

## **The Basis for the Judge's Consideration of the Power of Testimony of Minors in Proving the Crime of Rape (Sibolga District Court Decision Study No.39/Pid.Sus/2016/Pn Sbg.)**

**Desi Putri Br Barus**

Email: [desibarus937@yahoo.com](mailto:desibarus937@yahoo.com)

Universitas Sumatera Utara

### **ABSTRACT**

*Children are the future and the nation's next generation who have limitations in understanding and protecting themselves from various influences of the existing system. Sexual violence against children often occurs, so it impacts the child's physical and psychological aspects, which can be carried over to the child's maturity and interfere with the child's development. The description of a child as a victim can use in proving a crime. The method used in this study is normative juridical research. The nature of the research used is descriptive analysis, and data analysis carries out qualitatively using library data collection techniques. The results of this study found that the position of a child as a witness in a criminal case has legally recognized in the Criminal Procedure Code. However, the statement of a child witness cannot be accounted for in criminal law by the provisions of Article 160, paragraph (3) of the Criminal Procedure Code, Article 185, paragraph (7) of the Criminal Procedure Code, and Article 184 Criminal Procedure Code. The strength of the child's testimony can be said not to have reliable evidentiary power to determine whether the defendant has committed a crime but rather to strengthen the judge's conviction. In the judge's consideration of sentencing decisions, in general, the information given by the child is used by the judge as a guide and reinforcement of other legal evidence based on adjustments and links with evidence and facts that occurred in court, which use as a reinforcement for the judge's conviction and as a consideration in imposing a criminal sentence. In giving sentencing decisions in the decision file No.39./Pid.Sus/2016/PN Sbg the statement of the child as a victim witness adds to the confidence of the Panel of Judges.*

**Keywords :** Child, Rape, Evidence, Testimony.

### **INTRODUCTION**

Preparing the next generation of the children's nation is a major asset. Children's growth and development from an early age is the responsibility of the family, community and state. However, in the process of child growth and development, many are influenced by various factors, both biological, psychic, social, economic and cultural, which cause the non-fulfillment of children's rights. As a creature of God Almighty, children have rights in accordance with the glory of their dignity and dignity protected by laws and regulations. Children need to get the widest possible opportunity to grow and develop optimally.<sup>1</sup>

However, along with the times, the Indonesian nation is faced with the crime of commercial sexual exploitation of children which has become a global phenomenon and is a crime that has a bad impact on almost all parts of the world, especially on children. Violence is common against children, which can be destructive, dangerous and frightening. Children who are victims of violence suffer losses, not only material, but also immaterial such as emotional

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<sup>1</sup> Marlina, M. *Tindak Pidana Eksploitasi Seksual Komersial Anak Di Indonesia*. Jurnal Mercatoriaa, Vol. 8 No. 2, 2015, hlm.92.

and psychological shocks, which can affect the future life of the child. Forms of child violence can be acts of violence both physically, psychically and sexually.<sup>2</sup>

Article 1 Number (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, a child is a person who is not yet 18 (eighteen) years old, including a child who is still in the womb". Children are the future and the next generation of the nation who have limitations in understanding and protecting themselves from the various influences of the existing system. Children are an inseparable fundamental part of human survival and the survival of a nation and state. Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia reads that: "Children have a strategic role and the state guarantees the right of every child to survival, growth, and development as well as to protection from violence and discrimination. Therefore, the best interests of the child should be lived as the best interests for the survival of mankind".

