

Punishment Under Special Minimum Criminal Threat In the Crime of Child Abuse (Study of Decision Number 1041 K/Pid.Sus/2020)

Rosman Ahmad¹, Hariman Satria², Faisal Abdaud³, Mafardin⁴

¹²³⁴Faculty of Law, Universitas Muhammadiyah Kendari,
Indonesia

Article Info

Received: 2022-05-10

Revised: 2022-09-08

Accepted: 2023-12-12

Keywords:

*Criminal, Minimum,
Special, Child Abuse*

Abstract

The imposition of a penalty below the special minimum in the crime of molestation of children is a very important issue in criminal law. This crime aims to provide more effective protection to victims of immorality involving children. In some cases of child abuse, the judge handed down a verdict below the special minimum. The offense that is the focus of this study is how the judge considers sentencing under the special minimum criminal threat based on Decision Number 1041 K/Pid.Sus/2020 in the case of criminal acts of child abuse? The research method used is a type of normative legal research using 2 (two) legal approaches, namely the legislative approach and the case approach. The results of the study concluded that the Supreme Court in decision Number 1041/Pid.sus/2020 has strengthened the judex facti decision that imposes a penalty below the special minimum limit to the defendant so that the decision contradicts the provisions of Article 82 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is the minimum limit of 5 (five) years and a maximum of 15 (fifteen) years.

I. Introduction

The crime of molesting children is one of the most damaging forms of crime that damages the joints of life and is contrary to human rights, especially the right of children to grow and develop in a safe and violence-free environment. Child molestation not only causes deep psychological trauma to victims but also damages the future of children and regeneration in every country.

Data from various countries shows that cases of child abuse continue to increase from time to time. Reports from international agencies such as the United Nations (UN) and other human rights organizations documented violence against at least 19,379 children in 21 conflicts. A total of 8,521 children were used as soldiers in various conflict zones last year, while 2,674 children were killed and 5,748 injured. Countries such as Somalia, the Democratic Republic of the Congo, Afghanistan, Syria, and Yemen accounted for the most violations¹. Based on records from the Ministry of PPPA, cases of sexual violence against children reached 9,588 cases in 2022. This number has increased from the previous year, which was 4,162 cases². These figures reflect the urgent need to improve child protection and enforce strict laws against perpetrators of child sexual crimes.

In many jurisdictions, the law has been strengthened to handle cases of child molestation. One approach adopted by some countries is using a special minimum criminal threat as part of the penal system. The special minimum criminal threat aims to provide a strong signal that sexual crimes against children are intolerable and will be taken seriously by the criminal justice system.

In Indonesia's legal system, the protection of children has been affirmed in Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection. In the Law, many rights have been regulated specifically regarding children, including criminal provisions for acts that make children victims of these acts, including criminal acts of obscenity.

Based on Article 81 of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, it is stated that: "Any person who deliberately commits violence or threats of violence, coerces, commits tricks, a series of lies, or persuades a child to commit or allow obscene conversations to be carried out, shall be sentenced to imprisonment for a maximum of 15 (fifteen) years and a minimum of 5 (five) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah)".

¹ <https://www.tempo.co/dw/5179/pbb-jumlah-penculikan-dan-pemeriksaan-anak-di-daerah-konflik-meningkat>. edition, Tuesday, June 22, 2021

² Read the CNN article Indonesia "KemenPPPA: RI Emergency on Child Sexual Violence, 9,588 Cases During 2022": <https://www.cnnindonesia.com/nasional/20230127173509-20-905780/kemenpppa-ri-darurat-kekerasan-seksual-anak-9588-kasus-selama-2022>

The provisions in the article affirm that for criminal acts that meet the elements in Article 81, the criminal sanctions imposed are a minimum of 5 years and a maximum of 15 years. This means that the article requires a special minimum penalty. However, in practice, there are criminal acts of molestation against children that are decided below a special minimum limit. The decision is contained in Decision Number 1041 K/Pid.Sus/2020 which only decides the prison sentence for 1 (one) year and a fine of 60,000,000.00 (sixty million rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence for 3 (three) years. The criminal act was committed by the defendant Syarifuddin Bin Tayat, a 67-year-old man, against the child victim who was still 15 years and 9 months old.

