

Research Article

Juridical Analysis of Criminal Sanctions in Handling Cases of Sexual Abuse Crimes Committed by Teachers: A Study of Court Decision Number 1649/Pid.Sus/2020/PN.Mks

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Abstract: This research aims to analyze the application of material criminal law against perpetrators of sexual abuse crimes against children and examine the judge's considerations in sentencing in cases of sexual abuse against children committed by teachers. The study focuses on Court Decision Number 1649/Pid.Sus/2020/PN.Mks, where a Quran teacher was convicted of committing sexual abuse against several of his students. This normative legal research employs statutory and case approaches, analyzing primary legal materials including the Criminal Code (KUHP), Law Number 35 of 2014 concerning Child Protection, and the aforementioned court decision. The findings indicate that the application of material criminal law in this case has been in accordance with Article 82 paragraph (1), jo Article 76E of the Child Protection Law, where all elements of the crime were proven fulfilled. However, the judge's consideration in sentencing raises critical concerns regarding the application of aggravating factors. Under Article 82 paragraph (4) of the Child Protection Law, when sexual abuse is committed by educators, the punishment should be increased by one-third. The court sentenced the defendant to 6 years and 6 months imprisonment and a fine of Rp. 60,000,000, whereas according to the applicable law with aggravating factors, the sentence should have been 8 years and 8 months imprisonment. The study also identifies obstacles in handling such cases, including children's difficulty in revealing traumatic events, victims' fear and shame, limited witnesses, threats from perpetrators, and inadequate resources. The research recommends consistent application of sentence enhancement for perpetrators who are educators, improved inter-agency cooperation in handling child victims, enhanced school security measures, and comprehensive legal protection for child victims throughout the judicial process.

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1. Introduction

Children represent the future generation and inheritors of a nation's aspirations, making their protection and welfare a paramount state responsibility. The commitment to ensuring proper treatment that attends to children's development and their role as future leaders constitutes one of the fundamental obligations that must be upheld by the government. Children who are not yet mentally and physically mature require their needs to be fulfilled, their opinions to be respected, and to be provided with proper and conducive education for their personal and psychological growth and development, so that they can grow and develop into the future generation expected by the nation. The welfare of citizens, including the protection of children's human rights, is guaranteed by the Unitary State of the Republic of Indonesia. In accordance with Law Number 35 of 2014, a person is considered a child if they have not reached the age of 18 (eighteen) years, including children still in the womb, as stated in Article 1, number 1.

Children play an important role in shaping the future of the nation, both nationally and globally. As inheritors of the nation's values, they are entitled to protection from violence, discrimination, and guarantees of their civil rights and freedoms. As stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, the Indonesian state has the objective of protecting the entire Indonesian nation and all Indonesian bloodshed, promoting general welfare, educating the nation's life, and participating in implementing world order based on independence, eternal peace, and social justice. In accordance with Law Number 35 of 2014, which is an amendment to Law Number 23 of 2002 concerning Child Protection, it is crucial to protect children from all forms of treatment that violate human rights. Recognizing the strategic role, characteristics, and special nature possessed by children as the young generation carrying forward the ideals of the nation's struggle, comprehensive protection becomes imperative (Nashriana, 2011).

Despite the existence of numerous regulations enacted by law, violations continue to occur with alarming frequency. It is crucial for all parties, including the government, society, and families, to prioritize child protection. Ensuring that children receive adequate protection from violence and crime is essential because such acts can have adverse impacts on their welfare and safety. The understanding of violence against children is closely related to the word "abuse," which is commonly translated as violence, maltreatment, torture, or mistreatment. This word is defined as improper behavior intended to cause physical, psychological, or financial harm to an individual or group. Violence against children (child abuse) is a term commonly used to refer to violence against children, encompassing physical, psychological, and sexual dimensions (Gosita, 1996).

Recently, there have been reports of a Quran teacher in Makassar City who allegedly committed inappropriate acts against three of his female students. These actions clearly violate several articles in Law of the Republic of Indonesia Number 17 of 2016 concerning Child Protection. Specifically, these actions contradict Article 82 Paragraphs (1), (2), and (4), as well as Article 76E. This incident raises considerable concern in society, especially among parents who have placed their trust in teachers in Makassar. This case demonstrates that educators, who are expected to provide motivation and guidance, can actually be involved in dangerous actions that negatively impact their students' lives. The students in this case became victims due to the teacher's lack of self-control. Implementing firm action against

perpetrators is crucial, considering the detrimental consequences inflicted on victims' daily lives and the potential legal impacts for such teachers. This research aims to analyze the application of material criminal law against perpetrators of sexual abuse crimes against children and examine the judge's considerations in sentencing in Court Decision Number 1649/Pid.Sus/2020/PN.Mks.

