



## Analysis of Judge's Decision on The Crime of Sexual Intercourse with a Child (Case Study of Judge's Decision Number 1423 K/Pid.Sus/2018)

Debby Ramadhanty<sup>1\*</sup>, Pudji Astuti<sup>2</sup>

<sup>1</sup> Faculty of Law, State University of Surabaya, Indonesia

<sup>2</sup> Faculty of Law, State University of Surabaya, Indonesia

\* debbyksj@gmail.com

Article	Abstract
<b>Keywords:</b> Decision Analysis; Child Affair; Indictment	<i>Judgment Number 1423K/Pid.Sus/2018, relates to the defendant's commission of the criminal act of sexual intercourse through deception against a minor. This study aims to assess and analyze whether the judge's decision in case number 1423K/Pid.Sus/2018 complies with the criminal sanctions under Article 81 paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. It also seeks to examine and analyze why the judge disagreed with the public prosecutor's indictment. The research method used is normative juridical research, employing a statutory approach, conceptual approach, and case approach. The legal materials used include primary, secondary, and tertiary legal sources. The data collection method used is literature review. The analytical technique employed in this study is prescriptive analysis. The results of this research indicate that Judgment Number 1423K/Pid.Sus/2018 fulfills the juridical elements. However, the imposed sentence is still not in accordance with Article 81 paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection because the punishment imposed is below the minimum threat of punishment. Additionally, the judge disagreed with the public prosecutor's indictment, which charged the defendant under Article 88 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The judge believed that the defendant only fulfilled the element of sexual intercourse and not exploitation.</i>



Copyright ©2025 by Author(s); This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License. All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.

### INTRODUCTION

Indonesia is one of the countries whose level of technological advancement is quite sophisticated, making communication and interaction easier. In this era, the majority of the Indonesian population has enjoyed technological advances. Based on a report entitled Indonesian Internet Profile 2022, the Indonesian Internet Providers

Association (APJII), said that the number of Indonesians who have connected to the internet in the period 2021-2022 will reach 210 million people. Before the covid outbreak, the number of internet users in Indonesia only reached 175 million people. That, during the outbreak, the number of people using the internet is estimated to increase by 35 million (Firmansyah and Maulana 2022) .

Talking about technology cannot be separated from gadgets and the internet, this is what makes life easier and more efficient. With technological advances, it is possible to create new jobs such as youtuber, digital marketing and so on. In addition to the positive impacts caused, there are also negative impacts from technological advances. The existence of this technological advancement itself poses a threat to us if it is not able to be utilized properly, and can even damage the nation's generation with some of the negative things that are caused. Technological sophistication itself presents many criminal acts, it is not uncommon to find criminal acts using social media, such as spreading hoax news, bullying, and so on. The victims are not only adults but also children.

Data owned by the Indonesian Child Protection Commission (KPAI) recorded that over the past 4 (four) years the number of violence against children has continued to increase. In 2014, there were 5,066 cases. Specifically violence against children caused by social media there were 322 cases, the number continues to increase from 2011 around 100 cases. According to KPAI member Maria Ulfah Anshor, many child abuse cases originate from social media or the internet. Sexual crimes via the internet are a very high category of cases. Until 2014 there were 53 children who were victims. While there were 42 children who committed online sexual crimes, there were 163 children who were victims of pornography from social media. Finally, there are 64 children who own pornographic media in video format and uploaded on social media (Maria 2015).

Children are a source that has the potential to continue the life of the nation and state. Therefore, directions are needed in the nature of guidance for survival and protection in various aspects that allow for physical development and growth in the future. A child is a person who is not yet legally capable or is underage, still under the supervision of his/her parents or guardian. Children are in a weaker position than adults, so sometimes they are still very dependent on adults, so adults also have a responsibility to protect children's rights.

Children's rights are human rights that are inherent from birth and while still in the womb. Child rights state that "Child protection is all activities to ensure and protect children and their rights so that they can live, grow, develop, and participate, optimally, in accordance with the dignity of humanity, and receive protection from violence and discrimination". This means that every child should have the same rights (Wahyudi and Sukma t.t.)

The Child Protection Law stipulates that: "Any person who commits the crime of sexual intercourse with a child shall be punished". The crime of sexual intercourse with a child has an element of deception or seduction by the perpetrator to fulfill his lustful desires towards the victim. Crimes against children often occur because children can easily be persuaded and influenced by the tricks of the perpetrators. The weaknesses that children have make them more vulnerable and very easy to become victims in criminal acts. Because in essence children are less able to protect themselves from various kinds of actions that cause mental, physical and social harm (Maidin 2017)

The crime of sexual intercourse with a child is clearly against the law and damages the dignity of the child. The 1945 Constitution of the Republic of Indonesia (UUD 1945) states that; "Every child has the right to survival, growth and development and the right to protection from violence and discrimination".

