

# Criminal Accountability of Perpetrators of Child Molestation Supreme Court Decision Number 1041/K/Pid.Sus/2020

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## Abstract

The crime of molestation is a form of crime against decency, where criminal acts and criminality can be committed by anyone, whether parents, adults, teenagers and children, either directly or indirectly. However, children are very vulnerable to physical or sexual violence because they are powerless creatures who depend on the people who are present in their lives to be able to keep them alive in the world safely. The purpose of this study is to find out how the criminal liability of perpetrators of child molestation and to find out how the legal considerations of judges in handling criminal cases in accordance with the Supreme Court Decision Number 1041 / K / Pid.Sus/2020. The author uses the Normative Legal research method with a Normative Juridical approach. The source of legal material used consists of primary legal material, secondary legal material, and tertiary legal material. In this study, the authors used data collection techniques in the form of literature studies (library search). Data analysis techniques use qualitative data analysis to find out and explore certain phenomena. In this study, the authors examined the Crime of Child Molestation under the age of the defendant Syarifuddin bin Alm, Tayat at the Level of Justice of the Seluma District Prosecutor's Office sentenced the perpetrator to imprisonment, fines and was proven guilty and convincing of the accused crime of molestation based on witness testimony, instructions, evidence, and defendant's statement.

**Keywords:** child; criminal offenses; molestation.

## Introduction

Crime is a form of human behavior that is very detrimental to many people because it threatens the norms that are the basis of life and social order and can cause personal and social tensions. Various types of crimes often occur, one of which is violence against children (Soponyono 2020).

Molestation is a crime that has serious implications, especially for the safety of children and public order. So, it can be concluded that molestation is a crime committed by someone who is motivated by sexual urges in his actions with the aim of satisfying his lust (Dasfamudi 2022).

Crimes and discrimination can be committed by anyone, whether parents, adults, teenagers or children (SA Coal 2019). However, children are at high risk of becoming victims of physical and sexual violence because they are helpless creatures who depend on the people in their lives to survive safely. Discussions about children and their protection have never stopped in the



history of life. Because children are the next generation of the nation, the next generation of development, and the generation that is ready to carry out sustainable development and take control of the future of a nation. (Justice 2011)

Protecting Indonesian children means maintaining the potential of Indonesian human resources in their entirety, towards a just, prosperous and faithful society based on Pancasila and the 1945 Constitution (Thomas 2022). Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and honor, and receive protection from violence and discrimination (October 2022). However, in reality, based on data submitted by the Ministry of Women's Empowerment and Child Protection in 2024, there were 2,283 cases of violence and child molestation in Indonesia, with 1,987 female victims and 495 male victims.

Child Protection Law is a law that guarantees the rights and obligations of children (Santoso 2022). Child protection laws include customary law, civil law, criminal law, civil procedural law, criminal procedural law, and other regulations concerning children (Lubis 2023). Child protection concerns many aspects of life and livelihood, so that children can grow and develop in accordance with their basic rights (Arif, Law Enforcement Against Illegal Levies That Are Rampant in Medan City 2022). When a child becomes a victim of a crime, the state will provide protection to him/her. Based on Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning child protection, the law is the main source used by law enforcers in enforcing the law and sanctions against perpetrators. The crime of indecent assault itself is regulated in Article 289 of the Criminal Code, which states that anyone who forcibly forces another person to commit or permits an indecent act to be committed shall be subject to a maximum of nine years in prison for his/her actions. According to Article 76E, "Everyone is prohibited from using physical force or threats of physical violence, coercion, fraud, lies, or persuading a child to commit or permit an indecent act to be committed." Anyone who violates this prohibition will be subject to Article 81 Paragraph (1) which reads "Anyone who violates the provisions of Article 76E shall be subject to a minimum of five years and a maximum of fifteen years in prison. Judges have great authority and responsibility to fulfill their obligations in upholding the law, truth and justice.