2. Literature Review

Legal Protection Theory

Fitzgerald states, as quoted by Satjipto Raharjo, that legal protection theory originates from natural law theory. Plato, Aristotle (who was Plato's student), and Zeno (who was the founder of the Stoic school) were the pioneers of this school of thought. The natural law school argues that God is the source of universal and eternal law, and that there is no difference between law and morals. Followers of this school believe that law and morals are representations and internal and external rules of human life that are manifested through them. Fitzgerald explains Salmond's legal protection theory that law aims to unite and coordinate various interests of society because, in the traffic of interests, the protection of certain interests can only be achieved by limiting other interests. The interest of law is to protect human rights and interests, so law has the highest authority to determine which human interests must be regulated and protected (Rahardjo, 2003).

Legal protection must consider stages, where legal protection originates from legal provisions and all legal regulations made by society, which are essentially societal agreements to regulate behavioral relationships between members of society and between individuals and the government, which is considered to represent the interests of society. With the existence of law, interests that are usually contradictory can be combined and regulated. Therefore, to reduce conflicts of interest, the law must be able to integrate them. Satjipto Rahardjo states that legal protection is an effort to protect someone's interests by giving them human rights to act in the context of those interests. Setiono states that legal protection is an action or effort to protect society from arbitrary actions by authorities that are not in accordance with legal rules to realize order and tranquility, to enable humans to act in the context of their interests. According to R. La Porta in the *Journal of Financial Economics*, there are two types of legal protection provided by a state: prevention (prohibited) and punishment (sanction). The most effective legal protection is the existence of law enforcement institutions such as courts, prosecutors, police, and other non-litigation dispute resolution institutions (Porta et al., 2000).

Legal Certainty Theory

Legal certainty is one of the objectives of law; it can be said that legal certainty is part of efforts to realize justice. Legal certainty consists of law enforcement against actions, regardless of who commits them. Everyone can predict the consequences they will experience if they take certain legal actions through legal certainty. Legal certainty is also needed to realize the principle of equality before the law without discrimination. The word certainty is closely related to the concept of the principle of truth. That is, in the context of legal certainty, the word "certainty" is considered as something that can be strictly syllogized in a legally formal manner. Legal certainty ensures that a person can behave in accordance

with the provisions that apply in law and vice versa. Without legal certainty, an individual cannot have a standard provision to behave in a certain way (Mahfud, 2012).

According to Gustav Radbruch, certainty and justice are constitutive elements that must exist in law, while expediency or utility is a regulative element. Without the elements of certainty and justice, something cannot be called law. Radbruch's theory places certainty as the main priority among three basic values: justice, utility, and legal certainty. This prioritization is based on the argument that if there is a conflict between these legal objectives, then certainty should take precedence because certainty aims to create order in society. Gustav Radbruch's pure legal theory of legal certainty confirms that the law should be free of interest elements. Such a law is authoritative and can be applied and obeyed by the community. Law functions as a general guideline for individual and societal behavior. For this reason, the law must be certain. This means that legal rules must be clear and consistent, enabling a degree of predictability in social relations (Suteki, 2015).

Legal System Theory

The Greek word "systema" is the origin of the term "system," which means a complete entity consisting of several interconnected components. A system is a structure consisting of various abstract, concrete, and conceptual components. A system can also mean a plan, method, tool, or procedure used to achieve certain goals. First, a system is seen as an entity or form consisting of a structure made up of various parts. Second, a system also refers to a system that functions as a plan, method, or procedure to complete tasks. According to William A. Shrode and Dan Voich, a system is a collection of interconnected parts working together in a complex environment to achieve common goals. Carl J. Friedrich states that a system consists of several interconnected parts that have internal relationships with each other and with the system as a whole. Because all parts of the system are interdependent, damage to one will have a direct impact on the entire system (L. M. Friedman, 1977).