One example of a case that is the topic of this legal research, namely the sale of minors who were decided by Court decision number 1423 K / Pen.Sus / 2018. The author is motivated to analyze the Judges' Consideration in Court Decision Number 1423 K/Pid.Sus/2018 in relation to Article 82 paragraph (1) of the Child Protection Law. This case originated from the witness Nailur Rahman, Rinda Ayu Ristanti's lover (child victim), who operated a Facebook account belonging to a 15-year-old and posted the sentence open "BO" (booking out). After the post was uploaded, it was noticed by the defendant (Slamet Arianto Alias Sapto Bin Khamdani), a masher. Then the Defendant contacted Nailur Rohman to book/date the Child Victim. From the communication between the Defendant and Nailur Rahman, it was agreed that the child victim would serve the Defendant on July 9, 2017 at one of the boarding rooms owned by Mahmudi's brother on Jalan KH Agus Salim Gang VII Number 45 Kediri City. Copulation occurred between the Defendant and the child victim by inserting the Defendant's genitals into the child victim's vagina 3 (three) times at different times. Every time the Defendant finished having intercourse with the child victim, the Defendant gave money for sex services to Nailur Rahman in the amount of Rp 600,000 (six hundred thousand rupiah).

The crime committed by the Defendant Slamet was charged by the Public Prosecutor (JPU) in the indictment of Case Register PDM 106/KDIRI/Euh.2.KA/10/2017 with the primary charge of Article 81 paragraph (2) and the subsidiary charge of Article 88 paragraph (1) of the Law on Child Protection. The Public Prosecutor in his indictment stated that the Defendant Slamet Arianto Alias Sapto Bin Khamdani was guilty of committing deceit, a series of lies, or inducing a child to have sexual intercourse with him as referred to in Article 81 paragraph (2) of the Child Protection Law and charged the Defendant with 6 (six) years imprisonment minus the period of detention with the order that the Defendant remain in detention and pay a fine of Rp 1,000,000.00 (one million rupiah) in lieu of 2 (two) months imprisonment.

The District Court Judge stated in his final decision that the Defendant was legally and convincingly proven guilty of committing the crime of "Participating in the Sexual Exploitation of Children" as charged in the Second alternative charge of the Public Prosecutor. Therefore, the Defendant was sentenced to 3 (three) years imprisonment and a fine of Rp 1,000,000.00 (one million rupiah), provided that if the fine is not paid, it will be replaced with 2 (two) months imprisonment.

The Public Prosecutor filed an appeal which basically states in its appeal memorandum that: The Public Prosecutor disagrees with the reasoning of the panel of judges who found the defendant guilty of committing the crime of "Participating in the Sexual Exploitation of a Child". That the defendant's actions have been categorized as an *extra ordinary crime* because he made a child a victim, so the consideration of the Panel of Judges who decided the defendant with Article 88 of the Child Protection Law which carries a lower penalty will be a trigger for other perpetrators to commit sexual intercourse.

The appeal made by the Public Prosecutor was responded to by the Panel of Judges of the East Java High Court who were of the opinion that the legal considerations of the Panel of Judges of the First Level were correct, because they were considered based on appropriate reasons and correct according to the law on the facts obtained in the trial supported by valid evidence, so that these considerations could be approved and used as the basis for their own legal considerations by the Panel of Judges of the High Court in deciding the case at the appeal level. Based on these considerations, the Court of Appeal upheld the Decision of the Kediri District Court dated January 8, 2018 Number 237/Pid.Sus/2017/PN Kdr which was appealed by the Public Prosecutor.

The Public Prosecutor then appealed the decision to the Supreme Court. As a result, the Panel of Judges of the Supreme Court agreed with the reasoning of the Public Prosecutor that the Defendant was guilty of committing a criminal offense in violation of Article 81 paragraph (2) of the Child Protection Law. The Panel of Judges of the Supreme Court then handed down a decision granting the appeal of the Public Prosecutor and annulling the Decision of the East Java High Court Number 147/PID.SUS/2018/PT SBY dated February 26, 2018 which upheld the Decision of the Kediri District Court Number 237/Pid.Sus/2017/PN Kdr dated January 8, 2018. The Supreme Court sentenced the defendant to 3 (three) years imprisonment and a fine of Rp 1,000,000.00 (one million rupiah) or if not paid is replaced with 2 (two) months imprisonment.

