

Process of Proving the Crime of Sexual Abuse against Underage Child Victims in the Gorontalo City Area

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The evidentiary process is the judge's consideration in determining whether a defendant is proven to have committed a criminal act or not. One of the evidentiary processes is listening to witness statements, defendant statements and letters. The research method used in this writing is normative juridical, with descriptive research specifications. This research uses secondary data obtained through literature and described systematically. Based on the results of research in Decision Number 52/Pid.Sus/2024/PN.GTO, the evidence in the crime of child molestation in this case does not fulfill the elements of proof contained in Article 183 of the Criminal Procedure Code. Witness statements, letters in the form of Visum Et Repertum are valid evidence and have also taken into account the statement of the defendant who does not admit his actions so that the judge is confident that the defendant is not the perpetrator of a crime and the panel of judges also considers the matters that decide the case independently of demands from the Public Prosecutor who charged.

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1. INTRODUCTION

The objectives of the Republic of Indonesia are clearly stated in the 1945 Constitution of the Unitary State of the Republic of Indonesia that the State aims to protect the entire Indonesian nation and all of Indonesia's blood, promote general welfare, educate the life of the nation, participate in efforts for world peace based on independence, eternal peace, and social justice. In connection with this, it is fitting for the Indonesian people to receive protection in all aspects of their lives.

In reality, the state's goals still cannot be achieved in people's lives, such as legal problems which are increasingly common along with the development of the times, and science and technology are increasingly rapid. This results in people's behavioral patterns changing to become increasingly complex, and in accordance with the norms that apply in society. This deviant behavior can lead to violations and even crimes.

Crime is a reality in life that requires special handling. According to Kartono, "crime is a form of behavior that is contrary to human morals (immoral), constitutes society, is asocial in nature and violates the law and the criminal code".

This is because crime will cause unrest in society in general. Therefore, various efforts are always made to overcome this crime, even though in reality it is very difficult to eradicate crime completely because basically crime will always develop along with the development of society. Likewise, legal problems will also develop along with the development of problems occurring in society.

Sexual crimes are essentially abuses of power. Various forms of actions that the victim does not want must be accepted because there are other parties who feel superior and want these sexual acts to occur. In the Draft Criminal Code, the absence of official definitions

regarding several important terms, especially the term power which is the umbrella for the sexual crime articles, has been detrimental to the victims, this is because the public, especially legal officers, will take the meaning that has been assumed by the majority people who often harm the interests of victims, especially women and children.

One form of criminal act that seriously disrupts the security and order of life in society is the crime of obscenity. Fornication is an act carried out by someone who is driven by sexual desire to do things that are influenced by lust, thereby giving rise to satisfaction in themselves. Criminal acts of sexual immorality still occur frequently today. Abuse against helpless people such as children, both men and women, is a social problem that is very disturbing to society, even though the Indonesian Constitution has guaranteed constitutional rights for Indonesian children, namely "Every child has the right to survival, growth, development and has the right to protection from violence.

The crime of obscenity is regulated in the Criminal Code which only recognizes the term obscene acts. Obscene acts in the Criminal Code are regulated in the second book, Chapter XIV concerning crimes of morality, Articles 281-303. R. Soesilo stated that obscene acts are all acts that violate decency (decency) or are heinous acts, all within the realm of genital lust.

Obscenity is one of the sexual crimes that results from changes that occur in the structure of society. Sexual abuse is a type of crime that has a very bad impact, especially on the victims, because sexual abuse violates human rights and can damage human dignity, especially the soul, mind and offspring. Cases of criminal acts of sexual immorality are currently common in Indonesia. The victims in this crime are children.

The problem of the crime of obscenity in Indonesia has been accommodated in the legislative system, namely the Criminal Code (KUHP). The development of legal protection for children as victims of criminal acts of sexual abuse is specifically regulated through Law Number 23 of 2002 jo. Law Number 35 of 2014 concerning Child Protection. The background to the enactment of this law is that various forms of adult behavior that violate children's rights in Indonesia in various aspects of life still frequently occur. Law Number 23 of 2002 jo. Law Number 35 of 2014 concerning Child Protection is enforced in order to fulfill children's rights in the form of legal protection which includes the right to survival, the right to develop, the right to protection and the right to participate in community life without discrimination.

The data described above can explain that cases of sexual abuse are the most common cases, namely 26 cases from 2021 to 2023. The process in handling cases of criminal acts of sexual abuse is by looking for evidence or a criminal act. Proof in a criminal act is a process or method of proving to show whether the defendant is right or wrong in a criminal case in a court trial. Evidence is the provisions that contain outlines and guidelines regarding the methods permitted by law to prove the guilt of the accused.

