



IMPLEMENTATION OF LAW BY JUDGES IN PROVIDING LEGAL PROTECTION TO CHILD VICTIMS OF SEXUAL HARASSMENT (Study of Decision No. 25/Pid.Sus/2021/PN Tbk, Study of Decision No. 129/Pid.Sus/2021 PN Tim and Study of Decision No. 31/Pid.Sus/2022/PN Psp)

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Abstract

The application of the law by judges in criminal cases, especially for child victims of sexual abuse, is very important. Children have the right to protection that can endanger or hinder their normal growth and development. Therefore, it is imperative for the state to respect and protect children's rights by realizing them in legal regulations to protect children facing legal problems. This study aims to examine the role of judges in the juvenile criminal justice system in Indonesia and how judges apply the law in providing legal protection to child victims of sexual abuse and whether judges have provided legal protection to child victims of sexual abuse related to Decision Study No. 25/Pid.Sus/2021/PN Tbk, Decision Study No. 129/Pid.Sus/2021 PN Team and Decision Study No. 31/Pid.Sus/2022/PN Trg). The research method used is normative juridical with data collection techniques namely literature study. From the results of this study, the role of judges in the juvenile criminal justice system in Indonesia is to apply positive law and find laws that include justice, benefits and legal certainty by applying the application of law in accordance with the criminal acts committed by the defendant by providing protection for child victims of sexual harassment as stated in Law of the Republic of Indonesia No. 35 of 2014. Judges in applying the law with the facts in the trial in the study of decision No. 25 / Pid.Sus / 2021 / PN Tbk, decision No. 129 / Pid.Sus / 2021 PN Team, and decision No. 31 / Pid.Sus / 2022 / PN Psp, the judge decided that the defendant legally committed an innocent crime committed by the adoptive parents against the victim's child in the decision, however, in his decision the judge did not provide legal protection for the rights of the victim's child such as restitution as part of the victim's recovery.

Keywords: Implementation of Judge's Law, Legal Protection, Child Victims

INTRODUCTION

Children are a gift from God Almighty, possessing the same dignity and worth as adults. Therefore, children must receive special legal protection so they can grow and develop effectively within society. The direction of legal policy aims to establish the law as a rule that protects the rights of citizens and guarantees the lives of future generations. The consideration of Law No. 23 of 2002 concerning child protection states that "Children are a trust from the gift of God Almighty, in whom inherent dignity and worth as a whole human being". Therefore, children need to get the widest possible opportunity to grow and develop optimally, both physically, mentally and socially and have good morals, with this it is necessary to carry out protection efforts to realize the welfare of children by providing guarantees for the fulfillment of their rights and the existence of non-discriminatory treatment. Lately there have been many cases of sexual violence experienced by minors whose perpetrators are adults, most of whom are their closest people. Therefore, sexual abuse against children needs to get serious attention considering that the consequences of sexual violence against children cause children to experience prolonged trauma. Based on data from the Ministry of Women's Empowerment and Child Protection, there were 21,241 children who were victims of domestic violence in 2022, and in 2023 data from According to the online information system dashboard for the protection of women and children, from January to November 2023, there were 15,120 cases of violence against children, 12,158 of which involved girls. Many cases of sexual

harassment go unreported, either because victims feel ashamed and don't want their shame to be known to others, or because they fear threats from the perpetrator. The criminal justice system in Indonesia is a state in which functional and institutional relationships are established, namely coordination between one subsystem and another according to their respective functions and authorities, as regulated in criminal procedural law, in order to enforce applicable criminal law. This means that the criminal justice system includes the process of investigation, prosecution, examination in court, and the implementation of the decision by the judge. Judges play a role as state officials to uphold truth and justice by being able to interpret the law in an actual manner and must have the courage to create new laws or make legal discoveries.

