

## **ABSTRAK**

### **ANALISIS PERTIMBANGAN HAKIM DALAM PENJATUHAN PIDANA TERHADAP ANAK SEBAGAI PELAKU TURUT SERTA DALAM TINDAK PIDANA PERSETUBUHAN DENGAN ANCAMAN KEKERASAN (Studi Putusan Nomor: 39/Pid.Sus.Anak/2023/PN.Tjk)**

**Oleh**

**INNA SYAKIRA WARDAH**

Setiap anak idealnya dapat tumbuh dan berkembang secara wajar sesuai dengan tahapan perkembangan usianya, tetapi pada kenyataannya terdapat anak yang menjadi pelaku turut serta dalam tindak pidana persetubuhan dengan ancaman kekerasan, sehingga anak dijatuhi pidana sesuai dengan sistem peradilan pidana anak. Permasalahan penelitian ini mengenai pertimbangan hakim dalam penjatuhan pidana terhadap anak sebagai pelaku turut serta dalam tindak pidana persetubuhan dengan ancaman kekerasan dan putusan terhadap anak sebagai pelaku turut serta dalam tindak pidana persetubuhan dengan ancaman kekerasan sudah sesuai dengan tujuan pemidanaan.

Penelitian ini menggunakan pendekatan yuridis normatif dan didukung yuridis empiris. Sumber data dalam penelitian ini terdiri data lapangan dan data kepustakaan. Narasumber penelitian terdiri dari Hakim Anak, Jaksa, Penasihat Hukum/Advokat, Pembimbing Kemasyarakatan BAPAS dan Dosen Bagian Hukum Pidana. Pengumpulan data dilakukan dengan studi kepustakaan dan studi lapangan. Pengolahan data dilakukan dengan seleksi data, klasifikasi dan sistematasi data. Selanjutnya analisis data dilakukan secara kualitatif.

Hasil penelitian dan pembahasan menunjukkan bahwa pertimbangan hakim dalam menjatuhkan pidana terhadap anak sebagai pelaku turut serta dalam tindak pidana persetubuhan dengan ancaman kekerasan pada Putusan Nomor: 39/Pid.Sus.Anak/2023/PN.Tjk terdiri atas pertimbangan yuridis, filosofis dan sosiologis. Pertimbangan yuridis yaitu anak terbukti secara sah dan meyakinkan melakukan tindak pidana sebagai dakwaan alternatif pertama Jaksa Penuntut Umum, yaitu Pasal 76D Jo. Pasal 81 Ayat (1) Undang-Undang Nomor 17 Tahun 2016 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 tentang Perubahan Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak Jo. Pasal 55 Ayat (1) KUHP. Pertimbangan secara filosofis yaitu hakim mempertimbangkan filosofi penjatuhan pidana terhadap anak sebagai upaya pembinaan terhadap diri anak. Pertimbangan sosiologis yaitu

*Inna Syakira Wardah*

adanya pertimbangan latar belakang sosial serta keadaan yang memberatkan serta meringankan bagi anak pelaku tindak pidana. Penjatuhan pidana penjara selama 3 (tiga) tahun dan 6 (enam) bulan di LPKA Lampung di Masgar dan pelatihan kerja selama 6 (enam) bulan di UPTD Penyelenggaraan Kesejahteraan Sosial Insan Berguna Dinas Sosial Provinsi Lampung terhadap anak sebagai pelaku turut serta dalam tindak pidana persetubuhan dengan ancaman kekerasan sesuai dengan tujuan pemidanaan terhadap anak, khususnya teori pemidanaan gabungan (integratif), yaitu gabungan antara teori absolut (pembalasan) dan teori relatif (tujuan). Pidana yang dijatuhkan selain sebagai pembalasan atas tindak pidana yang dijatuhkan anak, juga sebagai upaya resosialisasi dan rehabilitasi anak (reintegrasi) terhadap anak yang melakukan tindak pidana agar menyadari kesalahan serta mampu memperbaiki dirinya agar menjadi anak yang berguna bagi masyarakat, bangsa dan negara setelah selesai menjalani masa pidananya.

