

**FACTORS INHIBITING THE ENFORCEMENT OF THE CRIMINAL LAW OF  
SEXUAL ABUSE OF CHILDREN  
(STUDY OF DECISION NUMBER 158/PID.SUS/2020/PN TGT)**

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**ABSTRACT**

*The crime of copulation is a sensitive issue, especially if the victim is a minor, which can result in impaired mental growth in the future. This study aims to analyze the application of criminal sanctions for child copulation by women and child protection activists (Verdict Study Number 158 / Pid.Sus / 2020 / PN Tgt) and other significant factors that affect law enforcement against perpetrators of criminal acts of copulation against children. The type of research in this research is a normative juridical method whose other name is doctrinal legal research, also known as library research or document studies, because this research is carried out or aimed only at written regulations or other legal materials. The approaches used by researchers in compiling this research are, among others: Statue Approach and the Case approach. The results showed that the implementation of criminal sanctions for criminal acts of child copulation by activists to protect women and children against children had been carried out by the provisions of the applicable laws and regulations. Factors that hinder law enforcement against perpetrators of criminal acts of copulation against children who are victims of trafficking by women and child protection activists in Paser Regency are law enforcement factors, community factors, and cultural factors.*

Tindak pidana persetubuhan merupakan suatu masalah yang sensitif, terlebih jika korbannya anak dibawah umur dapat berakibat terganggunya pertumbuhan mental dimasa depan. Penelitian ini bertujuan untuk menganalisis penerapan sanksi pidana tindak pidana persetubuhan anak oleh oknum aktivis perlindungan perempuan dan anak (Studi Putusan Nomor 158/Pid.Sus/2020/PN Tgt) dan faktor-faktor apa saja yang mempengaruhi penegakan hukum terhadap pelaku tindak pidana persetubuhan terhadap anak. Jenis penelitian dalam penelitian ini adalah metode yuridis normatif yang nama lainnya adalah penelitian hukum doktriner yang disebut juga sebagai penelitian perpustakaan atau studi dokumen karena penelitian ini dilakukan atau ditujukan hanya pada peraturan-peraturan yang tertulis atau bahan-bahan hukum lainnya. Adapun pendekatan yang digunakan oleh peneliti dalam menyusun penelitian ini adalah, antara lain: Pendekatan Perundang-Undangan (*Statue Approach*) dan Pendekatan kasus (*case approach*). Hasil penelitian menunjukkan bahwa Penerapan sanksi pidana tindak pidana persetubuhan anak oleh oknum aktivis perlindungan perempuan dan anak terhadap anak telah dilaksanakan sesuai dengan ketentuan peraturan Perundang-undangan yang berlaku. Faktor-faktor yang menghambat penegakan hukum terhadap pelaku tindak pidana persetubuhan terhadap anak yang menjadi korban perdagangan orang oleh

oknum aktivis perlindungan perempuan dan anak di Kabupaten Paser adalah faktor penegak hukum, faktor masyarakat, dan faktor kebudayaan.

**Kata Kunci:** *Law Enforcement, Criminal Law, Sexual Abuse.*

## A. INTRODUCTION

Due to the rising incidence of crime in Indonesia, the general populace needs to have a deeper understanding of the country's legal system. A lack of familiarity with Indonesia's legal system is one of the contributing factors that might lead to an individual's participation in criminal activity or their status as a victim of criminal activity. Crime is an issue that will not go away in society along with the growth of civilization since it is a problem that is inherent to society. Many criminal issues are present in today's culture, including sexual harassment, physical assault, homicide, and others (Atmasasmita, 2013).

According to the Human Rights Reference, the following people are considered to be members of the vulnerable group: a. Refugees; b. Internally Displaced Persons (IDPs); c. National Minorities; d. Migrant Workers; e. Indigenous Peoples; f. Children; and g. Women. In a society committed to upholding the principles of human rights, there must be members of vulnerable groups such as children, women, persons with disabilities, and members of underrepresented groups. In addition to children, women are also members of a vulnerable population that must be protected during the process of law enforcement. Ineffective law enforcement has contributed to increased violence directed toward vulnerable populations (Mareta, 2016).

Apart from being the next generation of the nation and human resources that need to be protected, children are also the future of the country. Children must strive for an optimal level of well-being both spiritually/mentally, physically, or socially because children are human resources who are heirs to potential generations (Ramadhani & Nurwati, 2021). Children are a vulnerable group to sexual violence because children always depend on the adults around them to position themselves as helpless and weak. Resulting in the child not telling when experiencing a moment he was threatened (Soesilo, Febiana, Murtanto, & Putri, 2022).