In deciding a criminal case, the judge must look at the facts presented in the trial and for example, child victims in cases of sexual harassment can provide legal protection to child victims, legal protection is not only to punish the perpetrator but also to provide the rights of child victims of sexual harassment such as mental recovery and restitution. This thesis takes The decisions are Decision Study No. 25/Pid.Sus/2021 PN Tbk, Decision Study No. 129/Pid.Sus/2021 PN Tim and Decision Study No. 31/Pid.Sus/2022, PN Psp. Based on the court's decision in these three decisions, the defendant was declared legally guilty of committing a crime, namely committing indecent acts against a child committed by adoptive parents. However, the decision only sentenced the perpetrator to prison without any mention of restitution for the child victim. The formulation of the problem to be raised is how the role of judges in the criminal justice system in Indonesia, how the application of the law is taken by judges in providing legal protection for child victims of sexual abuse, what are the judge's considerations in deciding a case, whether the perpetrator is a consideration of the judge in deciding a case and in the three decisions raised the judge has provided legal protection for child victims of sexual abuse.

METHOD

1) Research Approach

The research method used is normative juridical, which focuses on examining legal principles. Legal research aims to discover applicable legal principles or positive legal doctrines. It also examines legal systems, which can be applied to specific legislation or recorded law. Therefore, this research aims to describe a legal event or legal condition as it is.

2) Activity Plan

The research activity design is to examine the application of law by judges in providing legal protection to child victims of sexual abuse in the study of decision No. 25/Pid.Sus/2021 PN Tbk, Decision Study No. 129/Pid.Sus/2021 PN Tim and Decision Study No. 31/Pid.Sus/2022/PN Psp. The research period was 6 (six) months.

3) Scope or Object

The scope of this research is to examine the application of law by judges in providing legal protection in the study of decision No. 25/Pid.Sus/2021 PN Tbk, Study of Decision No. 129/Pid.Sus/2021 PN Tim and Study of Decision No. 31/Pid.Sus/2022/PN Psp

4) Legal Materials and Main Tools

Secondary data, namely data obtained from library research, includes:

- a. Primary legal materials, namely all data in the form of regulatory documents that are binding, original and determined by the authorized party, are Decision Study No. 25 / Pid.Sus / 2021 PN Tbk, Decision Study No. 129 / Pid.Sus / 2021 PN Tim and Decision Study No. 31 / Pid.Sus / 2022 / PN Psp, Law No. 1 of 1946 concerning Criminal Law Regulations, Law of the Republic of Indonesia No. 8 of 1981 concerning Criminal Procedure Law, Law No. 48 of 2009 concerning Judicial Power, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, Law No. 23 of 2022 in conjunction with Law No. 35 of 2014 in conjunction with Law No. 17 of 2016 concerning Child Protection.
- b. Secondary legal materials, namely books, journals, works from legal practitioners or academics that are related to this research, or materials that are relevant to the material being researched.
- c. Tertiary legal materials, namely print and electronic media.

5) Place

The places to collect data and information related to this research are the library and the Decision Directory.

6) Data collection technique

To obtain relevant data for this research, this research was conducted using library research techniques, which consist of books, journals, documents and other theoretical sources.

7) Operational Definition of Research Variables

The operational definition of the research variables that cover this research is divided as follows:

- Implementation is the expansion of activities that mutually adjust the interaction process between goals and actions to achieve them and requires an effective implementation network and bureaucracy.
- Implementation of law
Implementation of law according to Soerjono Soekanto:
 1. A tool for public order and tranquility,
 2. Means to realize social justice both physically and spiritually,
 3. Means of driving development.
- Judge
A judge is a state official who has the authority within the judicial power to receive, examine, try and decide criminal and civil cases in court.
- Legal protection
Legal protection is protection given to legal subjects by legal regulations, whether preventive or repressive, both written and unwritten in the context of enforcing legal regulations.
- Child victim
A child victim is a child under 18 (eighteen) years of age who experiences physical, mental suffering and/or economic loss caused by a criminal act.
- Sexual harassment
Sexual harassment is any form of behavior that has sexual connotations that is carried out unilaterally and is not wanted by the victim, the form can be in the form of speech, writing, symbols, gestures and actions that have sexual connotations.

8) Analytical Techniques

The analysis technique used uses a qualitative analysis method which is carried out by examining the results of non-numerical data which places more emphasis on legal analysis in literature reviews using formal and argumentative ways of thinking.