Criminal acts can be identified through reports, complaints, being caught red-handed, or being discovered directly. In cases of obscenity regulated in the Criminal Procedure Code, it requires high accuracy starting from the investigator, this is because in cases of obscenity usually no one sees it, there are only witnesses to the victim, which is made difficult by the reluctance of the victim to report it, as well as the location of the incident being far from the police station. making it difficult for the police to obtain evidence.

The process of a criminal act of sexual immorality has several stages, including several series of activities starting from the discovery of the criminal incident, action at the scene of the crime, examination of the victim's witness and requesting a psychiatric post mortem et repertum from the doctor, examination of the witness and examination of the suspect, arrest, detention, up to filing and submission of files to the district attorney's office.

An expert in the context of evidence is someone who has special expertise regarding a matter that is being sued in order to shed light on a legal event. An expert witness who delivers expert testimony has the status of a witness who is qualified to be an expert in his field such as a scientist, technician, medical expert and other specialized experts. Doctors as experts in the medical field play an important role as experts in the medical field to shed light on matters relating to the human body. Standard Operational Procedures in a hospital regarding the management of obtaining a *Visum et repertum* are absolutely necessary.

As for the data above, prospective researchers withdrew the case from LP/B/IX/2023/SPKT/POLRES GORONTALO KOTA/POLDA GORONTALO, dated 4 September 2023. In the police report, a brief description of the case contained initial information that the reported person had touched her breasts and kissed her. the victim's lips then the reporter immediately asked the victim and the victim admitted, with this incident the reporter felt objections and reported it to the police to be processed according to applicable law in violation of article 82 paragraph (1) in lieu of Republic of Indonesia Law number 1 of 2016 concerning second amendment to Republic of Indonesia Law no. 23 of 2002 concerning child protection became Jo Law. Article 64 paragraph (1) of the Criminal Code.

However, the prospective researcher asked the legal representative of the reported person that the person reporting the case was the victim's brother, not the victim's parents. And looking at the evidence provided by the reporter only in the form of statements from victims, witnesses and also the results of the assessment carried out by Puspage. When the police report was handed over to the prosecutor's office and forwarded to the court during the examination hearing of the victim who was accompanied by his parents, according to the attorney's statement there were differences in the information in the investigation BAP and the victim's statement in front of the judge in the trial which was the information in the investigation BAP that the victim was under coercion from her brother and other witnesses.

Mistakes in making *Visum et repertum* as evidence are the same as risking human rights. This is because proving whether or not someone has committed the obscene act of which they are accused is the most important part of a criminal procedure. Errors in evidence are tantamount to risking the human value of the human body. The pseudo-truth was born as a result of the falsity of the *Visum et Repertum*, so the truth of the *Visum et Repertum* is very necessary in terms of proving criminal acts of sexual immorality that occurred at the investigation and trial stages.

2. RESEARCH METHOD

This type of research is Normative-Empirical Legal Research (applied law research), namely research that uses normative-empirical legal case studies in the form of legal behavioral products, for example examining the implementation of credit agreements. The main point of the study is the factual implementation or implementation of positive legal provisions and contracts in every specific legal event that occurs in society in order to achieve predetermined goals.

3. RESEARCH RESULTS AND DISCUSSION

The 1945 Constitution guarantees the freedom of judges in deciding a case by stating in Article 24 paragraph (1) that judicial power is an independent power to administer justice to uphold law and justice. The judge's freedom is an important authority inherent in the individual judge where the judge functions to apply the text of the law to concrete events, not just substantive, but also to provide the right interpretation of the law in order to

straighten out concrete legal events so that the judge can freely provide judgment. - assessment and interpretation of the law.

However, apart from having the freedom to interpret legislation and apply it to concrete cases, judges also have the authority to make legal discoveries, when the judge faces a legal vacuum in resolving a case. A legal vacuum in this case must be perceived not only that there are no legal rules governing the case, but also if the existing legal rules are felt to be able to bring about injustice if simply applied to the case at hand.

In deciding a case, the judge is the last party in the criminal justice system whose role is as an interpreter of the law being applied. Through the interpretation made by the judge through a decision containing complete considerations, the application of the law to a particular case can be studied, evaluated and traced back.

Thus, in their freedom to resolve a case, a judge has the freedom to be independent and does not receive influence from any party to decide the case, including making legal discoveries in the form of deviations from existing procedural regulations, as long as these deviations can be accounted for rationally and are carried out to realize justice. Judges are freer and more flexible in resolving cases, because they not only convey the sound of the law but can make legal discoveries from various sources of legal discovery and can also create laws because the law actually exists in society.

