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## DAFTAR ISI

IMPLICATION OF SUPERVISION OF VILLAGE REGULATIONS IN THE CONCEPTION OF VILLAGE AUTONOMY BASED ON LOCAL WISDOM <b>Nurjihana, Firdaus and Fathul Muin .....</b>	<b>1 – 18</b>
LEGAL EFFORTS FOR A RULING OF PERMANENT LEGAL FORCE THAT CANNOT BE EXECUTED <b>Dewi Rayati, Firdaus, Danial .....</b>	<b>19 – 41</b>
COMFORT ZONE OF PEOPLE WITH DISABILITIES IN SOCIAL EMPOWERMENT ASPECT BY LOCAL GOVERNMENTS REVIEWING FROM LAW NUMBER 8 OF 2016 ON PERSONS WITH DISABILITIES <b>Shofiyatu Jahra, Firdaus, Fathul Mu'in .....</b>	<b>42 – 59</b>
JURIDICAL ANALYSIS OF LAW ENFORCEMENT BY THE ATTORNEY GENERAL IN REPUBLIC OF INDONESIA ON THE CORRUPTION CASE OF JIWASRAYA INSURANCE BASED ON LAW NUMBER 40 ON 2014 ABOUT INSURANCE <b>Maulana Agus Salim .....</b>	<b>60 – 83</b>
AUTHORITY OF THE BOARD OF REGIONAL REPRESENTATIVES TO MONITOR AND EVALUATE THE DESIGN OF LOCAL REGULATIONS AND LOCAL REGULATIONS IN CONSTITUTIONAL PERSPECTIVE <b>Restu Gusti Monitasari, Danial, Fatkhul Muin .....</b>	<b>84 – 110</b>
OVERVIEW OF INDONESIAN LAW AND INTERNATIONAL LAW ON TERRORISM AS AN EXTRAORDINARY CRIME <b>Nur Rohim Yunus, Siti Romlah, Siti Nurhalimah, Latipah Nasution .....</b>	<b>111 – 131</b>
PROHIBITED ACTIONS FOR BUSINESS ACTORS ON CARRY OUT BUSINESS ACTIVITIES (ANALYSIS OF DOG MEAT SALES AT REGIONAL COMPANY PASAR JAYA SENEN JAKARTA) <b>Syafrida, Tetti Samosir, Indah Harlina, M.T Marbun .....</b>	<b>132 – 150</b>
CRIMINAL SANCTIONS AGAINST CRIMINAL ACTORS WITH INTENTIONAL VIOLENCE FORCES A CHILD TO CONTINUOUSLY PERFORMS SEXUAL INTERCOURSE CASE STUDY DECISION NUMBER 5/PID.SUS/2018/PN SPG <b>Mohammad, Insana Meliya Dwi Cipta Aprila Sari, Nizla Rohaya, Heriyono Tardjono .</b>	<b>151 - 163</b>

**CRIMINAL SANCTIONS AGAINST CRIMINAL ACTORS  
WITH INTENTIONAL VIOLENCE FORCES A CHILD TO  
CONTINUOUSLY PERFORMS SEXUAL INTERCOURSE  
CASE STUDY DECISION NUMBER 5/PID.SUS/2018/PN SPG**

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Abstract

Every child is expected to be able to assume responsibility as the next generation of the nation, therefore children receive the widest opportunity to grow and develop optimally, both mentally, physically, and socially. The formulation of the problems in this research are: First, how are the Criminal Sanctions Against Criminal Actors in Decision Number 5/PidSus/2018/PN Spg? Second, how are the Judges' Consideration Factors in Imposing Sanctions for Criminal Acts in Decision Number 5/PidSus/2018/PN Spg? The theory used in this research is the theory of punishment. The research method used in this study is the empirical legal method. The conclusion of the study: first, the defendant Mohammad Hasbi Bin H. Usman was legally and convincingly proven to have committed a criminal act of violence or violence forcing a child to have sexual intercourse with him. Second, the defendant was provided a light sentence for he regretted his actions and the actor's age remains young, therefore he is expected to have a future.

Key Words: Children, Sexual Intercourse, Criminal Sanction

**INTRODUCTION**

Indonesia as a legal state upholds human dignity and guarantees the welfare of each of its citizens, which includes guaranteeing the protection of children as children additionally have rights that are included in human rights. Every child is expected to be able to assume responsibility as the next generation of the nation, therefore, children receive the widest opportunity to optimally grow and develop, both mentally, physically and socially. Therefore, it is necessary in providing initiatives to protect children against the fulfillment of children without any discrimination. This is in line with the principles and objectives of Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection.