RESULTS AND DISCUSSION

A. The Role of Judges in the Juvenile Criminal Justice System in Indonesia

Judges, in their role, are required to uphold the law and justice, not to win cases that are oriented towards economic or pragmatic values, which can distort morals and ethical values, divert legal texts from the values of truth, and rational logic based on legal reasoning based on the principle of formal legality. Judges are impartial in carrying out their duties in deciding cases in court.

In their role, judges are expected to implement the law by providing decisions that are in accordance with the three basic values supporting the law, which Gustav Radburch calls *Idee des rechts* (supporting the ideals of law), which include justice, benefit and legal certainty.

Judges play a crucial role in law enforcement and justice. As state officials, judges have the noble task of realizing a state based on the rule of law, providing legal certainty and public benefit through court decisions. When deciding a case, judges must always base their decisions on applicable law in the broadest sense, which includes the Constitution as positive law, prevailing customs, jurisprudence, and expert opinion (legal doctrine).

Judges play a crucial role in the criminal justice system, which consists of four components: the police, the prosecution, the courts, and correctional institutions. These four components work together to uphold justice.

According to Reksodiputro, the criminal justice system is a system within a society for addressing crime. Addressing crime is defined as an effort to control crime, comprising the police, prosecutors, courts, and correctional institutions.

Article 1, number 8 of the Criminal Procedure Code defines a judge as a state official authorized by law to adjudicate. Adjudication is a series of actions by a judge to receive, examine, and decide criminal cases based on the principles of freedom, fairness, and impartiality in court proceedings in accordance with the procedures stipulated in law.

The judge's sentencing should consider whether the sentence imposed has provided protection for the child and provided benefits.

When examining the child victim and/or child witness, the Judge may order that the child be taken out of the courtroom, the examination of the child victim and/or child witness as referred to, namely the parents/guardians, advocates or other legal aid providers and community counselors remain present.

The judge may order that the victim's child and/or witness' child be heard from:

- a. Outside the court hearing through electronic recording carried out by a community counselor in the local jurisdiction in the presence of an investigator or public prosecutor and an advocate or other legal aid provider; or
- b. Through direct remote examination using audiovisual communication tools accompanied by parents/guardians, community counselors or other companions.

B. Application of the Law by Judges in Criminal Cases of Sexual Harassment in Providing Legal Protection to Child Victims of Sexual Harassment

The application of law (*Rechtstoepassing*) is the application of abstract legal regulations to events. Directly applying legal regulations to concrete events is impossible. Concrete events must first be transformed into legal events before their legal regulations can be applied.

According to Muhammad Busyro, there are 2 (two) types of legal discoveries made by judges:

1. Legal discovery means applying a rule to a specific event for which a clear rule is already available. This represents a simpler method, meaning that the judge is limited to applying a legal rule (statute) that is appropriate to the facts or specific event.
2. Legal discovery in the sense of legal formation, where for a concrete event there is no clear/complete regulation available. In this case, the judge does not find a legal rule (statute) that is in accordance with the concrete facts or event, so he must form it through a certain method.

The professionalism of a judge in the application of the law is "an attitude based on the determination to carry out the work he has chosen with sincerity, supported by expertise based on knowledge, skills, and broad insight. The ethics of a judge who must act professionally can be examined in each judge's decision in the legal considerations section, even though the judge is basically equipped with the right to immunity, freedom and intervention.

Normatively, the duties of judges are regulated in Law Number 48 of 2009 concerning judicial power, namely:

1. Judge according to the law without discrimination (Article 4 paragraph 1)
2. Assisting justice seekers and trying to overcome all obstacles and barriers to achieve simple, fast and low-cost justice (Article 4 paragraph 2)
3. It is not permissible to refuse to examine, try and decide on a case submitted on the grounds that the law does not exist or is unclear, but it is obligatory to examine and try it (Article 10 paragraph 1)
4. Judges are obliged to explore, follow and understand the legal values and sense of justice that exist in society (Article 5 paragraph 1)
5. Considering the severity of the crime, the judge must also pay attention to the good and bad character of the defendant (Article 8 paragraph 2)

In carrying out the duties outlined above, judges are required to be professional in applying the law without making mistakes, so their academic and empirical abilities must be truly implemented. In applying the law to an event, a judge must concretely consider the values of justice that exist, grow, and develop within society and cannot be ignored, as they are one of the sources of consideration in rendering a just decision.

