

## **Optimization Of Law Enforcement Against Actors Child Abuse In The Perspective Of Restorative Justice (Study Of Decision Number 3/Pid.Sus-Anak/2020/PN.Bdg)**

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### **Abstract**

*Children are the greatest gift for families, religions, nations and countries. Children are the forerunner to the birth of a new generation which is the successor to the aspirations of the nation's struggle and human resources for national development. Children have the right to get protection, many children are victims of violence and experience wrong treatment such as abuse of children and obscene acts against children. It's not just the victims of violence against children, what is most concerning now is when the children themselves become perpetrators of crimes. The problems studied are: 1) how are the arrangements regarding children who commit criminal acts of obscenity against minors, 2) what are the constraints for the Panel of Judges in deciding cases of obscenity committed by minors in the Bandung District Court Decision Number: 3/Pid. Sus-Children/2020/PN.Bdg, 3) what is the criminal law policy for children as perpetrators of criminal acts of obscenity? The method used in this study is normative legal research which examines secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The results of the study show that children who commit sexual abuse are subject to sanctions as stipulated in Article 82*

*Paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection Jo. Article 64 of the Criminal Code. Constraints of the Panel of Judges in deciding cases of sexual abuse committed by minors in the Bandung District Court Decision Number: 3/Pid.Sus-children/ 2020/PN.Bdg. that is, it must look at the three (3) principles contained in the law, namely: the principle of justice, the principle of expediency, the principle of legal certainty. Meanwhile, children who become perpetrators of sexual abuse are protected according to Article 1 paragraph (2) of Law Number 35 of 2014 concerning Child Protection. In addition, the panel of judges must pay attention to the future of the child, even if the child commits a crime, the judge cannot impose the maximum sentence demanded by the public prosecutor. The legal policy in imposing criminal sanctions on children who commit criminal acts of obscenity, the judge must pay attention to the needs of the child, especially his rights as a child.*

**Keywords:** Criminal acts of sexual abuse by children, law enforcement and legal certainty

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### **I. INTRODUCTION**

Children are the greatest gift for families, religions, nations and countries. Children are the forerunner to the birth of a new generation which is the successor to ideals struggle of the nation and human resources for national development. Future the nation and the country in the future are in the hands of children now. More and more the better the child's personality is now, the better the nation's life will be in the future.

Children have the right to get protection, attention, affection, and education for the welfare of the child. Children must receive protection specifically for his physical and mental interests. It is hoped that children can grow and develop properly and children are protected from the threat of evil harm himself. Protection of children's rights is essentially concerned direct regulation in laws and regulations, policies, efforts and activities that ensure the realization of the protection of children's rights, first of all based on the consideration that children are a vulnerable group and independent, besides because there are groups of children who experience obstacles in their growth and development, both spiritual, physical and social<sup>1</sup>

The release of the Children's Law and until now, the well-being and fulfillment of children's rights is still far from what was expected. This can be seen from the situation and the child's current condition. The current situation and condition of the child when viewed from the side education, Indonesian children are said to be not prosperous and cannot be said to have been their rights are fully fulfilled, there are still many children in Indonesia who drop out of school. In addition to dropping out of school, there are also many children who are victims of violence and experience it mistreatment such as child abuse and obscenity towards children. Not only victims of violence that occurs against children, most It is worrying now that when the child himself becomes the perpetrator of a crime<sup>2</sup>

Crime can be committed by anyone and against anyone. Every people can be targets of crime, both adults and children. Thereby on the contrary that the perpetrators of criminal acts could have been committed by anyone, be it a person adults and children. The most concerning when the child is the perpetrator of a crime or what is often referred to as a child in conflict with law. As it is known that children are one of the assets of development national level, should be considered and taken into account in terms of quality and mass ahead. Without reliable quality a clear future for children, development it will be difficult to implement it and the fate of the nation will also be difficult to imagine.