The Supreme Court's decision granted the primary charge of the Public Prosecutor, namely Article 81 paragraph (2) of the Child Protection Law. The defendant was proven legally and convincingly guilty of committing the crime of "Intentionally committing deception, a series of lies or inducing a child to have sexual intercourse with him". However, there was no change in the criminal sentence imposed

on the defendant. Therefore, the defendant is still punished with imprisonment for 3 (three) years and a fine of Rp 1,000,000.00 (one million rupiah) or if not paid, it will be replaced with 2 (two) months imprisonment. Article 81 paragraph (2) of the Child Protection Law which is used as the primary charge of the Public Prosecutor, the punishment refers to Article 81 paragraph (1) of the Child Protection Law, which states that the punishment for every person who commits a criminal offense in accordance with Article 81 paragraph (2) of the Child Protection Law is imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).

The description of the background above motivates the author to make Supreme Court Decision Number 1423 K/Pid.Sus/2018 as a scientific study in research with the title: **"Analysis of Judges' Decisions on the Crime of Copulation Against Children (Case Study of Judge's Decision Number 1423 K/Pid.Sus/2018)"**.

Based on the background description above, the problems raised by the author in this research are as follows:

1. Are the Sanctions in the Judge's Decision in accordance with Article 81 Paragraph (2) of the Child Protection Law?
2. Why did the public prosecutor charge Article. 88 of the Child Protection Law and the judge disagreed with this?

## METHOD

The research with the title "Judge's Decision on the Crime of Copulation of a Child in Return for Money" is a normative research. This type of normative writing is a problem approach that examines legislation and regulations related to librarianship books and documentation that can be said to be related to the problems discussed in this thesis which discusses Decision number 1423 K/Pid.Sus/2018.

Normative legal research aims to provide a legal argument as a basis for determining whether an event has been considered right or wrong, and how the event should be seen from a legal point of view. (Mukti and Yulianto 2013)

The approach that will be used in this normative research is used as a perspective that can provide clarity to the description to get answers to the problems to be discussed. This research uses 3 types of approaches, namely the *statute* approach, *conceptual* approach, and *case* approach.

The statutory approach is to examine all laws and regulations relating to the legal issues being addressed (Marzuki 2005) . The statutory approach provides an opportunity for researchers to study whether there is consistency and compatibility between one law and another. The result of the research is an argument to solve the legal issue at hand.

The conceptual approach starts from studying the views and doctrines that develop in legal science. The conceptual approach is used to bring up objects of interest from a practical point of view and the point of view of knowledge in mind and certain attributes. An understanding of these views and doctrines is the basis for researchers in building a legal argument in solving the issue at hand (Marzuki 2005). The conceptual approach used in Decision number 1423K/Pid.Sus/2018 is the concept of the crime of sexual intercourse.

This case approach is to raise and analyze a case as the subject matter. This research analyzes cases that have been decided by Supreme Court Judges and have permanent legal force.

In order to solve a legal issue to be studied, researchers need sources of legal material. The sources of research materials needed are in the form of primary legal sources and secondary legal materials (Diantha and Pasek 2016). Legal materials that will be used in this research are obtained from library materials, which include:

Primary legal materials are legal materials that are authoritative which means they have authority. Primary legal materials consist of legislation, official records or minutes in making laws, judge decisions (Marzuki 2005). The primary legal materials used are the Criminal Code, Criminal Procedure Code, Child Protection Law, SPPA Law, Prosecutor's Law, Judicial Power Law, Human Rights Law, and Decision Number 1423K/Pid.Sus/2018.

Secondary legal materials are materials that can help analyze and understand primary legal materials, such as theses on the crime of sexual intercourse, journals related to child sexual intercourse, books and doctrines sourced from leading legal experts on legal issues related to the crime of sexual intercourse against children.

Tertiary legal materials used can be in the form of language dictionaries, legal dictionaries, and dictionaries that are related to the object of research. help researchers examine legal issues.

The technique of collecting legal materials in normative research is carried out through literature studies, both primary legal materials and secondary legal materials. The search for legal materials in this study was carried out in various ways, namely by reading, seeing, listening and searching through the internet media (Mukti and Yulianto 2013). The legal materials that have been collected are then selected and taken in accordance with the research problem.

Legal material processing techniques in normative legal research are carried out to systematize legal materials. In this case, the processing is carried out by selecting secondary data that has a relevant correlation with problems in the research, then classifying according to the classification of legal materials, both primary legal materials, secondary legal materials, and non-law materials to then analyze legal materials in compiling arguments in the form of analysis on the results and discussion of legal research systematically and logically.



