Legal Analysis of the Crime of Sexual Intercourse Against a Child by a Stepfather (Decision Study Number 13/Pid.Sus/2023/PN Wgw)

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Abstract
Children must be protected from all sorts of cruel treatment that lead to violations of human rights since they are the future generation of the country and are its buds, potential, and young people. Children that get harsh treatment will never grow or develop in the future. In Indonesia, instances involving the inhumane treatment of children are common. Case number 13/Pid.Sus/2023/PN Wgw is one such case that is pending at the Wangi-Wangi District Court. This case involves the stepfather (DEFENDANT LL) engaging in illicit sexual relations with a minor (CHILD VICTIM A). Whether the judge's decision to charge the defendant with a crime was in line with the law at hand is the wording of the research problem. Furthermore, how is the case Number 13/Pid.Sus/2023/PN Wgw analyzed using the theories of ratio decidendi and child protection? Using both a statutory and a case approach, this research methodology is normative. The Judge Panel in case number 13/Pid.Sus/2023/PN Wgw sentenced DEFENDANT LL in conformity with the law that was in effect at the time. dependent on the first alternative indictment article's definition of a criminal act, this is dependent on all of those components being met. Based on a child protection theory analysis of case number 13/Pid.Sus/2023/PN Wgw, it can be concluded that defendant LL's acts have stunted the physical, mental, and social development of child victim A. Meanwhile, the judges have examined the facts based on the evidence presented during the trial, applying the Ratio Decidendi Theory. As a result, they are confident in declaring that DEFENDANT LL has been legally and credibly proven to have committed a criminal act against CHILD VICTIM A.

I. Introduction

"A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb," according to Article 1 number 1 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning kid Protection. According to the Republic of Indonesia's 1945 Constitution, every child has the right to life, growth, and development as well as the right to be shielded from discrimination and violence.

Children must be protected from all sorts of cruel treatment that lead to violations of human rights since they are the future generation of the country and are its buds, potential, and young people. Children that get harsh treatment will never grow or develop in the future.

In Indonesia, instances involving the inhumane treatment of children are common. Case number 13/Pid.Sus/2023/PN Wgw is one such case that is pending at the Wangi-Wangi District Court. This case involves the stepfather (DEFENDANT LL) engaging in illicit sexual relations with a minor (CHILD VICTIM A).

Using alternative charges, the public prosecutor brought charges against DEFENDANT LL. The first alternative charge, as specified in Article 81 paragraph (3) Jo. Article 76D of Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Jo. Article 64 paragraph (1) of the Criminal Code, was selected by the Panel of Judges after considering the relevant legal facts.

According to child protection theory, DEFENDANT LL has ruined CHILD VICTIM A's future since he was unable to fulfill his obligations and rights as a child. DEFENDANT LL's acts have stunted CHILD VICTIM A's growth and development on all levels—socially, psychologically, and physically.

The judges considering case number 13/Pid.Sus/2023/PN Wgw have examined the facts based on the evidence presented during the trial, in accordance with the Ratio Decidendi Theory. As a result, they are confident in declaring that the DEFENDANT LL has been legally and convincingly proven to have committed a criminal act to CHILD VICTIM A, as stated in the first alternative indictment.

The author chooses the title "Legal Analysis of the Crime of Sexual Intercourse Against a Child by a Stepfather (Decision Study Number 13/Pid.Sus/2023/PN Wgw)" based on the background information provided above. The question of whether the judge's decisions to charge the defendant with a crime were compliant with the law at hand intrigues the author. Furthermore, how is the case Number 13/Pid.Sus/2023/PN Wgw analyzed using the theories of ratio decidendi and child protection?

2. Research Method

The normative legal research method, which is a component of the doctrinal research typology, is the research methodology employed by the author. The author employs both a statutory and a case-based research methodology. The author's indirect acquisition of secondary data through a review of the literature served as the research's data source.