The sentencing is based on considerations that should be based on the applicable legal provisions, but in reality the judge imposes a sentence below a special minimum so that it is interesting to be used as an object of research. Based on the description in the background, the focus of the problem studied is: how do judges consider imposing a criminal sentence under the special minimum criminal threat based on Decision Number 1041 K/Pid.Sus/2020 in the case of criminal acts of child abuse?

2. Research Method

This study is a *normative juridical*³ legal research using two legal approaches, namely the statute approach⁴ to analyze the accuracy of the application of law to cases handled by judges and the case approach⁵ to provide analysis of legal considerations by judges in examining and deciding cases that are the object of research.

3. Results and Discussion

Child Concept

Children are creatures that need care, affection, and a place for their development. The protection of children is very important because children are the most vulnerable part of society. Children will be the next generation of the nation in the future, so children's potential needs to be developed to the maximum because in the future it will become the

³ Hudah, Komsih, Ahmad Rustan, and Irwansyah Irwansyah. "Enigma of the Idea from Extending the Village Head Period: Orientation and Implications in a Constitutional Perspective." *SASI* 29.4 (2023): 743.

⁴ Rustan, Ahmad, Ju Lan Hsieh, and Wahyudi Umar. "Maladministration on Mining Business Licenses: Case Study "Mining Business License Production Operation PT. Aneka Tambang, Tbk."" *Varia Justicia* 17.3 (2021): 246-257.

⁵ Hargono, H., Rustan, A., Jambak, F., & Rahman, R. A. (2024). Dynamics and Challenges of Democracy in Local Elections in Indonesia and the Netherlands. *SASI*, 30(1), 111-118..

country's foundation to continue the nation's noble ideals⁶. Article 1 paragraph (1) of Law No. 35 of 2014 stipulates that a child is a person who is not yet 18 (eighteen) years old, including a child who is still in the womb.⁷

The definition of a child according to the Criminal Code (KUHP) is contained in Article 287 of the Criminal Code, it is stated that a minor is when the child has not reached the age of 15 (fifteen) years.⁸ Child protection paves the way for them to explore their potential and achieve their dreams. However, children's futures are often hindered by victims of exploitation. physical violence or sexual violence or obscene acts.

Obscene acts (*ontuchtige handelingen*) are all kinds of actions, both done to oneself and done to others regarding and related to the genitals or other parts of the body that can stimulate sexual desire. For example, stroking, holding, kissing vital parts.⁹ Meanwhile, in the Indonesian dictionary, the term obscenity comes from the word obscene which is interpreted as "an act of indecency, violating customs and morals, violating civility, vile and dirty"¹⁰ which is related to genitals or other body parts that can stimulate sexual desire¹¹, for example a man groping a woman's genitals.¹² Abuse can be divided into several types of abuse which include:¹³

1. *Sadistic Rape* : in this type sexuality and aggressiveness combine in a destructive form. The molester enjoys erotic pleasure not through his sex, but through horrific attacks or the victim's genitals and body.
2. *Angea Rape*: sexual abuse characterized by sexuality is a means of expressing and venting pent-up feelings of resentment/anger.
3. *Dononation Rape*: Abuse that occurs instantly the perpetrator tries to persist in power and superiority over the victim. The goal is sexual conquest, the perpetrator hurts the victim, but still has the desire to have sexual intercourse.
4. *Seductive Rape*: abuse that occurs in stimulating situations, created by both parties.
5. *Victim Precipitated Rape*: Abuse that occurs (persistently) by placing the victim as the one who causes the abuse which shows that on every occasion the sexual intercourse obtained by the man by taking advantage is contrary to the position of the woman who depends on him economically and socially. For example, a wife who is molested by her

⁶ Jamaludin, A. (2021). Legal Protection of Children Victims of Sexual Violence. *JCIC: Journal of CIC Institute of Research and Social Consultants*, 3(2), 2.

⁷ Maghfira, S. (2016). *The Position of Children According to Positive Law in Indonesia*. *Sharia Scientific Journal*, 15(2), 218-220.

