

ABSTRAK

ANALISIS PUTUSAN HAKIM DI LUAR DAKWAAN PENUNTUT UMUM DALAM PERKARA KEKERASAN SEKSUAL TERHADAP ANAK (Studi Putusan Nomor 287/Pid.Sus/2020/PN Sdn)

Oleh

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Hakim dalam memeriksa, mengadili dan memutus perkara pidana dibatasi oleh KUHAP. Pembatasan itu menyakatkan hakim memutus berdasarkan dakwaan. Namun di sisi lain jika memutus hanya berdasarkan dakwaan dan jaksa tidak teliti dalam membuat dakwaan ataupun menggunakan pasal keliru meskipun memang kejahatan seksualnya terjadi, maka nilai keadilan bagi korban tidak terbentuk. Sehingga sejauh mana kewenangan hakim dalam memutus di luar dakwaan perkara kekerasan seksual terhadap anak, dasar pertimbangan hakim dalam memutus di luar dakwaan tersebut, serta menganalisis suatu putusan.

Penulisan ini menggunakan metode penelitian yuridis-normatif. Penggunaan metode ini, penulis menganalisa beberapa putusan di luar dakwaan dalam perkara tersebut dan membandingkan dengan putusan lainnya, sistem hukum, dan aturan-aturan yang berlaku. Kemudian dianalisa dengan metode induktif untuk menjawab masalah yang ada.

Kewenangan hakim dalam memutus di luar dakwaan perkara kekerasan seksual dengan korban anak terdapat dua aliran pendapat yaitu menolak dapatnya diputus di luar dakwaan dan memperbolehkan hakim dapat memutus di luar dakwaan. Pada dasarnya Hakim diberikan kewenangan untuk menggali nilai-nilai dan memutus suatu perkara berdasarkan apa yang ditemukan dalam persidangan, mengingat fungsi hakim untuk memberikan keadilan dalam putusannya sebagaimana dalam Undang-Undang Kekuasaan Kehakiman. Kewenangan tersebut dilihat berdasarkan sistem hukum, kode etik hakim, pandangan hakim terhadap asas legalitas dan aturan yang berlaku. Pertimbangan Hakim dalam memutus di luar dakwaan perkara kekerasan seksual terhadap anak dengan melihat aspek yuridis, filosofis, dan sosiologis. Pertimbangan hakim tersebut lebih condong kepada aspek filosofis yaitu keadilan untuk korban dan sosiologis yaitu manfaat putusan dengan memperhatikan dampak yang dialami korban dan keadaan Terdakwa.

Banyaknya praktek hakim memutus di luar dakwaan dalam kasus kekerasan seksual terhadap anak ini maka perlu dibuat Surat Edaran Mahkamah Agung seperti pada kasus narkoba. Selain itu juga perlu untuk diatur dan dibahas dalam rangka pembaharuan hukum acara pidana. Praktek ini pun juga harus didasari dengan sikap profesional, tanggung jawab dan keberanian hakim dalam memutus.

Kata Kunci: putusan, luar dakwaan, kekerasan seksual, anak korban

ABSTRACT

ANALYSIS OF JUDGE'S VERDICT OUTSIDE THE INDICTMENT OF THE PUBLIC PROSECUTOR IN A CASE OF SEXUAL VIOLENCE AGAINST CHILDREN

(Study of Verdict 287/Pid.Sus/2020/PN Sdn)

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Judges in examining, trying and deciding criminal cases are limited by the Criminal Procedure Code. This restriction implies that the judge decides based on the indictment. But on the other hand, if the decision is only based on the indictment and the prosecutor is not careful in making the indictment or uses the wrong article even though the sexual crime has indeed occurred, then the value of justice for the victim is not formed. Thus, the extent of the judge's authority in deciding outside the indictment in cases of sexual violence against children, the basis for the judge's consideration in deciding outside the indictment, and analyzing a decision.

This writing uses a juridical-normative research method. Using this method, the author analyzes several decisions outside the indictment in the case and compares them with other decisions, the legal system, and applicable rules. Then analyzed with the inductive method to answer the existing problems.

The authority of judges in deciding outside the indictment in cases of sexual violence with child victims there are two schools of opinion, namely rejecting the possibility of being decided outside the indictment and allowing judges to decide outside the indictment. Basically, judges are given the authority to explore values and decide a case based on what is found in the trial, given the function of judges to provide justice in their decisions as in the Judicial Power Act. This authority is seen based on the legal system, the judge's code of ethics, the judge's view of the principle of legality and applicable regulations. Judges' considerations in deciding outside the indictment in cases of sexual violence against children by looking at juridical, philosophical, and sociological aspects. The judge's consideration is more inclined to the philosophical aspect, namely justice for the victim and sociology, namely the benefits of the decision by considering the impact experienced by the victim and the condition of the defendant.

The practice of judges deciding outside of the indictment in cases of sexual violence against children requires the issuance of a Supreme Court Circular Letter, such as in narcotics cases. In addition, it also needs to be regulated and discussed in the context of reforming the criminal procedure law. This practice must also be based on the professional attitude, responsibility and courage of judges in making decisions.

Kata Kunci: *verdict, outside the indictment, sexual violence, child victim.*