The legal system can be described as a mosaic, where small parts are cut and then reconnected to create a complete appearance. Each component depends on its relationship with the other, not solely. Lawrence Friedman divides the legal system into three components: legal structure, legal substance, and legal culture. The structure of the legal system includes the form and organizational system of law enforcement agencies, including how to regulate and manage the human resources within these organizations. Legal substance consists of norms, rules, patterns of real human behavior within the system, outputs in the form of regulations issued, and new rules developed while the law is in effect. Legal culture is public opinion that influences law, namely, social attitudes and behaviors towards the law. With these three components, a legal system can achieve its goals in maintaining social order and resolving conflicts in society. The effectiveness of law enforcement in cases of child sexual abuse depends on the synergy between these three components of the legal system (Krismen, 2022).

The Crime of Sexual Abuse Against Children

Sexual abuse (pencabulan) is regulated in the Criminal Code (KUHP) under crimes against decency. The term comes from the word "cabul," which means all acts that violate decency or disgraceful acts, all related to sexual or genital matters. The crime of sexual abuse,

according to R. Soesilo, can be defined as all forms of acts that violate decency or disgraceful acts that are all related to sexual matters. Article 289 of the Criminal Code states that anyone who, by violence or threat of violence, forces someone to commit or allow obscene acts to be committed shall be punished for the offense of violating decency with a maximum imprisonment of nine years. The elements of the crime of sexual abuse consist of objective and subjective elements. Objective elements include acts of violence or threats of violence to force, obscene acts, and someone. Subjective elements include the element of intent inherent in the perpetrator (Prodjodikoro, 2002).

In the context of children as victims, Law Number 35 of 2014 concerning Child Protection provides more specific regulations. Article 76E stipulates that every person is prohibited from committing violence or threats of violence, forcing, committing trickery, committing a series of lies, or persuading a child to commit or allow obscene acts to be committed. Article 82 paragraph (1) states that anyone who violates the provisions as referred to in Article 76E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of not more than Rp. 5,000,000,000 (five billion rupiah). Importantly, Article 82 paragraph (4) provides for sentence enhancement: if the criminal act as referred to in paragraph (1) is committed by parents, guardians, caregivers, educators, or educational staff, the criminal penalty shall be increased by one-third of the criminal penalty as referred to in paragraph (1). This provision recognizes that educators hold a position of trust and moral responsibility, and abuse of this position warrants enhanced punishment (Teguh Harrys Pratama, 2018).

3. Research Methods

This research employs a normative legal research method, examining and analyzing primary and secondary legal materials by understanding law as a set of regulations or positive norms within the legislative system. In normative legal research, library materials constitute the basic source known as secondary data sources. This study uses a statutory approach (statute approach) and a case approach (case approach). The statutory approach was conducted by examining various legal regulations governing child protection, criminal sanctions, and procedures for handling criminal cases. The case approach was used to analyze Court Decision Number 1649/Pid.Sus/2020/PN.Mks in depth (Marzuki, 2022).

Primary legal materials include the 1945 Constitution of the Republic of Indonesia, the Criminal Code (KUHP), Law Number 4 of 1979 concerning Child Welfare, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 35 of 2014 concerning Amendment to Law Number 23 of 2002 concerning Child Protection, Law Number 17 of 2016 concerning Child Protection, and Court Decision Number 1649/Pid.Sus/2020/PN.Mks. Secondary legal materials include books, theses, dissertations, journals, and documents discussing the crime of child sexual abuse and child protection. Tertiary legal materials include legal dictionaries, encyclopedias, and other reference materials. Analysis of legal materials was conducted qualitatively using deductive logical reasoning to answer the research problems, describing, interpreting, and examining collected legal materials in depth and systematically.

4. Results and Discussion

Application of Material Criminal Law Against Perpetrators of Sexual Abuse Against Children

Criminal sanctions constitute one of the instruments used to strengthen legal norms. Criminal sanctions represent the last resort (*ultimum remedium*) when other legal sanctions are deemed incapable of strengthening norms. According to E.Y. Kanter and S.R. Sianturi, punishing someone who has committed a criminal act is one way to achieve the objectives of criminal law. They state that there is a foundation for justifying the existence of the authority's right to impose punishment, which can be seen from several starting points: first, the starting point on the principle of divinity, where according to the doctrine of God's sovereignty as contained in the Holy Scriptures, the ruler is a servant of God, protecting the good and punishing criminals with the imposition of punishment; second, the starting point on the philosophical principle, where the basis of punishment is based on the social contract between the people and the state, where citizens surrender part of their freedom or fundamental rights in exchange for protection of their interests from the state; and third, the starting point on the principle of legal protection, where the basis of punishment is based on the utility and interest of punishment for the achievement of the goal of communal life, namely legal protection (Sriwidodo, 2020).