⁸ Personal, D. (2018). *Protection of children is against the law*. *Volkgeist Law Journal*, 3(1), 14-25.

⁹ Adami Chazawi, 2007, *Crimes Regarding Modesty*, Rajawali Grafindo Persada Publisher, Jakarta, p. 80

¹⁰ Yanti Yuniar, 2012, *Complete Dictionary of Indonesian Language*, Agung Mulia Publisher, Jakarta.P. 12

¹¹ Fauzi, R. (2019). *Implementation of the Handling of the Investigation of the Crime of Intercourse and Child Abuse at the Four Angkat Candung Police Station*. *JCH (Journal of Legal Scholars)*, 5(1), 173-84.

¹² Leden Marpaung, 2004, *Crimes against Morality and the Problem of Prevention*, Sinar Grafika, Jakarta, p. 64.

¹³ *Ibid*, p. 65

husband or a housekeeper who is raped by her employer, while the wife or maid does not question (complain) about this case to the authorities.

The forms of abuse are quite diverse, there are several types of terms about obscenity, namely:¹⁴

1. *Sexual exhibition*, deliberately showing off the genitals to the child.
2. *Voyeurism*, adults kissing children lustfully
3. *Fondling*, stroking/groping the child's genitals.
 - a. *Fellatio*, adults force children to make oral contact.

In the Criminal Code (KUHP), the definition of obscenity is contained in article 285 which stipulates that "whoever by violence or threat of violence forces a woman who is not his wife to have sex with him, is threatened with rape with a maximum prison sentence of twelve years". Furthermore, provisions related to the crime of molestation against children are specifically regulated in Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection (PA Law) stated in Article 76E that "Everyone is prohibited from committing violence or threats of violence, coercing, committing deception, committing a series of lies, or persuading children to commit or allow obscene acts to be committed".¹⁵

Law Number 35 of 2014 concerning child protection has been stipulated to protect children from various violence that damages children's future, including acts of molestation and rape. Children are born independent, they must not be eliminated or eliminated, but children's independence must be protected and expanded in terms of obtaining the right to life and the right to protection from parents, family, society, nation and state. The protection of children receives special attention in Law Number 35 of 2014, so that children who are born, grow and develop have full human rights.¹⁶

Perpetrators of child molesters, which can also be called *child molesters*, can be classified into five categories, namely:¹⁷

1. *Immature*, perpetrators commit molestation due to the inability to identify themselves with sexual roles as parents.
2. *Frustrated*, perpetrators commit their crimes (obscenity) as a reaction to emotional sexual frustration towards adults. Often they turn to their own children (incest) feeling unbalanced with their wives.

¹⁴ Dafid, C., Uning, P., & Sanidjar, P. (2021). *Factors Causing the Crime of Child Abuse in the Jurisdiction of the South Solok Resort Police* (Doctoral dissertation, Hatta University).

¹⁵ Subawa, I. B. G., & Saraswati, P. S. (2021). *Criminological Study of the Crime of Child Abuse in the Jurisdiction of the Denpasar Police*. *Kertha Wicaksana*, 15(2), 169-178.

¹⁶ Tatumpe, A. (2019). *Criminal acts of molestation against children and their legal demands*. *Journal Scientia de Lex*, 7(3), 1-19.

¹⁷ Rosifany, O. (2021). *Legal provisions for the crime of molestation of minors according to the Child Protection Law*. *LEGALITY: Scientific Journal of Legal Sciences*, 5(2), 90-103.

3. *Sociopathic*, the perpetrators of abuse who commit their acts with people who are completely foreign to them, an act that comes out of the aggressive tendency that sometimes arises.
4. *Pathological*, molested perpetrators who are unable to control sexual urges as a result of psychosis, mental weakness, weakness of body organs or premature *senile derioration*.

Miscellaneous: which does not include all of the above categories

Special Minimum Sentence and Special Maximum.

