



LIABILITY FOR THE CRIMINAL ACT OF RAPE ON A MINOR BY DECEPTION BASED ON JUDGMENT NO. 11/PID. SUS ANAK/2022/PN TJK

Risti Dwi Ramasari

Fakultas Hukum Universitas Bandar Lampung
Email: risti@ubl.ac.id

Gindha Ansori Wayka

Fakultas Hukum Universitas Bandar Lampung
Email: ansori@ubl.ac.id

M. Adhitya Ridho Gumilang

Fakultas Hukum Universitas Bandar Lampung
Email: adhityaridho149@gmail.com

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ABSTRACT

Sexual violence that occurs at this time, especially the rape of women and children is increasingly prevalent, making the community very restless. In fact, this also happens to underage teenagers who are still in school, which should focus on education. The purpose of this paper is to determine the responsibility of the perpetrators of committing the crime of Rape on Minors by Deception. This writing uses a normative juridical approach research method and qualitative descriptive research. Criminal liability is based on several elements, such as the presence of each person. This element is intended to further examine who is sitting as a child, whether it is really the culprit or not, this is to avoid an error in persona in punishing someone. In this case, a child has been brought before the trial, namely, the child is in good physical and mental health and is able to answer all questions that are asked to him clearly and responsively, then there is an element of deliberately tricking, a series of

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lies, or persuading the child to have intercourse with him. or with other people.

Keywords: Law; Rape on a Minor; Criminal Liability

INTRODUCTION

Indonesia is a country of laws. This is stated in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia of 1945. Furthermore, Article 27 paragraph (1) jo Article 28D paragraph (1) reads "All citizens have concurrent positions in law and government and are obliged to uphold that law and government with no exception", and in Article 28D paragraph (1) " Everyone has the right to fair legal recognition, assurance, protection and certainty and equal treatment before the law". Moempoeni Martojo said: "The term citizen is certainly in the sense of both women and men".¹

As a sovereign state, the purpose of Indonesia is stated in Alenia 4 Preamble to the 1945 Constitution "... to establish an Indonesian state government and to promote the general welfare, educate the nation's life, and participate in carrying out world order based on independence, lasting peace, and social justice".²

The rise of crimes that occur in our country at this time greatly makes the surrounding community uneasy, such as robbery, violence against children, corruption, murder, kidnapping, fraud, sexual abuse, especially rape. Rape itself is one of the crimes that has recently been often reported both through newspapers, magazines, social media, and other mass media which has increased in numbers that can be said to be relatively quite serious. Almost every year every month every time to time the case never ends or can in other languages never end. More

¹ Moempoeni Martojo. 1999. Prinsip Persamaan di Hadapan hukum bagi Wanita danPelaksanaannya di Indonesia, *Universitas Dipenogoro (UNDIP) Disertasi*, Semarang, hlm. 2.

² Lintje Anna Marpaung. 2018. *Ilmu Negara*, Yogyakarta, Penerbit ANDI, hlm. 55



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and more women, especially teenagers in Indonesia, are becoming victims of rape.

Rape itself is an act that violates human rights, especially for women, even though we know that women's honor must be protected as stipulated in the 1948 Universal Declaration of Human Rights based on women's experience, violations of women's rights and rape are interpreted as prohibited acts.

Rape is a form of violence and crime of decency against women that can happen at any time, happen to anyone and anywhere, such as on the streets, at home, in the office, even within the scope of schools. At times and places where there is no social control, in areas not monitored by society or when society is negligent, rapists usually take advantage of the opportunity to carry out their depraved acts of deceiving the victim with various kinds of seduction and premeditated gimmicks.

Rape is sexual violence committed to vent sexual appetites committed by a man against a woman in a way that is judged to be in violation of both norms and laws. Nowadays, rape that often occurs against women is the rape of children.

