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Termination of Investigation by Investigators of the Crime of Sexual Intercourse Against Children: A Study in the Pidie Jaya Resort Police Jurisdiction

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Abstract

This study examines the factors that led to the termination of the investigation into the criminal act of sexual intercourse with children in the jurisdiction of the Pidie Jaya Resort Police and the legal steps taken to obtain justice for victims of sexual intercourse with children who were terminated by investigators. The research method used is empirical juridical in nature, with the results showing that the factors causing the investigation by investigators to stop the crime of child intercourse are (1) the elements of Article 76D of Law Number 23 of 2002 concerning Child Protection are not fulfilled as amended by Law Invite No. 35 of 2014

concerning Child Protection (hereinafter referred to as the Child Protection Law); (2) lack of witnesses, there were no witnesses who saw the incident of intercourse directly; (3) the long period of the incident; (4) unable to confirm whose genitalia has damaged the victim's hymen. The effort that can be taken to obtain justice for victims of sexual intercourse with children by stopping the investigation is to use the Pretrial route so that the judge can judge whether it is legal or not to stop the investigation by investigators from the Pidie Jaya Resort Police.

Keywords: Sexual Intercourse with children, Termination of Investigation

1. Introduction

According to Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI) it is stated that "Indonesia is a state based on law", in which Indonesia guarantees every constitutional right of its citizens. Constitutional rights are defined as rights guaranteed by the constitution or the Basic Law, whether those guarantees are expressly stated or implied. Because it is included in the constitution and laws, it becomes part of the constitution and the Basic Law so that all branches of state power are obliged to obey and respect it. Therefore, the recognition and respect for constitutional rights as part of the constitution at the same time also means a limitation on the power of the State.¹

Indonesia is a country that has claimed to be a state of law; therefore, it is the obligation of the State of Indonesia to uphold, respect and guarantee the fulfillment of basic rights and respect for the dignity of its citizens, in which these rights are absolutely inherent in every human being, even those rights also attached to the child who is still in the womb though. In Articles 28 A to Article 28 J of the 1945 Constitution of the Republic of Indonesia, the constitutional rights of citizens are regulated in detail. Article 28B paragraph (2) states that "Every child has the right to live, grow and develop and has the right to protection from violence and discrimination." Therefore, if a crime occurs against a child, including the crime of intercourse, then the perpetrator must be sanctioned (punished) in accordance with the applicable laws and regulations. The applicable regulations are the Child Protection Law Number 35 of 2014 as amended from Law Number 14 of 2012 concerning Child Protection (Child Protection Law).

According to Article 81 paragraph (1) of the Child Protection Law, "Every person who violates the provisions referred to in 76D shall be punished with imprisonment for a minimum of 5 (five) and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000. 00 (five billion rupiah)". Paragraph (3) also stipulates provisions regarding the addition of 1/3 (one third) of the criminal penalty as referred to in paragraph (1) if it is committed by parents, guardians, nannies, educators or educational staff.

¹ Dewa Gede Palguna, I., *Pengaduan Konstitusional (Constitutional Complaint) Upaya Hukum terhadap Pelanggaran Hak-hak Konstitusional Warga Negara*, Sinar Grafika, Jakarta, 2013, hlm. 111.

In carrying out law enforcement, in Article 14 of Law Number 2 of 2002 concerning the Indonesian National Police it is stated that one of the duties of the Police is to conduct investigations and investigations into criminal acts based on criminal procedure law and other applicable laws and regulations. This provision is in line with what has been regulated in the Criminal Procedure Code (KUHAP), namely Law Number 8 of 1981 Article 1 number 5 which reads "Investigation is a series of investigative actions in searching for and finding an event that is suspected of being an act of crime in order to determine whether or not an investigation can be carried out in accordance with the procedures stipulated in the law."

So before an investigative action is carried out, an investigation is first carried out by the investigator, the aim of which is to collect "initial evidence" or "sufficient evidence" so that the criminal act can be carried out further action, namely investigation. In this case the act of investigation can also be equated with "investigative action" namely as an attempt to find and find traces or initial evidence in the form of information and evidence of an event that is suspected of being a crime.² Then in Article 1 number 2 KUHAP formulates the meaning of investigation which is a series of investigative actions to search for and collect evidence, where with this evidence can make clear the crime that occurred so that the suspect is found, which in this case is carried out according to the method regulated in the Criminal Procedure Code.

At the investigation stage the emphasis is on the act of "searching and finding" an "event" that is considered or suspected of being a crime. While at the investigation stage, the emphasis is placed on the act of "searching for and collecting evidence" so that the crime found becomes clear and clear and a suspect or perpetrator can be found or determined. Thus, between the investigative and investigative actions there are two phases of action which are one unit and complement each other, so that the examination can be completed on a criminal incident,³ to then be delegated to the Public Prosecutor. Based on this, it has become one of the duties and authorities of the Police as law enforcers or a tool of the state in carrying out investigations and investigations in order to maintain material criminal law, so that security and order can be realized in society.