The principle of imposing a special minimum penalty is one of the concepts in criminal law that sets the minimum limit of punishment that must be imposed on certain criminals. This principle aims to ensure that perpetrators of crimes receive a fair and commensurate punishment for the crimes committed, as well as to provide a stronger deterrent effect and protection for the community. Special minimum penalty principles: *first*, Legal Certainty: This principle provides legal certainty because judges do not have the discretion to impose sentences below the minimum limit that has been set by law. It also helps prevent too wide a disparity in punishment between similar cases. *Second*, the Deterrent Effect: With the existence of a special minimum penalty, it is hoped that it can provide a stronger deterrent effect to criminals so that it can reduce the number of crimes. Criminals know that they will get a definite punishment if proven guilty. *Third*, Justice for Victims: This principle also aims to provide a sense of justice for victims and the community. Crime victims and the community can feel safer and more protected with strict and definite punishment for crime perpetrators. *Fourth*, Limitation of Judge's Discretion: Judges have limitations in imposing sentences below the minimum limit set. This can prevent the occurrence of punishment that is too light which may not be in accordance with the severity of the crime committed.

However, the principle of imposing a special minimum penalty also has some challenges and criticisms, such as the limitation of judges' discretion: Some critics argue that restrictions on judges' discretion can result in injustice in certain cases where the circumstances of the perpetrator or the special circumstances of the crime may require lighter or different sentences. Special minimum criminal provisions can also be considered inflexible in dealing with different situations and conditions in crime cases.

Regarding the provisions of the minimum sanction, it has been regulated for each special criminal act. In the application stage, in special criminal cases as charged by the public prosecutor to the defendant, it turns out that there are several judges (with certain legal considerations) who impose sentences below the limit of the special minimum criminal threat in the formulation of the delicacies, when associated with legislation (lawmakers) that the special minimum penalty for certain delicacies is set to support the principles of criminal law.¹⁸

¹⁸ Haris, O. K. (2017). *Juridical review of the application of sanctions below the special minimum in special criminal cases*. *Journal of Ius Constituendum*, 2(2), 240-257.

According to Barda Nawawi Arief, in principle, the special minimum penalty is an exception, namely for certain delicacies that are very detrimental, dangerous or unsettling to the community and delicacies that are qualified or aggravated by the consequences (*erfolgsqualifizierende delikte*).¹⁹ The quality and quantity of criminal penalties that can be imposed by judges are tied to the criminal threats that have been listed in the formulation of the criminal law. The regulation of criminal threats in Indonesia's criminal law system is the existence of minimum and maximum limits. The minimum limit consists of a general minimum and a special minimum. The general minimum is 1 (one) day in prison and the special minimum is regulated in special criminal acts. The Criminal Code does not recognize a special minimum. The maximum criminal threat consists of a general maximum and a special maximum. The general maximum includes 20 years in prison, life imprisonment and the death penalty. Specific maximums are set in the threats of each article.²⁰

The Criminal Code does not recognize special minimum criminal provisions, but only recognizes the existence of general minimum, general maximum, and special maximum. Thus, the special minimum criminal provision is a deviation from the parent criminal system in the Criminal Code. This deviation can be justified, but it should be accompanied by a special application rule because criminal threats cannot simply be applied/operationalized just by being included in the formulation of the delicacies.²¹

Based on the provisions of Article 82 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, it is stated that:²² *"Every person who violates the provisions as referred to in Article 76E shall be sentenced to a minimum of 5 (five) years in prison and a maximum of 15 (fifteen) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah)".* Furthermore, Article 76E of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, stipulates that: *"Everyone is prohibited from committing violence or threats of violence, forcing deception, committing a series of lies, or persuading children to commit or allow obscene acts to be committed".*

The pattern of criminal punishment is carried out for criminal acts that have special elements. Without an adequate pattern, it will cause the problem of criminal disparity that can disturb the sense of justice. It can also result in the transition of a criminal act from a *non-arrestable crime* to an *arrestable crime*.²³ In the formulation of the length of criminal

¹⁹ Sudirman, A. (2015). *The existence of a special minimum crime as a means of countering corruption crimes*. *Legal Matters*, 44(3), 316-325.

²⁰ Anjari, W. (2020). *Application of the Death Penalty to Convicted Corruption Cases*. *Legal Matters*, 49(4), 432-442.