According to Lilik Mulyadi, a decision can be tested using 4 (four) basic criteria, namely:

1. Is my decision correct?
2. Am I honest in making decisions?
3. Is it fair to the parties concerned?
4. Is my decision useful?

The process of handing down a verdict by a judge is a complex and difficult one, requiring training, experience, and wisdom. In handing down a verdict, a judge must determine whether a defendant has committed a crime or not. After receiving and examining a case, the judge will then issue a decision, known as a judge's verdict, which is a statement by the judge as a state official authorized to do so, delivered in a court hearing open to the public, with the aim of ending or resolving a case.

According to Moelyatno, the process or stages of a judge's decision-making in a criminal case are carried out in several stages, namely:

- a. Stage of analyzing criminal acts: criminal acts are prohibited acts and are subject to criminal penalties for anyone who violates the prohibition. When analyzing whether a defendant has committed a criminal act or not, the judge considers the societal aspect, namely the act as stated in the formulation of a criminal regulation. Judging from the appropriateness or inappropriateness of the act, if the act

fulfills the elements in a criminal law article, then the defendant is declared proven to have committed the criminal act charged against him.

- b. Stage of analyzing criminal responsibility: the defendant is found guilty of committing a criminal act in violation of a certain article, the judge analyzes whether the defendant can be found responsible for the criminal act he committed.
- c. The stage of determining the sentence: the judge is convinced that the perpetrator has committed an unlawful act, so that he is declared guilty of his actions, and then the perpetrator can be held responsible for his actions, then the judge will impose a sentence on the perpetrator by looking at the articles of the law that the perpetrator has violated.

Legal protection is a service that must be carried out by law enforcement officers or security officers to provide a sense of security, both physical and mental, to victims and sanctions from threats, harassment, terror and violence from any party given during the investigation, prosecution and examination stages in court.

A protection can be said to be legal protection if it contains the following elements:

- a. There is protection from the government for its citizens
- b. Guarantee of legal certainty
- c. Relating to citizens' rights
- d. The existence of punishment sanctions

Legal protection is the protection of the dignity of legal subjects and the recognition of their basic rights. Legal protection is a set of rules that can protect legal subjects from unlawful acts. The 1945 Law of the Republic of Indonesia stipulates that everyone has the right to recognition, guarantees, protection, fair legal certainty, and equal treatment before the law, including child victims.

Article 1 number 2 of Law 35 of 2014 explains that child protection is all activities to guarantee and protect children and their rights so that they can live, grow, and develop and participate optimally in accordance with human dignity and receive protection from violence and discrimination. There are several articles that can be charged against forms of sexual harassment of minors, both rape and molestation. The Child Protection Law, in the articles that are usually charged, are Article 76 D in conjunction with Article 81 paragraph (1), Article 76 D in conjunction with Article 81 (2), and Article 76 E in conjunction with Article 82 (1).

The rights of child victims of sexual crimes are as follows:

- a. Legal aid
- b. Protection of witnesses and victims
- c. Rehabilitation
- d. Prevention

C. Application of Law by Judges in Providing Protection for the Rights of Child Victims of Sexual Harassment in the Study of Decision No. 25/Pid.Sus/2021/PN Tbk, Study of Decision No. 129/Pid.Sus/2021 PN Tim and Study of Decision No. 31/Pid.Sus/2022/PN Trg