Looking at the existing reality, even though we often hear of many cases of rape that occur but the victim himself is in doubt to report. This is usually caused by the threat from the perpetrator more so if socially and the position of the perpetrator and family is higher, from the surrounding community which is like ostracizing the victim and feeling depressed because he feels that he is more dirty, as well as a sense of remorse and sin.³

The rape problem experienced by women is an example of the humility of women's position towards men's sexual interests. The sexual image of a woman who has positioned herself as a male sexual object is of far-reaching implications. In their daily lives, women are constantly faced with physical and psychic violence, coercion and

³ Shanty Dellyana. 1998. *Wanita dan Anak di Mata Hukum*. Liberty, Yogyakarta, 1998,

hlm. 50.



torture. Therefore, rape is not just a reflection of the image of women as sex objects, but rather as objects of male power.⁴

In research conducted by the Indonesian Child Protection Commission (KPAI) or the Indonesian National Commission for Child Protection reported that in 2003, the number of children who were victims of sexual crimes was recorded as many as 343 cases. In 2019, that figure rose to 350 cases. In 2021 KPAI revealed that as many as 207 children were victims of sexual abuse and violence with details, namely 126 girls and 71 boys. Of course, the actual number of cases of child maltreatment, such as rape and incest, occurs in general much higher than the data presented by the media or recorded by KPAI.

Based on the meaning contained in the Big Dictionary of Indonesian, rape comes from the word rape which means forced dashing, strong, mighty. While rape is defined as the process, method, act of rape, violating with violence.⁵ In the Criminal Code (KUHP) rape itself is regulated in article 285 which reads "Whoever by force or threat of violence forces a woman to have sex with him outside of marriage, is threatened with rape with imprisonment for a maximum of twelve years". The formulation in the Criminal Code provides several elements to be categorized as an act of rape, such as:

- a. By force or threat of violence.
- b. Forcing a woman to have sex
- c. Performed outside of marriage

The elements of the formulation apply cumulatively meaning that it is called the crime of rape if it meets these elements.

According to R. Sugandhi, rape is A man who forces on a woman not his wife to have intercourse with her with threats of

⁴ Dadang S. Anshari, 1997, *Membincangkan Feminisme, Refleksi Muslimah atas Peran Sosial Kaum Wanita*, Pustaka Hidayah, Bandung, hlm. 74

⁵ W.J.S. Poerwadarminta. 2007. *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta, hlm. 878.



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violence, for which it is required that a man's has entered into the pubic hole of a woman which then secretes semen.⁶

The perpetrators of this rape crime were not only committed by adults but also committed by teenagers and children, even tragically, those who committed the copulation were children who were still in school. The way it is carried out or how it works or better known as the Modus Operandi of the crime of copulation is different, some are carried out individually and some are in groups, various ways are done by deliberately committing deception, a series of lies, and or persuading the victim to perform copulation. The perpetrators usually already know the victim and sometimes the victim is a relative or close friend in his school.

One of the cases of the Crime of Rape committed using deception, a series of lies, or persuasion against the victim as in the judgment No. 11/Pid.Sus Anak/2022/PN Tjk. This case has the status of Anonymization which means that both the victim and the perpetrator are vague because both the victim and the perpetrator are both minors under the 1945 Law. The Panel of Judges ruled that the defendant was validly and conclusively proven guilty of committing the act of rape. On Friday, January 14, 2022, at around 18.30 WIB, it was located in the room of the perpetrator's house addressed at Perum Tanjung Asri Blok C No.22 Kel. Pematang Wangi Kec. Tanjung Seneng Kota Bandar Lampung or at least somewhere within the scope of the legal area of the Tanjung Karang District Court, the one who commits the criminal act of deliberately committing a ruse, a series of lies, or persuasion to have intercourse with him. Sentence the perpetrator to imprisonment at the Special Child Development Institute (LPKA) class II Bandar Lampung for 4 (four) months and job training at the Special Child Development Institute (LPKA) for 2 (two) months and a criminal charge to the perpetrator to pay a case fee of Rp. 2,000.00 (two thousand rupiah).