²¹ Claudia, N., Pujiyono, P., & Rozah, U. (2018). *Renewal of the Special Minimum Criminal Policy in Corruption Crimes*. *Diponegoro Law Journal*, 7(3), 237-264.

²² Wahyuningsih, S. E. (2016). *Legal protection for children as victims of moral crimes in the current positive criminal law*. *Journal of Law Reform*, 3(2), 172-180.

²³ Tim Newburn, 2007, *Criminology*, Willan Publishing, Portland, Hlm. 608

sanctions (*strafmaat*), several formulations are also known, namely:²⁴ a). *Fixed/definite sentence system* in the form of a definite criminal threat; b). *Indefinite sentence system* in the form of maximum criminal threat; c). *The determinate sentence system* is in the form of determining the minimum and maximum limits on the duration of criminal threats; and d). *The indeterminate sentence system* is in the form of not determining the maximum limit of the criminal penalty where the legislation leaves it entirely to the discretion of law enforcement in applying the size, nature or duration of the crime.

The pattern of aggravating criminal threats in the Criminal Code can be distinguished into two categories. First, in the general category of criminal sanctions regulated in the General Rules Book I of the Criminal Code. In this case, the Criminal Code uses a uniform "pattern", for example, weighting because of the concursion, either because of idealistic concursus, concursus realist or *voortgezette handeling* (even though there are different weighting techniques from each other). In this case, the determined criminal threat (which can or can be imposed) is one-third more severe than the criminal threat contained in the formulation of the delicacy which contains the heaviest criminal threat. The pattern of criminal punishment by adding a third of the prison sentence is heavier because of the concomitant in many ways is also followed by the Criminal Code Bill. The use of this pattern was maintained as a reflection of the acceptance of utilitarianism, so that pure accumulation was used in a limited way. It is different from the United States which uses pure commutation (*zuivere cumulatie*). for each form of concurrency, so it tends to be retribution-based in determining the crime.²⁵

Second, in the special category of criminal punishment regulated in the rules on Criminal Acts (Crime and Violations) in the formulation of the offense contained in Book II and Book III of the Criminal Code. This pattern of weighting can also be differentiated into two groups. The first group is weighting in a uniform special category, namely weighting in a uniform pattern such as weighting in the general category, which is weighted by one-third. In this case, the criminal threat is emphasized because of the *recidivism* of the delicacies. Criminal threats are also emphasized because of the special qualities of the perpetrator (delik subject), for example because he is a civil servant. In addition, criminal threats are also weighted because of the special qualifications of the delik object, such as the persecution carried out against the mother, father, wife or child of the perpetrator, whose penalty is increased by one-third of the special maximum.²⁶

The purpose of imposing a special minimum penalty on cases of decency against children as victims is to avoid the discretion of the public prosecutor and the judge in determining their demands so that it can reduce injustice in the determination of criminal charges and

²⁴ Frans, M. P. (2022). *Criminal implementation below minimum in narcotics cases is based on a progressive legal perspective*. *Supremacy: Journal of Law*, 4(2), 174-176.

²⁵ Andi Zaenal Abidin and Andi Hamzah, 2006, *Special Forms of Manifestation of Delic and Penitentiary Law*, RajaGrafindo Persada, Jakarta, p. 238.

²⁶ Huda, C. (2011). *Criminal Punishment Patterns in Special Criminal Law*. *Ius Quia Iustum Law Journal*, 18(4), 508-524.

prevent criminal disparities. However, it is often found that judges impose sentences below the special minimum set in the law, causing legal uncertainty. For example, in the case of Supreme Court Decision Number 1041 K/Pid.Sus/2020 against the defendant Syarifuddin Bin Tayat who was charged by the Public Prosecutor (JPU) has been legally and convincingly proven guilty of committing a criminal act of molestation against children as regulated and threatened in Article 76E of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection Jo Article 82 paragraph (1) of Law Number 17 of 2016 concerning Amendments to Law Number 17 of 2016 second, Law Number 23 of 2002 concerning Child Protection Jo Article 64 paragraph (1) of the Criminal Code which was charged against the defendant in a single indictment.