Sexual violence is an act of assault of a sexual nature, both physical and non-physical directed at women, regardless of whether there is a personal relationship between the victim and the perpetrator (Erlina, 2014). The crime of sexual intercourse with a child is a behavior that deviates from the norms of our society. The crime of sexual intercourse is a sensitive issue, especially if the victim is a minor which can result in disruption of mental growth in the future. The psychological impact that occurs on child victims will bring prolonged trauma and will lead to behaviors such as lack of confidence, excessive anxiety, depression, and stress (Sulistyaningsih & Faturochman, 2002). Not only the psychological impact, children who are victims of sexual

intercourse also get social impacts, such as becoming the subject of conversation in their surroundings, both friends and neighbors.

One of the cases of sexual intercourse with a child can be seen in the case in decision Number 158/Pid.Sus/2020/PN Tgt. The criminal act of sexual intercourse was committed by an activist from the Usuk Bulau Regional Communication Forum for the empowerment of women and children in Paser Regency. The victims themselves were victims of trafficking in persons who were previously caught in Tanah grogot, Paser Regency, so to provide protection for these children they were placed in shelters. The halfway house itself should be a place of refuge to look after and recover the mentality of child victims of trafficking in persons. However, the perpetrator, who was a member of the forum, even committed sexual intercourse with one of the children who was placed in a day care institution or shelter in Paser Regency. By taking advantage of the psychological state of the child victim of trafficking in persons, the perpetrator gives promises or promises to marry her and persuades the victim to have intercourse with her. Based on an interview with Briptu Yuni, In 2021 it was stated that the victim was a 15 year old child and the child was a victim of human trafficking.

This study aims to discuss the application of criminal sanctions for child sexual intercourse by activists protecting women and children (Judge Decision Number 158/Pid.Sus/2020/PN Tgt) and what factors influence law enforcement against perpetrators of child sexual intercourse by women and children protection activists. Several studies regarding the crime of sexual intercourse with children have been carried out. For example, research conducted by (Dewi, Sujana, & Sugiarta, 2019) discusses regarding the crime of sexual intercourse with a child. Then the research conducted by (Purnomo, 2019) explaining about argumentation of the dualistic concept of criminal law responsibility by a panel of judges in the crime of sexual intercourse with a child. In addition, research conducted by (Widyawati, 2020) which discusses discussing in more depth the crime of sexual intercourse with children in an Islamic perspective.

## **B. METHOD**

This type of research in writing is a normative juridical research method whose other name is doctrinal legal research, also known as library research or document study, because this research is conducted or aimed only at written regulations or other legal materials (Soekanto, 2007). Among other approaches used by researchers in compiling this research are the Statute Approach and; the case approach (Hulukati, Ismail, & Nggilu, 2020). Library research was conducted, which entailed the acquisition of data and information from a variety of publications, readings, and legislation about the issue at hand. The library was home to this literature review's research sessions. The Paser Police Station in Paser District, East Kalimantan, served as the study's location. The laws and regulations, literature, scientific papers, previous research findings, documents, legal practitioners' opinions, journals, and various relevant books used in

this study were gathered through literature studies and obtained through online and library searches.

## **C. RESULTS AND DISCUSSION**

### **1. Application of Criminal Sanctions for the Crime of Child Sexual Action by Activists for the Protection of Women and Children (Study of Decision Number 158/Pid.Sus/2020/PN Tgt)**

The criminal offense comes from the Dutch translation of *strafbaarfeit*. Simons explained that *strafbaarfeit* is a behavior (*handeling*) threatened by a criminal, which is against the law and is related to mistakes committed by people who can be responsible (Hamzah, 2008). Normatively, it has been regulated regarding the criminal act of intercourse against children in the Criminal Code, namely Article 287 of the Criminal Code.

The perpetrator commits the criminal act of intercourse using seduction (*Seduire*: persuade, seduce) and rape. Seduction is persuasion and the temptation to invite his partner to have sex, violating the norms of morality or the law. Usually, women get beautiful promises to be married and bear their fate. Sexual intercourse between an adult and a child, even though it is not done by threatening or legally forcing the act, falls into the category of statutory rape; likewise, what happens in the *kerinci* police jurisdiction, where intercourse against children is carried out by promising to be responsible (Widyawati, 2020).