In Court Decision Number 1649/Pid.Sus/2020/PN.Mks, the defendant Anwar Alias Dg. Mappa, a Quran teacher, was charged with committing sexual abuse against several of his female students. The case began when multiple parents reported that their children had been subjected to inappropriate touching and shown pornographic videos by their Quran teacher. The incidents occurred over several days, causing trauma to several children. The public prosecutor charged the defendant with a single charge under Article 82 paragraph (1) of Law Number 17 of 2016 concerning Child Protection, jo Article 76E of Law Number 35 of 2014 concerning Child Protection, which states: "Whoever intentionally commits trickery, a series of lies, or persuades a child to commit or allow obscene acts to be committed." Based on this charge and the evidence presented at trial, the defendant was proven legally and convincingly guilty of intentionally committing obscene acts.

The analysis of the case reveals that all elements of the crime were fulfilled. The first element, "every person," refers to the defendant Anwar Alias Dg. Mappa, whose identity matched who was deemed capable of being held accountable for his actions by responding to the panel of judges' questions alertly and clearly. The second element, "intentionally committing violence or threats of violence, forcing, committing trickery, a series of lies, or persuading a child," was proven through the defendant's actions of giving money to victims, amounting to Rp. 5,000 and Rp. 10,000 and threatening victims by saying, "Don't ask anyone, don't ask your mother, I'll report you to the police," causing victims to comply with the defendant's wishes. The third element, "to commit or allow obscene acts to be committed," was proven by the fact that through the defendant's trickery and lies, the defendant easily persuaded the victims to do what the defendant wanted, ultimately causing the victims to allow obscene acts to be committed against them. The case went through complex stages in the criminal justice system, including reporting and investigation, indictment, trial proceedings, verdict, and potential appeals (Djamil, 2015).

The handling of child sexual abuse cases faces significant obstacles that impact the effectiveness of law enforcement. One of the challenges that emerges when dealing with children who have experienced violence is their inability to recount their experiences, which can complicate the process of gathering statements and conducting medical examinations (*visum*). Due to intimidation tactics used by perpetrators, victims may be reluctant to report incidents. The number of witnesses required in many cases is limited, as most cases involve only two people. Efforts to protect child victims include providing a safe environment, counseling, maintaining confidentiality, rights advocacy, health services, information, assistance during examinations, fulfillment of rights according to the Child Protection Law, prevention of intimidation, family and community support, and collaboration with child protection agencies. Factors inhibiting case handling include children's difficulty revealing events, victims' fear and shame, lack of witnesses, threats from perpetrators, non-compliance with legal procedures, limited resources and expertise, lack of public awareness and outreach, and limited facilities and infrastructure (Marlina, 2009).

Judge's Considerations in Sentencing for Sexual Abuse Crimes Committed by Teachers

Based on the case position described above, the decision in the case has been in accordance with the category of sexual abuse against children as it has been explained in Child Protection Law Number 35 of 2014, jo Child Protection Law Number 23 of 2002, based on Article 82 paragraph (1) jo Article 76E. Article 76E of the 2014 Child Protection Law states: "Every person is prohibited from committing violence or threats of violence, forcing, committing trickery, committing a series of lies, or persuading a child to commit or allow obscene acts to be committed." Article 82 paragraph (1) of the 2014 Child Protection Law states: "Every person who violates the provisions as referred to in Article 76E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of not more than Rp. 5,000,000,000 (five billion rupiah)." The public prosecutor demanded that the defendant be sentenced to 10 (ten) years imprisonment and a fine of Rp. 60,000,000 (sixty million rupiah) subsidiary 6 (six) months imprisonment (Wiyono, 2016).

In the process of imposing punishment or the punishment process, the role of the judge is very important. The judge concretizes criminal sanctions contained in a regulation by punishing certain people in certain cases. The considerations of judges in making decisions include first establishing the facts or acts committed by the defendant, then determining the appropriate law for those facts, so that through interpretation it can be determined whether the defendant's own actions can be punished. In addition to these matters, in imposing punishment, factors of societal development should also be considered by judges, because judges in imposing punishment consider everything that can aggravate or mitigate the punishment. According to Djoko Prakoso, matters that must be considered in sentencing include: the character of the perpetrator, the motive and purpose of committing the crime, how the crime was committed, the inner attitude of the criminal perpetrator, life history and socio-economic background, the attitude and actions of the perpetrator after committing the crime, the effect of punishment on the perpetrator's future, and society's view of the crime committed by the perpetrator (Prakoso, 2016).