Cases of violence against children that are rampant in Indonesia such as, Physical abuse (physical violence), Emotional Abuse (emotional violence) and Sexual abuse (sexual violence). One of the sex practices that is considered deviant is a form of sexual violence. This means that the practice of sexual relations is carried out by violent means, contrary to religious teachings and values and violates applicable laws. Violence is shown to prove that the perpetrator has power, both physical and nonphysical. That power can be used as a tool to carry out his evil efforts. Abdul Wahid and Muhammad Irfan viewed sexual violence as a term that refers to deviative sexual behavior or deviant sexual relations.<sup>3</sup>

Placing children as victims of crimes in the discussion of legal protection of children can be determined in the provisions of the Criminal Code which regulates several types of crimes that can be experienced by children, namely:

1. The issue of copulation is regulated in Article 287 of the Criminal Code, Article 288 of the Criminal Code and Article 291 of the Criminal Code.
2. Obscene acts are regulated in Article 289 of the Criminal Code, Article 292 of the Criminal Code, Article 293 of the Criminal Code, Article 294 of the Criminal Code, Article 295 of the Criminal Code, and Article 298 of the Criminal Code.

The problem of sexual violence is a form of crime that harasses and tarnishes the dignity of humanity, and should be categorized as a type of extra ordinary crime, therefore its handling must be widespread as well. Efforts to stop violence are important, as violence has inflicted various injuries on victims. Prolonged trauma experienced by the victim, feelings of shame, fear, resulting in the victim sometimes finding it difficult to re-express the violence he has experienced.<sup>4</sup>

According to the big dictionary Indonesian sexual violence is a person who has a sexual appetite for children. Child sexual abuse or often called child sexual abuse is a form of torture

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<sup>2</sup> Maidin Gultom, *Perlindungan Hukum terhadap Anak dan Perempuan*, Bandung: Refika Aditama, 2013, hlm.2.

<sup>3</sup> Abdul Wahid dan Muhammad Irfan, *Perlindungan Terhadap Korban Kekerasan Seksual*, Bandung: Refika Aditama, 2011, hlm. 28.

<sup>4</sup> Atikah Rahmi, *Urgensi Perlindungan Bagi Korban Kekerasan Seksual dalam Sistem Peradilan Pidana*, <https://jurnal.hukumonline.com/a/5cb49f2e01fb73001038d1c9/urgensi-perlindungan-bagi-korbankekerasan-seksual-dalam-sistem-peradilan-pidana-terpadu-berkeadilan-gender.>, Diakses pada tanggal 17 Mei 2022

carried out by adults or older people that is carried out on children for sexual stimulation. Article 289 of the Penal Code states that whoever by force or threat of violence forces a person to commit or allow to commit an obscene act is punished for tampering with decency with a penalty of imprisonment for a period of nine years. The evidentiary process in the case of the criminal act of rape of a minor greatly affects the psychological state of the victim, the victim must provide detailed information during the evidentiary process about what has happened to him. Witnesses have a very important role at trial because witness testimony can be used as a basis and reference in strengthening the judge's decision at trial." This has the effect that every witness testimony is always given very much attention both by the legal actors involved in the trial and by the law-watching community."<sup>5</sup>

Article 1 Number (5) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System stipulates that "a child who is a witness to a criminal act hereinafter referred to as a Child Witness is a child who is not yet 18 (eighteen) years old who can provide information for the purposes of investigation, prosecution, and examination at a court hearing about a criminal case that is heard, seen, and/or experienced it myself". Article 160 paragraph (3) of the Criminal Procedure Code, a witness statement can be considered valid if it has complied with the applicable provisions, namely before giving a statement, a witness must first take an oath or promise. Article 185 paragraph (7) of the Criminal Procedure Code "the testimony of a witness who is not sworn in even though it is in accordance with one another, does not constitute evidence, but if the testimony is in accordance with the testimony of the sworn witness, it can be used as an additional means of other valid evidence.

Based on the description above, in the case that the author examines is related to the basis of the judge's consideration in sentencing the sentence taking into account the testimony of a minor as a victim in judgment No.39 /Pid.Sus/2016/PN Sbg. Then it is first described as follows. The identity of the defendant is Tangkas Simatupang aka Tangkas Sianturi, who was born in Naga Timbul, Age 59 Years, born on July 13, 1961, Male Gender, Indonesian Nationality, Residing on Jl. Dolok Tolong No.43, Hutabaringan Village, SibolgaUtara District, Sibolga City, Christianity, Work as a Freelance Day Laborer. the basis of the judge's consideration in sentencing the sentence taking into account the testimony of a minor as a victim in judgment No.39/Pid.Sus/2016/PN Sbg. Defendant Tangkas Simatupang in September on a day and date that is not clearly known to have committed violence or threats of violence, coerced, committed deception, committed a series of lies or persuaded children to commit or allow obscene acts to be committed, against the victim Ruth Melisa br Simatupang who was 2 years old.