## Method

In this study, the author uses the Normative Law research method (SA Batubara, Legal Protection for Patients in Medical Services at Public Hospitals 2020). Normative Legal Research is an activity that will examine aspects to resolve internal problems of positive law (Arif 2021). The normative legal research method uses the Normative Judicial approach method. The tendency of the nature of the research used by the author is Descriptive (Rodiatun 2017). In descriptive legal research, the expected answers are correct, appropriate, inappropriate, and wrong.



## Criminal Responsibility for Perpetrators of Child Molestation

### Proving Obscene Acts

#### a. Witness Statement

It is the first evidence mentioned. In criminal cases, witness testimony evidence must be used throughout the process, from investigation, interrogation, prosecution, and trial (Prasetyo 2024). Article 1 paragraph 27 of the Criminal Procedure Code Number 1 of 1981 stipulates that the information provided by the criminal procedure<sup>1</sup>The statement can be considered by the Panel of Judges to be used as valid evidence, then it must meet the criteria that have been set. The first criterion is that the statement must be sworn in court because the statement that is accepted is only information given in court. The second criterion is what the witness saw, heard, and experienced himself. The third criterion is that the witness must state it himself in court. The fourth criterion is that at least the testimony must be submitted<sup>2</sup>by two witnesses. The fifth criterion is that the witness's testimony must be in accordance with the case. Meanwhile, the biological mother of the child molestation victim and the biological father of the victim also became witnesses in the molestation case until the trial stage (2024).

#### b. Evidence

Stating that there is evidence in the case of indecent assault committed by the defendant SYARIFUDDIN bin TAYAT in the form of:

- 1 (one) set of pink pajamas
- 1 (one) black bra
- 1 (one) sheet of pink check

#### c. Defendant's Statement

Regarding the defendant's statement, Article 189 of the Criminal Procedure Code states: "The defendant's statement is what the defendant tells in court about an act that he himself committed or knew or experienced."

### Testing Responsibility Ability

Viewed from the perspective of the ability to be responsible, only those who are capable of being held accountable can be held accountable. The issue of the capacity to be responsible is whether a person is capable of being the target of norms.(sa Coal 2020). Based on the observations of the Panel of Judges during the trial, the defendant is in good physical and mental health, is not under guardianship and is able to respond to the trial well, so that the defendant is a perfect legal subject.

<sup>1</sup>Andayani, I. (2018). Imprisonment in the Juvenile Criminal Justice System. *Yustitia Journal*, 12(2), 59



### Proving the Error

Aims to provide a true picture of an event, so that from that event a conclusion can be obtained. truth that can be accepted by common sense. Proof means that the event really happened and the defendant is guilty of committing the act, so that a prosecution is necessary.(See 2015). Evidence is a provision that contains a description and instructions on the methods permitted by law to prove the defendant's guilt.(Ramadan 2023).In relation to the case of termination of case Number 1041/K/Pid.Sus/2020, the perpetrator SYARIFUDDIN bin TAYAT. Proven legally and convincingly guilty of committing the crime of "Persuading Children to Commit Indecent Acts Continuously". As regulated and threatened in Article 76 E of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in conjunction with Article 82 paragraph (1) of Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection in conjunction with Article 64 paragraph (1) of the Criminal Code which was charged against the defendant in the Single indictment. Thus, the act that carried out against the law which has been fulfilled(Saptaningsih 2020)

### Implementation of Sanctions

The application of sanctions is intended to threaten or impose a criminal act on someone who has committed a crime that disrupts and endangers legal interests. The perpetrator from Dermayu District named SYARIFUDDIN bin TAYAT has molested a minor who was charged by the Public Prosecutor of the Seluma District Court as follows:

1. Declaring that the Defendant SYARIFUDDIN bin TAYAT has been proven legally and convincingly guilty of committing the crime of "Indecent Acts Against Minors" as regulated and threatened in Article 76 e of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection in conjunction with Article 82 Paragraph (1) of the Republic of Indonesia Law Number 17 of 2016 concerning Amendments to the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection in conjunction with Article 64 Paragraph (1) of the Criminal Code which was charged against the defendant in the Single Indictment.
2. Sentencing the Defendant SYARIFUDDIN bin TAYAT to 6 (six) years in prison, minus the time the Defendant has been in detention, with the order that the Defendant remain in detention.
3. Imposing a fine on the Defendant SYARIFUDDIN bin TAYAT of Rp. 60,000,000.00 (sixty million rupiah) and a subsidiary of 3 (three) months imprisonment.
4. Stating evidence in the form of; 1 (one) set of pink nightgowns, 1 (one) black bra, 1 (one) pair of pink panties
5. Ordering the defendant to pay court costs of Rp. 2,000.00 (two thousand rupiah)



## Legal Considerations of Judges in Handling Criminal Cases

In the immoral case at the Seluma District Court with case number 1041/K/Pid.Sus/2020 which was decided on May 19, 2020 by a single judge, the public prosecutor charged the defendant SYARIFUDDIN bin TAYAT with Article 74 e of Law of the Republic of Indonesia Number 35 of 2014 concerning amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning child protection. And sentenced the defendant to 6 (six) years in prison minus the time the defendant was in detention and a fine of Rp. 60,000,000.00 (sixty million rupiah). The basis for the judge's considerations in deciding the criminal case Number 1041/K/Pid.Sus/2020 at the Seluma District Court were:

- a. That there were statements that occurred during the trial, both statements given by the perpetrator and statements given by the victim and witnesses.
- b. That the elements of the criminal act charged by the public prosecutor in the indictment violate Article 82 paragraph (1) of Law No. 17 of 2016 concerning Child Protection.
- c. That the defendant has been proven legally and convincingly guilty of committing the crime of "Indecent Acts Against Minors" as regulated and threatened in Article 76 E of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection in conjunction with Article 82 Paragraph (1) of the Republic of Indonesia Law Number 17 of 2016 concerning Amendments to the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection in conjunction with Article 64 Paragraph (1) of the Criminal Code which was charged against the defendant in the Single Indictment.
- d. That the Public Prosecutor has charged the defendant with committing a criminal act as stated in the special criminal decision letter dated May 19, 2020.
- e. That based on the trial facts, the defendant has been proven to have committed indecent acts against child victim 1, child victim 2, and child victim 3 which he did repeatedly with the lure of being given money by the defendant in the amount of between Rp. 50,000.00 (fifty thousand rupiah) to Rp. 250,000.00 (two hundred and fifty thousand rupiah).
- f. That at the time the defendant committed indecent acts against the victim's child, the victim's child based on Birth Certificate Extract No. AL.608.0047970 was still 15 years and 9 months old.

That the purpose of criminal punishment is as an effort to have a deterrent effect on the defendant, and also to be a warning to other members of society so that they do not commit similar acts to those committed by the defendant, so that the punishment given must be in accordance with the defendant's mistake.

## Conclusion

The judge's decision on the perpetrator of child molestation has fulfilled the sense of substantive justice. Because in trying the crime, the judge is not only guided by the law, but also by the norms that develop in society so that the perpetrator's actions are comparable to the punishment proposed by the panel.



The suggestion put forward by the author as a response to the results of the research that has been conducted is for the judge to give the maximum sentence for the defendant who is guilty of committing sexual abuse against a child. The judge must really consider all aspects based on legal certainty, benefit, and legal justice so that true justice can be achieved and felt by all parties. Considering the negative impact on the psychology of the child who is the victim. Given that crimes against children continue to increase in Indonesia, this can be a consideration for the judge in imposing the maximum sentence. Furthermore, preventing criminal acts of sexual abuse against children is a shared responsibility between the government, law enforcement, parents, and society. Therefore, the most important thing according to the author is to prioritize strong moral and religious education for each individual and protect children from the influence of bad life.

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