Crime is behavior that is prohibited by the state because it is actions that are detrimental to the state and to those actions the state reacts with punishment as a last resort. Crime has also spread to children child. There are so many phenomena reported by the mass media that children become perpetrators of sexual abuse. Children as weak and helpless certainly do not understand what is good and bad to do. Child behavior minors related to molestation is not enough just to be seen as ordinary delinquency<sup>3</sup>

Children who commit criminal acts of sexual immorality are usually due to several reasons factors, including the existence of great curiosity possessed by children, the number of circulation of pornographic videos, the style of dating today's children who are lacking controlled, technological developments, family factors, factors imitating people's behavior around him, religious values that are increasingly lost in society, television shows and internet networks that increasingly provide sites that are not good for children. Need received special attention from the family and the surrounding community so that the child don't feel alone

<sup>1</sup> Waluyadi, *Child Protection Law*, (Bandung: Mandar Maju, 2009), p.19

<sup>2</sup> Maidin Gultom, *Legal Protection of Children*, (Bandung: Refika Aditama, 2006), p. 35

<sup>3</sup> Achmad Ali, *Yusril Versus Criminal Justice System*, (Makassar: PT. Umitoha Ukhuwah Graphic 2010), hlm. 48.

either. And this growing problem needs to be addressed immediately addressed and resolved which are not only the responsibility of the state, but also requires the active participation of all levels of society.

As happened in the jurisdiction of the Bandung District Court in the case

Child Against the Law (ABH) FARIS SATYA ADHIRAJASA Bin BUDI WARDOYO which on Wednesday 17 April 2019 at around 12.00 WIB or at least at some point which is still included in April 2019 housed in a house in Griya Bandung Asri Housing, Bandung City or at least in other places that are still included in the jurisdiction of the Court The District of Bandung, which has the authority to examine and adjudicate, deliberately did so deception, a series of lies, or enticing a Child to have intercourse with him or with someone else.

The witness, NADIA, was the first time ABH Faris had intercourse with him Satya Adhirajasa, that is 15 (fifteen) years and 9 (nine) months based on QUOTATION OF BIRTH CERTIFICATE number: 9938/U/JU/2003 dated 29

September 2003 in the name of SAKINAH NURNADYA HIPPI issued by the Population Service and Jakarta Provincial Civil Registry and signed by Hj. PURE

SYLVIANA, Sh. Mrs. As a result of the actions committed by FARIS SATYA

ADHIRAJASA causing the witness SAKINAH NURNADYA HIPPI alias NADIA to become a victim intercourse with a minor as stated in VISUM ET REPERTUM Result Number Pol: R/E/230/X/KES.3/2019 dated 18 October 2019 made and signed by dr. Herman Budi S.Sp. OG, M.Kes, doctor at the Bhayangkara Tk II Sartika Hospital Love Bandung. In this case the author would like to point out some of the problems that benchmarks in the discussion of this material, namely:

1. What are the arrangements regarding children who commit criminal acts of obscenity to minors?
2. What are the constraints of the Panel of Judges in deciding cases of obscenity that committed by minors at the Bandung District Court Decision Number: 3/Pid.Sus-Children/2020/PN.Bdg?
3. What is the criminal law policy for children as perpetrators of crimes fornication?

## II. METHODOLOGY

The research method used is through a normative juridical approach with a library approach or document research to analyze problems using secondary legal sources, namely legislation or legal sources that are relevant to the issues studied.

## III. RESULTS AND DISCUSSION

The concept of CSR has been applied by several companies operating in the context of the global, national and international economy, whose CSR commitments and activities refer to aspects of a *firm's behavior* that are guided by two key elements, namely *good corporate governance* and *good corporate responsibility*.

### 1. Law Number 1 of 1946 concerning Criminal Law Regulations

The positive legal regulations that apply in Indonesia are the Book of Laws Criminal Law (KUHP), where the KUHP itself is a codification of law criminal law and applies to all population groups, namely foreign eastern groups, natives, and Europe. Thus it can be said there is a form of similarity or uniformity in the criminal law regulations in force in Indonesia. Since the existence of Law Number 73 of 1958 which

determines the enactment of the Law Number 1 of 1946 concerning criminal law regulations for all of Indonesia, Indonesia's material criminal law becomes uniform throughout the country.