Intercourse is included in the crime of decency; intercourse occurs due to persuasion, causing intimate relationships. Simply intercourse can be said to be an intimate relationship that is usually carried out to obtain sexual satisfaction or a way to get offspring; intercourse is a human activity, so intercourse is not included in the form of crime, but if this sexual activity is done not by applicable legal rules, it is said that an act committed as a crime of sexuality (A. R. P. Dewi, Sujana, & Sugiarta, 2019).

The Paser Police, through the Women and Children Services Unit in this case, collaborated with the Office of Population Control, Family Planning, Women's Empowerment and Child Protection (DPPKBP3A) and the Paser Cares Sesama Foundation to protect the crime of trafficking in persons where the victim is a child, by providing shelter while at the shelter of the Paser Cares Foundation which is located on Jl. Dr. Cipto Mangun Kusumo, Tanah Grogot District, Paser Regency. The Halfway House aims to provide protection and mental recovery for child victims of trafficking persons in Tanah Grogot. It is known that one of the activists for the protection of women and children assigned to look after and protect child victims of trafficking in persons committed the crime of sexual intercourse with one of the children.

The case of the criminal act of sexual intercourse against a child who was a victim of trafficking in persons and was committed by an activist for the protection

of women and children in Paser District. The panel of judges at the Tanah Grogot District Court in case number 158/Pid.Sus/2020/PN Tgt decided on the Defendant with Article 81 Paragraph (2) and Paragraph (3) of the Law of the Republic of Indonesia Number 17 of 2016 concerning Stipulation of Government Regulations instead of Laws Law Number 1 of 2016 concerning the Second Amendment to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection as amended by Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (UU 45, 2014).

Some considerations of the panel of judges in deciding that the perpetrator has met the criminal elements under Article 81 Paragraph (2) are as follows:

- a. The element of each person, where this element is related to the subject of law, a natural person or corporation, which will account for the act if the subject of law is proven legally and convincingly guilty of committing the crime he is charged.
- b. The element of deliberately committing a ruse, a series of lies, or persuading the child to have intercourse with him or with another person.
  - 1) Intentional based on M.V.T (Memorie Van Toelichting) interprets intentionality (Opzet) as "wanting and knowing" (Willens en Willens); it can be said that intentionality means wanting and knowing what is done;
  - 2) The child referred to in this element is the victim's child. The age limit of a child according to the provisions of Article 1 Number 1 of the law of the Republic of Indonesia number 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning child protection, "a child is a person who is not yet 18 years old", in the facts of the trial it is known that the child victim when the act of intercourse occurred he was 14 years old evidenced by the victim's birth certificate.
  - 3) according to R. Soesilo, the contest between members of the male and female genitalia commonly runs to get children, so members of the male genitalia must enter into the female genitalia, thus removing semen (R. Soesilo, 1981) from the facts of the trial proved. The perpetrators have done it 4 (four) times.
  - 4) based on the description of the facts in the trial regarding the chronology of events, the panel of judges considered that the intercourse carried out by the defendant with the victim's child was carried out by the defendant with the inner attitude of the defendant's will and knowledge by persuading the victim's child.
- c. Elements performed by parents, guardians, people with familial ties, nannies, teachers, school workers, child protection officials, or by a combination of these.
  - 1) The Paser Regent Decree No. 263 / Kep-27/2020 on the Empowerment of Women, as shown by Letter Evidence Dated January 9, 2020, the Regional Communication Forum for community participation for women's

empowerment and Child Protection Usuk Bulau Paser Regency 2020-2023 explained that the offender was a member of the Child Rights fulfillment sector and that the defendant was tasked with reminding the children of the victim and the children of the witnesses to carry out pickets while incarcerated, and to do so until the legal process was concluded;

- 2) that is, the offender was scarce;
- 3) the offender's treatment of the victim's kid goes against his duties as a caretaker, supervisor, and protector to uphold the child's rights and ensure the child's wellbeing.

Following Article 81 of the Law of the Republic of Indonesia No. 17 of 2016 on the Stipulation of Government Regulation, the panel of judges has decided to apply this law instead of Law No. 1 of 2016 on the Second Amendment to Law No. 23 of 2002 on Child Protection, as Amended by Law No. 35 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection.