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Children are the nation's future who will continue the existence of a nation, in this case, Indonesia. However, children as the nation's next generation in recent time are faced with a dangerous threat, particularly the rise of criminal acts of sexual intercourse against children committed by adults and minors, and this is an extreme and a dangerous threat for children as the nation's next generation. One of the reasons for the occurrence of criminal acts of minors committed by the teacher even carried out repeatedly or continuously. In Decision Number 5/Pid.Sus/2018/PN Spg, at the Sampang District Court, it was explained that the defendant was a teacher or educator at an elementary school institution in Gulbung Village, Pengarengan District, Sampang Regency. The defendant Mohammad Hasbi Bin H. Usman has been legally and convincingly proven guilty of committing the crime of "deliberately committing violence in forcing a child to have sexual intercourse with him continuously" against a victim named Fatima Binti Nasir (*Sampang District Court Decision Number 5/Pid.Sus/2018/PN Spg, pg. 39., n.d.*)

Children cannot protect themselves against various kinds of mental, physical and social threats in various fields of life. Therefore, we need a legal protection that favors the interests of children. Legal protection for children in a family, community, and nation is a benchmark of national civilization for the development of a complete human being, therefore everyone is obliged to seek protection of children.

Based on the matters above, children need to get protection from harmful actions, therefore children as the next generation of the nation are maintained both for the sake of the nation and state in the future. According to Arif Gosita, protection for children must be provided so that children do not become victims of the actions of individuals or groups, private organizations and governments, either directly or indirectly (Gosita, 2011). The victims in question are those who suffer mental, physical, social losses as a result of passive actions, or active actions carried out by other people or groups (private or government) either directly or indirectly. As it is recognized that the law is a series of regulations regarding the behavior of people as members of society, and the purpose of the law is to provide safety, happiness, and

order in society. Each member of the community has different interests, therefore, in accommodating these interests, interactions between community members are regulated by law in order to create a balance in people's lives. However, a balance shock will occur if one or several people violate the law for the violation signifies a loss for the other party.

Based on the description of background above, the formulation of the problem to be studied in this research is as follows:

First, what are the Criminal Sanctions Against Criminal Actors in Decision Number 5/PidSus/2018/PN Spg?

Second, what are the Judges' Consideration Factors in Imposing Sanctions for Criminal Actors in Decision Number 5/PidSus/2018/PN Spg?

This study uses the theory of punishment. In the field of criminal law theory, there are three schools of thought in criminal law, which explain the purpose of criminal law. First, the classic flow. In theory, this school of thought emerged as a reaction to the arbitrary regime of the 18th century in France which caused a lot of legal uncertainty, legal uncertainty and injustice. This school mainly requires criminal law that is systematically structured and focuses on legal certainty (Muladi dan Barda Nawawi Arief, 2010).

If the classical flow in criminal law is related to the purpose of transfer, then the flow is a reflection or elaboration of the concept of the purpose of criminal law, namely to protect the interests of the community, the person must be immediately sentenced to a crime without regard to his condition when committing a crime. (Muladi dan Barda Nawawi Arief, 2010).

Second, the modern flow or often referred to as the positive flow. This school of thought focuses on the causes of evil using natural science methods and intends to directly approach and influence criminals in a positive way as long as they are able to be corrected. According to this school, a person's actions must be viewed in a concrete way, that is, influenced by his personal character, biological factors, and social environmental factors, therefore these actions cannot be viewed in an abstract way from a purely juridical point of view. Therefore, the modern school is

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based on the notion of determinism, and a person's actions are influenced by his character and environment, therefore he cannot be blamed or accounted for and punished (Muladi dan Barda Nawawi Arief, 2010).

Thus, the modern school of thought is oriented towards the actors of the crime (the actors). When a criminal act occurs, the actor does not have to be automatically subject to certain criminal sanctions in accordance with legal (criminal) provisions. Evidence is the first matter that must be conducted to acknowledge what is the tangible background and motivation of the actor when committing a crime, therefore, in the end it can be ascertained that from the evidence, the actor deserves to be reproached for the crime he has been committed (Kholik. Abdul M., 2000).

In the theory of criminal law performed by many leading legal scholars, it is recognized that criminal law has a preventive purpose, both general prevention and special prevention. The purpose of sentencing is not a new matter. However, punishment has an impact on the continuation of the convict's life, particularly the impact of stigmatization on the convict and his family. This condition provided rise to new schools of criminal law which put more emphasis on human dignity, in addition to wanting to achieve the goal of punishment itself. One example of types of criminal sanctions is performing customary obligations.