In Indonesia, the implementation of legal and judicial processes for violations Law by children is no longer new. But because until now it doesn't exist set of regulations governing the administration of juvenile justice comprehensive, starting from the arrest, detention, investigation, and examination in trial, up to the sanctions given and their execution, then until the time However, the implementation still refers to a number of special rules regarding cases law violations by children in the Criminal Code and Criminal Procedure Code, as well as in the Act Number 3 of 1997 concerning Juvenile Court (Children Court Law). Besides that, the implementation of the judicial process for children must also refer to the Convention on the Rights of the Child which has been ratified in Presidential Decree No. 36 of 1990 (Convention of Rights Children), where more or less he has been commodified in the Juvenile Court Law.

According to Sudarto, what is meant by criminal sanctions is suffering deliberately imposed on people who commit acts that meet certain conditions.<sup>4</sup> Meanwhile, according to Roeslan Saleh, what is meant by sanctions Crime is a reaction to an offense and this is in the form of a misery that the state deliberately inflicts on the perpetrator of the offense.<sup>5</sup> According to Simons, a crime is a form of suffering. which by criminal law has been associated with a violation of a norm, which by a judge's decision has been imposed on a guilty person.<sup>6</sup>

Concerning criminal and action, which means that sanctions consist of criminal and action, which means that the sanction consists of punishment and action with regard to what what is meant by punishment according to experts as previously stated, In this case *a contractio* what is meant by action is what is charged to people who commit criminal acts that are not constituting suffering or what is not is suffering or what is not is a reaction to a delict that does not manifest as something that the state has inflicted on delict maker. Obscene acts in question are all acts that violate decency (politeness) or abominable acts, all of that is included genital lust environment, for example groping limbs or genitals. What is prohibited in this article is not only intentionally forcing people to do it obscene acts, but also forcing people to allow it to be done to him obscene acts.

## **2. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System**

The enactment of Law Number 11 of 2012 concerning the Justice System Juvenile Crime, among others, has determined what is meant by a child in conflict by law. This law applies *lex specialis* to the Criminal Code, in particular relating to criminal acts committed by children, with the Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, is a reference also in the formulation of the 2012 Criminal Code Concept related to crime and crime for children. thus, do not overlap or conflict with each other.<sup>7</sup>

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that a child in conflict with the law hereinafter referred to as a child is a child who is 12 (twelve) years old, but not yet 18 (eight) years

<sup>4</sup> Muladi et al., *Criminal Theories and Policies*, Second Printing, (Bandung: Alumni, 1992), p.2 Roeslan

<sup>5</sup> Saleh, *Criminal Code*, Third Printing, (Jakarta: New Script, 1987), hlm. 25

<sup>6</sup> PAF Lamintang, *Indonesian Penitential Law*, First Print, (Bandung: Amico, 1984), p.35.

<sup>7</sup> Darwan Prinst, *Indonesian Children's Law*, (Bandung: Citra Aditya Bakti, 2013), p. 43.

old fifteen) years who are suspected of committing a crime, what is meant by a child in conflict with the law is:<sup>8</sup>

- a. A child who commits a crime, or
- b. A child who commits an act that is prohibited for a good child obeys statutory regulations or according to other living legal regulations and apply in the community concerned.

In this regard, if it is associated with Law No 12 of 1995 concerning Corrections, the status of the naughty child is based court decisions can be as criminal children or state children. Called a criminal child i.e. children who, based on a court decision, are serving a crime in an institution Correctional Institution (LP) is no longer than 18 (eighteen) years old. Then as a state child, that is, a child based on a court decision is handed over to The state for children to be educated and placed in prison is no longer than 18 (eighteen) years old.<sup>9</sup>

Based on the provisions of Law Number 11 of 2012 concerning the System Juvenile Criminal Justice against children in conflict with the law can be imposed punishment, namely principal punishment and additional punishment or action. Provisions in Article 71 paragraph (1) and paragraph (2) of Law Number 11 of 2012 concerning the Justice System Juvenile Crime regulates the main punishment and additional punishment for children who conflict with the law.