Along with the development of the era where the world community's concerns regarding the fulfillment of children's rights, in 1990 Indonesia became one of the countries that participated in ratifying international rules, one of which was the Convention on the Rights of the Child, which became the basis for the inclusion of children's rights in amendments to the 1945 Constitution and also as a basis for the formation of the Child Protection Law Number 35 of 2014 as an amendment to Law Number 23 of 2002.

Article 1 of the Child Protection Act defines a child as someone who is not yet 18 years old, including children who are still in the womb. A child is someone who is obliged to protect and fulfill his rights, in the same law there is also a regulation which states that every parent, community,

environment and also the State have the right to protect every child's rights.

In 2020 there was an alleged crime of sexual intercourse against a child committed by a stepfather in Samalanga, Pidie Jaya Regency. The incident occurred in 2014 when the victim was in grade 5 of Elementary School (SD). The victim, who at that time had just come home from school, decided to take a nap in front of the television with the victim's half-brother who was the same age as him. The victim woke up and saw the victim's stepfather touching the victim, because the victim was very sleepy at that time and the victim went back to sleep. However, the perpetrator instead covered the victim's face using a long batik cloth and fucked the victim. The perpetrator threatened to kill the victim's biological mother if the victim screamed or told anyone about it.

In 2016, the victim asked to continue her education at a junior high school (SMP) and dayah in Samalanga to avoid her stepfather's actions. In 2017 the victim was required to return to stay at home due to the condition of the dayah which was damaged by the Pidie Jaya earthquake. When the victim was at home, the perpetrator used this opportunity to have intercourse while the victim was sleeping. The perpetrator also threatened to kill the victim if the victim screamed or told the victim's biological mother about the perpetrator's actions. Until 2020 the victim told about the incident of intercourse after being urged by the victim's aunt and making a report at the Pidie Jaya Police (Polres) with a Certificate of Evidence Report Number: SKTBL/ 53/ IX/ RES.1.24./ 2020/SPKT on 14 September 2020. However, in 2020 Pidie Jaya Police Investigators (Polres) issued an Investigation Termination Warrant (SP3).

Based on the background above, the author is interested in analyzing the process of carrying out investigations in handling cases of sexual intercourse with children at the Pidie Jaya Resort Police, the factors that led to the termination of investigations by investigators of child sexual intercourse, and also what efforts have been made to obtain justice. for victims of sexual intercourse with children who are terminated by investigators.

2. Methodology

The author conducted legal-empirical research in order to find facts and data that would help him understand and find the real situation happening in society. Descriptive research is used to collect accurate data regarding certain objects, concepts or populations. Research is typically conducted orally or through interviews with respondents. This method of research uses primary data, which is data obtained from the respondents themselves.

The type of research conducted by the author is a juridical-empirical type of research, which means a research conducted on the actual situation or real situation that occurs in society with the aim of knowing and finding the facts and data needed.⁴

The data collection technique in this study was to obtain primary data by interviewing respondents and informants with the aim of obtaining data that could be justified for the truth of the problem to be studied. The research data that has been obtained from the results of the interviews are then

² M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP Penyidikan dan Penuntutan*, Edisi Kedua, Sinar Grafika, Jakarta 2014, hlm. 101.

³ *Ibid*, hlm. 109.

⁴ Sarifuddin Azwar, *Metode Penelitian*, Pustaka Pelajar, Yogyakarta, 1998, hlm. 7.

edited to check whether the data is complete and can answer research questions and can be justified for its correctness.⁵ The data obtained from field research was then analyzed by connecting with the applicable regulations so as to produce descriptive data in the form of descriptions of written words or descriptions in written form from respondents and informants. Thus, from various sources related to the problems discussed in this study so as to get conclusions that are in accordance with the objectives that have been formulated.

3. Results and discussion

Aceh, with its specificity, is a very special region and has received specialties since the signing of the Helsinki Memorandum of Understanding (MoU) or memorandum of understanding between the Indonesian government and the Free Aceh Movement (GAM) on August 15, 2005, which coincides with that date being commemorated as Aceh Peace Day.

The signing of the Helsinki Memorandum of Understanding (Mou) is a sign that there has been an agreement that has had an impact and a new face on Aceh, especially for the people of Aceh because the purpose of the Helsinki MoU or the memorandum of understanding was made was to settle the prolonged conflict in Aceh peacefully, comprehensive and sustainable. The Helsinki MoU contains the specificity of governance in Aceh, human rights, amnesty and GAM reintegration into society, security arrangements, Aceh monitoring missions, and dispute resolution.

This specificity has resulted in Aceh being able to build a province that has Islamic breath, namely by enacting and implementing enforcement based on Islamic law. Until in 2014 a regional regulation called Qanun No. 6 of 2014 concerning Jinayat Law, which regulates actions that are prohibited in Islam and accompanied by threats of punishment. Some of the criminal acts included in the scope of jinayat law such as khamar, khalwat, maisir, sexual harassment, adultery, ikhtilath, qadhaf, rape, liwath and musahaqah.⁶

However, behind a new face and based on Islamic law does not cover the possibility of a criminal act occurring. Both criminal acts committed against children, women and other vulnerable groups, especially in Islamic teachings highly uphold respect and appreciation, especially for women and children. However, it cannot be denied that behind the strict and peaceful implementation of Islamic law, there are still many individuals who become perpetrators of violence against women and also child predators.