Legal material analysis techniques are activities in normative legal research in the form of conducting a review of the results of processing legal research materials using theories related to legal issues that function as an analysis knife. The legal material analysis technique used in this research uses a prescription method that identifies legal facts and eliminates materials that have no relation to the research problem, searches for answers to problem formulations based on the laws that have been collected, then draws conclusions as an answer to the problem formulation (Marzuki 2005). The legal material that will be analyzed using this prescriptive method can later provide advice to the government so that it can be useful for solving problems related to the criminal act of child sexual intercourse.

## RESULTS AND DISCUSSION

### Case Chronology

Initially, the witness Nailur Rohman, who was the victim's lover, operated the 15-year-old victim's Facebook account and posted the sentence "BO" (Booking Out). After the post was uploaded, the defendant Slamet Arianto found out about it. Then Slamet contacted Nailur to book a date with the child victim.

On Sunday 9 July 2017 Slamet finally met Linda Ayu Ristanti (Child Victim) who was 15 years old and invited the victim to intentionally deceive, lie, or induce the child to have sexual intercourse with him or another person. After the sexual intercourse the defendant Slamet Arianto gave Rp. 600,000 to the victim Linda Ayu Ristanti. This was done several times and the last time was on August 6, 2017.

That the actions of the defendant Slamet Arianto have participated in sexual exploitation, in addition to feeling vaginal pain when urinating the victim witness Linda Ayu Ristanti suffered injuries according to the results of Visum Et Repertum No. VER / /VIII/2017/Rumkit dated August 7, 2017 conducted by Dr. Eric Agustinus Doctor at Bhayangkara Kediri Hospital, with the results of examination of body parts including: -Outer lip of the vagina: a blister was found at six o'clock measuring one centimeter by zero point two centimeters; -Hymen: found old tears at one o'clock, three o'clock, seven o'clock, and nine o'clock to the base; at hours: one, three, five, eight, eleven and twelve with the conclusion of the examination results obtained old tears in the hymen ";

With the conclusion that the physical examination revealed abrasions on the outer lips of the vagina and a long-standing tear in the hymen due to blunt force;

### Judge's Consideration

At the level of appeal filed by the Public Prosecutor, no new matters were found, so they are not considered further, therefore the purpose and contents of the

appeal have been properly considered according to the law in the case at first instance;

Considering that after the Court of Appeal has carefully studied the case file and an official copy of the decision of the Kediri District Court dated January 8, 2018 Number 237/Pid.Sus/2017/PN Kdr, the appeal memorandum dated January 31, 2018 filed by the Public Prosecutor, the Panel of Judges of the Court of Appeal is of the opinion that the legal considerations of the Panel of Judges of the First 5 Instance in its decision have been considered based on proper and correct reasons according to the law on all facts obtained in the trial supported by valid evidence, so that these considerations can be approved and made the basis of their own legal considerations by the Panel of Judges of the Court of Appeal in deciding the case *a quo* at the appeal level; Considering, that on the basis of the above considerations, the decision of the Kediri District Court dated January 8, 2018 Number 237/Pid.Sus/2017/PN Kdr, can be maintained and strengthened.

Considering, that subsequently there are no things that can be used as excuses on the part of the Defendant, and there are no reasons that can prove that the Defendant is unable to take responsibility for his wrongdoing, so that the Defendant must be sentenced;

Considering, that because the Defendant is in detention, based on the provisions of Article 242 of the Criminal Procedure Code, it is ordered that the Defendant remain in detention; Considering, that the period of arrest and detention served by the Defendant shall be deducted in full from the sentence imposed; Considering, that because in the examination of the Court of First Instance and at the level of appeal the Defendant is still found guilty and sentenced, then the Defendant must be burdened with paying court costs for the two levels of justice; Furthermore, on March 27, 2018 the Public Prosecutor filed a request for cassation. -Considering that the reasons for the cassation submitted by the Cassation Petitioner/Public Prosecutor in the cassation memorandum are fully contained in the case file; -Considering that the reasons for the cassation filed by the Cassation Petitioner/Public Prosecutor, the Supreme Court is of the following opinion: - That the Public Prosecutor's cassation objection basically disagrees with the *judex facti* of the Court of Appeal in terms of stating that the Defendant was legally and convincingly proven guilty of committing a criminal offense in violation of Article 88 of Law Number 35 of 2014. The Public Prosecutor is of the opinion that the Defendant is legally and convincingly proven guilty of committing the crime of violating Article 81 paragraph (2) of Law Number 35 of 2014 concerning Child Protection. -Considering that therefore there are sufficient reasons to grant the cassation request from the Cassation Petitioner/Public Prosecutor and annul the decision of the East Java High Court Number 147/PID.SUS/2018/PT SBY dated February 26, 2018 which upheld the Decision of the Kediri District Court Number