Based on the provisions of Article 82 paragraph (1) of Law Number 11 of 2012 regarding the Juvenile Criminal Justice System actions that can be imposed on children who in conflict with the law are:<sup>10</sup>

- a return to parents/guardians;
- b submission to someone;
- c treatment in a mental hospital;
- d treatment at LPKS;
- e obligation to attend formal education and/or training held by government or private agency;
- f revocation of driving license;
- g improvement as a result of a crime.

In addition to the above actions, the Judge can give reprimands and set conditions addition. A reprimand is a warning from a good judge directly to a child those who are subject to action or indirectly through parents, guardians or people foster parents so that the child does not repeat his actions. That additional condition for example the obligation to report periodically to social counselors based on the elucidation of Article 73 paragraph (7) of Law Number 11 of 2012 concerning the

Juvenile Criminal Justice System.<sup>11</sup>

The imposition of the action taken by the judge is carried out on the child who doing acts that are prohibited for children according to the rules legislation. However, against a child who commits a crime, the judge imposing principal punishment and/or additional punishment or action. In terms of age, imposition of action especially for children who are still 12 (twelve) years old. For children who have

<sup>8</sup> Gerson Bawengan, *Investigation of Criminal Cases and Interrogation Techniques*, (Jakarta: Pradya Paramita, 2012), hlm.27

<sup>9</sup> Marlina, Juvenile Criminal Justice in Indonesia, *Development of the Concept of Diversion and*

<sup>10</sup> Article 82 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

<sup>11</sup> Rahardi Ramelan, *Non-Prison Correctional Institutions*, (Jakarta: Gramedia, 2012), p. 63.



exceeded the age of 12 (twelve) years to 18 (eighteen) years of imprisonment. This is done considering the physical, mental and social growth and development of children.<sup>12</sup>

The goals and rationale for juvenile justice are the starting point. The first approach must be considered in discussing the problem legal protection for children in the judicial process. Based on starting point an approach that is oriented towards child welfare needs a special approach in matters of legal protection for children in the judicial process. Action type which can be imposed on children in conflict with the law based on Article 82 paragraph (1) Law Number 11 of 2012 concerning the Juvenile Criminal Justice System turns out to be slightly broader than the formulation of the 2012 Criminal Code Concept. The formulation of the imposition of action against children (Article 132 of the Draft Criminal Code of 2012) is:<sup>13</sup>

- a. Return to parents, guardians or carers,
- b. Return to the government or a person,
- c. Must follow a training held by the government or a private body,
- d. Revocation of driving license,
- e. Rehabilitation.

### 3. Law Number 35 of 2014 concerning Amendments to Laws Law Number 23 of 2002 Concerning Child Protection

Sexual abuse is an event that is in the spotlight at this time, especially because now there are many cases of criminal acts of obscenity committed by child. Children have very unique personalities, where children are able to act accordingly with his own feelings, thoughts and will. But, of course the environment too will influence the personal development of the child. Therefore, every child has the right to get a proper place to grow, away from everything that have a negative effect on personal development.

Hart Rossi defines sexual harassment as an act that involves adults as abusers, but harassment can also occur "when a child is used as an object of sexual gratification by another child of age less than 18 (eighteen) years who take over parental duties".<sup>14</sup> The application of criminal sanctions against perpetrators of criminal acts of obscenity is not only against adults, but also applies to children who commit crimes obscenity. According to R. Soesilo what is meant by obscenity is anything acts that violate morality/decency or heinous acts that are all there its relation to sexual lust, for example kissing, groping the genitals, groping the breasts (intercourse is also included in this meaning).<sup>15</sup>

Children as perpetrators of criminal acts of obscenity are used by law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 Concerning Child Protection to apply criminal sanctions to children who conflict with the law. Using the Child Protection Law in this is so that children's rights while undergoing the legal process can still be fulfilled and protected. Children in conflict with the law are children who are 12 years old (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a criminal act.<sup>16</sup> The acts committed by boys and girls are in the form of obscene acts that begin with appeal first then the act violates Article 76E of Law Number 35 of 2014 Concerning Amendments to

<sup>12</sup> M. Nasir Djamil, *Children Not For Law*, (Jakarta, Sinar Graphic, , 3013), p.139.