Regarding the defendant's actions, the prosecutor demanded that the defendant be sentenced to imprisonment for 6 (six) years, reduced if the defendant was in custody and with an order that the defendant remain in custody. Imposing a fine of 60,000,000.00 (sixty million rupiah) and a subsidy for 3 (three) months of confinement. At the Cassation level, the Supreme Court issued a decision rejecting the Cassation application from the Public Prosecutor and strengthening the decision of the first instance (Tais District Court Decision Number 80/Pid.Sus/2019/PN. Tas) by imposing a penalty on the defendant with imprisonment for 1 (one) year and a fine of Rp. 60,000,000 (sixty million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 3 (three) months.

The judge's consideration in the quo case is that the defendant is very old, even though the victim is classified as a child according to the law. However, mentally, and biologically the victim has grown up in terms of sex, the physical consequences experienced by the victim due to the obscene act committed by the defendant do not exist, and the victim's act is the most important factor that causes the perpetrator of the obscene act by the defendant against the victim in other words, the fault also lies with the victim. According to Wiryono Kusumo, Considerations or often called *considerations* are the basis of the Judge's decision or the Judge's argument in deciding a case. If the legal argument is not correct and improper (proper), then one can judge that the verdict is untrue and unfair.²⁷

Based on the judge's considerations in the aquo case, which is the reason why the judge imposed his sentence on the defendant below the special minimum limit, namely for 1 (one) year because *first*, the defendant's age factor is old, where the defendant's age at the time of committing the crime is 67 years old. For the author, the judge's consideration of the age factor is not appropriate, the age factor cannot be a reason for forgiveness. Although sometimes criminal liability is considered in criminal punishment is viewed negatively as an inability to take responsibility or as a reason for forgiveness. The court will consider negatively if the perpetrator of a criminal act submits a defense reason

²⁷ Sonda Tallesang, 2014, *Basis for Judges' Consideration in Imposing Conditional Criminal Sentences as an Alternative to Prison Sentence (Study at the Malang District Court)*, Faculty of Law, University of Brawijaya, p. 6

related to the inability to be responsible under Article 44 of the Criminal Code²⁸ that the person who commits an act while at the time of committing the act the person suffers from an illness or is insane, then the act cannot be held accountable to him and the person cannot be punished. Thus, the perpetrator is categorized as an adult person and based on the facts revealed at the trial that the defendant's actions were carried out consciously, then, based on the principles in the Criminal Code, the imposition of a criminal sentence only requires the fulfillment of the elements of the criminal act in the form of objective acts and cognitive aspects which are delicacy elements. The act committed by the defendant was done deliberately, then *mutatis mutandis* he is considered guilty and should be sentenced according to the formulation of the delik as the basis for punishment, namely the special minimum penalty.

The second *consideration* is that although the victim is still classified as a child according to the law, she is mentally and biologically mature in terms of sex. The judge's consideration is inappropriate, the indicator of maturity according to the law is only measured by age, not by psychological conditions so that the judge is wrong in formulating the concept of adult law. The third consideration, the judge considered that the physical consequences experienced by the victim due to the obscene act committed by the defendant did not exist. According to the author, this consideration is also inappropriate, victims of sexual violence not only have a physical impact on the victim but also psychologically which will be experienced not only when experiencing violence, but also in the future when they are adults and aware of the social impact that will be received related to the victim's condition in the past. Some research results show that victims of sexual violence are usually depressed, fearful, and anxious within a few months or years²⁹. Sexual violence in children will also experience traumatic experiences such as loss of confidence and give rise to negative stigmas. So the judge's decision is very detrimental to the victim.³⁰

Therefore, the panel of judges cannot impose a penalty on the defendant below the special minimum limit because it will certainly violate the provisions of the Law that have been specifically regulated regarding the minimum and maximum limit of the penalty. The author argues that judges cannot avoid the minimum limit that has been regulated in the Law specifically. Because the purpose of making a special law is to avoid what is called criminal disparity. The judge imposed a sentence below the minimum limit on the defendant violated the provisions of Article 82 paragraph (1) of the Child Protection Law, namely the minimum limit of 5 (five) years and the maximum of 15 (fifteen) years. Therefore, the Supreme Court court should see, correct, and correct errors in the court decisions under it. Because the *court did* not pay attention to the provisions of Article 82 paragraph (1) of the Child Protection Law regarding the crime imposed is still a special