## **METHODS**

The type of research used in this study is normative juridical. Normative juridical is a legal research that lays down law as a building system of norms. The norm system in question is about principles, norms and rules in accordance with laws and regulations. Normative legal research is the legal research of literature. Legal research has several approaches. With this approach, researchers will get information from various aspects regarding the issue being tried

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<sup>5</sup> Muhadar, Edi Abdullah, Husni Thamrin, *Perlindungan Saksi dan Korban dalam Sistem Peradilan Pidana*, Surabaya: Putra Media Nusantara, 2010, hlm.1

to find answers to. This research itself will use the following approaches:

a. *Statute Approach*

The statute approach is carried out by examining all laws and regulations related to the legal issues that are being handled. The statutory approach will open up opportunities for researchers to study, whether there is consistency and similarity between one law and another in legislation. Article 7 paragraph 1 of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations. Establish the type of hierarchy of laws and regulations of the Republic of Indonesia consisting of:

1. Constitution of the Republic of Indonesia of 1945;
2. Provisions of the People's Consultative Assembly;
3. Government Laws/Regulations in Lieu of Laws (Perppu);
4. Government Regulation;
5. Presidential Regulation;
6. Provincial Regulations; and
7. Provincial Regulations;

The author uses the Statute Approach in examining the Basis for Judges' Consideration of the Power of Testimony of Minors in Proving Criminal Acts by examining all laws relating to children and the judiciary.

b. *Case Approach*

The case approach (case approach) that the researcher needs to learn is *ratio decidendi*, which is the legal reasons used by the judge to arrive at his verdict. According to Goodheart, the ratio of *decidendi* can be found by paying attention to material facts. The facts are in the form of person, place, time and everything that comes with it as long as it is not proven otherwise. The case approach is used by the author in the case of Judgment No.39/Pid.Sus/2016/PN Sbg, especially in examining the judge's consideration of legal facts and examining the strength of the child's testimony in evidence.

## **RESULTS AND DISCUSSION**

Verdict No. 39/Pid.Sus/2016/PN Sbg by the Panel of Judges, the defendant was declared validly and conclusively proven guilty of committing a criminal act of threatening violence against children to commit obscene acts as in the single indictment stipulated in Article 82 Paragraph (1) Jo Article 76E of the Ri Law No. 35 of 2014 concerning Child protection. which states "Everyone shall not commit Violence or threats of Violence, coerce, deceit, commit a series of lies, or induce the Child to commit or allow to be committed an obscene act." And "Everyone who violates the provisions as referred to in Article 76E shall be sentenced to a maximum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah)."

The prosecution's demands to the Defendants who basically sued, stated that the Defendant Tangkas Simatupang alias Tangkas Sianturi was proven to have lawfully and convincingly committed a criminal act regulated in Article 82 Paragraph (1) Jo Article 76E of the Ri Law No. 35 of 2014 concerning Child protection. And declared a criminal sentence against the defendant Tangkas Sianturi with imprisonment for 11 (eleven) years imprisonment in the reduced *sekama* The defendant is in custody with the order of the defendant to remain in

custody and a fine of Rp. 60,000,000,- (sixty million rupiah) subsider 6 (six) months confinement.