Therefore, the imposition of dozens of criminal sanctions shall be the most essential matter considered by judges, for they involve legal interests, which are different from civil sanctions or administrative sanctions relating to material properties. J.E.sahetapi has warned that "criminal imposition (*een straf opleggen*) must be sought to be appropriate and balanced with the values of legal awareness, which values move according to the development of space, time, and circumstances that require the imposition of a special misery, as a reaction to actions that violate the order (law) that is imposing a criminal (Sahetapi, 2007).

Roman writers in general have argued that a punishment should be aimed at three purposes, particularly, to improve the personality of the criminal himself, to make people a

deterrent to commit crimes and to make certain criminals incapable of committing other crimes.

Professor Simons argues that the old writers in general have looked for the basis of justification of a punishment on a goal that is further than a formation in addition to seeing the nature of a punishment as a retaliation (Lamintang, 2010). The adherents of the natural law school or the natuurechts school, in general, have sought for the basis of the punishment in generally accepted legal notions. Those who view the state as an embodiment of the human will, have sought to justify the punishment of the will of the individual.

This method has been used, among others, by Hugo de Groot, who in order to obtain an explanation of why an actor must be viewed as worthy to receive the consequences of his actions has looked at the will of nature, namely whoever has done something evil, then it is appropriate if he was treated badly. Or in other words, the crime by its nature is a "*malum passion nis quod in infligitur o malum actionis*".

Rousseau had sought the justification of the crime in his famous theory of the social contract, while Beccaria had sought the justification for the free will of citizens, particularly those who sacrificed a small part of their freedom to the state, therefore, by obtaining protection from the state, they could enjoy most of its freedoms. In the theories of Rousseau and Beccaria they have sought the basis of justification of the crime on the will of the individuals without abandoning the notion of retaliation, which is sometimes also recognized as the main goal of a punishment.

## **METHODOLOGY**

The research method used in this study is an empirical juridical method, particularly research that uses primary data and secondary data by extracting data directly from the source. This research is additionally supported by a normative approach by researching library materials by studying and examining theories, concepts and regulations related to the problem (Soekamto, 2019). The activity time and the meaning provided by the observed actors

concerning the event in question. As well as the interview method used to obtain information on things that cannot be obtained through observation utilizing informal conversations (free interviews), using interview guidelines, and using standard guidelines (Ashshofa, 2010).

The approach method used in this research is a sociological juridical approach. The sociological juridical approach is to identify and conceptualize law as a real and functional social institution in a real life system” (Soekanto, 2010). The sociological juridical approach is emphasizing research that aims to obtain legal knowledge empirically by going directly to the object, particularly at the Sampang District Court. To assist in this writing, the researchers used primary legal data/materials and secondary legal data/materials. Primary legal data/materials are obtained through observations or interviews as the primary data. An interview is a way of gathering information by asking and answering face to face with respondents (Sugiono, 2008). Among them were the judges who tried the Decision Number 5/Pid.Sus/2018/PN Spg, including: Purnama, S.H., as Chief Judge, I Gde Perwata, S.H., M.H., and Triu Artanti, S.H., each as Member Judges.

Meanwhile, secondary research data was obtained through laws and regulations relevant to the material discussed, particularly the Criminal Code, Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection, and different other relevant laws and regulations. Secondary legal materials in the form of legal reading materials, journals, and other materials in relation to research as well as tertiary legal materials in the form of legal dictionaries that is able to provide an explanation of the terms used in this research.

## **RESULTS AND DISCUSSION**



**A. Criminal Sanctions Against Criminal Actors in Decision Number 5/Pidsus/2018/Pn Spg**

In Article 284 of the Criminal Code by R. Soesilo in his explanation, what is meant by sexual intercourse is a collision between male and female genitals which is usually performed to get children, therefore, the male genitalia must enter the female genitalia, thereby releasing semen.

The crime of decency regarding the act of sexual intercourse is formulated in Articles 286 and 287 of the Criminal Code, all of which categorized as crimes. In addition, it is specifically formulated in Article 81 of Law Number 23 of 2002 on Child Protection. Article 81 of Law Number 23 of 2002 on Child Protection.

- (1) One who intentionally commits violence or threats of violence to force a child to have sexual intercourse with him/her or with another person, shall be punished with imprisonment a maximum fine of Rp.300,000,000.00 (three hundred million rupiahs) and a minimum of Rp.60,000,000.00 (sixty million rupiahs).
- (2) The criminal provisions as referred to in paragraph (1) shall additionally apply to anyone who intentionally commits a trick, a series of lies, or persuades a child to have intercourse with him or with another person.

