
Ratio Decidendi Judge's Decision In Deciding The Crime Of Persecution

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ABSTRACT

This study aims to find out the ratio of judge's decision in deciding the crime of child abuse based on verdict number 17 / Pid.Sus-Anak / 2019 / PN. Gto. The method used in this study is normative legal research. The approach used is to use the legal approach or statute approach (statute approach) and use the case approach. The results showed that the ratio decidendi the judge's ruling in deciding the crime of persecution based on the verdict number 17 / Pid.Sus-Anak / 2019 / PN. Gto. It is appropriate because this is considering the age of the defendant who is under 18 (eighteen) years old. In Article 1 number 1 of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 on Child Protection it is stated that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. In other words, the accused is still classified as a child according to the criminal law and is considered still unable to account for the actions committed. Therefore, there needs to be a change in the Child Protection Act related to children as "PERPETRATORS" because the 2014 Law on the amendment of Law No. 23 of 2004 only protects victims' children.

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1. Introduction

A. Background

Advances in urbanization technology, and industrialization are causing social problems in the depravity of modern society today. This condition is not easy for society to adapt to this which causes a lot of confusion, anxiety, anxiety, both external and internal conflicts in their hidden nature that is disturbing and detrimental because people perform behaviors that deviate from common norms by doing on their own accord for personal intelligence.

Outside culture affects the behavior of members of society itself, especially children, the environment, especially in social environments that encourage children to do prohibited acts. and has a very large role in the formation of children's behavior to do prohibited acts.¹ So that children need to get guaranteed protection from all forms of bullying, both in real life and in virtual life. Especially with the rapid development of technology, which allows people to connect and know the limits of privacy.² The child is an integral part of the survival of man and the survival of the nation and state. Indonesia's constitution has a strategic role that expressly states that the state guarantees the right of every child to survival, growth, and development and protection from violence and discrimination³ So that this becomes a constitutional right for all citizens of Indonesia.⁴ Because also human rights are part of the implementation of the judiciary within the framework of independent judicial power.⁵ The right to life must be protected by the state, especially the state of law.⁶ Indonesia is one of the countries that put forward the constitution in every aspect of national and state life.⁷ The existence of human rights (HUMAN RIGHTS) will have no meaning if it is not followed up with the law that governs the relationship of rights, meaning that the law formalizes human rights into a set of rules to maintain and protect so as not to become clashes in the life of society and state.⁸

¹ Thesis Niken Candra Lupita, *Criminological Analysis of Child Murders*, Lampung, 2017

² Nur, R. (2020). *Reconstruction of Sanctions Action in the Juvenile Criminal Justice System* (Doctoral dissertation, Hasanuddin University),

³ Nur, R. (2017). *The Anti-Child Protection Agency (LPKA) in Gorontalo City*. *Journal of The Light of Justice*, 5(2), 60-71.

⁴ Nggilu, N., & Wantu, F. M. (2020). *Treading the Constitutional Path to Zaken Cabinet: Ikhtiar Realizing a Constitutional Quality Government*. *Journal of The Law of the Ocean of Justice*, 15(1), 128

⁵ Nabih Amer. (2020). *Analysis of dissolution of community organizations in the perspective of the state of law*. *Journal of Legality*. 13 (1), 12

⁶ Lisnawaty Badu. (2012). *Euthanasia and human rights*. *Journal of Legality*. 5 (1), 1

⁷ Fakhris Lutfianto Hapsoro. (July, 2020). *Interpretation of the Constitution in testing constitutionality to realize the living constitution*. *Journal of Law Review*. 2 (2), 145

⁸ Tijow, Lusiana. *Human Rights Protection is for the Right to Live of Children in The Womb Outside the Legitimate Pbrkawinan*. *Journal of Legality* 3 (2), 80

In addition to guaranteed protection during the investigation and investigation process, Law No. 35 of 2014 as a change to Law No. 23 of 2002 on Child Protection (PA Law) has also provided legal guarantees in the form of a series of special protections for children who are victims of criminal acts, namely: rehabilitation efforts (recovery) both in institutions and outside institutions, efforts to protect from the news of identity through mass media and to avoid liberalization, providing safety guarantees for victim-witnesses and expert witnesses, both physical, mental, and social, and, providing accessibility to obtain information about the development of cases that have made them victims of persecution. The enforcement of law and law enforcement against criminals is a strategic step to realize national goals in terms of implementing applicable laws and regulations.⁹