Based on the background above, the author is interested in conducting research as stated in writing a journal with the title

⁶ Sugandhi. 1980. KUHP dan Penjelasannya, Usaha Nasional, Surabaya, Hlm. 302



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METHODS

To solve the problem to provide instructions on the problem to be discussed, the research method that the author uses consists of a normative juridical approach method, a normative juridical approach method that will be used using two supporting data sources, both primary data and secondary data. In this study, primary data will be used such as laws and regulations. Meanwhile, secondary data are obtained from literature materials, namely from scientific forums-forums and other written works. Then use qualitative descriptive research methods. Qualitative descriptive research is research that presents research data in the form of sentence descriptions.

RESULT AND DISCUSSION

Accountability of perpetrators of rape on minors using deception

In criminal liability is inseparable from criminal acts, a person cannot be held accountable without first committing a criminal act. In order to be held criminally liable, the defendant must be proven to have committed a mistake. Criminal liability is to determine whether a suspect/defendant is responsible for a criminal act that occurs or not. If he is convicted then it must be proven that the act is unlawful and the defendant is able to take responsibility.

A person has an aspect of criminal liability, in the sense of being convicted of a maker, there are several conditions that must be met in accordance with article 81 paragraph 2 of Ri Law number 17 of 2016 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to RI Law Number 23 of 2022, concerning Child Protection, namely:

1. The element of each person

Considering, that this element is intended to examine further as to who is sitting as a Child, whether it is really the perpetrator or not, it is to avoid any error in persona in sentencing a person, in this case it has been presented to the trial of a Child, i.e. the Child is in good physical and spiritual health and is able to answer all the questions



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asked to him clearly and responsively, on the question the Judge has explained his identity in full which turns out to be in accordance with the identity of the Child as stated in the indictment and in accordance with the minutes of the investigation, regardless of the whether or not the material acts charged by the Public Prosecutor were proved to the Child, and during the course of the examination of this case, the Judge did not see any things that could erase his guilt so that the Child was seen as a person capable of accounting for his deeds which had been charged in this case, therefore the element of Every Person can be said to be Fulfilled.

2. The existence of an element of deliberately committing a gimmick, a series of lies, or persuading the child to have intercourse with him or with another person.

The Element of Intentionally Committing a Gimmick, A Series of Lies, Or Persuading a Child to Have Intercourse With Him or With Others has the nature of an Alternative The Judge is not burdened with proving all the sub-elements of this article, just one of the sub-elements is fulfilled then the other sub-elements do not need to be proved again. Then what is meant by intentionality in criminal acts is the will of the sipelaku followed by behavior to realize the will and the perpetrator realizes that his will will cause consequences. based on the facts of the trial, it was revealed that the child had stabbed the victim's witness on Friday, January 14, 2022 at around 18.30 WIB in Bandar Lampung, based on this explanation, the Panel of Judges agreed that the Element of Intentionally Committing a Gimmick, A Series of Lies, Or Persuading a Child to Have Intercourse With Him or With Others has been fulfilled. because one of the elements of Article 81 Paragraph (2) of RI Law Number 17 of 2016 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to RI Law Number 23 of 2002 concerning Child Protection has been fulfilled, then the Child must be declared legally and convincingly proven to have committed a criminal act "Intentionally Inducing Children to Have Intercourse with Him", in the trial the Judge did not find anything that could abolish criminal liability, either as a justification reason and or a forgiving reason, then the Child must be



held accountable for his deeds. Based on that, the panel of judges decided:

- a. Declaring the Child validly and conclusively guilty of committing a criminal offence "Knowingly Inducing the Child to Have Intercourse With Him.
- b. Sentence the child therefore to imprisonment at the Special Child Development Institute (LPKA) Class II Bandar Lampung for 4 months and job training at the Special Child Development Institute (LPKA) Class II Bandar Lampung for 2 months.
- c. Establish the period of arrest and detention of the Child
- d. deducted entirely from the sentence imposed.
- e. Establishing the Child remains in custodye.
- f. Charge the Child to pay a case fee of Rp2,000.00 (two thousand rupiah).