<sup>13</sup> Article 82 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

<sup>14</sup> Michael Gurian, *The Wonder of Boys: How to Raise Boys to Become Real Men*, (Jakarta: Serambi, 1996), p. 420

<sup>15</sup> R. Soesilo, *The Criminal Code (KUHP) and the Comments Complete Article by Article*,

<sup>16</sup> Nasriana, *Criminal Law Protection for Children in Indonesia*, (Jakarta: Fajar Interpratama,

Law Number 23 of 2002 concerning Child Protection which states:<sup>17</sup> *"Every person is prohibited from committing violence or threats of violence, coerce, trick, perpetrate a series of lies, or induce the Child to commit or allow obscenity to be committed."* The punishment for this act is regulated in Article 82 of Law Number 35 of 2014 concerning Amendments to Law Number

23 of 2002 About Child Protection, as follows:<sup>18</sup>

- 1) Everyone who violates the provisions referred to in Article 76E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (five). fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).
- 2) In the event that the criminal act referred to in paragraph (1) is committed by a Person Parents, guardians, babysitters, educators, or educational staff, then the penalty plus 1/3 (one third) of the criminal threat referred to in paragraph (1).

From the formulation of the article above, it can be seen that there is no obligation for action The crime must be reported by the victim. Thus, the offense of sexual immorality against children is an ordinary offense, not a complaint offense. Hence other people can report this incident.

#### **4. Government Regulation Number 65 of 2015 Concerning Implementation Guidelines**

Diversion and Handling of Children Who Are Not Yet 12 (Twelve) Years Old Diversion has basically been regulated in Law Number 11 of 2012 regarding the Juvenile Criminal Justice System and Supreme Court Regulation Number 4 Years 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System however, these regulations are not yet perfect in becoming guidelines for the implementation of diversion to protect children. Therefore, Government Regulation No. 65 of the year was born 2015 concerning

Guidelines for Implementation of Diversion and Handling of Children Who Have Not Aged 12 (Twelve) Years.

Government Regulation Number 65 of 2015 has been socialized. Guidelines the implementation of the diversion process regulated in Chapter II mentions in Article 2 of this PP that the purpose of diversion is:

- a Achieving peace between victims and children;
- b Resolving child cases outside the judicial process;
- c Prevent children from deprivation of independence;
- d Encouraging the public to participate; and
- e Instill a sense of responsibility in children.

The investigator submits a letter of notification of the start of the investigation and coordinate with the public prosecutor within a period of 1 x 24 (one time twenty four hours) from the issuance of the investigative order and from the start of the investigation.<sup>19</sup> The investigator notifies and offers to settle the case through diversion to Children and/or parents/guardians, victims or Child Victims and/or people

<sup>17</sup> Article 76E Law Number 35 of 2014 Concerning Amendments to Laws  
Number 23 of 2002 concerning Child Protection

<sup>18</sup> Article 82 of Law Number 35 of 2014 concerning Amendments to Law Number 23 Year 2002 About  
Child Protection

<sup>19</sup> Article 12 Government Regulation Number. 65 of 2015 concerning Guidelines for Implementation of Diversion

parent/guardian within a period of 7 x 24 (seven times twenty four hours) from the start investigation. If all parties agree to diversion, the investigator determines a date commencement of diversion deliberations.

Diversion cannot be done when the victim does not agree to the implementation diversion. In the event that the parties do not agree to diversion, the investigator continues the process the investigation then submits the case files and minutes of the diversion attempt to the public prosecutor. The diversion process is carried out within 30 (thirty) days and carried out through deliberations on diversion. Diversion meetings involve: investigators, children and their parents/guardians, victims or child victims and/or people parents/guardians, social counselors, and professional workers.