237/Pid.Sus/2017/PN Kdr dated January 8, 2018, and then the Supreme Court will hear this case itself with the decision as stated below; -Considering that since the Defendant is still convicted, he shall be ordered to pay the court costs at the cassation level;

### **Decision**

The panel of judges rendered a decision against the defendant Slamet Arianto as outlined in Supreme Court decision 1423K/Pid.Sus/2018 as follows:

1. Stating that the Defendant Slamet Arianto Alias Sapto Bin Khamdani has been proven legally and convincingly guilty of committing the crime of "Intentionally deceiving, lying or inducing a child to have sexual intercourse with him";
2. Sentencing the Defendant to 3 (three) years imprisonment and a fine of Rp1,000,000.00 (one million rupiah), provided that if the fine is not paid, it shall be substituted with 2 (two) months imprisonment;
3. Determining that the period of detention served by the Defendant shall be fully deducted from the punishment imposed;
4. Ordering the Defendant to remain in detention;
5. Determine the evidence in the form of: – 1 (one) Samsung J.5 cellphone;  
– Rp600,000.00 (six hundred thousand rupiah);  
Confiscated to the State;  
– 1 (one) Fiesta condom;  
Destroyed;
6. Charged the Defendant to pay court costs at the cassation level in the amount of Rp2,500.00 (two thousand five hundred rupiah).

### **Discussion**

#### **1. Conformity of sanctions in the judge's decision with Article 81 Paragraph (2) of the Child Protection Law**

Based on the Kediri High Court Decision number 1423 K/Pid.Sus/2018 which examines, hears, and decides a case of sexual intercourse with a child that occurred in Kediri City, East Java, which was committed by Slamet Arianto alias Sapto Bin Khamdani as the Defendant in the case committed by a child victim, namely Rinda Ayu Ristanti who is still 15 (fifteen) years old. Based on the provisions set out in the Law, what is meant by:

"A child is someone who is not yet 18 (eighteen) years old, and includes children who are still in the womb".

It is also corroborated by the citation of the birth certificate of the Kediri city civil registry No. 2192/1/2002 that Rinda is female, born in Kediri on January 5, 2002 so that at the time of the incident the child was still 15 (fifteen) years old or

not yet 18 (eighteen) years old, as well as the child victim is still in junior high school and the status has not married. So it is clear that the victim is a child.

In the Judge's Decision, it was stated that Slamet Arianto alias Sapto Bin Khamdani as the perpetrator of sexual intercourse with a child had committed an act prohibited by law. In the verdict of the Panel of Judges of the Supreme Court (MA), the perpetrator was sentenced to 3 (three) years imprisonment and a fine of Rp. 1,000,000.00 (one million rupiah) with the provision that if the fine cannot be paid, it must be replaced with confinement for 3 (three) months.

Based on Article 1 point 11 of the Criminal Procedure Code, court decisions can be classified into 3 types, namely:

1. Sentencing/Verordeling Decision

This decision is regulated in Article 193 paragraph (1) of the Criminal Procedure Code which states:

"if the court is of the opinion that the defendant is guilty of committing the criminal offense charged against him, then the court imposes a sentence."

This provision can be interpreted if the judge is of the opinion that the defendant is legally and convincingly proven according to the law guilty of committing the criminal offense charged. In this case there must be guilt and the existence of at least 2 pieces of evidence and the judge's belief that the defendant actually committed a criminal offense.

2. Acquittal / Vrijspraak

An acquittal verdict according to Article 191 paragraph (1) of the Criminal Procedure Code states:

"if the court is of the opinion that from the results of the examination at the hearing, the guilt of the defendant for the acts charged to him is not proven legally and convincingly, then the defendant shall be acquitted".

Which means that if the results of the examination at the trial of the actions committed by the defendant are not proven legally and convincingly according to the law for the acts charged, a verdict of acquittal will be issued by the judge.

3. Judgment of release from all legal charges / Onslog Van Alle Recthsvervolging

The decision to be released from all legal charges is regulated in Article 191 paragraph (2) of the Criminal Procedure Code which states:

"If the court is of the opinion that the act committed by the defendant is proven, but the act does not constitute a criminal offense, then the defendant shall be acquitted of all charges."

This means that if the act charged is proven but the act does not constitute a criminal offense, the judge will release the defendant from all charges.

In the Indictment of the Public Prosecutor who filed and read out the charges against Slamet Arianto alias Sapto Bin Khamdani as the defendant in a case of sexual intercourse with deception of a child, with charges as regulated and punishable by Article 81 Paragraph (2) of Law of the Republic of Indonesia Number 35 of 2014 on Child Protection with a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).