As a result, the Panel of Judges of the Tanah Grogot District Court has applied the maximum sentence allowed by law to those responsible for the crime of sexual intercourse with minors committed by an activist for the protection of women and children. Certain penalties are put in place to discourage future offenses and make child victims feel justice was served.

## **2. Factors Influencing Law Enforcement Against the Perpetrators of the Crime of Sexual Intercourse Against Children by Women and Children Protection Activists**

The crime of sexual intercourse with a child is a form of crime against a child whose impact can be mentally, psychologically and physically damaging. These actions do not only occur in big cities but also occur in areas far from big cities. Law enforcement is the process of making efforts to uphold or function legal norms in a real way as a guideline for behavior in traffic or legal relations in the life of society and the state (Moho, 2019). According to Soerjono Soekanto, there are 5 (five) factors that influence law enforcement in Indonesia, namely (Pramuji & Putri, 2020):

- a. The legal factor, in this case, is the law
- b. Law enforcement factors, parties that implement and form laws
- c. Facility factors or facilities that support law enforcement
- d. Community factors, namely the environment where the law is applied or applies
- e. Cultural factors, namely as a result of work, creativity, and taste based on human initiative in social life.

The five factors above influence each other, namely one factor with another factor. The existence of legal rules is formulated in laws, for example law in books is very dependent on its prospects in society, and law in action or the mentality of law enforcement officials to form realistic laws. The prospect of upholding legal norms will be determined by the performance of law enforcement officials (Wahid, 2005).

a. Act Factor

Some of the problems that may arise from the law that affect law enforcement in Indonesia are caused by (1) the enactment of the law is not followed by the principles, (2) the much-needed implementing regulations have not been made, and (3) the unclear meaning words in the law resulting in confusion in its interpretation and application (Soerjono, 2019). Criminal acts of crimes against children are regulated in the Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulations instead of Law Number 1 of 2016 concerning the Second Amendment to the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to the Law Republic of Indonesia Number 23 of 2002 concerning Child Protection.

Specifically, regarding the crime of child intercourse, it has been regulated in Article 81 of the Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulations instead of Law Number 1 of 2016 concerning the Second Amendment to the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection. The child protection law contains good provisions as a rule by threatening strict criminal sanctions and providing protection for children who are victims of crime so that it can be seen that based on the above; the law factor does not affect law enforcement against the criminal act of intercourse against children by unscrupulous activists for the protection of women and children.

b. Law Enforcement Factors

Law enforcement officials play important roles and responsibilities in the law enforcement process. Law enforcement has a very broad meaning, because it includes those who directly and indirectly deal with problems in the field of law enforcement. Here law enforcers are limited to law enforcers who are directly involved in law enforcement such as Judges, Prosecutors, Lawyers, Police, and Corrections (Soerjono, 2019). Something that can affect the performance of law enforcement officials is the quality of human resources. The quality of a law enforcement apparatus can impact law implementation in the field. Law enforcers must know and understand their duties and authorities and the law so that the law can be upheld.

Paser Regency has an area of 11,604 km<sup>2</sup>, consisting of 10 Subdistricts, 144 Kelurahan/Villages, and 275,452 inhabitants (Official News on Population Statistics in 2020), with the largest population, namely in Longkali District, around 70 thousand more people (Official News Census Statistics) Population, 2020). In the Regulation of the Chief of Police Number 23 of 2010 concerning Organizational Structure and Working Procedures at the Polres Level, from the organizational structure of the Rural Police Office, it can be seen that the

number of personnel who should serve in the Polsek is around 50 members. Based on the data obtained, each Polsek in Paser Regency is staffed by around 18-20 apparatus personnel in each sub-district.

Suppose you look at the comparison between the population and the assigned police officers. In that case, there is an imbalance between the number of officers and residents in each sub-district in the Paser Regency. As a result, several officials have to double duty to continue to provide full service. The service at Sector Police Office during service hours, there is personnel who should serve as investigators concurrently guarding vital national objects, so that service at the Sector Police Office could be more optimal. The thing that can hinder the apparatus in enforcing the law in the community is the limited number of police officers in the Polsek in each sub-district in the Paser Regency.

c. Facility Factor

Supporting facilities or facilities can expedite law enforcement officials in enforcing the law. Law enforcement will not be able to take place properly and smoothly if there are no means or facilities. These facilities or facilities include adequate equipment, safe and smooth organization, adequate finances and educated and skilled human resources, and others (Soerjono, 2019). According to the PPA (Empowerment of Women and Children) Unit of the Criminal Investigation Unit of the Paser Police, in the case of the crime of sexual intercourse with a child that an activist committed for the protection of women and children that took place in the Paser Regency, the existing facilities or facilities have never had deficiencies or problems occur. This information comes from the investigation into the case that was conducted.