A critical analysis of the judge's decision in Case Number 1649/Pid.Sus/2020/PN.Mks reveals a significant concern regarding the application of aggravating factors. The court sentenced the defendant to 6 (six) years and 6 (six) months imprisonment and a fine of Rp. 60,000,000 (sixty million rupiah), with the defendant choosing to undergo substitute imprisonment of 6 (six) months rather than paying the fine. The researcher contends that the judge insufficiently considered the fact that the perpetrator was an educator (*guru mengaji*/Quran teacher). There is a moral responsibility held by an educator in carrying out their duties. Educators should be good examples both inside and outside the classroom. For criminal acts committed by perpetrators who are educators, they should receive an additional one-third increase from the sentence received in accordance with applicable regulations, namely Article 82 paragraph (4) of the Child Protection Law. According to this provision, the sentence should have been 8 (eight) years and 8 (eight) months imprisonment. This inconsistency in applying the aggravating factor undermines the deterrent effect intended by the legislature and fails to adequately recognize the breach of trust inherent in crimes committed by educators against their students (Sinaga, 2017).

The imposition of fines also raises effectiveness concerns. The defendant was sentenced to a fine of Rp. 60,000,000 (sixty million rupiah), which is not effective or can be said to not achieve the expected goal of providing compensation to victims, as the defendant preferred to undergo substitute imprisonment of 6 (six) months rather than paying the fine. This outcome fails to provide any tangible benefit to the victims who suffered as a result of the defendant's actions. The criminal justice system should prioritize victim recovery and compensation alongside perpetrator punishment. The case also highlights the need for consistent application of legal provisions regarding sentence enhancement for perpetrators in positions of authority over children. Judges should be more attentive to the specific circumstances that warrant aggravated punishment, particularly when perpetrators abuse positions of trust. Furthermore, the case demonstrates the importance of comprehensive victim protection measures throughout the judicial process, including psychological support, confidentiality protections, and assistance during legal proceedings (Wahyudi, 2011).

5. Conclusion

The application of material criminal law in Case Number 1649/Pid.Sus/2020/PN.Mks has been in accordance with the provisions of Article 82 paragraph (1) jo Article 76E of the Child Protection Law, where all elements of the crime of sexual abuse against children were proven fulfilled. The criminal justice process went through complex stages, including reporting and investigation, indictment, trial proceedings, and verdict. However, the imposition of imprisonment accompanied by a fine, where the defendant was sentenced to a fine of Rp. 60,000,000 was not effective, as the defendant chose to undergo substitute imprisonment of 6 (six) months rather than paying the fine, failing to provide compensation to the victims. Obstacles in handling such cases include children's difficulty in revealing traumatic events, victims' fear and shame, limited witnesses, perpetrator intimidation tactics, and the limited number of witnesses, as most cases involve only two people.

The judge's consideration in deciding the imposition of punishment should pay attention to all existing elements, including developments in society. It is important to

examine existing facts so that justice arises. In the criminal decision of Makassar District Court Number 1649/Pid.Sus/2020/PN.Mks, the researcher considers that the judge insufficiently considered the fact that the perpetrator was an educator. There is a moral responsibility held by an educator in carrying out their duties. Educators should be good examples both inside and outside the classroom. For criminal acts committed by perpetrators who are educators, they should receive an additional one-third increase from the sentence received in accordance with Article 82 paragraph (4) of the Child Protection Law, namely 8 years and 8 months imprisonment. Recommendations include judges consistently applying sentence enhancement for perpetrators who are educators as stipulated in Article 82 paragraph (4); government issuing derivative regulations or specific guidelines on child protection in educational environments; law enforcement prioritizing the best interests of the child with psychological assistance, legal advocacy, and protection from intimidation; educational institutions and communities conducting ongoing socialization about child protection, reporting mechanisms, and healthy sexuality education; and future researchers comparing more court decisions related to sexual abuse by educators to determine the extent of judges' consistency in applying sentence enhancement and protection for child victims.

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