1. Position case

a. Decision No. 25/Pid.Sus/2021/PN Tbk

The defendant M has committed an indecent act against his 13-year-old stepdaughter, 3 times, namely in July 2020, September 2020, where the act was carried out by holding the victim's breasts, and inserting his hand into the victim's genitals. After a post-mortem, it was found that there were old lacerations due to blunt force on the victim's genitals and it was found that the victim's child was experiencing fear and anxiety. The defendant was charged with alternative charges, namely First: Article 81 paragraph (2) in conjunction with Article 81 paragraph (3) of the Republic of Indonesia Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection; or Second Article 76 E of the Republic of Indonesia Law No. 35 of 2014 concerning Amendments to the Republic of Indonesia Law No. 23 of 2002 concerning Child Protection in conjunction with Article 82 paragraph (2) of the Republic of Indonesia Law Number 17 of 2016 concerning the Determination of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection. Furthermore, the Panel of Judges declared Defendant M legally and convincingly guilty of committing the crime of "Indecent acts against children committed by parents" as per the second charge, and sentenced the Defendant to 10 (ten) years imprisonment and a fine of Rp. 100,000,000.00 (one hundred million rupiah).

b. Decision No. 129/Pid.Sus/2021 PN Tim

Defendant A from 2016 to 2021 committed the act of rape against his adopted child by holding the victim's child's breasts with both hands and then squeezing the victim's child's breasts and then the victim's child, in addition the Defendant also took his genitals out of his pants and forced the victim's child to touch his genitals and made indecent video calls with the victim's child, as well as holding the victim's child's genitals. The indecent acts were carried out repeatedly from 2016 to 2021. Defendant A was charged with a Single Charge of violating Article 76E of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection in conjunction with Article 82 Paragraph (1) and Paragraph (2) of the Republic of Indonesia Law Number 17 of 2016 concerning the Determination of Perpu Number 1 of 2016 concerning the second amendment to the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection into Law.

c. Decision No. 31/Pid.Sus/2022/PN Trg

In October 2021, the defendant E committed an indecent act against his 12-year-old biological child by kissing the victim's neck, opening the victim's clothes and bra, then the defendant squeezed the victim's breasts while kissing the victim's lips and neck, then the defendant sucked the victim's breasts, after which the defendant inserted his hand through the waistband of the victim's pants, then groped the victim's genitals (vagina) and then inserted his finger into the victim's genitals, which was done repeatedly. Based on the repertum post-mortem, it was concluded that the victim's vagina could be passed through with 1 loose index finger, the hymen was found to be injured at 3, 5 and 7 o'clock, and the person's hymen was no longer intact because it had been passed by a blunt object. Defendant E was charged with Alternative Charges, namely First: Article 81 Paragraph (1) and (3) of the Republic of Indonesia Law Number 17 of 2016 concerning the Determination of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become Law in conjunction with Article 76D of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection or Second: Article 82 Paragraph (1) and (2) of the Republic of Indonesia Law Number 17 of 2016 concerning the Determination of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become Law in conjunction with Article 76E of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

2. Application of Law by Judges in Providing Legal Protection to Child Victims of Sexual Abuse in the Study of Decision No. 25/Pid.Sus/2021/Pn Tbk, Study of Decision No. 129/Pid.Sus/2021 Pn Tim and Study of Decision No. 123/Pid.Sus/2022/Pn Trg

a. Application of Law by Judges in District Court Decision No. 25/Pid.Sus/2021/Pn Tbk

The defendant, who is the victim's stepfather, was legally proven to have committed an indecent act against a 13 (thirteen) year old child. During the examination, an old tear was found to be at the base of the five o'clock position on the hymen due to blunt force on the genitals and the victim appeared afraid and anxious.

The verdict uses alternative charges. The first alternative charge is Article 81 paragraph (2) in conjunction with Article 81 paragraph (3) of Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection. The second alternative charge is Article 76 E of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection in conjunction with Article 82 paragraph (2) of Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection. This decision in its demands shows that there is doubt on the part of the Public Prosecutor in choosing what criminal act to charge the defendant, whether sexual intercourse or indecency, in the first alternative charge the prosecutor should have included the act of sexual intercourse as written in the second alternative charge so that the act committed is clearer, if seen from the chronology the perpetrator did not have sexual intercourse with the child but because there was a long torn wound found up to the base of the five o'clock direction on the hymen due to blunt force on the genitals, it became the basis for the public prosecutor in determining whether the crime was sexual intercourse or indecency against a child. With this, the Panel of Judges by paying attention to the legal facts above directly chose the second alternative charge as regulated in Article 76 E of Law of the Republic of Indonesia No. 35 of 2014 concerning Amendments to Law of the Republic of Indonesia No. 23 of 2002 concerning Child Protection in conjunction with Article 82 paragraph (2) of Law of the Republic of Indonesia No. 17 of 2016 concerning the

