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Below Minimum Punishment Sentences for the Child Rape Perpetrators

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Abstract

According to Article 50 of the Jinayat, anyone who intentionally rapes a child will face a punishment of at least 150 times and up to 200 times of *'uqubat ta'zir*, or a fine of at least 1,500 grams of pure gold and up to 2,000 grams of pure gold, or imprisonment for a minimum of 150 months and a maximum of 200 months. The accused in the rape case against the child has been found guilty and convicted based on the Judgment of the Court of Sharia' Banda Aceh No. 47/JN/2021/MS.Bna jo. Judgment of the Supreme Court No. 14/K/Jn/202. The accused has been sentenced to a prison term of 72 (seventy-two) months. Committing an act that is below the minimum threshold stated in Article 50 of

the Jinayat is considered a criminal offense. The research approach employed in this study is the Juridic Normative research method. The objective of the study is to elucidate the factors contributing to the deviation from the minimal punishment for those convicted of child rape, from the standpoint of safeguarding children. According to the research findings, the Supreme Court Decision No. 14/K/JN/2022 fails to adequately protect children from perpetrators of child rape. The judge's decision does not examine the traumatic impact experienced by the child, which is a crucial aspect of child protection.

Keywords: Criminal, Below Minimum, Perpetrators, Child Rape

Introduction

Sexual crime is a form of crime that infringes on the dignity of humanity and can be classified as an extraordinary crime ^[1]. Everyone has a chance to be a victim of sexual abuse, especially children. Rape is a form of sexual crime that is common to adult children. According to Soetandyo Wignjoesubroto, rape is an attempt to satisfy a man's sexual desire toward a woman in violation of morality and applicable law ^[2].

Article 20 of the Child Protection Act states that States, Governments, local governments, communities, families, and parents or guardians are responsible for maintaining child protection. Child protection is an attempt to protect a child so that he or she can exercise his or her rights and duties. In this case, the principle of the child's best interests in all actions concerning the child by the Government, society, legislative bodies, and judicial bodies shall be the primary ^[3].

According to the Child Protection Act, criminal sanctions for perpetrators of sexual offenses against children consist of the death penalty, imprisonment, and criminal fines, accompanied by the imposition of action as a form of criminal punishment for the perpetrator. The forms of sexual offenses against children in this law include sexual harassment and rape.

Aceh is a special privileged area of government. The privilege of Aceh covers matters relating to the policy in the rules of law that originate in Islamic local law (Qanun Aceh No. 6, 2014 on Islamic Criminal Law).

According to Qanun Jinayat, the criminal sanctions for perpetrators of sexual offenses against children consist of punishment by stabbing, gold fines, and imprisonment, accompanied by restitution if requested by the victim. The forms of sexual offenses against children in this law include sexual harassment and rape.

The frequent occurrence of sexual offenses against children is one of the indicators of poor quality of child protection. For example, every year there are rape cases against children perpetrated by adults, which are tried at the Banda Aceh Shariah Court. In 2020 there will be 1 (one) case, in 2021 there will have been 3 (three) cases, in 2022 there are 8 (eight) cases and as of October 2023 there is 1 (a) case. These cases have been discontinued and have a fixed legal force.

Article 50 of the Genocide states that any person who deliberately commits rape against a child is threatened with *'uqubat ta'zir* beating at least 150 (one hundred fifty) times, at most 200 (two hundred) times, or fine at least 1,500 (one thousand five-

hundred) grams of pure gold, at the most 2,000 (twelve thousand) grams of pure Gold or imprisonment at the shortest 150 (a hundred fifty) months, the longest 200 (two hundred) months.

Based on a judgment in the rape case against a child, namely the Judgment of the Banda Aceh Sharia Court Number 47/JN/2021/MS.Bna jo. Judgment of the Supreme Court Number 14/K/ JN/2022, the accused was found to have committed rape against the child and was sentenced to imprisonment for 72 (seventy-two) months. It is a criminal offense falling below the minimum limit specified in Article 50 of the *Jinayat* case.

The criminal threat in Article 50 of the *Jinayat* Law enforces a special minimum and maximum criminal sanctions system, i.e. there are minimum penalties and maximum penalties as guidelines that may be used by a judge in convicting the perpetrator of rape against a child. The minimum penalty is a criminal offense with a minimum (lowest limit) as the judge's guideline for judging a crime, whereas the maximum penalty has a maximum limit.

Judgments in cases of rape of a child should take into account the impact of such judgments on the condition of the child at a later stage in his or her life. The punishment given to the perpetrator of a child rape is expected to have the same effect as a precautionary effort to prevent the crime from being repeated, either by him or the community. Thus, it becomes important to carry out an analysis of the criminal fall below the minimum for perpetrators of rape against children in a child protection perspective.