According to the opinion of the expert, R. Soesilo, in his book, he explains that "intercourse is the entry of the male genitalia into the female genitalia which can produce a child. The genitalia must enter the female genitalia so that sperm / semen can be released.⁷

In the Criminal Code (KUHP) Number 8 of 1981 in Article 287 paragraph (1) states that intercourse is anyone who has intercourse with a woman out of wedlock, who is known or suspected that she has not yet reached the age of fifteen or has not yet entered the age of marriage, shall be punished by a maximum imprisonment of nine years.

Article 76D in conjunction with Article 81 paragraph (1) of Law Number 35 of 2014 as amended to Law Number 23 of 2002, stipulates that any person is prohibited from using violence or the threat of violence to force a child to have sexual relations with him or anyone else. "About punishment (1) "Anyone who violates Article 76D shall be punished with imprisonment for not less than 5 years and not more than 15 years and a fine is IDR 5,000,000,000.00." It can be concluded that intercourse with a child is the insertion of the male genitalia into the female genitalia where the act is carried out with threats of violence, persuasion, deception or coercion to have intercourse with him or another person.

Based on data compiled from the Aceh Women's Empowerment and Child Protection Service (DP3A Aceh) which provides the fact that in the period from January to September 2022 there have been 443 cases of sexual violence against children in Aceh. The details are as follows:

the scope of sexual violence which includes:

1. Psychological violence as many as 97 cases.
2. Sexual Harassment in 92 cases.
3. Sexual (incest) as many as 8 cases.
4. Sodomy in 6 cases.
5. Abandonment of 25 cases.
6. Economic Exploitation in 2 cases.
7. 94 cases of domestic violence.
8. There were 102 cases of rape.
9. ABH as many as 14 cases.
10. Child Custody in 1 case, and Others as many as 14 cases.

This high number of violence shows that how sad is the fate of Acehnese children who can become victims of sexual violence in Aceh, where there is no need to use a complicated calculation method to be able to add up that every 18 (eighteen) hours 45 (forty five) minutes every children in Aceh are raped, sodomized, abused and other acts are carried out which of course this will greatly affect the future of Acehnese children.⁸ In line with this, the data collected from the Pidie Jaya Resort Police regarding cases of sexual violence against children from 2021 to 2022 are as follows:

List of the Number of Cases Handled by the Pidie Jaya Resort Police in 2021 - 2022

No Year Number of Cases Type of Crime:

1. 2021: 7 Cases:
 - a. Obscenity
 - b. Sexual intercourse with children
 - c. Rape against disability
 - d. Sexual harassment
2. 2022: 3 Cases:
 - a. Sodomy
 - b. Sexual harassment

⁵ Lexy Moleong, *Metode Penelitian Kualitatif*, PT. Remaja Rosdakarya, Bandung, 1999, hlm. 3.

⁶ Elda Maisy Rahmi, Ali Abu Bakar, Suhaimi, Pelaksanaan 'Uqubat Restitusi Terhadap Korban Perkosaan, *Kanun Jurnal Ilmu Hukum*, Vol. 21, No. 2, (Agustus 2019), pp. 227-240.

⁷ R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, Bogor, Politeia, 1995, hlm. 209

⁸ Syahrul, Direktur Yayasan Lembaga Bantuan Hukum Indonesia – Lembaga Bantuan Hukum (YLBHI – LBH) Banda Aceh, *Interview*, tanggal 1 Desember 2022.

Based on the data obtained above, in 2021 there have been crimes against children with details of 2 cases of sexual abuse, 2 cases of sexual intercourse with children, 1 case of rape against a disability and 2 cases of sexual harassment. Then in 2022 there was 1 case of sodomy and 2 cases of sexual harassment.

The large number of criminal acts in the form of sexual crimes committed against children can foster a perception in the community that the current criminal law policies have not been able to prevent or minimize the occurrence of crimes against children, especially sexual crimes.⁹

With the elaboration of the data that has been collected, the high number of cases of sexual violence against children in Aceh should be a concern for the government to be able to prevent and follow up on these cases so that the level of cases of sexual violence in Aceh can be reduced, especially for the police department which is the gateway in resolving cases in the field of law. Meanwhile, the data obtained from the Banda Aceh Legal Aid Foundation - Legal Aid Institute (YLBHI - LBH) contained several cases of sexual intercourse with children carried out by police investigators. The list of cases is as follows:

List of Number of Cases Conducted with Termination of Investigation (SP-3) by Police Investigators in Aceh in 2019 – 2021:

1. 2019: 1 Cases:
Efforts Made: The victim's parents refused to be followed up.
2. 2020: 2 Cases:
Efforts Made: 1 case The victim's parents refused to be followed up, 1 case in Pre-Trial.
3. 2021: 1 Cases:
Efforts Made: The victim's parents were not cooperative in carrying out the Pre-Trial.¹⁰