Of the many criminal cases that occur, the crime of abuse committed by children is rife in the community that is done in various ways. This crime of persecution is a crime that gets enough attention among the community and needs special handling because this crime of persecution is committed by children who should get attention from all elements of society. The process of resolving a criminal act committed by children is regulated in a special law, namely Law No. 11 of 2012 regulates how the juvenile justice process, which came into force effective from June 30, 2014. Part of the function of the constitution is how human rights are protected and this is guaranteed in the law. More important is how to keep children from getting entangled and involved in a crime that occurs so that they must do the embankment. Citing the opinion of Dian Ekawaty Ismail that there are several types of containment, namely preventive countermeasures, curative countermeasures, and repressive efforts (crackdown), carried out at the time of the crime.¹⁰

In line with the progress and so rapid science and technology today.¹¹ Especially in the current era, technological advances are increasingly sophisticated that greatly support criminals who commit crimes more easily get tools or sharp objects to be used to commit persecution, as the results of data obtained by the author in Gorontalo city police that the crime of child abuse occurred in the last two years. For 2019 there have been 2 cases recorded and in 2020 yesterday reported 2 cases of logging committed by minors.¹² The consideration of the judge in handing down the verdict is based on juridical and nonjuridical considerations, based on consensus deliberation but if it is not achieved

⁹Ahmad Rustan Syamsuddin.(July, 2020) Proof of Abuse of Authority in Criminal Cases of Corruption in Procurement of Goods and Services. *Journal of Law Review*. 2 (2), 163

¹⁰ Dian Ekawaty Ismail, Mohamad Taufiq Zulfikar Sarson. (2021). *Criminolog Analysis of Women's as Perpetrators of Domestic Violence Crimes*. 3 Special Issues April, 70

¹¹ Lakoro, A., Badu, L. W., Achir N. (2020). *Weak Police in Handling Online Lottery Gambling Crimes*, *Journal of Legality*, Vol 13, No. 01, 32

¹² Interview with Godri Kulangke (Member of Unit 4 Satreskrim) Gorontalo City Police. Tuesday, 19/January/2021

because one of the judges differs in assessing the results of the evidence in a court hearing or often called dissenting opinion then the verdict will be based on the most votes.

The expression of proof does not necessarily clearly define that the process of proving the original criminal is unnecessary or in other words the position of the original criminal law contained in the preceding articles does not require an element of proof.¹³ But in the case of children, because the child has a specificity that has been regulated in Law No. 11 of 2012, the judge is the sole judge. Against the provision of sanctions against children who commit criminal acts are given special treatment, with the provisions of the above explains how the ratio decidendi legal consideration of the judge's verdict in criminal proceedings given by the judge by the child who committed the criminal act must be different from the adult.

B. Problem Formula

How the ratio decides the judge's decision in deciding the crime of child abuse based on the verdict number 17 / Pid.Sus-Anak / 2019 / PN. Gto

C. Research Methods

The type of research used in this study is a type of normative legal research. The approach used is to use the legal approach or statute approach (statute approach) and use the case approach. This is because the author uses the constitution or legislation as a spear to perform analysis.¹⁴

2. DISCUSSION

RATIO DECIDENDI JUDGE'S DECISION IN DECIDING THE CRIME OF PERSECUTION BASED ON DECISION NO. 17 / PID. SUS-ANAK/2019/PN. GTO

Ratio decidendi or consideration of the judge is the argument/reason of the judge used by the judge as a legal consideration that becomes the basis before deciding the case. Ratio decidendi in handing down the verdict. The judgment of the judge is the consideration made by the judge who tried based on the evidence that is supported by a belief based on conscience and wisdom, to decide the criminal case. The judge's consideration is proof of elements of a criminal offense whether the defendant's actions have fulfilled and

¹³ Fadel Ilato, dkk. (2021). *Criminal Action Without Proven in Money Laundering in Indonesia*. Jurnal Law Review, 3 Special Issue, 184