Research Method

This type of research is juris-normative research, i.e. research that uses secondary data (library material) as the primary source. The approach used is a case approach, which is carried out by examining cases based on court decisions that have had fixed legal force ^[4]. The case approach examined is the *ratio decidendi* of a case, that is, the legal grounds used by the judge to reach his decision. Data collection in this study is derived from secondary data, covering primary legal material, secondary law material, and tertiary legal materials. Data obtained from both library research and field research is analyzed using methods of qualitative analysis, i.e. by providing an overview of the existing problems in the form of explanations.

Results and Discussions

The judge of the Sharia Court of Banda Aceh No. 47/JN/2021/MS. Bna declared the accused, not legally proven and convinced guilty of committing, ordered to commit, and who accompanied the commission of rape against a child, and released the Accused from all charges of the Prosecutor General.

Based on the reasons contained in the cassation memoirs, the opinion of the Supreme Court in Judgment No. 14/K/JN/2022 was addressed to its considerations, which mentioned the error of assessing the testimony of other witnesses that are interrelated and confession of the accused who confessed to have had a physical relationship with the child of the victim, as well as not taking into account the Constitutional Court Decision No. 65/Law-VIII/2020 that there has been an extension of the definition of witness, as referred to in Article 1, paragraphs 26 and 27 jo. Thus, the Supreme Court annulled the ruling of the Banda Aceh

Shariah Court and tried the case itself. The accused has fulfilled the criminal elements of Article 50 of the Law.

According to Article 50 of the Genocide, any person who deliberately commits rape against a child is threatened with punishment of at least 150 (one hundred fifty) times, at most 200 (two hundred) times, or a fine of not less than 1,500 (one thousand five-hundred) grams of pure gold, not more than 2,000 (two thousand) grams of pure Gold or imprisonment of no less than 150 months, no more than 200 months.

The Supreme Court Judge's judgment No. 14/K/JN/2022 established that the accused was legitimately proven and convinced guilty of deliberately committing, committing, and accompanying the act of rape against a child and dropped 'uqubat ta'zir on the Accused with 'ucubat imprisonment for 72 (seventy-two) months. According to the provisions of Article 50 of the Law, there are maximum and minimum criminal provisions that may be considered by a judge when examining a case of rape of a child. The minimum and maximum sentences are marked with the phrases "the shortest 150 (one hundred and fifty) months" and "the longest 200 (two hundred) months".

Prosecutors can prosecute based on the provisions of the law, unlike judges who have freedom so that they are not bound by law, judges can decide out of law, find law, and use jurisprudence. If there are minimum and maximum provisions, the prosecution's claims must be adjusted between the minimum and the maximum limits, and not allowed beyond those limits.

Criminal claims are based on the facts in the trial which are legal facts derived from the means of evidence presented, namely the victim, witnesses, experts, and letters visum et repertum, as well as *visum et repertum psychiatikum*. According to Article 181, paragraph (1) of Act No. 7 of 2013 on the *Jinayat* Proceedings Law, the legal means of proof consists of the testimony of witnesses, expert statements, evidence items, letters, electronic evidence, confessions of the accused, and the indictment of the defendant.

The evidence is then assembled, considered to include the elements of whether it is proved by these facts, is fulfilled or not, if, of the clues that have been obtained when the trial led to the accused, that is what is the point of the prosecutor in claiming, the size of the claim depends on the circumstances of the victim, i.e. how the crime has been done against the victims.

In its application, some judges award the crime by the prosecution of the public prosecutor, besides there are Judges who also grant the crime lighter or even heavier than the prosecutors' lawsuit. The maximum and minimum penalty limits in Article 50 of the Genocide are based on the principle that the judge is free to decide the extent of the penalty he considers appropriate and appropriate as a form of suffering for the perpetrator of rape against a child. However, the freedom of the judge is not meant for a judge to act arbitrarily subjective.

The freedom of the judge does not run away from the law but must be by the rule of law, that is, a judge cannot resign according to his will without clear consideration, a Judge is free to dig up the value of the law means that no judge can be interfered by anyone in making a judgment, and the judges are free to be influenced by no one. The judge shall be free to judge by the judgment of the judge's assembly. If

there is a judge who disagrees, he shall give his reason in the judgment.

According to Article 1, paragraph 2, of the Child Protection Act, child protection is any activity to guarantee and protect the child and his or her rights to live, grow, develop, and participate optimally under the dignity and dignity of humanity, and to be protected from violence and discrimination. One of the purposes of child protection is to give attention and protection to the interests of the child as a victim of sexual offenses, especially as a rape victim, both through the criminal justice process and through the various means of social care available in society. Maximum protection is essential for the child victim of rape, as the impact of this crime is enormous, such as the disturbance of the child's physical, psychological, and social condition, which will inevitably affect the children's well-being and future survival.

The legal protection of a child as a victim of rape is a shared responsibility and must be carried out by all parties, as stipulated in Article 20 of the Child Protection Act, which states that the State, the Government, the local government, the community, the family, and parents or guardians are obliged and responsible for the protection of the child.