Based on these data it is explained that within a span of 3 years there are still cases of sexual intercourse with children which have been terminated by police investigators who are spread across several jurisdictions in the Aceh region. Another reality on the ground in 2021 was that there was 1 case that was stopped by investigators from the Pidie Jaya Resort Police regarding a case of sexual intercourse with a child with a police report Number: LP.B/53/IX/RES.1.24/2020/SPKT which was reported in 2020. As for the factors for stopping the investigation of intercourse with the child are:

a. Factors for not fulfilling the elements of Article 76d of the Child Protection Law

It started in 2013 when the victim was still in grade 5 of Elementary School (SD), incidents of sexual intercourse with children accompanied by threats occurred 4 (four) times. The incident occurred at the house owned by Usman Bin Abu Bakar who is a suspect in sexual intercourse with children, the address of the house is Gampong Dayah Baroh, Ulim District, Pidie Jaya Regency. Because under the threat of the suspect who threatened to kill the victim if the victim told this to the victim's biological mother, the victim chose

to remain silent and silent. However, the victim's mother knew this and reported it on September 14 2020 with the Report Evidence Number: SKTBL/53/IX/Res.1.24./2020/SPKT with the Reported Person on behalf of Usman Bin Abu Bakar, namely the victim's stepfather at the Pidie Resort Police Jaya.¹¹

Based on this report, an investigation has been carried out based on the Investigation Warrant Number: S.Sidik /36/IX/Res.1.24/2020/Reskrim dated 15 September 2020 which was accompanied by a determination of the suspect. In the report, the suspect was charged with Article 76D of the Child Protection Act.

Based on the Notification Letter on the Progress of Investigation Results (SP2HP) of the Pidie Jaya Resort Police with number: SP2HP/16/III/2021/Reskrim dated March 26, 2021 explained that investigators had conducted a case on March 22, 2021 at the Pidie Jaya Police Hall with the conclusion that the case intercourse with a child on behalf of the suspect Usman Bin Abu Bakar does not meet the elements.¹²

However, in 2021 a case investigation (SP-3) will be discontinued in cases of adultery against children. According to the Decree on Termination of Investigation issued by the Head of the Pidie Jaya Police with Number: S.Tap/03.a/III/Res.1.24. /2021 /Reskrim dated March 26, 2021 which stipulates: Stop the investigation of criminal acts on behalf of the suspect Usman Bin Abu Bakar, Male gender, Place/Date of Birth: Dayah Baroh, 01 March 1977, Occupation: Entrepreneur, Address: Gampong Dayah Baroh, Ulim District, Regency Pidie Jaya.

Termination by law based on a letter returning the case files from the Pidie Jaya District Attorney, and the results of the case title that the case did not fulfill the elements of the article alleged against the suspect.

Furthermore, the investigator notifies the termination of the investigation to the victim and suspect and related parties.

Guided by the Decree of the Head of the Pidie Jaya Resort Police, it can be ascertained that the reason for stopping the crime was because the elements in Article 76D had not been fulfilled as alleged by the suspect.

Article 76D contains a prohibition against violence against children and the article reads "Every person is prohibited from committing violence or threats of violence forcing a child to have intercourse with him or with another person." 85 paragraph (1) to (3), which reads:

1. Any person is prohibited from using violence or the threat of violence to force a child to have sexual relations with him or anyone else. "About punishment (1) "Anyone who violates Article 76D shall be punished with imprisonment for not less than 5 years and not more than 15 years and a fine is IDR 5,000,000,000.00.
2. Any person who knowingly commits deception, makes multiple lies or forces a minor to have sexual intercourse can be convicted of a crime.
3. These laws also cover the criminal aspects covered in paragraph one. Criminals who abuse their position as

⁹ R. Bondan Agung Kardono, Nyoman Serikat Putra Jaya, Nur Rochaeti, "Hukuman Kebiri Terhadap Kejahatan Seksual Anak", *Kanun Jurnal Ilmu Hukum*, Vol. 22, No. 3, (Desember 2020), pp. 567-582.

¹⁰ Yayasan Lembaga Bantuan Hukum Indonesia –Lembaga Bantuan Hukum (YLBHI – LBH) Banda Aceh.

¹¹ Zulkfli, Kepala Unit Pelayanan Perempuan dan Anak (PPA) dan Pidana Umum Kepolisian Resor Pidie Jaya, *Interview*, tanggal 13 November 2022.

¹² Muhammad Qodrat Husni Putra, Kepala Operasional dan Advokat Publik Yayasan Lembaga Bantuan Hukum-Lembaga Bantuan Hukum (YLBHI – LBH) Banda Aceh, *Interview*, tanggal 10 Desember 2022.

educators, parents, guardians, caregivers or educational staff should receive additional criminal penalties. One third of the original penalty is added to this list.

Based on the provisions of Article 76D juncto Article 85 paragraph (1) of the Child Protection Act, there are 3 elements of criminal acts, namely:

1. Everyone

Based on Article 1 number 16 of the Child Protection Act, it is explained that what is meant by Everyone is an individual or a corporation. In relation to the crime of stopping the investigation into the crime of sexual intercourse with a child, the suspect/reported person is an individual, in which case the element of every person has been fulfilled.