However, in the Supreme Court's decision, the verdict of imprisonment is lower than the punishment specified in the Child Protection Law. It is different if the perpetrator of child sexual intercourse is committed by a child or the perpetrator is a child, then there are exceptions regulated in the Law of the Republic of Indonesia Number 11 of 2012 contained in Article 79 which states that the maximum imprisonment is  $\frac{1}{2}$  (one-half) of the maximum imprisonment and the child is not given a minimum sentence.

The court decision is the most important part in resolving a case because the court decision is used to obtain legal certainty for the defendant. Therefore, the judge in giving a decision must reflect a sense of justice. The judge in making a decision must be based on the legal basis and application of the law in Indonesia, so that it can be used as a guideline in imposing punishment for the defendant. The foundation that can be used by judges in the application of criminal law is the principle of universal minimum maximum special or general minimum / special minimum principle.

According to A. Ridwan quoted by (Hidayat 2016) provides an understanding of the principle of universal minimum is a general principle that applies to each case with its respective type of punishment, while the principle of special maximum is the imposition of the highest penalty that is specific to each provision of a different law or has been determined maximum. The principle of universal minimum/special maximum or general minimum/special minimum principle can provide limitations for judges in imposing punishment related to the minimum and maximum limits of punishment. This means that the judge may not impose a sentence more than the maximum limit and may not be below the minimum limit determined by the law. This minimum principle aims to avoid gaps in decisions between one case and another that have similarities (disparity of punishment). In addition, this minimum principle aims to show the seriousness of the crime, so that the perpetrator must be given a deterrent effect in the form of a minimum to maximum sentence.

The author discusses the suitability of Supreme Court Decision Number 1423K/Pid.Sus/2018 with the criminal punishment in Article 81 Paragraph (1) of the Child Protection Law. In the decision, it is known that the defendant legally committed the crime of sexual intercourse with deception of a child in accordance with Article 81 Paragraph (2) of the Child Protection Law. The judge imposed a

prison sentence of 3 (three) years and a fine of Rp. 1,000,000 (One million rupiah) and if the fine is not paid, it will be replaced by imprisonment for 2 (two) months. However, the punishment imposed by the panel of judges of the Supreme Court is below the minimum limit of Article 81 Paragraph (1) of the Child Protection Law which determines the minimum limit of imprisonment of 5 (five) years.

The author argues that this minimum provision cannot be avoided by judges because in giving a decision a judge must be based on the law which is in accordance with the principle of legality in criminal procedure law which states that in carrying out his duties a judge must be based on legislation. So the freedom possessed by the judge is not absolute because in practice a judge in imposing punishment on the defendant must also adhere to statutory provisions. (Artana, 2019). Therefore, in giving a verdict the judge must really be fair and kind to the defendant and the victim.

The author is also of the opinion that the judge may not impose a sentence other than that stipulated in the law, meaning that the judge may not impose a sentence that exceeds or is below the minimum criminal threat determined by the law. If the judge gives a verdict that is not in accordance with the provisions of the law, it can lead to legal uncertainty, besides that it can also lead to public distrust of law enforcement officials, especially judges, because they have made decisions that are not in line with the legislation (Setiani and Lukis 2020) . Judges in imposing sentences must contain 3 elements, namely justice, legal certainty, and also benefits so that the decisions made by the judges are of high quality.

Judges have the freedom to give a decision, but judges who give decisions below the minimum threat of punishment determined in the legislation as in Supreme Court Decision Number 1423K/Pid.Sus/2018 are deemed inappropriate because the punishment imposed on the defendant is considered too light and not proportional to the actions committed, which in this case the victim is a child. If the judge imposes a verdict under the threat of punishment, the defendant may repeat it again and there will be no deterrent effect, besides that the threat given is too light, it does not rule out the possibility that the community underestimates criminal sanctions and can commit the same crime.

The author argues that Supreme Court Decision Number 1423K/Pid.Sus/2018 has fulfilled the juridical elements, however, the imposition of punishment on the defendant is not in accordance with the provisions of the Child Protection Law where the judge imposed a prison sentence of 3 (three) years on the defendant, this is not in line with the laws and regulations where the minimum limit is 5 (five) years. In imposing a verdict, the judge should still be guided by the criminal sanctions stipulated in the Child Protection Law, where the minimum limit of criminal sanctions has been set. (Ramadhan 2020)

## **2. Indictment of the Public Prosecutor in article 88 of the Child Protection Law and Judges disagree.**

The term indictment itself appears several times in the Criminal Procedure Code, but in the general provisions, the meaning of this indictment itself is not explained with certainty. The indictment itself is a letter made by the Public Prosecutor (JPU) on the basis of the BAP he receives from the investigator which makes a careful, clear and complete description of the formulation of a criminal offense that has been committed by a person or several people. The indictment is accompanied by a description of the relationship between the criminal offense and a certain event by describing the elements of the criminal offense formulation in relation to a certain event which is the basis for examination at a court hearing.