3. Result and Discussion

The judge's factors in deciding whether to charge defendant LL with a crime

Number of the case 13/Pid.Sus/2023/PN This is a criminal case where the stepfather (DEFENDANT LL) had sex with a youngster (youngster VICTIM A). In this instance, the Public Prosecutor brought further allegations against DEFENDANT LL. The first alternative charge, as specified in Article 81 paragraph (3) Jo. Article 76D of Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Jo. Article 64 paragraph (1) of the Criminal Code, was selected by the Panel of Judges after considering the relevant legal facts. The elements of this charge are as follows:

a. Individuals;
b. Threatening or using violence;
c. Pressuring a child to engage in sexual activity with them or with another person;
d. When more than one person performs the act together, such as parents, guardians, family members, child caregivers, educators, educational staff, or child protection officials;
e. When multiple acts, each of which is a crime or misdemeanor, are connected in a way that makes them appear to be a single, continuous act.

The Judge Panel in case number 13/Pid.Sus/2023/PN Wgw sentenced DEFENDANT LL in conformity with the law that was in effect at the time. The basis for this is the completion of every element of a criminal act listed in the first alternative indictment article, specifically Article 64 paragraph (1) of the Criminal Code, Article 81 paragraph (3) Jo, and Article 76D of Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Jo. The elements are explained as follows:

a. The “Everyone” Element

According to the Toerekening Van Baarheid, the term "every person" refers to anyone, including legal subjects. These subjects, whether they be individuals or legal entities, can be held accountable for their conduct and carry out legal threats. This is so because certain attributes that an offender must possess are not mandated by law.

The word "everyone" suggests that everyone is covered by criminal law, meaning that each and every person is either able to understand the implications of their actions and their meaning (die omde fertelijke strkking der sigen handeling de begryppen) or is capable of carrying out their rights and obligations.

DEFENDANT LL did not deny his identity during the trial, and this was further

supported by the testimony of witnesses that were heard at the trial, which also supported DEFENDANT LL's identity. Therefore, the Defendant is meant to be understood as each individual in the indictment article, and the Defendant is not someone who is prohibited by law from being held legally liable.

The Panel of Judges concluded that the DEFENDANT LL was a physically and mentally healthy individual, making him competent and capable of accepting responsibility for his actions based on their observations made during the trial, specifically from the way they answered questions, made statements, and responded to questions from the Panel. legislation.

The person mentioned in case number 13/Pid.Sus/2023/PN Wgw was correctly addressed to DEFENDANT LL during the trial, confirming his identity as stated in the Public Prosecutor's indictment. As a result, there was no mistake in person (error in persona), and the requirement of "every person" in the indictment article has been satisfied.

b. The element "Committing violence or threats of violence"

It doesn't matter if the first two requirements—"committing violence" or "threat of violence"—are not satisfied because this second element is part of the alternative category that only has two requirements. All of the second components have been satisfied if even one of the alternative elements is met.

Any use of force against an individual or object that has the potential to injure or shock the target of the threat is considered "committing violence" under this second criteria. Violence, according to R. Soesilo, is the unlawful use of a comparatively significant amount of force or authority.

Violence against a child is defined as "any act against a child that results in physical, psychological, sexual, and/or neglect, misery or suffering, including threats to commit unlawful acts, coercion or deprivation of liberty" under Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Violence threats are defined as "Every act in the form of speech, writing, images, symbols or body movements, either with or without the use of means that can cause fear of people or society wide" .

One sort of violence against children is sexual violence. Sexual harassment is defined as forcing someone to read sexually explicit information or subjecting them to unwelcome advances, groping, kissing, or other sexual activity. Legal protection is a right for minors who have experienced sexual assault.

It was found that in case number 13/Pid.Sus/2023/PN Wgw, CHILD VICTIM A had provided a statement in which CHILD VICTIM A essentially claimed that CHILD VICTIM A had engaged in multiple sexual encounters with DEFENDANT LL between 2001 and the last time, which occurred on Sunday, December 4, 2022, at

approximately 02.00 WITA at DEFENDANT LL's home, specifically in VICTIM A'S SON'S room.

At the outset, DEFENDANT LL sexually assaulted CHILD VICTIM A. Specifically, the defendant entered the victim's chamber, lay down next to the victim, hugged the victim, and then got on top of the victim while removing his pants. CHILD VICTIM A, but CHILD VICTIM A objected. DEFENDANT LL then told CHILD VICTIM A to "don't make a fuss" and undid his pants, exposing him.