The procedure of law enforcement connected to crimes committed against minors has been swimmingly up to this point. Case processing at each Sector Police Office in the District can handle child cases to ensure that the community does not face barriers or impediments when reporting crimes against children. When dealing with victims in the aftermath of an event, the PPA Unit (Women and Children Services) Sat Reskrim Polres Paser works in conjunction with the Office of Population Control, Family Planning, and Empowerment of Women and Children (DPPKB3A). In particular, the enforcement of laws regarding crimes committed against minors benefits greatly from a lack of obstructions in the facilities or facilities that are now available. For law enforcement to function at its highest potential, the factors of the facilities or facilities themselves have a significant impact.

d. Community Factors

Cooperation between law enforcement officials and community members is necessary to operate the justice system efficiently. The critical thinking of a society on the legal issues surrounding it is an important factor to consider. As a result of research that was carried out in Tanah Grogot, Paser Regency, East



Kalimantan, it is known that the majority of people believe that when there is a man and a woman, even if one of them is underage, it is not considered a crime for them to commit acts like husband and wife or to have sex outside of marriage for the reason that they both like. This is the opinion that was uncovered by the research. Because of this, people do not consider its criminal conduct, and as a result, they believe that law enforcement procedure is not required. Therefore, issues inside the community significantly impact how law enforcement operates in a certain region.

e. Cultural Factors

The applicable law basically includes the legal cultural (system) values as its basis, so that values are abstract concepts about what is good and what is bad. These values are usually value pairs reflecting two extreme conditions that must be coordinated (Soerjono, 2019). Based on research into cases of unlawful intercourse against children by women and child protection activists that occurred in Paser Regency, the parents of the victim's child who knew about the incident thought that the intercourse that occurred could be forgiven and resolved amicably because the perpetrator gave honest money worth IDR 1,000,000 .00 (one million rupiahs) and promised to marry the victim's child. The lure offered by the perpetrator makes the parents of the victim's child unwilling to solve the problem legally and wish to make peace.

“*Uang jujuran*” is one of the cultures that exist in the area of Kalimantan; “*Uang jujuran*” is done during premarital. “*Uang jujuran*” is the gift of the prospective groom to the prospective bride in the form of money that must be given as a condition for carrying out the marriage (Sanawiah & Rismanto, 2021). The habit of being “*Uang jujuran*” can be a positive thing if it is done to be good, namely to bind so that things don't happen that can derail the wedding ceremony that will be held.

“*Uang jujuran*” can be bad when done only to satisfy a man's lust for the woman he wants before marriage. The lure of the perpetrator to marry the victim's child by giving “*Uang jujuran*” and the desire for peace from the parents of the victim's child does not necessarily eliminate the unlawful nature of the perpetrator's actions. Completing a criminal act of intercourse against a child peacefully with the assumption that marriage is better can affect law enforcement efforts against crimes against children.

## D. CONCLUSION

The application of criminal sanctions for the crime of child intercourse by unscrupulous activists for the protection of women and Children Against Children has been carried out by the provisions of applicable laws and regulations. Factors that hinder law enforcement against perpetrators of criminal acts of sexual intercourse against children who are victims of trafficking by unscrupulous activists for the

protection of women and children in Paser Regency are law enforcement factors where the number of personnel in the field is not balanced with the number of residents in each district in Paser Regency, inequality in the number of law enforcement officers with the number of residents resulted in less than optimal apparatus to enforce the law. Then the factor of society, the mindset of society that sexual intercourse carried out by children voluntarily is considered not a criminal act so as not to report it to law enforcement officers. Then the cultural factor, the culture of “uang jujuran” that exists in Kalimantan, has been abused for criminal perpetrators of sexual intercourse against children to replace their mistakes to be resolved with kinship and not reported to law enforcement officers. In the future, the authors hope that law enforcement against the crime of sexual intercourse against children needs to be improved and not tied to factors that have been hindering, such as the mindset of society and cultural factors. In the future, the public needs to be educated that intercourse with a child is a criminal offense that endangers the child's future and has a long impact on them psychologically.

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