Therefore, the indictment is the most important basis of criminal procedure because it is based on the examination at the court session. According to its form, an indictment can be structured as follows:

1. A single indictment, meaning that the defendant has only committed one offense which the public prosecutor believes will be proven.
2. An alternative indictment, which is an indictment composed of several criminal offenses charged, each of which is mutually exclusive of the other.
3. Subsidiary primary indictment, this indictment consists of several layers of charges arranged in layers with the intention that one layer serves as a substitute for the previous layer.
4. Cumulative indictment, meaning that the defendant is charged with committing more than one offense, whether similar or not.

In Supreme Court Decision Number 1423K/Pid.Sus/2018 the charges given by the Public Prosecutor (JPU) against the defendant were Article 81 paragraph (2) and Article 88 of the Child Protection Law. Which in article 88 paragraph (1) mentions the exploitation of children. In the cassation, the judge disagreed with the prosecutor's charges because according to the judge, the defendant only demonstrated that the offense of sexual intercourse had occurred, while it was not the defendant but Nailur (the victim's boyfriend) who carried out the exploitation. According to the judge, it was Nailur who played a role in sexually exploiting the victim, so Nailur benefited or gained from the crime of sexual intercourse committed by the defendant Slamet Arianto. The judge did not agree with the prosecutor's indictment that linked the defendant to Article 88 of the Child Protection Law because Nailur was proven to be a party to sexual exploitation due to her position and role as a sex service provider by utilizing child victims for economic gain. This judge's consideration is a juridical consideration, because the judge is based on the facts revealed at the trial and by the law which is determined as a matter contained in the decision. Other things that are juridical in nature are the prosecutor's indictment, testimony of defendants and witnesses, evidence, articles

of criminal law. The following considerations of the judge are included in juridical considerations:

- a. Public prosecutor's indictment; the indictment is the basis of criminal procedure law because it is based on which the examination at trial is carried out. The indictment in addition to containing the identity of the defendant also describes the criminal offense charged by mentioning the time and place when the criminal offense
- b. Statement of the defendant; what the defendant states at the hearing about the act committed or what he/she knows or experiences himself/herself.
- c. Witness testimony regarding a criminal event that he himself heard, saw, and experienced and must be delivered in front of a court session by taking an oath.
- d. Evidence; objects that may be subject to confiscation and that are presented by the public prosecutor before the court.
- e. Articles of criminal law. These articles begin to appear and are revealed in the public prosecutor's indictment, which is formulated as a criminal law provision that the defendant violated. These articles are then used as the basis for punishment or action by the judge.

In the end, the judge in decision 1423K/Pid.sus/2018 only sentenced the defendant to Article 81 Paragraph (2) of the Child Protection Law. Because the judge was only of the opinion that the defendant only committed the offense of sexual intercourse with a prison sentence of 3 (three) years and a fine of Rp. 1,000,000 (one million rupiah).

## CONCLUSION

Based on the analysis above, the author concludes as follows:

1. In the verdict 1423K/Pid.sus the imposition of punishment was not appropriate because the judge imposed a punishment under the applicable law. If the judge gives a verdict that is not in accordance with the statutory provisions, it can lead to legal uncertainty, besides that it can also lead to public distrust of law enforcement officials, especially judges, because they have made decisions that are not in line with the legislation.
2. In the indictment made by the public prosecutor in case No. 1423K/Pid.sus/2018 which charged the defendant with committing sexual exploitation of a child was not correct, because based on the actions of the defendant revealed in the trial, the defendant acted as a user of exploitation, not as an exploiter. If it is related to Article 88 of the Child Protection Law, then the defendant's actions do not comply with this article.

## Suggestion



1. Judges in deciding a case should be more careful and observant. The author argues that the sanctions given should not be less than the regulating law. For the sake of goodness and to provide a deterrent effect on the suspect.
2. The Public Prosecutor must be clearer and more careful in preparing the indictment and must be in accordance with the provisions in the governing law, so that the indictment provisions.