The defendant ll then undid his pants and tried to stick his penis inside Child Victim A's vagina, but he was unable to do so. Consequently, the defendant ll forced his penis inside, allowing it to enter the child victim's vagina before shaking it. -moved his buttocks back and forth, causing DEFENDANT LL's penis to enter and exit CHILD VICTIM A's vaginal entrance for a while before DEFENDANT LL's sperm emerged and flowed into the aperture, While the manner in which DEFENDANT LL engaged in sexual activity with CHILD VICTIM A during the most recent occurrence was the same as in the past, that is, DEFENDANT LL went into the children's room and engaged in sexual activity with them right away.

After having sex with the child, the defendant threatened the child by saying, "Don't make a fuss, people will hear you, just do what I want, if you don't want to, I will hit you, then I won't give you anything." "I will eat you and I won't give you pocket money to school," the child stated, paying close attention to what the child said. Because CHILD VICTIM A was terrified of DEFENDANT LL, he never notified his family or anybody else about his intercourse with the defendant. Additionally, DEFENDANT LL refuted CHILD VICTIM A's statement. In his own words, DEFENDANT LL never threatened to strike CHILD VICTIM A because he wanted to have sex with her.

The judges' panel came to the conclusion that, in order to carry out a series of acts of sexual intercourse against CHILD VICTIM A, DEFENDANT LL had used threats in the form of words and body movements in a way that could cause feelings of fear and ultimately result in repeated sexual suffering for CHILD VICTIM A after reviewing the testimony and evidence in case number 13/Pid.Sus/2023/PN Wgw. During the trial, it was discovered that CHILD VICTIM A felt afraid of DEFENDANT LL and her current pregnancy, with a gestational age of approximately 9 (nine) months.

It is clear from the above justification that the second requirement—more precisely, "making threats of violence"—has been met.

c. The element "Forcing a child to have sexual intercourse with him or another person"

When someone is forced into doing anything, it puts them in a situation where their only option is to comply with the coercer's wishes. Put another way, the coerced individual won't act or ignore something in accordance with the coercer's wishes if the coercer doesn't act. Here, the coerced individual is not forced to conduct actions that

would be extremely harmful to him; for example, it would be preferable to pass away or suffer serious injuries or illness than to comply with the coercer's demands. Reasonability in this case needs to be evaluated casuistically. In essence, coercion is accompanied by acts of violence or threats of harm. Because of the coercer's strong will, coercion essentially results in the coerced person losing their freedom. The physical force or power exerted over the subject of coercion can be used to gauge the strength of the will.

The panel of judges must first determine whether or not kid VICTIM A qualifies as a "child" before making a decision. With reference to the Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection, specifically Article 1 point 1, it is stated that "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb."

As a result, Asih falls under the definition of "Child" under Article 1 point 1 of Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection. This was determined after looking through the court file, specifically the identity of CHILD VICTIM A, and comparing it with the extract from the Birth Certificate.

PAF Lamintang and Djisman Samosir define sexual intercourse as "the act of a person who, by force or threat of violence, forces a woman to have sexual intercourse outside the bonds of marriage with him." After the Child Protection Law was passed, the crime of having sex with a minor was given more precise regulations. Children who are sexually abused suffer from a variety of losses, including immaterial ones like mental and psychological trauma that may have an impact on their lives in the future.

A man's genitalia being inserted into a woman's genitalia in a way that is normal or can lead to pregnancy is called intercourse. In this case, women include both immature and "children" in addition to adults, hence it cannot be considered sexual intercourse in the limited sense if the man's genitalia just "stick" on the woman's genitalia.