Criminal conviction of the accused, the panel of judges who examined and tried with case register number No. 39/Pid.Sus/2016/PN Sbg. Sentenced the Defendant therefore to imprisonment for 7 (for) years and 6 (six) months and a fine of Rp.60,000,000,- (sixty million rupiah) provided that if the fine is not paid, it is replaced by imprisonment for 3 (three) months. The judge as God's representative upon the face of the earth. The title of being a representative of god is very worthy of being pinned to the shoulders of a judge because it is in his hands that the fate and life of man are determined. A judge's decision is a statement from a judge in deciding a case in a trial and has permanent legal force. "Constitutional judges and judges are obliged to explore, follow, and understand the values of the law and the sense of justice that lives in society".<sup>6</sup>

Judge's Decision is a term that has an important meaning for justice seekers in criminal justice. Furthermore, the term "judge's ruling" on the one hand is useful for the defendant to obtain legal certainty about his "status" while on the one hand the judge's decision is both a "crown" and a "culmination" of reflecting the values of justice, essential truth, human rights, mastery of law or facts in an established, qualified and factual manner, as well as visualization of the ethics, mentality, and morality of the judge. Article 1 Number 11 of the Code of Criminal Procedure states: "A court decision is a statement of a judge pronounced

In the judgment of case No. 39 /Pid.Sus/2016/PN Sbg, the Panel of Judges gave a verdict of conviction (veroordeling) which reads "Sentence the Defendant therefore to imprisonment for 7 (for) years and 6 (six) months and a fine of Rp.60,000,000,- (sixty million rupiah) provided that if the fine is not paid, it is replaced by imprisonment for 3 (three) months." In this study, the author disagrees with the decision of the Panel of Judges, especially on proving criminal acts committed by defendant Tangkas Simatupang aka Tangkas Sianturi. In essence, a verdict of conviction (veroordeling) is a judge's decision that contains an order for the defendant to serve a sentence for the acts he has committed in accordance with the judgment.<sup>7</sup>

The Panel of Judges handed down the verdict of conviction, so the judge was convinced based on valid evidence and facts at trial that the defendant committed the act as stated in the indictment. More precisely the fulfillment of the provisions of Article 183 of the Criminal Procedure Code which reads: "A judge may not sentence a person unless by at least two valid pieces of evidence he obtains a conviction that a criminal offence actually occurred and that it is the accused who is guilty of committing it." The judge's conviction does not arise by itself, but must arise from the valid evidence already mentioned in the statute and not from other circumstances. From the provisions of Article 183 of the Criminal Procedure Code mentioned above, it is clear that the evidence must be based on the law (KUHP), that is, valid evidence, accompanied by the judge's conviction obtained from these evidence.

Court Decisions In Criminal Procedure Court decisions are the output of a judicial process in a court hearing that includes the process of examining witnesses, examining the

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<sup>6</sup> Undang-undang RI Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman, pasal 5 ayat (1).

<sup>7</sup> Susanti Ante, *Pembuktian dan aPutusan Pengadilan Dalam Acara Pidana*, Jurnal Lex Crimen Vol. II. 2013, hlm 101.



accused, and examining evidence. When the evidentiary process is declared complete by the judge, it is time for the judge to make a decision. The evidence found in the child rape case committed by defendant Tangkas Simatupang alias Tangkas Sianturi is only based on the testimony of the victim's witnesses who were not sworn and no other evidence was found. As for what is the evidence in the rape case committed by defendant Tangkas Simatupang aka Tangkas Saianturi, namely:

1. The testimony of the victim witness Ruth Melisa Br Simatupang (Victim) without being sworn explained that the defendant had a pubic device with his hand and it was done in the defendant's room, the Victim Witness stated that the Suspect also rubbed the Defendant's pubic shaft on the Victim Witness's vagina until satisfied, then the Defendant inserted his pubic shaft and the Defendant also threatened the Victim Witness if he did not want to be obscured then the Victim Witness's leg would be scissored. The defendant also committed obscenity against the Victim Witness more than 1 (one) time or has often occurred.
2. Article 185 paragraph (7) of the Criminal Procedure Code provides "The testimony of a witness who is not sworn even though it is in accordance with one another, does not constitute evidence, but if the testimony is in accordance with the testimony of the sworn witness, it can be used as an additional means of other valid evidence". Referring to article 185 paragraph (7), the researcher argues that the testimony of children in the rape case committed by defendant Tangkas Simatupang alias Tangkas Sianturi cannot be entered into valid evidence in the trial.
3. The testimony of Witnesses, Doa Restu Br Hutasoit, Sahala Parulian Simatupang and Helgawaty Br Hutasoit who explained that the Accused Tangkas Simatupang alias Tangkas Sianturi had committed an act of rape against Victim Witness Ruth Melisa Br Simatupang based only on listening to the story of Victim Witness Ruth Melisa Br Simatupang. Article 1 number (26) of the Criminal Procedure Code regulates: "A witness is a person who can provide information for the purposes of investigation, prosecution and justice about a criminal case that he hears for himself, he sees for himself and he experiences himself".
4. Expert Witness Statement with letter Visum Et Revertum (VER) Number: 445 / 3125 / XII / 2015 dated December 01, 2015. The Expert Witness explained that there were no signs of violence and also no signs of violence on the chest, but there was a tear of the blood membrane at 7 and 11 o'clock, not to the bottom caused by a blunt object. The Expert Witness also explained that what was said to be a new wound due to obscenity was found a red mark on the vagina, a tear on the blood membrane, swelling or there were traces of blood on the edge of the wound (characteristics were found carried 1 (one) week. And explained, what is said to be an old wound due to obscenity is that there are no red marks on her vagina, there is no swelling or blood pressure on the edge of the wound, there is only a tear on the blood membrane, usually these characteristics are found at times above 1 (one) week. Article 1 Number (27) states "The testimony of a witness is one of the evidence in a criminal case in the form of testimony from a witness about a criminal event that he heard himself, he saw for himself and he experienced himself by citing the reasons for his knowledge."

5. There was no evidence found in the rape case committed by defendant Tangkas Simatupang against Victim Witness Ruth Melisa Br Simatupang. Based on the legal facts as well as the evidence during the trial the author argued that in the evidence in the rape case against the child Ruth Melisa Br Simatupang there was a lack of evidence in proving the actions of the accused Tangkas Simatupang alias Tangkas Sianturi. The author strongly opposes and strongly condemns the defendant's actions to Ruth Melisa Br Simatupang's 2-year-old son, the defendant's actions are very despicable considering the very small age of the victim Witness and Juan the defendant has damaged the mentality of the child as the next generation of the nation, but still we must not override the rules of the Act for the realization of the purpose of the law to regulate human behavior in maintaining order, justice, as well as anticipating chaos in the community.

## CONCLUSION

Based on the discussion of the three problems in this study, it is concluded as follows:

1. The position of the child as a witness in a criminal case has been legally recognized in the Criminal Procedure Code, but according to the shaper of the children's law, the testimony of the child witness cannot be perfectly accounted for in the criminal law in accordance with the provisions of Article 160 Paragraph (3) of the Criminal Procedure Code which confirms that before giving testimony, the witness must take an oath or promise, therefore the testimony of the child witness can be used as a clue or additional valid evidence, Regulated in Article 185 paragraph (7) of the Criminal Procedure Code and can increase the judge's confidence as specified in Article 184 of the Criminal Procedure Code.
2. The child's testimony has evidentiary power value for the judge, returning to the judge's judgment subjectively because the assessment of the witness's evidence is generally not binding, nor is the testimony of the witness's child. It can be said that the child's testimony does not have a strong evidentiary power to determine the defendant committed a criminal act, but the child's testimony has the power to strengthen the judge's conviction.
3. The judge's consideration of the verdict of conviction is generally the information given by the child is used by the judge as a guide and reinforcement of other valid evidence based on adjustments and links to the evidence and facts that occurred at the trial, which is then used as a reinforcement of the judge's conviction and as a consideration in sentencing. In giving the verdict of conviction in the judgment file No.39./Pid.Sus/2016/PN Sbg, the testimony of the child as a victim witness added to the confidence of the Panel of Judges in sentencing the Defendant and added with the letter Visum Et Revertum (VER) Number: 445 / 3125 / XII / 2015. As valid evidence.

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