## REFERENCES

- Abrijoto. 2010. Judge Freedom: A Critical Analysis of the Role of Judges in Executing Judicial Power. Jakarta: Diadit Modia.
- Arto, Mukti. 2004. Civil Practice in Religious Courts. Jogjakarta: Student Library.
- Chazawi, Adami. 2015. Criminal Offenses Regarding Modesty. Jakarta: Grafindo.
- Diantha, and I. Made Pasek. 2016. Normative Legal Research Methodology in Justifying Legal Theory. Jakarta: Kencana.
- Effendy, Marwan. 2007. The Attorney of the Republic of Indonesia, Its Position and Function from a Legal Perspective. Jakarta: Ghalia Indo.
- Fajar, Mukti, and Achmad Yulianto. 2013. Dualism of Normative and Empirical Legal Research. Yogyakarta: Student Library.
- Gosita, Arif. 1992. Child Protection Problems. Jakarta: Sinar Grafika.
- Gosita, Arif. 2013. Definition of Sexual Intercourse. Jakarta: CV Akademika.
- Gultom, Maidin. 2017. Legal Protection of Children and Women. Bandung: Retika Aditama.
- Hadisuprpto, Paulus. 2010. Child Delinquency Understanding and Overcoming. Malang: Selarah.
- Hamzah, Hamzah. 2017. Criminal Procedure Law. Jakarta: Sinar Grafika.
- Harahap M.Y. 2012. Discussion of Problems and Application of KUHAP. Jakarta: Sinar Grafika.
- Lilik Mulyadi, 2007. The Bali Bombing Trial. Jakarta: Djambatan.
- Makarao, S.H, M.H. and Prof. M. Taufiq, et al. 2014. Child Protection Law & Elimination of Domestic Violence. Jakarta: Rineka Cipta.
- Marzuki, and Peter Mahmud. 2007. First Line of Normative Legal Research. Jakarta: Kencana Pemuda Group.
- Mulyadi. 2008. Criminal Procedure Law. Bandung: PT Mandar Maju.

- Prakoso, Arbianto. 2016. Child Protection Law. Jogjakarta: LaksBang PRESSInd.
- Santoso, Topo. 2016. Sexuality and Criminal Law. Jakarta: IND-HILL.
- Wahid, Abdul, and Muhammad Irfan. 2001. Protection of Victims of Sexual Violence. Bandung: Refika Aditama.
- Bagus, Ramadhan. 2020. "Juridical Review of Judges' Considerations in Passing Juvenile Crime Verdicts".
- Dirwansyah, Kusbianto, and Azmiati Zuliah. 2022. "CRIMINAL RESPONSIBILITY IN THE CRIME OF ABUSE COMMITTED BY A CHILD (Analysis of Court Decision Number 6/Pid.Sus.Anak/2018/PT.Mdn)." 15(2).
- Hidayat M. Anao, 2016. "Application of Minimum Threat in Judges' Decision". 6.
- Indra, Bayu Mulyadi, I. Ketut, Rai Setiabudi. 2019. "The Freedom of Judges to Impose Special Minimum Penalty in Corruption Crime."
- Mutiara, Rizky Fitria. 2022. "Consideration of Judges in Imposing Criminal Punishment under the minimum threat against perpetrators of child molestation"
- Setiani, Lukis, Levina Yustianingtyas, 2020. "Juridical Analysis of Acquittal Decision in the Crime of Child Rape (Study of Simalungun District Court). 9(3).
- Wahyudi, Tegar Sukma, and Toto Kushartono. 2020. "LEGAL PROTECTION OF THE RIGHTS OF CHILDREN WHO ARE VICTIMS OF DOMESTIC VIOLENCE TREATMENT IN RELATION TO LAW NUMBER 35 OF 2014 CONCERNING AMENDMENTS TO LAW NUMBER 23 OF 2002 CONCERNING CHILD PROTECTION." 2.
- Wahyuningsih, Sri Endah. 2016. "Law Reform." 3.
- Firmansyah, Luky Maulana. 2022. "How Many Internet Users in Indonesia by 2022? Here's the Data." Retrieved November 2. ([https://www.fortuneidn.com/tech/luky/be\\_rapa-pengguna-internet-indonesia-per-2022-berikut-datanya](https://www.fortuneidn.com/tech/luky/be_rapa-pengguna-internet-indonesia-per-2022-berikut-datanya))
- Ulfa, Maria. 2015. "Child Abuse Starts on the Internet." Retrieved December 4 ([https://www.kominfo.go.id/index.php/content/detail/4865/Maria+Ulfah%3A+Kekerasan+on+Children+Start+from+Internet/0/sorotan\\_media](https://www.kominfo.go.id/index.php/content/detail/4865/Maria+Ulfah%3A+Kekerasan+on+Children+Start+from+Internet/0/sorotan_media))