Saran dalam penelitian ini adalah kepada aparat penegak hukum dalam sistem peradilan pidana anak agar dalam menangani anak yang berkonflik dengan hukum tetap konsisten mengedepankan pemidanaan yang bersifat edukatif dan rehabilitatif, sehingga sesuai dengan esensi diberlakukannya Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak. Kepada Pembimbing Kemasyarakatan agar melakukan pendampingan, pembimbingan, dan pengawasan terhadap Anak selama menjalani masa pidana. Selain itu Pimpinan LPKA dan UPTD Penyelenggaraan Kesejahteraan Sosial Insan Berguna Dinas Sosial Provinsi Lampung, agar menyampaikan perkembangan hasil rehabilitasi sosial Anak kepada Pembimbing Kemasyarakatan dan Jaksa, sehingga sanksi tindakan yang dijatuhkan hakim tersebut benar benar dapat dilaksanakan dengan efektif.

**Kata Kunci:** Pertimbangan Hakim, Anak, Turut Serta, Persetubuhan.

## **ABSTRACT**

### **ANALYSIS OF THE JUDICIAL CONSIDERATION IN THE IMPOSITION OF SENTENCES ON CHILDREN AS CO-PERPETRATORS IN THE CRIMINAL OFFENSE OF SEXUAL INTERCOURSE UNDER THREAT OF VIOLENCE**

**(A Study of Decision Number: 39/Pid.Sus.Anak/2023/PN.Tjk)**

**By**

**INNA SYAKIRA WARDAH**

*Ideally, every child should be able to grow and develop properly in accordance with the stages of their age-related development. However, in reality, there are children who become co-perpetrators in the criminal offense of sexual intercourse under threat of violence, resulting in the imposition of criminal sanctions on the child in accordance with the juvenile criminal justice system. The issues examined in this study concern the judicial consideration in sentencing children as co-perpetrators in the criminal offense of sexual intercourse under threat of violence, and whether the sentence imposed on such children is consistent with the objectives of punishment.*

*This research employs a normative juridical approach supported by an empirical juridical approach. The sources of data in this study consist of field data and library research data. The research informants include Juvenile Court Judges, Public Prosecutors, Legal Counsel/Advocates, Community Counselors from the Correctional Center (BAPAS), and Lecturers in the field of Criminal Law. Data collection was carried out through literature review and field research. Data processing involved data selection, classification, and systematization. Subsequently, data analysis was conducted qualitatively.*

*The results of the research and discussion indicate that the judicial considerations in imposing criminal sanctions on a child as a co-perpetrator in the criminal offense of sexual intercourse under threat of violence in Decision Number: 39/Pid.Sus.Anak/2023/PN.Tjk consist of juridical, philosophical, and sociological considerations. The juridical consideration is that the child was lawfully and convincingly proven to have committed the criminal offense as charged in the first alternative indictment of the Public Prosecutor, namely Article 76D in conjunction with Article 81 paragraph (1) of Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 on the Amendment to Law Number 23 of 2002 concerning Child Protection, in conjunction with Article 55 paragraph (1) of the Indonesian Criminal Code*

*Inna Syakira Wardah*

*(KUHP). The philosophical consideration lies in the judge's view that the imposition of punishment on the child serves as a means of guidance and personal development for the child. The sociological consideration involves the child's social background as well as aggravating and mitigating circumstances surrounding the commission of the criminal offense. The imposition of a term of imprisonment of 3 (three) years and 6 (six) months at the Juvenile Correctional Institution (LPKA) Lampung in Masgar, along with job training for 6 (six) months at the Integrated Service Unit for the Organization of Social Welfare for "Insan Berguna" under the Social Affairs Office of Lampung Province, against the child as a co-perpetrator in the criminal offense of sexual intercourse under threat of violence, is consistent with the objectives of sentencing for children, particularly the combined (integrative) theory of punishment, which merges the absolute theory (retribution) and the relative theory (purpose-oriented punishment). The sentence imposed functions not only as retribution for the criminal act committed by the child, but also as an effort toward resocialization and rehabilitation (reintegration), enabling the child to realize their wrongdoing and to reform themselves so as to become a useful member of society, the nation, and the state after completing the term of punishment.*

*The recommendations of this study are addressed to law enforcement officials within the juvenile criminal justice system, urging them to consistently prioritize educational and rehabilitative forms of punishment when handling children in conflict with the law, in accordance with the essence of the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Furthermore, Community Counselors are encouraged to provide continuous assistance, guidance, and supervision to children throughout the period of punishment. In addition, the leadership of the LPKA and the Integrated Service Unit for the Organization of Social Welfare for "Insan Berguna" under the Social Affairs Office of Lampung Province is advised to report the progress of the child's social rehabilitation to the Community Counselor and the Public Prosecutor, so that the judicially imposed measures may be effectively implemented.*

**Keywords:** *Judicial Considerations, Child, Co-Perpetration, Sexual Intercourse.*