The freedom of the judge to decide on the criminal offense of a child rapist should protect the child as a victim. The child as a victim of sexual offenses will experience various problematic conditions both internally and externally, internally, the child will experience unstable growth, mental or psychological disorders, and get physical injuries that can interfere with the growth of a healthy and productive child, while externally the child would get bullied in society that causes the child to be afraid and ashamed of being in the community environment^[5].

The special minimum punishment laid down in the Law of Jinayat is based on thinking to more effectively influence general prevention, especially for delinquencies that are perceived to be dangerous and disturbing to the public. In addition, the special minimum penalty aims to prevent the offender from being given a mild penalty so that he is afraid and will commit this crime again because the punishment is quite severe.

In its implementation, the Supreme Court Decision No. 14/K/JN/2022 did not apply under the minimum limit specified in Article 50 of the Genocide, i.e. a penalty of imprisonment awarded within a minimum period of 150 (months) and a maximum of 200 of months. However, the sentence of imprisonment sentenced to the accused in the judgment is a crime under the minimum, that is, 72 months.

Based on the fact that the trial revealed that the child of the victim was raped by the accused, after the rapes by Witnesses I and II and the abuse by the witnesses. Witness I and Witness II were tried with the different file numbers of the defendant, and each of them was sentenced to 150 (one hundred and fifty) months of imprisonment.

The punishment imposed on the accused in the case of rape of this child is relatively light compared to the provisions of Article 50 of the Law, which provides for a minimum of 150 (one hundred fifty) months of imprisonment. Therefore, the criminal falling below the minimum of 72 (seventy-two months) in prison does not reflect child protection, as the judge in his consideration did not take into account the traumatic impact the child victim experienced.

In the excessive circumstances, the judge only considers that the acts of the Accused violate the provisions of the Law

and the Actors do not support the implementation of Islamic Shariah in the province of Aceh, while the condition of the victim who has suffered trauma or the shame to reunite with his social environment is not considered as a condition that afflicts the accused.

Article 59 (2) letter j of the Child Protection Act stipulates that a child as a victim of sexual offenses must receive special protection so that the child is guaranteed a sense of safety from things that endanger himself and his life in the process of his or her growth. The death penalty for a child rapist gives a penalty to the child of the victim so that the child victim feels insecure and uncomfortable in living his life. In this case, guarantees of child safety are simply neglected and the perpetrator seems to have been given priority over the child. Crime victims are often disappointed by law enforcement practices that are more attentive and protect suspects' rights, while victims' rights are more neglected.

The judgment of the adjudication should satisfy the element of justice for every party (victim, society, perpetrator) even though justice is subjective, and not necessarily equal between justice by judge and justice by society. However, the judge's act of exercising his freedom and independence in making judgments must remain in keeping with the people's sense of justice. Justice must always be inherent in the judgment of the judges, for justice is the primary purpose of the law and the laws^[6].

Justice is an abstract thing, but everyone desires justice^[7]. Justice can be achieved if the judge in his decision takes into account all aspects, ranging from the perpetrator, the victim of the crime (the impact suffered by the crime victim), and the sense of justice of the community. However, when it comes to a child, especially if it concerns a child as a victim of rape, the best interests of the child must be given priority. Punishment below the minimum for the perpetrator of child rape will not give the maximum effect, as perpetrators will receive less training in terms of psychology and behavior given the time of execution is shorter than the minimum established by this Law. One factor in rape cases continues to occur because a judge's judgment feels unfair, such as a fairly light sentence on the perpetrator, which can encourage other members of the community to do evil and evil, meaning that they no longer feel afraid of the legal sanctions they will receive.

One of the rights of the child victim of rape is the right to recovery, that is, the child of the rape victim has to be restored to his psychological disturbance as a result of a rape. If the sentence is short, when the perpetrators are released, they are concerned that they will return to contact with the child of the victim and hurt the child, thereby causing the psychological trauma the child has suffered to not recover and increasing the burden of the trauma. It ignores the sense of justice that the victim's child should have.

Criminal verdicts below the minimum in this case also do not bring utility and order to the community, because the imposed mild crimes will make the people nervous and feel insecure in their environment. For rape perpetrators, they must be punished severely, so that they can have the effect of jera^[8].

The imposition of criminal sanctions for the crimes of rape against children must be consistent with the purposes of mediation, namely, intimidating criminals and preventing the public from committing the same crimes. Criminal

sanctions are expected to be a lesson for the offender because it has a deterrent effect (special prevention) so that he does not repeat his actions in the future. Criminal sanctions should also prevent other persons or people of age from committing such crimes (general prevention) by understanding that the threat of such criminal sanctions causes severe suffering.

Conclusion

In conclusion, the penalty falls below the minimum for perpetrators of rape against children in Supreme Court Decision No. 14/K/JN/2022 and does not reflect the protection of the child, as the judge in his consideration did not take into account the traumatic impact experienced by the child. The lowest punishment imposed on the offender causes the child to suffer the return of the offender and the possibility of repeating his actions against the child so that the child feels insecure and uncomfortable living his life. Children are entitled to security guarantees and, if not enforceable, justice in the best interests of the child cannot be realized.

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