Whereas the defendant MOHAMMAD HASBI BIN H. USMAN on a day, date and month that is no longer remembered in 2013 at around 00.00 West Indonesia Time, or at least at one time in 2013, was in the room of the witness FATIMA BINTI H. NASIR Hamlet of Berek Leke, Gulbung Village, Pangarengan District, Sampang Regency, or in a place that remains to be included in the jurisdiction of the Sampang District Court, in such a way that it must be viewed as a continuing act, has committed violence or threatened violence forcing a child to have sexual intercourse with him or with another person, particularly the victim-witness FATIMA BINTI H. NASIR (When the sexual

intercourse was carried out, he was 11 years old who was born on April 08, 2002), the act was carried out by the defendant in the following ways:

At the time and place mentioned above, the victim-witness FATIMA BINTI H.NASIR slept in her room alone, while the one who usually checks the condition of the house before going to bed is the witness's cousin, named DILA, however, at that time the victim's witness did not know whether all the doors in the witness' mother's house had been locked or not. Thereafter suddenly at around 00.00 West Indonesia Time, while the victim's witness was sleeping, the victim's witness sensed an object rubbing on the victim's genitals (vagina), made the victim's witness woke up, and saw a person named HASBI was pressing the victim's witness' body and when the defendant found out the victim's witness woke up from sleep, the defendant immediately covered the victim's mouth using his right hand while saying "je'aceng" (don't scream) thereafter, the victim's witness felt her genitals being entered by the defendant's penis and made the victim's witness cried for feeling pain in her genitals. Thereafter, the defendant shook her body up and down as the defendant's penis entered the victim's genitals (vagina) and not long after the defendant pulled his genitals from the victim's genitals, the defendant released his sperm on the victim's witness bed.

Thereafter the defendant released his hand that was covering the witness' mouth, and the defendant stated to the witness by saying "senga'je'lebeleh ka orang" (do not talk to other people), therefore, the defendant wore his pants and went from the victim's witness room to the back door and exit the victim's house through the back door.

Whereas after the initial incident in 2013, the defendant's sexual desire was increasing, the defendant contacted the victim-witness occasionally by telephone and the defendant occasionally conveyed it directly to the victim-witness when he passed in front of the defendant's house and made promises to the victim-witness that he would provide money, however, the defendant requested the victim-witness a condition whereas he wanted the defendant to have sexual intercourse, in this way the defendant could have

sexual intercourse with the victim-witness repeatedly, both at the victim's house and at the defendant's house, and occasionally in a hut in the middle of a rice field in Gulbung Village, Pangarengan District, Sampang Regency.

Whereas the defendant had a last sexual intercourse with the victim's witness, particularly in June 2017, where the defendant telephoned the victim's witness and requested her to come to a hut around the reservoir behind his house and the defendant was waiting for the victim's witness at that place, thereafter, around 00.00 West Indonesia Time, the victim's witness came and the defendant immediately hugged the victim's witness body, kissed the victim's witness' lips, and squeezed the victim's witness' breasts, thereafter, the defendant put the victim's witness to sleep on the ledge in the hut then the defendant took off the skirt the victim's witness was wearing then the defendant opened the sarong that the victim's witness was wearing then the defendant directed the defendant's penis (penis) to the victim's genitals (vagina) and then the defendant had intercourse with the victim's witness until the defendant ejaculated and after that the defendant gave Rp.50,000 (fifty thousand rupiahs) of money to the victim's witness.

Whereas after recognizing the victim-witness was pregnant, the defendant requested by stating "apa been andik pacar (do you have a boyfriend)", and the victim-witness answered, "rye/j engkok andik pacar nyamanah RISAL" (yes I have a boyfriend named RISAL). Recognizing this matter, the defendant requested the victim to immediately engaged and married to RISAL. At that time the defendant requested RISAL's cellphone number to the victim's witness and had contacted RISAL to request him in order to immediately ask the victim's witness to his parents for engagement with the victim's witness got engaged. However, the engagement was over for RISAL's parents did not want the victim's witness since the victim's witness was already pregnant.