The Public Prosecutor charged the defendant with the primary charge of Article 81 paragraph (1)14 of Law Number 23 of 2002 concerning Child Protection and the subsidiary charge of Article 81 paragraph (2)15 of Law Number 23 of 2002 concerning Child Protection. The judge decided that the defendant was guilty of violating Article 81 paragraph (1) of Law Number 23 of 2002 concerning Child Protection. In his considerations, the judge stated that the defendant had not been legally and convincingly proven to have violated the primary charges alleged by the public prosecutor.

During the examination of the crime of sexual violence against children, witnesses were presented, both mitigating and aggravating the defendant. However, apart from the victim witness, there was not a single witness who saw, heard or personally experienced the incident (*testimonium de auditu*). Apart from evidence in the form of witness statements, other evidence presented is expert testimony. The expert presented was a doctor who examined the victim when it was discovered she was pregnant and issued a post mortem et repertum regarding the victim's condition at that time. In handing down a guilty verdict to the defendant, the judge based his decision on the victim's testimony which was accompanied by indicative evidence. Indicative evidence is an act, event or situation which, because of its correspondence, either with one another or with the criminal act itself, indicates that a criminal act has occurred and who the perpetrator is.

Decision Number 52/Pid.Sus/2024/PN.GTO. issued by the Gorontalo District Court to decide a case related to criminal acts of sexual violence against minors. In this case, the defendant, a member of the National Police, was charged with violating Article 81 paragraph (1) of Law Number 23 of 2002 concerning Child Protection. The perpetrator and the victim were not related or lived in the same house. However, during the trial process, the victim's statement which was examined by the judge three times resulted in the victim's statement stating that she had not been sexually assaulted by the defendant. This statement was spoken in a physically and spiritually healthy manner without any coercion from anyone accompanied by the victim's mother.

In deciding the above criminal case of sexual intercourse with a minor or sexual violence against a child, the judge applied an unusual method of proof, namely not basing it on articles related to the minimum principle of proof and the principle of 'one witness is not a witness' as adopted. by the Criminal Procedure Code.

However, heedless of Article 185 Paragraph 1 of the Criminal Procedure Code (a witness's statement as evidence is what the witness states at trial) and did not heed Article 189 paragraph 1 of the Criminal Procedure Code (the defendant's statement is what the defendant stated at the trial about the actions he committed or that the defendant himself knew or experienced himself), so it is not appropriate for the Cassation Application as the Public Prosecutor to enforce the defendant's will to remain in court based solely on the witness "Unnus Testis Nullus Testis".

In this case, the judge considered the information given by the victim witness whose testimony was sworn in and considered that the victim witness' statement did not match the statement of the victim's child and was denied by the defendant before the police examination so that the statement became indicative evidence. With a witness statement and evidence.

With the descriptions above, it can be concluded that the problem is related to the judge's consideration in accepting witness statements that do not match the victim's statement in the case with evidence to prove that the defendant is guilty.

4. CONCLUSION

The judge considered the information given by the victim witness whose testimony was sworn in and considered that the victim witness' statement did not match the statement of the victim's child and was denied by the defendant before the police examination so that the statement became indicative evidence. With a witness statement and evidence. With the descriptions above, it can be concluded that the problem is related to the judge's consideration in accepting witness statements that do not match the victim's statement in the case with evidence to prove that the defendant is guilty.

In adjudicating cases involving vulnerable groups, such as women, children or other vulnerable groups, judges as decision makers who make legal discoveries on concrete legal issues are expected to be able to look for new breakthroughs in the form of legal interpretations or discoveries that can accommodate substantial justice for justice seekers from vulnerable groups, by not only implementing procedural justice which often does not meet justice for vulnerable groups.

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Mahkamah Konstitusi melalui Putusan Nomor MK 65/PUU-VIII/2010, memperjelas pengertian apa yang disebut dengan *testimonium de auditu* berdasarkan Pasal 184 ayat (1) KUHAP, yaitu bahwa arti penting saksi bukan terletak pada apakah dia melihat, mendengar, atau mengalami sendiri suatu peristiwa pidana, melainkan pada relevansi kesaksiannya dengan perkara pidana yang sedang diproses. Kewenangan untuk menilai saksi yang relevan tersebut ada dalam pemeriksaan di tingkat penyidikan, penuntutan dan pemeriksaan di pengadilan.

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