As per the legal facts presented during the trial, CHILD VICTIM AA kept his sexual assaults by DEFENDANT LL a secret from his family and other people due to his fear of DEFENDANT LL. Defendant LL claimed during the trial that he had never hit or threatened Child Victim AA, nevertheless

When DEFENDANT LL wanted to have intercourse with CHILD VICTIM AA, CHILD VICTIM AA objected, but the Defendant told her not to make a big deal out of it. With strong conviction, the Panel of Judges has determined that DEFENDANT LL's illegal sexual encounter with CHILD VICTIM AA was motivated by coercion. In order for the third element of the indictment article—which is primarily about "forcing the child to have sexual intercourse with him"—to be legally satisfied.

d. **The element "The act is carried out by parents, guardians, people who have**

family relationships, child caretakers, educators, educational staff, officials who handle child protection, or is carried out by more than one person together".

Since the nature of this fourth element is alternative, all of the elements are satisfied even if you only complete one of the elements or sub-parts inside it. According to the evidence presented during the trial, CHILD VICTIM A is the stepson of DEFENDANT LL from the marriage that was consummated lawfully between DEFENDANT LL and Witness WN, or CHILD VICTIM AA's biological mother. Since CHILD VICTIM AA was only three years old, DEFENDANT LL has also assisted in providing care and attention for AA'S CHILD VICTIMS. This suggests that the act performed by the parents, which makes up the fourth part, has been legally completed in accordance with the law.

e. The element "Several acts, although each of them constitutes a crime or violation, are related in such a way that they must be viewed as one continuous act"

This fifth aspect indicates that an action is connected to another. To be considered a continuous action, an activity must satisfy certain criteria, such as originating from a single intention, being identical, and occurring within a reasonable time frame. The following is also included in the explanatory memory (Memorie Van Toelichting/MvT) on the creation of Article 64 of the Criminal Code:

1. A continuing crime can only result from a collection of related illegal acts, meaning that some of the activities must involve the execution of a banned choice.
2. The combination of a theft and a murder or a theft and an assault cannot lead to a continuous act for the following reasons:

a. The offender must make multiple decisions in order to commit these crimes.
b. The offenders undoubtedly need various times in order to make and carry out such judgments.

Drawing from this explanatory memory, one could hypothetically argue that if an individual commits multiple crimes or violations, each of these acts is considered a continuing action because of the relationship between them, which requires these acts to be viewed as such.

DEFENDANT LL is deemed to have been legally and convincingly proven to have committed a criminal act upon the fulfillment of all requirements contained in the first alternative indictment article, specifically Article 81 paragraph (3) jo. Article 76D of Law Number 17 of 2016 concerning Second Amendment to Law Number 23 of 2002 concerning Child Protection jo. Article 64 paragraph (1) of the Criminal Code.

Analysis of Case Number 13/PID.SUS/2023/PN WGW Based on Child Protection Theory and Ra Theory tio Decidendi

a. Child Protection Theory

The Child Protection Law's Article 20 declares that "the state, government, society, family, and parents are obliged and responsible for implementing child

protection." The two (two) categories of child protection are separated as follows: 1) Judicial child protection, encompassing safeguards within the domains of civil and public law; and 2) Non-Judicial child protection, encompassing safeguards within the domains of social, health, and education.

According to child protection theory, child protection refers to all efforts undertaken to establish the necessary frameworks for each child to fulfill their rights and responsibilities in order to support their normal growth and development on all levels—physically, cognitively, and socially. According to Arif Gosita, safeguarding children is an attempt to keep them safe so they can fulfill their legal and moral responsibilities. These obligations are not as important in the legal framework for safeguarding children as children's rights, which are governed by law. Because it is every citizen's duty and right to participate in national development, ignoring the issue of child protection will impede both the welfare of the populace and the children.

Considering that the judicial process for children in conflict with the law is handled differently from the handling of cases involving criminal offenses committed by adults, the application of child protection theory has relevance to the application in court processes and the protection of children of a juridical and non-juridical nature when handling cases of children in conflict with the law. similar to what occurred in juvenile criminal case number 13/Pid.Sus/2023/PN Wgw.

The criminal case 13/Pid.Sus/2023/PN Wgw concerns the stepfather (DEFENDANT LL) having sex with a child (CHILD VICTIM A). Although DEFENDANT LL should have been protecting CHILD VICTIM A as a father (parent), according to Article 20 of the Child Protection Law, he was mistreated.