**B. Analysis of Judges' Considerations in Imposing Sanctions for Criminal Acts in Decision Number 5/Pidsus/2018/Pn Spg**

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The consideration of the Sampang District Court Judge in this case handed down a sentence of imprisonment for 10 (ten) years and a fine of Rp. 500,000,000 (five hundred million rupiahs), and if the fine was not paid, it shall be replaced with a prison sentence of 4 (four) months against the actor, Mohammad Hasbi bin H. Usman, with the following considerations:

Whereas since the defendant was arrested and detained legally and there is no valid legal reason to release the accused, in accordance with the provisions of Article 197 paragraph (1) item K of the Criminal Procedure Code, it shall be stipulated that the defendant remains in custody. Whereas since the defendant is found guilty and will be sentenced to a crime, then in accordance with article 222 paragraph (1) of the Criminal Procedure Code the defendant must additionally be burdened with paying court fees, the amount of which is determined as stated in this ruling.

Whereas taking into account Article 81 Paragraph (1) of the Law of the Republic of Indonesia No. 35 of 2014 on amendments to Law no. 23 of 2002 on Child Protection Article 64 Paragraph (1) of the Criminal Code and Law no. 8 of 1981 on the Criminal Procedure Code and other relevant laws and regulations. The legal considerations of the panel of judges in deciding cases shall reflect the community's sense of justice, which is not only based on juridical considerations, however, there are additionally sociological considerations, which lead to the background of the crime. The panel of judges must have confidence in deciding cases by listening to the statements of witnesses, defendants and evidence, as well as creating a sense of justice for the community.

Based on the decision Number: 5/PidSus/2018/PN Spg, it is stated that the aforementioned Mohammad Hasbi Bin H. Usman has been legally and convincingly proven guilty of committing a crime. The Defendant was sentenced to imprisonment for 10 (ten) years and a fine of Rp. 500,000,000.- (five hundred million rupiahs) provided that if the fine is not paid, it shall be replaced with imprisonment for 4 (four) months.

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Thus, the defendant's actions are against the law and there is no justification. According to law, the defendant is a person who is capable of being responsible and the defendant committed his actions intentionally and without forgiving reasons. Thus, the judge's decision which contains criminal sanctions is correct. The sanctions are given to provide a deterrent effect, therefore, the defendant regrets his actions and does not repeat his actions in the future.

In terms of the negative impact of the defendant's actions on the victim-witness who is in pain in her genitals since the hymen had been torn, which made her no longer a virgin. This results in negative judgments in community social interactions, a death price that can be paid with the minimum punishment, even with any money to replace it will not be paid until death. The psychological impact caused trauma throughout the life of the victim's witness is immeasurable, the possibility of suffering will be carried to the grave. For every time facing a man, the image of the incident is unavoidable, not to mention the feeling of shame towards the peers is getting more intense. This is an extremely worst luck.

From the results of interviews with the Chief Justice and Member Judges who examined and tried this case, it was revealed that: One of the judge's legal considerations regarding the verdict against the defendant Mohammad Hasbi Bin H. Usman, was a consideration of mitigating matters, among others, the defendant regretted his actions and did not I will repeat it, the defendant is still young, the defendant is still a student who is expected to have a future, the defendant is polite in court, and the defendant has never been convicted. It is in such legal considerations that the judge imposes a minimum sentence, as stated in Article 81 Paragraph (1) of the Law of the Republic of Indonesia No. 35 of 2014 concerning amendments to Law no. 23 of 2002 concerning Child Protection Jo Article 64 Paragraph (1) of the Criminal Code.

According to the authors, a sentence imposed on the Defendant must be a punishment that is in accordance with the actions committed by the Defendant, and is a decision that is taken fairly and wisely without any intervention from any party. The verdict should be able to fulfill a sense of justice for all parties involved, not only for the victim, but also for the

defendant. Although in the trial process the Defendant performed many things that is able to alleviate it, however, the substance of the actions carried out by the Defendant in performing sexual intercourse was carried out continuously up to 9 (nine) times.

## **CONCLUSION**

First, the Criminal Sanctions Against Criminal Act Actors in Decision Number 5/PidSus/2018/PN Spg, stating that the defendant Mohammad Hasbi Bin H. Usman was legally and convincingly proven to have committed the criminal act of “Committing violence or violence forcing a child to have intercourse with him” as regulated and is threatened with a criminal offense in Article 81 paragraph (1) of the Law. NO. 35 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection.

Second, the Judge's consideration in deciding the case in Decision Number 5/PidSus/2018/PN Spg, for the defendant regrets his actions and will not repeat it, the defendant remains young and a student who is expected to have a future, the defendant is polite in court, and the defendant has never been convicted. It is in such legal considerations that the judge imposes a minimum sentence, as stated in Article 81 Paragraph (1) of Law Number 35 of 2014 on amendments to Law no. 23 of 2002 on Child Protection Jo Article 64 Paragraph (1) of the Criminal Code.

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