2. Committing violence or threats of violence

In Article 1-point 15a of the Child Protection Act, the definition of violence is any act against a child that results in physical, psychological, sexual misery or suffering and/or neglect including threats to commit acts, coercion or deprivation of liberty unlawfully. In connection with the elements of committing violence or threats of violence, the victim during the examination and investigation process has provided information that in essence the suspect had forcibly opened the victim's pants and forced the suspect's penis into the victim's genitals and rectum while covering the victim's face using a long batik cloth. The suspect also threatened to kill if the victim told anyone about the incident. As a result, the victim feels pain in the genitals, suffers physically, psychologically and sexually.¹³ Based on this, the element of committing violence or threat of violence has been fulfilled.

3. Forcing a child to have intercourse with him or another person.

Regarding the element of forcing a child to have intercourse with him or with another person, a *Visum et Repertum* (VeR) was carried out against the victim by a doctor at the Pidie Jaya Regional General Hospital (RSUD) on behalf of dr. Omar Dhani, SP. OG as contained in the VeR Letter Number: 445/352/IX/RSUD-PJ/2020 dated 16 September 2020 with the results of the post mortem stating that there was an irregular torn wound in the hymen caused by a blunt object experienced by the victim.¹⁴ In connection with the VeR letter issued by the Pidie Jaya Hospital, it can be proven that sexual intercourse with the victim was committed by the suspect.

Based on the explanation of these elements, the reasons for not fulfilling the elements of the article as referred to in Article 76D which are alleged to be against the suspect cannot be accepted and are not reasons for stopping the investigation as stipulated in Article 109 paragraph (2), namely that an investigation can be stopped on the grounds that there is not enough evidence, the event is not a crime, or terminated for the sake of law.

b. The factor is the lack of witnesses, there are no people who saw the incident directly and the victims' statements cannot be used as evidence

In the case of sexual intercourse with a child with Report Number: SKTBL/53/IX/Res.1.24./2020/SPKT, an

examination of witnesses who have been properly summoned and recorded in the Minutes of Examination (BAP) has been carried out with the number of witnesses examined being 10 people. These witnesses are witnesses who have something to do with the crime of sexual intercourse with a child. Based on the instructions of the Public Prosecutor (JPU), the testimony of the witness on behalf of T. Muammar Bin T. Muhammad Arbi was not sufficient. The Public Prosecutor (JPU) asked to be examined by other witnesses related to this case, namely those who directly witnessed the intercourse process. In his statement in the Minutes of Examination (BAP), witnesses who saw directly the crime were not found.¹⁵

Thus, only the victim's statement can support the crime, so one of the witnesses is not a witness (*Unus Testis Nullus Testis*) so that the application of presumption against the suspect is not supported by corroborating evidence other than the testimony of a single victim.¹⁶

In this regard, an examination has been carried out on T. Muammar who is the victim's biological brother and witness Asnawiyah as the victim's mother. These statements, although they stand alone, show a clue that points to the suspect as the alleged perpetrator of the crime of intercourse with the victim. The Public Prosecutor (JPU) and police investigators should have considered the testimony of T. Muammar and Asnawiyah as valid witnesses even though the statement was not seen directly.

In line with this, Article 185 paragraph (4) of the Criminal Procedure Code reads: "The statements of several independent witnesses regarding an event or situation can be used as a legal means of evidence if the testimony of the witness is related to the others in such a way as to justify the existence of a certain event or situation."

Whereas in 2010 the Constitutional Court expanded the meaning of witness as referred to in the Criminal Procedure Code (KUHAP). With Decision Number: 65/PUU-VIII/2010 the Constitutional Court ruled that witnesses are not only people who can provide information about what they heard, saw, and experienced themselves, but also include people who can provide information in the context of investigations, prosecution, and trial of a crime that he does not always hear, see and experience himself.

If in the case of proving witnesses who saw directly according to the instructions requested by the Public Prosecutor (JPU) the imposition of such evidence is feared it could create motivation for the perpetrators to commit the crime of sexual intercourse with children or other sexual violence in a place where the public cannot see crowded or in quiet places. This is what causes the number of sexual violence in Aceh to continue to increase, while law enforcement officials in following up on cases will continue to make the same mistakes over and over again.¹⁷

If witnesses are needed to witness it firsthand, it can be said that cases of sexual violence in Aceh will have the same fate

¹⁵ Zulkifli, Kepala Unit Pelayanan Perempuan dan Anak (PPA) dan Pidana Umum Kepolisian Resor Pidie Jaya, *Interview*, tanggal 13 November 2022.

¹⁶ Yusman Ayyub, Kepala Urusan Bidang Operasional (KBO) Kepolisian Resor Pidie Jaya, *Interview*, tanggal 13 Desember 2022.

¹⁷ Syahrul, Direktur Yayasan Lembaga Bantuan Hukum Indonesia – Lembaga Bantuan Hukum (YLBHI – LBH) Banda Aceh, *Interview*, tanggal 1 Desember 2022.