According to child protection theory, because DEFENDANT LL was unable to fulfill his obligations and rights as a child, he ruined CHILD VICTIM A's future. DEFENDANT LL's acts have stunted CHILD VICTIM A's growth and development on all levels—socially, psychologically, and physically.

Since VICTIM A'S CHILD was three years old, DEFENDANT LL, as a stepfather, was responsible for raising and providing for him. Like he would have his own biological child, DEFENDANT LL ought to have given CHILD VICTIM A the same love and protection. But the truth is that DEFENDANT LL truly performed a horrible deed when he had sex with CHILD VICTIM A, who was still developing as a child and so had immature thoughts.

c. Ratio Decidendi Theory

A panel of judges' decision based on relevant information is known as a ratio decidendi. A judge must give justification and reasons for the decision when rendering one in court. The judge's considerations also pertain to the rationale and foundation of the ruling. A key component of appreciating the worth of a judge's decision that is both

just and provides legal clarity is the judge's deliberation, or ratio decidendi. This is governed by the provisions of Law Number 48 of 2009 concerning Judicial Power (UUKK), namely Article 50 paragraph (1) and Article 53 paragraph (2).

Article 197 paragraph (1) letter d of the Criminal Procedure Code regulates the judge's considerations. It provides that "Considerations are prepared concisely regarding the facts and circumstances along with the evidence obtained from the examination at trial which is the basis for the defendant's decisions." This article's contents make it clear how crucial it is for the judge to take into account the facts as they relate to the evidence that was used in the trial.

According to Mackenzie, the Ratio Decidendi theory is based on a fundamental philosophical framework that takes into account all relevant factors pertaining to the disputed case's subject matter. The judge's considerations must be grounded in a clear motivation to uphold the law and ensure that the litigants receive justice. The judge then looks for relevant statutory regulations as the legal basis for passing a decision.

The judges examining case number 13/Pid.Sus/2023/PN Wgw have used the Ratio Decidendi Theory to analyze the facts of the case and the evidence presented during the trial. As a result, they are confident in their findings that the defendant, LL, has been legally and convincingly proven to have committed a criminal act against CHILD VICTIM A, as stated in the first alternative indictment, specifically in accordance with Article 81 paragraph (3) jo. Article 76D of Law Number 17 of 2016 concerning Second Amendment to Law Number 23 of 2002 concerning g Child Protection jo. According to Article 64 paragraph (1) of the Criminal Code, the elements of a criminal offense are as follows:

1. Everyone;
2. Committing violence or threatening violence;
3. Forcing the child to have sexual intercourse with him or another person;
4. The act is carried out by parents, guardians, people who are related to them, child caretakers, educators, educational staff, officials in charge of child protection, or is carried out by more than one person together;
5. Several acts, even though each of them constitutes a crime or violation, are related in such a way that they must be viewed as one continuous act.

4. Conclusion

a. The Judge Panel considering Case No. 13/Pid.Sus/2023/PN Wgw sentenced DEFENDANT LL in conformity with the law in effect at the time. According to Article 81 paragraph (3) of the first alternative indictment article, Article 76D of Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Jo, and Article 64 paragraph (1) of the Criminal Code, all of the elements of a criminal act must be fulfilled. (1) anyone; (2) using violence or threatening to use violence; (3) forcing a child to engage in sexual activity with him

or another person; (4) the act is carried out by parents, guardians, relatives, child caregivers, educators, educational staff, child protection officials, or by multiple people acting together; (5) multiple acts, even though each one is illegal, must be considered as a single, continuous act.

b. Case analysis for 13/Pid.Sus/2023/PN Wgw According to child protection theory, because DEFENDANT LL was unable to fulfill his obligations and rights as a child, he ruined CHILD VICTIM A's future. DEFENDANT LL's acts have stunted CHILD VICTIM A's growth and development on all levels—socially, psychologically, and physically. In the meantime, the judges reviewing case number 13/Pid.Sus/2023/PN Wgw have examined the facts based on the evidence presented during the trial, applying the Ratio Decidendi Theory. As a result, they are confident that the DEFENDANT LL has been proven guilty of the crime both legally and credibly. charges in relation to CHILD VICTIM A.

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