The Basis for The Judge's Consideration in Deciding the Crime of Rape of a Minor By Deception

The consideration of the judge is one of the very important aspects to realize the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty, in addition there are also benefits for the parties concerned so that this judge's consideration must be addressed carefully, well, and carefully. If the judge's consideration is not thorough, good, and careful, then the judge's decision derived from that judge's consideration will be overturned by the High Court or the Supreme Court. In the examination of cases, the judge must pay attention to the evidence, because the results of the evidence will later be used as consideration to decide the case.

According to The Mother of Uni Latriani, as a judge at the Tanjung Karang District Court Class IA, the judge's decision is closely related to how the judge expresses his opinion or consideration based on the facts and evidence at the trial and the judge's belief in a case. Therefore, judges have a central role in passing court decisions. In the judgment of the court there must be considerations regarding matters that are aggravating and mitigating the judgment, these considerations are used as an excuse by the judge in passing his judgment whether it is in the form of another conviction.



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Consideration of the matters which incriminate and relieve the accused is provided for in Article 197 letter d and 197 letter f of the Criminal Procedure Code Article 197 letter d reads "A succinctly drafted consideration of the facts and circumstances along with the means of proof obtained from the examination at trial which form the basis for determining the guilt of the accused". Meanwhile, Article 197 letter f reads "Articles of laws and regulations that are the basis for punishment or actions and laws and regulations that are the legal basis of the judgment, accompanied by circumstances that burden and relieve the accused".

Judges in prosecuting criminals must go through a process of presenting truth and justice in a court decision as a series of law enforcement processes. In passing a judgment, the judge must have a basis of consideration based on conviction and supported by the existence of valid evidence so that the verdict handed down by the judge really meets the sense of justice of the community. Judges in passing judgments must consider many things, be it related to with the case being examined, the level of deeds and mistakes committed by the perpetrator, the interests of the victim, his family and a sense of justice. According to the mother of Uni Latriani, A judge when imposing a sentence on a defendant should not impose such a sentence unless the accused has fulfilled a minimum of two valid pieces of evidence, so that the judge obtains a conviction that the defendant is actually proved and conclusively guilty of a criminal offence. According to Article 184 of the Code of Criminal Procedure, the valid evidence referred to is, Witness Statement, Expert Statement, Letter, Instructions, Statement of the Defendant.

According to Mrs. Uni Latriani, she stated that the Panel of Judges a quo considered that the Child had been charged by the Public Prosecutor with an alternative charge, so that the Judge with due regard to the aforementioned legal facts would immediately consider the most appropriate charge if it was related to the defendant's conduct namely the second Alternative Charge as stipulated in Article 81 Paragraph (2) of RI Law Number 17 of 2016 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of



2016 concerning the Second Amendment to RI Law Number 23 of 2002 concerning Child Protection.

According to Mrs. Uni Latriani, with the evidence of the Defendant committing a criminal offence as charged to her in the alternative indictment, then against the material of the defence of the Defendant's Legal Counsel other than those considered above must be rejected, because this case according to the Panel of Judges a quo is purely a criminal case which since the Defendant was sentenced to a criminal/Act it must also be burdened to pay the costs of the case; Taking into account, Article 81 Paragraph (2) of RI Law Number 17 of 2016 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to RI Law Number 23 of 2002 concerning Child Protection Law Number 3 of 1997 concerning Children's Courts and Law Number 8 of 1981 concerning the Criminal Procedure Law and other relevant laws and regulations.

CONCLUSION

Based on the explanation above, the writing concludes that criminal liability is based on several elements, namely the existence of an element of each person, this element is intended to further examine who is sitting as a Child, whether it is really the perpetrator or not, this is to avoid errors in persona in punishing someone, in this case has been presented to the trial of a Child, that is, the Child is in good physical and spiritual health and is able to answer all the questions posed to him clearly and responsively, and then there is an element of Deliberately committing a ruse, a series of lies, or persuading the child to have intercourse with him or with others. Because of this, the defendant was sentenced to imprisonment at the Special Child Development Institute (LPKA) class II bandar Lampung for 4 months and job training in special child coaching (LPKA) class II bandar Lampung for 2 months.



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