Determination of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection, the elements of which are: "Any person", "Intentionally commits violence or threats of violence, forces, commits deception, commits a series of lies or persuades a child to commit or allow indecent acts to be committed", committed by parents, guardians, child carers, educators or education personnel. There is an additional word in the element of the crime, namely "intentionally", if seen in the article that is imposed intentionally, it is not written in the article but "everyone is prohibited". In the prosecutor's demands, the defendant was charged with a prison sentence of 12 (twelve) years in prison, reduced in full during the defendant's time in temporary detention with the order that the defendant remain detained and a fine of Rp. 200,000,000, - (two hundred million rupiah) subsidiary 3 (three) months in prison. In the Judge's Decision, the defendant was sentenced to 10 (ten) years in prison and a fine of Rp. 100,000,000.00 (one hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence of 1 (one) month. The judge should not reduce the principal sentence, because the victim was her child, the victim had also experienced trauma and the victim appeared afraid and anxious, and had also suffered a long-term laceration to the base of the five o'clock position on the hymen due to blunt force which should not have been experienced by a child her age.

b. Application of Law by Judges in District Court Decision No. 129/Pid.Sus/2021/PN Tim

The defendant who is the victim's stepfather was legally proven to have committed a criminal act of indecency against a 14 (fourteen) year old child. The decision used a single charge as regulated in Article 76E of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection in conjunction with Article 82 Paragraph (1) and Paragraph (2) of the Republic of Indonesia Law Number 17 of 2016 concerning the Determination of Government Regulation in Lieu of Law Number 1 of 2016 concerning the second amendment to the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection into a Law, the elements of which are as follows: "Everyone", "It is prohibited to commit violence or threats of violence, force, use trickery, carry out a series of lies, or persuade children to commit or allow indecent acts to be committed by adoptive parents." In the prosecutor's demands, the Defendant was charged with imprisonment for 7 (seven) years minus the period of arrest and detention that the Defendant had served and a fine of Rp. 5,000,000,000 (five billion rupiah) subsidiary of 6 (six) months imprisonment. In his decision, the Judge sentenced the Defendant to the same sentence as what the prosecutor demanded with a prison sentence of 7 (seven) years and a fine of Rp. 5,000,000,000.00 (five billion rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 6 (six) months. There is no difference between the prosecutor's demands and the judge's decision, the judge should also be able to add 1/3 of the demands made by the public prosecutor, because the defendant had committed the obscene act over a long period of time from 2014 to 2021, this caused trauma for the victim's child and also damaged the victim's morals and mental state.

c. Application of Law by Judges in District Court Decision No. 31/Pid.Sus/2022/PN Psp

The defendant, who is the victim's biological father, was legally proven to have committed an indecent act against a 12 (twelve) year old child. The verdict used alternative charges. The first alternative charge is Article 81 Paragraph (1) and (3) of the Republic of Indonesia Law Number 17 of 2016 concerning the Determination of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become Law in conjunction with Article 76D of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which emphasizes. The second alternative charge is Article 82 Paragraph (1) and (2) of the Republic of Indonesia Law Number 17 of 2016 concerning the Determination of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become Law in conjunction with Article 76E of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. This decision in its indictment shows that there is doubt on the part of the Public Prosecutor in choosing what criminal act will be charged to the defendant, whether sexual intercourse or indecency, if seen from the chronology the perpetrator did not have sexual intercourse with the child but because in the Visum Et Repertum it was found that the vagina could be passed through with 1 loose index finger, the Hymen was found to be injured at 3, 5 and 7 o'clock with the conclusion that the person's hymen was no longer intact because it had been passed by a blunt object, this is what made the public prosecutor hesitate in choosing what article to charge the perpetrator. The Panel of Judges, by considering the legal facts above, directly chose the second alternative charge, the elements of which are as follows: "Any Person", "Commits violence or threats of violence, forces, commits deception, commits a series of lies, or persuades a Child to commit or allow