²⁸ Syamsu, M. Ainul, and M. H. Sh. *Criminal Punishment & Two Basic Principles of Criminal Law*. Prenada Media, 2018. p. 5

²⁹ Hidayat, M., & Taufiqurrahman, T. (2021). The psychological impact of sexual violence on children. *Coution: journal of counseling and education*, 2(1), 4.

³⁰ Noviana, I. (2015). Sexual violence against children: its impact and treatment. *Socio Informa*, 1(1)

minimum limit, thus it will certainly experience legal disparities.

The imposition of a special minimum penalty is very important to provide more effective protection to victims of immorality involving children. This crime can stop immoral acts and prevent more serious crimes from occurring and prevent the recurrence of immoral crimes against children. The imposition of a special minimum penalty can improve the quality of the law in dealing with moral cases involving children. This crime can provide a clear example that the law not only functions as a security guard, but also as a justice guard. In addition, the imposition of a special minimum penalty can increase public awareness as well as for perpetrators about the importance of protecting children from immoral crimes. This crime can provide awareness that moral acts not only involve the victim, but also have an impact on society at large.

4. Conclusion

Based on the results of the analysis and discussion, it was concluded that the Supreme Court in decision Number 1041/Pid.sus/2020 had strengthened the *judex facti decision* that imposed a penalty below the minimum limit on the defendant who had violated the provisions of Article 82 paragraph (1) of the Child Protection Law, namely the minimum limit of 5 (five) years and the maximum of 15 (fifteen) years. The purpose of imposing a special minimum penalty on cases of imposition of decency against children as victims is to avoid the discretion of the public prosecutor and the judge in imposing the sentence to reduce injustice in the determination of criminal charges and prevent the occurrence of criminal disparities.

References

- Adami Chazawi, 2007, *Tindak Pidana Mengenai Kesopanan*, Penerbit Rajawali Grafindo Persada, Jakarta.
- Anjari, W. (2020). *Penerapan Pidana Mati Terhadap Terpidana Kasus Korupsi. Masalah-Masalah Hukum*, 49(4).
- Andi Zaenal Abidin dan Andi Hamzah, 2006, *Bentuk-Bentuk Khusus Perwujudan Delik dan Hukum Penitensier*, RajaGrafindo Persada, Jakarta.
- Claudia, N., Pujiyono, P., & Rozah, U. (2018). *Pembaharuan Kebijakan Pidana Minimum Khusus Dalam Tindak Pidana Korupsi. Diponegoro Law Journal*, 7(3)
- Dafid, C., Uning, P., & Sanidjar, P. (2021). *Faktor-Faktor Penyebab Terjadinya Tindak Pidana Pencabulan Terhadap Anak Di Wilayah Hukum Kepolisian Resor Solok Selatan* (Doctoral dissertation, Universitas Bung Hatta).
- Djulaeka. 2014. *Konsep Perlindungan Hak Kekayaan Intelektual Perspektif Kajian Filosofis HaKIKolektif-Komunal*. Malang. Setara Press. p.134
- Fauzi, R. (2019). *Pelaksanaan Penanganan Penyidikan Tindak Pidana Persetubuhan dan Pencabulan Terhadap Anak di Polsek Empat Angkat Candung. JCH (Jurnal Cendekia Hukum)*, 5(1).
- Frans, M. P. (2022). *Implementasi Pidana Dibawah Minimal Dalam Kasus Narkotika Berdasar Perspektif Hukum Progresive. Supremasi: Jurnal Hukum*, 4(2),
- Hargono, H., Rustan, A., Jambak, F., & Rahman, R. A. (2024). *Dynamics and Challenges of Democracy in Local Elections in Indonesia and the Netherlands. SASI*, 30(1),
- Haris, O. K. (2017). *Telaah yuridis penerapan sanksi di bawah minimum khusus Pada perkara pidana khusus. Jurnal Ius Constituendum*, 2(2),
- Hudah, Komsih, Ahmad Rustan, and Irwansyah Irwansyah. "Enigma of the Idea from Extending the Village Head Period: Orientation and Implications in a Constitutional Perspective." *SASI* 29.4.
- Huda, C. (2011). *Pola Pemberatan Pidana dalam Hukum Pidana Khusus. Jurnal Hukum Ius Quia Iustum*, 18(4),
- Hidayat, M., & Taufiqurrahman, T. (2021). *Dampak psikologis kekerasan seksual pada anak. Couston: journal of counseling and education*, 2(1), 4
- Jamaludin, A. (2021). *Perlindungan Hukum Anak Korban Kekerasan Seksual. JCIC: Jurnal CIC Lembaga Riset Dan Konsultan Sosial*, 3(2), 2.
- Leden Marpaung, 2004, *Kejahatan terhadap Kesusilaan dan Masalah Prevensinya*, Sinar Grafika, Jakarta.
- Maghfira, S. (2016). *Kedudukan Anak Menurut Hukum Positif di Indonesia. Jurnal Ilmiah Syari'ah*, 15(2),