¹³ *Ibid.*

¹⁴ *Ibid.*

forever because they will never be revealed. Based on its nature, sexual acts are carried out with the same pattern, namely in a closed manner. If the act is committed in public or in front of a large audience, then Indonesia will certainly no longer need law enforcement officials whose job is to uncover the incident.¹⁸

c. Factors of Long-Lasting Intercourse Events

The complainant reported the crime of sexual intercourse with the child that occurred to the victim in 2013 and 2017, while the complainant only reported the criminal act of sexual intercourse with the child in 2020. The time frame for alleged criminal acts by reporting was deemed too long, so that the investigators and supporting investigators The Pidie Jaya Resort Police had difficulty proving the existence of a legal act as referred to in the statement provided by the victim and also from the results of the VeR.¹⁹

Based on the KUHAP there is no regulation that regulates the time limit for investigations or the expiration of a case. However, in the Regulation of the Police of the Republic of Indonesia Number 14 of 2012, there is no mention of the expiration of an investigation. However, in the Criminal Code (KUHP) in Article 78 Paragraph (1) there is a provision regarding the penalty for expiry if:

1. Concerning crimes that are punishable by fines, imprisonment or imprisonment for a maximum of 3 years, after 6 years;
2. Regarding crimes that are punishable by imprisonment of more than 3 years, after 12 years;
3. Concerning crimes punishable by death or life imprisonment, after 18 years.”

Based on this article, it is reviewed from the criminal threat imposed on the perpetrators of criminal acts. In this case the perpetrators of intercourse with children are threatened with imprisonment for a maximum of 15 (fifteen) years, so if you pull the red thread with the explanation of the article above, it should be considered too long a term if the reporting has exceeded 12 years, but in this case the incident started in 2013 and 2017 will only be reported in 2020, if the total time interval is 7 years.

This is in line with the cases of sexual intercourse against children reported by the complainant, these cases fall into the category of cases with a moderate level of difficulty due to the act of violence in the form of sexual intercourse with a child. It can be categorized as a serious case if a person's life has been lost or the case of sexual intercourse with the child has resulted in loss of life or serious injury.²⁰

The categorization of these cases is also one of the supporting factors for a case that can be said to be severe, mild or moderate within the Pidie Jaya District Attorney's Office. However, this must be based on cases with certain qualifications, namely a case is said to be a severe category if the case:

1. When it's viral.
2. Attract the attention of many people.
3. The criminal act was committed by an official.²¹

However, the case of sexual intercourse with a child is also a case that we can categorize as serious because to become a Public Prosecutor (Prosecutor) has specific criteria, namely:

1. The public prosecutor has handled cases against children for 3 consecutive years.
2. Have a great interest in children's cases/high dedication in children's cases.
3. Has attended or obtained Technical Guidance Certification (Bimtek) regarding Children in Conflict with the Law.²²

The lengthy period of criminal incidents and reports is not a valid reason for stopping an investigation. Moreover, this case already has sufficient evidence, namely VeR and the statements of other witnesses. Regarding the long-time lag between a criminal incident and reporting, investigators should understand the factors that cause this, namely 1. the victim is a child who is psychologically immature like an adult, 2. the victim is in a state of fear because of threats from the perpetrator who is a close person and live with him. The point is psychologically the victim feels pressured and afraid to report it. It takes time for victims to have the courage to report/tell what happened to them.²³

d. The factor of not being able to confirm whose genitals is suspected of having damaged the victim's hymen

Based on the results of VeR Number: 445/1352/IX/RSUD-PJ/2020 issued by Dr. Omar Dhani, Sp. OG on September 16 2020 with the conclusion of the results of the examination, namely that the victim's vital organs appeared to be torn up in the hymen, which were irregular due to a blunt object. However, to prove that the act allegedly committed by the suspect was carried out with the intention of "intentionally committing" it cannot be found or is not supported by other corroborating evidence because in the results of the VeR there is no explanation indicating that the cause of the injury in the victim's vital organs were caused by intercourse by the suspect. The investigator has sent the case file to the Public Prosecutor (JPU), but the Public Prosecutor said that the file was not complete and P-19 was conducted 4 (four) times, namely:

- a. Instructions from the Public Prosecutor (P-19) dated October 22, 2020, which states that in order for investigators in proving each element of the article alleged against the suspect to be guided by articles 183 and 184 of the KUHAP, conduct an examination of a medical expert who explains that VeR, Psychologist and follow-up witness examination.
- b. Instructions from the Public Prosecutor (P-19) dated 16 November 2020 Number B/1438/L.131/Eku.1/11/2020, which states that Investigators should carry out further

¹⁸ Muhammad Qodrat Husni Putra, Kepala Operasional dan Advokat Publik Yayasan Lembaga Bantuan Hukum-Lembaga Bantuan Hukum (YLBHI – LBH) Banda Aceh, *Interview*, tanggal 10 Desember 2022.

¹⁹ Yusman Ayyub, Kepala Urusan Bidang Operasional (KBO) Kepolisian Resor Pidie Jaya, *Interview*, tanggal 13 Desember 2022.