¹⁴ Johnny Ibrahim, *Normative Legal Theory and Methods*, (Malang: Boymedia Publishing, 2009), 30

following the criminal acts charged by the public prosecutor.¹⁵

Ratio decidendi or judge's consideration of cases of criminal abuse committed by children in court decision No. 17 / Pid.Sus-Anak / 2019 / PN. Gto based on the results of an interview with a Gorontalo District Court judge by Mr. Dr. Prayitno Imam Santosa. SH.MH said that the ruling itself is aimed at anyone who participates in a criminal case because it is to create the purpose of the law itself. Juridically the application of sanctions imposed by judges is not a problem as long as it does not exceed the minimum and maximum limits of criminal sanctions threatened in the article concerned, but the problem is what is the basis or reason for the judge's consideration in handing down the verdict objectively acceptable and fulfills the sense of justice for the community. Quoting as said by Fence M. Wantu in his Journal that the nature of justice is a matter of judgment from one person to others, which is generally seen from those who receive treatment only.¹⁶ The government through the law has given the starting point of the judiciary, which is done for the sake of justice based on the Supreme Divinity.¹⁷ protect basic rights or dignity and human dignity, especially for seekers of justice.¹⁸ If referring to the opinion of Nonet and Selznick as quoted by Fenty U. Tensulawa et al that ¹⁹ "The law must truly prosper society in the greater interest, not just for the benefit of those in power."

Against cases of abuse committed by children in court decision No. 17 / Pid.Sus-Anak / 2019 / PN. Gto the basis of the judge's consideration is that the prosecutor's indictment filed by the public prosecutor is one of the important tools used by the judge in reviewing and considering handing down the verdict. In the implementation of the verdict, the judge is authorized to give a verdict / criminal conviction if the deeds of the perpetrators of criminal acts are proven legitimately and convincingly to commit criminal acts. To make a decision the judge must have juridical considerations and nonjuridical considerations. However, the more cases of crimes, one of which is persecution, all parties have a role to eradicate it such as prosecutors, police, and justice.²⁰

Court decision No. 17/Pid.Sus-Anak/2019/PN. Gto based on the indictment of the public prosecutor with the charge of child primary is charged with violating Article 354

¹⁵ Lilik Mulyadi, *The Face of the Judge's Ruling in Indonesia's Criminal Procedure Law*, (PT Citra), 2010), 33

¹⁶Fence M. Wantu. (June, 2013). *The Constraints of Judges in Creating Legal Certainty, Justice, and Expediency in Civil Justice*. *Journal of the Pulpit of Law*. 25 (2), 206

¹⁷ Fenty Puluhulawa, Lusiana M, Tujow, Sutrisno. (2020). *Application of The Principle of Justice, Legal Certainty and Expediency in the Judge's Ruling*. *Journal of Gorontalo Law Riview*. 3, (2) Oktober, 184

¹⁸ Dian Ekawaty Ismail. (2009). *Efforts to Protect the Rights of Suspects / Defendants Through a Pretrial Mechanism in the City of Gorontalo*." *Journal of the Pulpit of Law*. 21 (1) Februari, 85

¹⁹ Puluhulawa, F.U, J. Puluhulawa, M.G. Katili. (2020) *Legal Weak Protection of Personal Data in the 4.0 Industrial Revolution Era*. *Jambura Law Review*. 2 (2). Gorontalo State University. 182

²⁰AdamiChazawi. *Crimes against the body and life*. (Jakarta, King Grafindo Persada, 2010), 56

paragraph (1) of the Criminal Code subsidiary child is charged with violating article 351 paragraph (2) of the Criminal Code more subsidiary violates article 351 paragraph (1) of the Criminal Code. or consideration of the judge to make a verdict on this case has fulfilled the element of persecution has been fulfilled and criminally imposed a criminal against Child XXXXXXXXXXXXXXXX with a prison sentence for 10 (ten) months in LPKA (Children's Special Development Institution); Establishing the period of detention that has been served by the Child is deducted entirely from the criminal imposed; Establishing that the Child remains in custody at the Special Children's Development Institution (LPKA) as an institution or place where the Child is serving his or her criminal term; Stating evidence in the form of: - A knife made of silver iron with handles made of wood depicting a dragon with a blade length of 28 cm and a blade width of 3.5 cm; Seized to be destroyed; 8. Stipulate that the Child is burdened with paying the cost of the case amounting to Rp5,000,- (five thousand rupiah).