- Noviana, I. (2015). Kekerasan seksual terhadap anak: dampak dan penanganannya. *Sosio Informa*, 1(1)
- Pribadi, D. (2018). *Perlindungan terhadap anak berhadapan dengan hukum*. *Jurnal Hukum Volkgeist*, 3(1),
- Rustan, Ahmad, Ju Lan Hsieh, and Wahyudi Umar. "Maladministration on Mining Business Licenses: Case Study "Mining Business License Production Operation PT. Aneka Tambang, Tbk."." *Varia Justicia* 17.3 (2021).
- Rosifany, O. (2021). *Ketentuan Hukum Tindak Pidana Pencabulan Terhadap Anak Dibawah Umur Menurut Undang-Undang Perlindungan Anak*. *LEGALITAS: Jurnal Ilmiah Ilmu Hukum*, 5(2),
- Subawa, I. B. G., & Saraswati, P. S. (2021). *Kajian Kriminologis Tindak Pidana Pencabulan terhadap Anak di Wilayah Hukum Polresta Denpasar*. *Kertha Wicaksana*, 15(2),
- Syamsu, M. Ainul, and M. H. Sh. *penjatuhan Pidana & Dua prinsip dasar hukum pidana*. Prenada Media, 2018.
- Sonda Tallesang, 2014, *Dasar Pertimbangan Hakim Dalam Penjatuhan Putusan Pidana Bersyarat Sebagai Alternatif Pidana Penjara (Studi Di Pengadilan Negeri Malang)*, Fakultas Hukum Universitas Brawijaya.
- Sudirman, A. (2015). *Eksistensi Pidana Minimum Khusus Sebagai Sarana Penanggulangan Tindak Pidana Korupsi*. *Masalah-Masalah Hukum*, 44(3),
- Tatampe, A. (2019). *Tindak Pidana Pencabulan Terhadap Anak Dan Tuntutan Hukumnya*. *Journal Scientia De Lex*, 7(3),
- Wahyuningsih, S. E. (2016). *Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana*.
- Yanti Yuniar, 2012, *Kamus Lengkap Bahasa Indonesia*, Penerbit Agung Mulia, Jakarta. *Kesusilaan Dalam Hukum Pidana Positif Saat Ini*. *Jurnal Pembaharuan Hukum*, 3(2),
- <https://www.tempo.co/dw/5179/pbb-jumlah-penculikan-dan-pemeriksaan-anak-di-daerah-konflik-meningkat>. edisi, Selasa, 22 Juni 2021
- Baca artikel CNN Indonesia "Kemen PPPA: RI Darurat Kekerasan Seksual Anak, 9.588 Kasus Selama 2022": <https://www.cnnindonesia.com/nasional/20230127173509-20-905780/kemenpppa-ri-darurat-kekerasan-seksual-anak-9588-kasus-selama-2022>
- Tim Newburn, 2007, *Criminology*, Willan Publishing, Portland.