Investigators make reports and minutes of the diversion process and send them case files to the public prosecutor and continue the criminal justice process in the event that the diversion deliberation process does not reach an agreement.<sup>20</sup> In the case of diversion reaching an agreement, the investigator submits a Diversion Agreement Letter and news diversion program to the investigator's direct superior to be sent to the Head of the District Court to obtain a stipulation.<sup>21</sup> Chief District Court issue a stipulation within a maximum period of 3 (three) days. Determination submitted to investigators and social advisers within a maximum period of 3 (three) days from the date of determination.<sup>22</sup> The investigator asked the parties to carry out the diversion agreement after receive determination. Supervision is carried out by the investigator's direct supervisor implementation of the diversion agreement. Community advisors provide assistance, guidance, and supervision of the implementation of diversion agreements.<sup>23</sup>

## 5. Supreme Court Regulation Number 4 of 2014 concerning Guidelines Implementation of Diversion in the Juvenile Justice System

Juvenile crimes currently receive a lot of criticism, because there are many prison sentences bring negative effects. The negative effects of imprisonment in connection with the effects negative with the deprivation of a person's independence, as well as viewed from an angle the effectiveness of the prison sentence. A more *modern* view humanity and emphasizing the element of improvement of the perpetrator (reform, rehabilitation, and reconciliation) clearly criticized the imprisonment. Children taking legal action is strongly influenced by several factors. One of them is the influence of the child's environment because in childhood the process of imitating and searching for identity.

According to the *Black Law Dictionary*, the concept of diversion is known as a diversion program, namely:<sup>24</sup> A program aimed at a suspect before the trials in the form of *community programs* such as job training, education and sort of where if the program is deemed successful it allows him not to proceed with the criminal justice process. This diversion then does every case crimes where the perpetrators are children directly enter into juvenile justice, but Attempts may be made to settle cases through mediation or

<sup>20</sup> Article 17 Government Regulation Number. 65 of 2015 concerning Guidelines for the Implementation of

<sup>21</sup> Article 19 Government Regulation Number. 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Who Are Not Yet 12 (Twelve) Years Old

<sup>22</sup> Article 20 Government Regulation Number. 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Who Are Not Yet 12 (Twelve) Years Old.

<sup>23</sup> Article 21 Government Regulation Number. 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Who Are Not Yet 12 (Twelve) Years Old

<sup>24</sup> Bryan A. Garner, *Black's Law Dictionary*, (Minnesota : St. Paul Publishing, 2000), hlm. 387



deliberation in accordance with provisions in Perma No. 4 of 2014. Perma No. 4 of 2014 passed since July 2014 as follow-up rules regarding the previously listed diversions in the Juvenile Justice System Act.

There are several important materials in Perma No. 4 of 2014, among others regarding the affirmation of the child's age, where diversion is applied to children who have 12 years old but not yet 18 years old or already 12 years old despite ever married but not yet 18 years old who is suspected of committing a crime. Another important regulation is regarding the obligation of the judge to try diversion in the case of a child accused of committing a criminal act with threats prison under 7 years. Also to children accused of committing criminal acts with the threat of imprisonment for 7 years or more in the form of an indictment subsidiary, alternative, accumulative, or combination (combined). Two affirmations this arrangement shows the seriousness of MA in protecting the interests of the child, regardless of marital status and the type of crime committed charged as long as the possibility of diversion can still be done.

Perma No. 4 of 2014 gives authority to enforcement officers law to take wise actions at all levels examination, starting from the investigation, prosecution, examination, before the court up to the implementation stage of the decision. To guarantee that the child is facing by law are not actively involved in criminal trials and justice like an adult convict.

## **6. Judge Obstacles in Imposing Decisions on Criminal Acts Child Abuse**

### **a. Evidence**

According to Article 183 of the Criminal Procedure Code which states that: *"Judges may not impose a penalty on someone, except when with at least two valid pieces of evidence he obtained the conviction that a criminal act actually happened and that it is the defendant who is guilty of committing it."* At least two valid pieces of evidence are obtained based on the inspection at court hearings, while examinations at trial are based on letters the indictment formulated by the Public Prosecutor who was transferred to the court. Thing above based on Article 143 paragraph (1) of the Criminal Procedure Code, namely: "Public prosecutor transferred the matter to the District Court with a request that it be urgent judge the matter accompanied by a letter of indictment".