²⁰ Zulkifli, Kepala Unit Pelayanan Perempuan dan Anak (PPA) dan Pidana Umum Kepolisian Resor Pidie Jaya, *Interview*, tanggal 13 November 2022.

²¹ Deddy Syahputra, Kepala Seksi Pidana Umum (Kasi Pidum) Kejaksaan Negeri Meureudu, *Interview*, tanggal 30 November 2022.

²² Bramanda Hariansyah, Jaksa Penuntut Umum Kejaksaan Negeri Pidie Jaya, *Interview*, tanggal 30 November 2022.

²³ Muhammad Qodrat Husni Putra, Kepala Operasional dan Advokat Publik Yayasan Lembaga Bantuan Hukum-Lembaga Bantuan Hukum (YLBHI – LBH) Banda Aceh, *Interview*, tanggal 10 Desember 2022.

examinations of experts who, in essence, are scientifically knowledgeable can confirm that there is an irregular tear in the hymen due to the blunt object belonging to the suspect which is linked to the victim's statement stating that the suspect had intercourse with her in 2013 and 2017. Investigators have conducted further examinations on dr. Omar Dhani, Sp. OG, who basically is scientifically owned by an expert, cannot provide an explanation that the torn wound was caused by the suspect's genitals, other male genitalia or other objects.

- c. Instructions from the Public Prosecutor (P-19) dated December 2, 2020 Number B/1438/L.131/Eku.1/11/2020, which states that Investigators should carry out further examinations of experts who, in essence, are scientifically knowledgeable can ensure that there is an irregular tear in the hymen due to the blunt object belonging to the suspect which is linked to the victim's statement stating that the suspect had intercourse with her in 2013 and 2017 and carried out further examination of other witnesses related to the case.
- d. Investigators have carried out Minutes of Consultation and Coordination of case handling with the Pidie Jaya District Attorney on 26 February 2021 with the results of consultations. Investigators have carried out further examinations on dr. Omar Dhani, Sp. OG, who is essentially scientifically owned by an expert, cannot provide an explanation that the torn wound was due to the suspect's genitals, other male genitalia or other objects and the examination of other witnesses had been carried out.
- e. Letter of Return of Case Files from the Pidie Jaya District Prosecutor's Office Number B-369/L.131/Eku.I/03/2021 dated March 4, 2021 to be responsible for handling and resolving the case has transferred its responsibilities to the investigator then the investigator can determine attitude in accordance with the provisions of the criminal procedure law.

Based on this, the investigator has completed the instructions of the Public Prosecutor but continues to return the case file (P-19) with the same instructions from the Public Prosecutor. These instructions have been attempted in various ways, but the Public Prosecutor wanted an explanation from the obstetrician in detail about whose genitals caused the lacerations to the victim's vital organs. This is of course beyond the investigator's power in disclosing the desired "brand" as intended by the Public Prosecutor. Based on further information from the witness T. Muammar who stated that he had seen the suspect grope and continue to touch the victim so often the suspect came to the witness and victim's room in the early hours of the morning this could be a clue for the Public Prosecutor (Prosecutor) without asking a detailed explanation regarding the "brand" of the genitals to the Expert repeatedly.²⁴

Based on article 188 paragraph (1) of the KUHAP defines instructions as acts of events or circumstances which due to their correspondence between one another and the crime itself indicate that a crime has occurred and who culprit. In further elucidation in paragraph (2) it states that evidence

can be obtained from witness statements, letters, and the testimony of the accused.

In this case the testimony of the witness and the letter in the form of VeR has shown that there was a torn wound on the victim's vital organs and based on the testimony of the witness who knew the actions of the suspect who touched, groped the victim, and often entered the victim's room at the time of midnight and early morning should be used as a clue that leads to the crime of sexual intercourse with the victim. In his statement the victim also gave information according to what he heard, saw and personally experienced the actions of the suspect against the victim.

Based on the factors mentioned above, the victim and complainant objected to stopping the investigation into the child sexual intercourse case experienced by the victim. Therefore, the victim's Legal Counsel immediately took action to carry out pretrial efforts of course with the willingness of the victim and complainant to achieve justice for the victim. On February 2, 2022 the complainant's legal counsel registered a pretrial request with the Chairperson of the Mereudu District Court with the case register number: 1/Pid.Pra/2022/PN Mrd dated February 2, 2022.²⁵

Because this case did not reach the court due to the termination of the investigation by the investigator, in this case the judge could not judge based on his conscience and conviction, so no further examination was carried out by the Panel of Judges. Because the only person who has the right to drop or determine whether or not someone is guilty is the judge, not the termination of an investigation by factors that don't make sense.²⁶

In the petitum of the pretrial petition the victim as the applicant in the case and also accompanied by his attorney asked the honorable judge to examine, try and give a decision by:

1. Granted the Petitioner's request in its entirety;
2. Declare that the termination of the investigation on behalf of the suspect Usman bin Abu Bakar as referred to in the Decision Letter Number: S.Tap/03.a/III/Res.1.24./2021/Reskrim dated 26 March 2021 concerning Termination of Investigation is invalid and contrary to law;

Order that the alleged crime of sexual intercourse with a child is referred to in the Police Report Number: LP-B/5/IX/Res.1.24./2020/SPKT Polres Pidie Jaya dated 14 September 2020 in conjunction with Statement Letter of Evidence Report Number: SKTBL/53/IX/Res.1.24./2020/SPKT dated 14 September 2020 was opened and the investigation was carried out again.