The purpose of the judge is to give criminal sanctions to the convict so that the child does not repeat his actions. As it is well known that the purpose of the prosecution is not as a means of revenge that views the criminal as a last resort. Based on the description above, the author sees the sanctions imposed by the judge as a step to provide lessons to the child to improve it in the special child development institution (LPKA) so that the child does not repeat his actions. This is a form of policy that has been given to law enforcement, namely judges to hand down a verdict.²¹ This can happen if the village government realizes the inherited conditions are internalized into the development program (endogenous development).²² This pressure is slightly more causing a significant reaction to the existence of society, so the government is careful in solving a problem that has to do with society.²³

Against the judge's ruling, the criminal act indicted is a very important thing to be used as an aspect of juridical considerations. The prosecutor / public prosecutor in his indictment saw whether the defendant's actions had fulfilled and followed the criminal act, this is characterized by juridical consideration as a tool to see the elements in a criminal act of proof. Juridical considerations are very influential on the implementation of the Amar / dictum of the judge's decision. In judicial practice, the judge's decision before juridical consideration is proven and considered then the judge will first withdraw the facts in the trial that arise and is a commutative conclusion of the testimony of the

²¹ Sandy Dayoba Alexander dan Widowaty. (2020). Factors Causing Disparity in The Judge's Ruling Against Children Perpetrators of Theft crimes with Enactment, Indonesia Journal of Criminal Law And Criminology, 1 (2),76

²² Zamroni, S. (2016). Villages Build Without Leaving The Fringe Group. Institute for Research and Empowerment (IRE), 2, 6

²³Fitriyadi, Ahmad Adi. (2020). Differentiation of Refugees and Asylum Seekers in International Refugee Law and Its Relationship to the Principle of Non-Refoulement. JALREV 2 (2), 127

witnesses, the testimony of the accused and the evidence submitted and examined at the trial.

The conditions formal are in the form of elements of criminal acts in the verdict number 17 / Pid.Sus-Anak / 2019 / PN. Gto based on legitimate evidence and based on justice that does not conflict with Pancasila and the law that governs and becomes the basis of all regulations of judge consideration in handing down verdicts should reflect a sense of justice. After the facts in the trial are disclosed, the judge's verdict is then considered against the elements of the criminal activities that have been claimed by the Public Prosecutor. The Public Prosecutor must prove the defendant's actions have fulfilled the elements of the article indicted. The public prosecutor charged the defendant with a single charge. So, the public prosecutor must be confident in the indictment to ensnare the perpetrator for his actions.²⁴

Consideration is very important in sanctioning defendants what else defendants who are still immature, a judge must decide a verdict with consideration derived from the existing evidence tools then strengthened with the judge's conviction to produce a fair verdict. The author agrees with the Judge's consideration that the facts of the trial as well as the conformity among the testimony of witnesses will be as well as mitigating matters and incriminating matters will affect the Judge's decision. In this case, the defendant Xxxxxxxx has indeed been found guilty following the article indicated by the Public Prosecutor. However, based on the facts of the defendant's trial, the child was polite in the Children's Court classified as a relative age who was young and had time to improve himself, the Child regretted his actions and promised not to repeat it following the actions of the defendant based on the defendant's testimony that the abuse was due to a vengeful motive that affected the defendant's behavior.

In this paper, the author argues that the Judge's consideration of the criminal action imposed on the accused is appropriate because this is given the age of the defendant who is under 18 (eighteen) years old. In Article 1 number 1 of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 on Child Protection it is stated that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. In other words, the accused is still classified as a child according to the criminal law and is considered still unable to account for the actions committed. Regarding the judge's decision in handing down the verdict based on the results of interviews with Gorontalo district court judges, mentioned that "The sentence of the judge has used Law No. 11 of 2012 related to the juvenile criminal justice system in article 71.

It begins with the understanding of the term that states that humans are wolves for other

²⁴ Skripsi, Beta Risky Aistin, Juridical Analysis of Criminal Acts of Mistreatment of Children Against Children (Case Study Verdict No:48/Pid.B/2014/Pn.Mks, Makassar, 2017, 55

humans or humans are other human predators or in the language of the law. (Homo lupus), the meaning of Homo lupus is that humans are always selfish and do not want to see others, so it is no longer impossible often if humans commit violations, whether intentional violations or unintentional violations committed, which result in such acts harming the general public and often also violate the legal norms that apply in the general public, This is known as a crime or crime.²⁵ So in modern times is an era where humans are required to develop themselves. ²⁶ If you look at the case above that there is no settlement of cases outside the court or often known as the process of resolving cases with a Restorative Justice approach with a diversion system as stipulated in articles 5 and 6 of Undnng-Law No. 11 of 2012 concerning the Criminal Justice System of Children.²⁷