indecent acts to be committed by parents, guardians, people who have family relationships, child caretakers, educators, education personnel, officers who handle child protection, or committed by more than one person together". The Judge was right in choosing the charge made by the public prosecutor, namely the second alternative charge, by considering the facts revealed in the trial. In the prosecutor's demands, the Defendant was charged with imprisonment for 7 (seven) years minus the time the defendant was in temporary detention and ordered the defendant to remain detained and a fine of Rp. 1,000,000,000,- (one billion rupiah) which if the defendant is unable to pay is replaced with imprisonment for 6 (six) months. In the Judge's decision, the defendant was sentenced to 7 (seven) years in prison and a fine of Rp. 1,000,000,000.00 (one billion rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 2 (two) months. The demands of the public prosecutor and the judge's decision in the verdict are the same if seen from the main sentence but in the judge's decision there is a reduction of 4 months imprisonment, the judge should in giving sanctions to the perpetrator also think about the victim by maximizing the punishment according to the applicable law because in my opinion the perpetrator of the crime of indecency especially a parent against a child is very cruel and will cause shame and trauma for the child for life, and if seen from the chronology the perpetrator will not stop doing his actions if this is not reported to the authorities.

That based on the three cases above, in his consideration the judge must go through the stages in making his decision, namely the first stage of analyzing the criminal act in this case the judge must see what actions the perpetrator committed and whether the act violates the applicable law that has been imposed on him whether the article imposed on the elements in the article has been fulfilled or not. in decision No. No. 25 / Pid.Sus / 2021 / PN Tbk, Decision No. 129 / Pid.Sus / 2021 PN Tim and Decision No. 31 / Pid.Sus / 2022 / PN Psp, the criminal act committed is a criminal act of indecency. second stage of analyzing criminal responsibility, the judge if he has analyzed the criminal act committed by the perpetrator then sees whether the defendant can be held responsible for the criminal act he committed, if there are no reasons that can eliminate the criminal offense the defendant must be held responsible for the actions he committed in decision No. No. 25 / Pid.Sus / 2021 / PN Tbk, Decision No. 129/Pid.Sus/2021 PN Tim and Decision No. 31/Pid.Sus/2022/PN Psp, in the defendant there are no reasons that can eliminate his criminal offense, therefore the defendant must be responsible for the criminal acts he committed, then at the stage of determining the sentence, in this case, if the judge believes that the perpetrator has committed an unlawful act, so that he is declared guilty of his actions, and then his actions can be accounted for by the perpetrator, then the judge will impose a sentence on the perpetrator, by looking at the articles of the law that were violated by the perpetrator. The similarity of the three decisions above, namely the defendant who committed the obscene crime is the father of the victim's child, and in the three decisions using Article 82 paragraph (2), namely if it is carried out by a parent, guardian, child caretaker, educator, or education personnel, then the sentence is increased by 1/3 (one third) of the criminal threat as referred to in paragraph (1). However, in the three decisions the judge did not maximize the criminal threat according to the law imposed on the defendant.

In the demands, from the three decisions above, the public prosecutor also did not suggest that restitution be carried out for the child victim, law enforcement only gave sanctions to the perpetrator without considering what would be given to the child victim. If we look at Article 16 paragraph (1) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, it is explained that "For perpetrators of criminal acts of sexual harassment in addition to imprisonment, fines, or other criminal penalties according to the provisions of the Law, the judge is obliged to determine the amount of Restitution for Criminal Acts of Sexual Violence which is threatened with imprisonment of 4 (four) years or more". Furthermore, paragraph (2) explains "Regarding the provisions referred to in paragraph (1), the judge may impose additional penalties". Thus, it can be concluded that the position of restitution in criminal procedural law is neither a principal punishment nor an additional punishment, because restitution is essentially a victim's right, not a form of punishment. Legal justice is justice based on law and legislation. In the sense that judges only decide cases based on positive law and statutory regulations. In upholding justice, judges merely enforce the law—this is justice according to the legalistic positivism school. In essence, the implementation of a judge's duties and authorities is carried out in order to uphold just truth, which adheres to law, statutes, and the values of justice in society. In carrying out this judicial function, the judge's duty is to uphold law and justice. Therefore, in making a decision, the judge must consider three very essential things: justice (*gerechtigheit*), benefit (*zwachmatigheit*), and certainty (*rechsecherheit*). The purpose of punishment is not merely to avenge the criminal act committed by the defendant, but also has an educational nature, namely a learning instrument for the defendant, so that he can improve his attitude and actions in the future. The three decisions above, according to the judge, only apply a regulation to a concrete event, for which there are already clear regulations. This shows a simpler method, in the sense that the judge is only limited

