ongoing rape cases of minors, the judge is guided by sentencing guidelines that consider the level of guilt of the accused, and the level of crime committed, the value obtained by the defendant from the crime, as well as aggravating and mitigating circumstances. Regarding the imposition of a restitution decision, namely the payment of compensation that is charged to the perpetrator based on a court decision that has obtained permanent legal force for material and/or immaterial losses in the form of claims for compensation for loss of property, for suffering as a result of criminal and/or psychological acts. The judge decides the case at the appellate level based on Article 241 paragraph (1) of the Criminal Procedure Code which states that the High Court for cases examined at the appellate level include: Reinforcing the District Court's decision, Amending or amending the District Court's decision, and canceling the District Court's decision. In this case, the Tanjung Karang High Court changed or corrected the decision of the Blambangan Umpu District Court.

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