According to Article 184 of the Criminal Procedure Code (KUHP) states that the valid evidence is: Witness testimony;

- 1) Member Evidence;
- 2) Letters;
- 3) Instructions;
- 4) Statement of the Defendant.

### **b. Witness**

Witness testimony is one of five pieces of evidence required in disclosing criminal cases. According to Article 185 of the Criminal Procedure Code said, *"Witness testimony as evidence is what the witness states in court."* Witness statements must be given or read out in advance trial so that the judge can evaluate the testimony given by the witness not false information. Not all witness statements have value as such evidence. Witness testimony that has value as evidence is witness testimony in accordance with what is described in Article 1 point 27 Criminal Procedure Code, namely witness testimony regarding an event that the witness saw himself, hearing witnesses themselves, natural witnesses themselves and

mentioning reasons from that knowledge. Law enforcement or related agencies are required to provide witness protection in criminal cases.

There are several conditions that must be attached to the statement in order to be eligible have value as valid evidence. When the conditions have been fulfilled, then the statement has value as evidence. order one testimony has power as evidence, so it must have conditions conditions as follows:

- 1) Objective Conditions: cannot be together as defendants, cannot be present family relationships, capable of being responsible, ie aged 15 years or have ever been married or not memory sick.
- 2) Formal Requirements: testimony must be spoken in court, the testimony must be said under oath, not subject to the principle of unus testis nullus testis.
- 3) Subjective/material conditions: the witness describes what he heard, he saw and which he experienced himself; the reasons or reasons why the witness saw, hear and experience something described.

#### IV. CONCLUSION

1. In the case of a child as the perpetrator of a criminal act of obscenity, the Law shall be used Law Number 35 of 2014 concerning Amendments to Law Number 23 2002 concerning Child Protection to apply criminal sanctions against children in conflict with the law, in this case so that children's rights are temporary undergoing the legal process can still be fulfilled and protected. Conflicted child by law is a child who has turned 12 (twelve) years old, but not yet aged 18 (eighteen) years who are suspected of committing a crime. If actions performed by boys and girls in the form of actions obscenity that begins with seduction beforehand then the act violates Article 76E and Article 82 of Law Number 35 of 2014 Concerning Amendments On Law Number 23 of 2002 concerning Child Protection.
2. Constraints of judges in imposing criminal penalties on cases of child offenders obscenity in Decision Number: 3/Pid.Sus-Children/2020/PN.Bdg must see three (3) principles contained in the law, namely: the principle of justice, the principle of expediency, the principle legal certainty. As for children who become perpetrators of sexual abuse protected according to Article 1 paragraph (2) of Law Number 35 of 2014 Concerning Child protection, "child protection is all activities to ensure and protecting children and their rights so that they can live, grow, develop, and participate optimally in accordance with the dignity of humanity, as well as receive protection from violence and discrimination". For the future of the child even if the child commits a crime, the judge cannot impose maximum sentence demanded by the public prosecutor.
3. In imposing criminal sanctions on children in conflict with the law, including a child who commits a criminal act of obscenity, the judge is obliged to pay attention to the needs of the child, especially his rights as a person child. In this case the aim of restorative justice and diversion is to encourage creating a fair trial and encouraging the parties to participate in it and seeks to provide justice to cases of children who have been already committed a crime to the law enforcement officers as law enforcement authorities.

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### Legislation:

- 1945 Constitution
- Law Number 35 of 2014 Concerning Amendments to Laws Number 23 of 2002 concerning Child Protection.
- Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The Criminal Code (KUHP).
- Government Regulation Number. 65 of 2015 concerning Guidelines for Implementation of Diversion And Handling Children Who Are Not Yet 12 (Twelve) Years Old.
- Supreme Court Regulation Number 4 of 2014 Regarding Implementation Guidelines Diversion in Juvenile Justice System

### Decision:

- Decision Number 3/Pid.Sus-Children/2020/PN.Bdg