In the trial process, in this case the Respondent's party was the Head of the Pidie Jaya Resort Police c.q the Head of the Criminal Investigation Unit of the Pidie Jaya Resort Police submitted 66 (sixty-six) documentary evidence during the trial process.

As for the basis for the judge's consideration of the pretrial decision Number: 1/Pid.Pra/2022/PN Mrd considers "that what is meant by insufficient evidence according to the

²⁴ Yusman Ayyub, Kepala Urusan Bidang Operasional (KBO) Kepolisian Resor Pidie Jaya, *Interview*, tanggal 13 Desember 2022

²⁵ Syahrul, Direktur Yayasan Lembaga Bantuan Hukum Indonesia – Lembaga Bantuan Hukum (YLBHI – LBH) Banda Aceh, *Interview*, tanggal 1 Desember 2022.

²⁶ Muhammad Qodrat Husni Putra, Kepala Operasional dan Advokat Publik Yayasan Lembaga Bantuan Hukum – Lembaga Bantuan Hukum (YLBHI – LBH) Banda Aceh, *Interview*, tanggal 10 Desember 2022.

pretrial judge is a situation where there is absolutely no evidence, a condition where there is only one piece of evidence, or there are many evidence but the evidence is irrelevant to the alleged criminal event.

Considering that what is intended by an investigation to be terminated for the sake of law is if an act reported has expired, the reported act has been terminated by a decision that has permanent legal force (*nebis in idem*), the suspect has died or the offense being complained about has been revoked."

Furthermore, in his consideration the pretrial judge considered that after examining the evidence of the Respondent's letter, in this case the Pidie Jaya Resort Police with evidence of letters T-58 and T-59 related to the termination of the investigation because they did not fulfill the elements of the article alleged to the suspect. Regarding this matter, the pretrial judge considers that the indictment is not a reason for stopping the investigation as stipulated in Article 109 paragraph (2) of the KUHAP. Therefore, based on the judge's view, the termination of the investigation is illegal and contrary to law.

Based on the judge's considerations and taking into account the provisions of Article 109 paragraph (2), the pretrial judge decides:

1. Granted the Petitioner's request in its entirety;
2. Declare the termination of the investigation conducted by the Respondent on the police report Number LP-B/5/IX/Res.1.24./2020/SPKT Polres Pidie Jaya dated 14 September 2020 based on the Order for Termination of Investigation Number: SPPP/03/III/Res.1.24./2021/Reskrim dated March 24, 2021 jo Letter of Stipulation Number: S.Tap/03.a/III/Res.1.24./2021/Reskrim dated March 26, 2021 concerning Termination of Investigation is illegal and contrary to law;
3. Ordered the Respondent to resume the Investigation process into Police Report Number LP-B/ 53/ IX/ Res.1.24/ 2020/ SPKT Polres Pidie Jaya on 14 September 2020;
4. Ordered the Respondent to pay the costs incurred in this case in the amount of IDR).

Based on this decision, of course it can be a good precedent for other justice seekers. Because this can restore public confidence in being able to recover the rights of victims or other justice seekers who have been harmed by the implementation of procedures that are not based on law and on the mere arbitrariness of law enforcement officials. Looking at the examples of pretrial decisions that have been made against victims, we can draw the conclusion that pretrial is a tool for exercising control over every unprocedural action of law enforcers.

4. Conclusion

The definition of intercourse is the insertion of the male genitalia into the female genitalia which can produce children. The genitalia must enter the female genitalia so that sperm / semen are released. Or intercourse is anyone who has intercourse with a woman out of wedlock, who is known or suspected that she has not reached fifteen years of age or has not yet entered the age of marriage. In this case, sexual intercourse with a child referred to as a child in the Child Protection Act is someone who is not yet 18 years old. Then in Article 81 contains criminal threats for perpetrators who commit violence or threats of violence to have

intercourse with him or another person, he will be punished with imprisonment for a minimum of 5 years and a maximum of 15 years and a maximum fine of IDR 5.000,000,000.00.

The factors in which the investigation was discontinued into the criminal act of intercourse against children in the jurisdiction of the Pidie Jaya Resort Police was due to the unfulfillment of the elements of the article as referred to in article 76D of the Child Protection Act. Apart from that, another factor is the absence of witnesses who directly saw the incident of intercourse and the Public Prosecutor who conducted P-19 which was accompanied by instructions 4 times with the same instructions, namely to be able to ascertain whose genitals had caused lacerations in victim's vitals.

As for the termination of the investigation, as with the termination of the investigation into the criminal act of intercourse against a child, the only way to do this is to make a pretrial request. Where pretrial can restore public trust can also restore the rights of victims or other justice seekers who have been harmed by the implementation of procedures that are not based on law.

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