to applying a legal rule (statute) that is in accordance with the facts or concrete events. Legal protection for child victims of sexual harassment made by law only looks at the punishment for the perpetrator without considering what the child victim will experience in the future and what is given to the child victim, by seeing that there is no submission of child victim rights such as restitution for child victims from the three decisions above. The purpose of punishment is not merely to take revenge for the criminal acts committed by the Defendant, but also has an educational nature, namely a learning instrument for the Defendant, so that he can improve his attitude and actions in the future. The three decisions above, according to the judge, only apply a regulation to a concrete event, for which events have clear regulations. This shows a simpler method, in the sense that the judge is only limited to applying a legal rule (statute) that is in accordance with the facts or concrete events. Legal protection for child victims of sexual abuse made by law only looks at the punishment for the perpetrator without considering what the child victim will experience in the future and what is given to the child victim, by seeing that there is no submission of child victim rights such as restitution for child victims from the three decisions above. The purpose of punishment is not merely to take revenge for the criminal acts committed by the Defendant, but also has an educational nature, namely a learning instrument for the Defendant, so that he can improve his attitude and actions in the future. The three decisions above, according to the judge, only apply a regulation to a concrete event, for which events have clear regulations. This shows a simpler method, in the sense that the judge is only limited to applying a legal rule (statute) that is in accordance with the facts or concrete events. Legal protection for child victims of sexual abuse made by law only looks at the punishment for the perpetrator without considering what the child victim will experience in the future and what is given to the child victim, by seeing that there is no submission of child victim rights such as restitution for child victims from the three decisions above.

CONCLUSION

Based on the research results outlined above, we can draw the following conclusion:

1. The role of judges in the Indonesian Juvenile Criminal Justice System is to provide decisions that encompass justice, benefit, and legal certainty. The position of judges has an important role in implementing positive law and in finding the law. Judges are not permitted to reject cases on the grounds that "there is no legal basis for regulating it." The juvenile criminal justice system is the entire process of resolving cases of children in conflict with the law, from the investigation stage to the guidance stage after serving their sentence. The criminal justice system law related to the examination of child victims is regulated in Article 60 paragraph (2) of the SPPA Law and in Article 58 paragraph (3) letter a of the SPPA Law.
2. The application of law by a judge is a regulation in a concrete event, for which the regulations are clearly available. This means that the judge is only limited to applying a legal rule (statute) that is in accordance with the facts or concrete event. There are stages carried out by the judge in handing down a decision, in a criminal case, such as; The stage of analyzing the criminal act, the stage of analyzing criminal responsibility, the stage of determining the sentence, with these stages the judge is more professional in applying the law, this can help the judge in applying the law in applying what is its application in providing protection to child victims of sexual abuse.
3. The Application of Law by Judges in providing legal protection to child victims of sexual abuse in Decision Study No. 25/Pid.Sus/2021/Pn Tbk, Decision Study No. 129/Pid.Sus/2021 Pn Tim and Decision Study No. 31/Pid.Sus/2022/Pn Psp, Judges have applied the Law on Child Protection to perpetrators of indecent crimes, the sentencing carried out by judges varies, in the three judges' decisions, in the three decisions the judges only follow the prosecutor's charges and there are also judges who reduce the perpetrator's sentence, in this case the judges only follow what has been made by law.

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