Taking into account the child's application and the prosecutor's criminal charges, the judge considers aggravating and mitigating matters before sentencing, in particular:

- Aggravating circumstances:
 1. The child's actions are of public concern.
 2. The boy is a recidivist and is currently serving a sentence at LPKA Gorontalo.
- Mitigating circumstances:
 1. Anak-anak berperilaku sopan di pengadilan
 2. Children are relatively young and find time to develop
 3. The child regrets his actions and promises not to repeat them.

Based on the above considerations, then regarding the length of the criminal that will be imposed on the child, the Judge argued to impose the criminal as Amar below while still providing learning for the child so that in the future the child does not do any more actions that can be punished to improve himself and distance himself from actions that violate the norms of the law to become a better person. Therefore, the government must firmly establish the laws and regulations related to this matter in the future, especially related to special arrangements for children who commit criminal acts.²⁸ Because the sanctions given to children do not have to be equated with adult perpetrators, moreover, those sanctions have a sense of humanity or degrading. Melissa Towadi cited melissa towadi's opinion that "equal rights are achieved over the inhuman and degrading prohibition of punishment, and freedom of religion." Of course, this is very important to be applied in the ongoing legal process where sanctions given to perpetrators must have

²⁵ Novendri M. Nggilu dan Ahmad (2020). The Pulse of the Fifth Amendment of the 1945 Constitution through the Involvement of the Constitutional Court as a Principle the Guardian of the Constitution. *Journal of the Constitution*, 16(4), 786

²⁶Bakung, Dolot Alhasni. (2020) Determination of Legal Protection of Rights Holders Neighboring Right. *Jurnal Law Review*. 2 (1), 67

²⁷Hasuri, (Juni, 2018). Restorative Justice for Children Perpetrators of Criminal Acts of Murder in Islamic Criminal Prefects, *Journal of Legal Sciences*. 2 (1), 55

²⁸ Muhammad Rosikhu. (2021). Setting Death Penalty For Perpetrators of Corruption In Times of Natural Disasters. 14 (1), 45

a sense of fairness and not discriminate.²⁹

Based on the results of the above interview, it can be said that before the judge decides the case, the judge first considers the circumstances of the case based on the facts at the trial, then after being considered proven legitimately and convincingly has committed a criminal act, as stipulated in the indictment more subsidiary. The verdict was also following the prosecutor's demands, namely, the defendant was sentenced to 10 months in LPKA (Children's Special Development Institute). The Judge's consideration of the criminal action imposed on the accused is appropriate because this is considering the age of the defendant who is under 18 (eighteen) years old. In Article 1 number 1 of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 on Child Protection it is stated that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. In other words, the accused is still classified as a child according to the criminal law and is considered still unable to account for the actions committed.

Therefore, the child must still be supervised, so that any depravity does not involve a child in the environment of each work.³⁰ Looking definition of a child, it can be ascertained that the child is one of the assets of the nation and state, where the child is the successor that should be taken care of and taught good things. Therefore, when children get bad treatment should be protected by their rights due to various regulations that have been made by the government.

3. COVER

A. Conclusion

Ratio decidendi judge's decision in deciding the crime of persecution based on verdict number 17 / Pid.Sus-Anak / 2019 / PN. Gto. This is appropriate because this is considering the age of the defendant who is under 18 (eighteen) years old. In Article 1 number 1 of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 on Child Protection it is stated that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. In other words, the accused is still classified as a child according to the criminal law and is considered still unable to account for the actions committed.

B. Suggestion

There needs to be a change in the Child Protection Act related to children as

²⁹ Mellisa Towadi, dkk. (2021). *An Indication of China's Policy towards Uighurs and its Implications by International Law Aspects*. *Jurnal Law Review*. 3 (1), 55

³⁰Iriyanto Tiranda. (July, 2019). *Ideal Concept of Handling Cases of Wild Levies Corruption Based on Judicial Principles*. *Jurnal Law Review*. 1 (2), 132

"PERPETRATORS" because in law 2014 the amendment of Law No. 23 of 2004 only protects victims' children

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