

**JUDGES' CONSIDERATIONS IN ISSUE-MAKING DECISIONS  
REGARDING THE LENGTH OF SENTENCES FOR  
PERPETRATORS OF CHILD INDEMNITY (STUDY OF  
LUBUKPAKAM DISTRICT COURT DECISION NO.  
2044/PID.SUS/2021/PN.LBP JO MEDAN HIGH COURT DECISION  
NO. 2093/PID.SUS/2021/PT.MDN JO SUPREME COURT DECISION  
NO. 2909K/PID.SUS/2022)**

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**Abstract**

*The perpetrators of child molestation crimes deserve to be given a fairly high sentence, for example, as stated in Law No. 17 of 2016 concerning Government Regulation in Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law, where in Article 81 A paragraph (3) there is a criminal sanction in the form of chemical castration for perpetrators of child molestation. However, in reality, in law enforcement related to child molestation crimes where children are victims, not all perpetrators are given the maximum or severe sentence. The sentence given to perpetrators of child molestation crimes is reduced or not punished severely. This is as stated in the Decision of the LubukPakam District Court No. 2044/Pid.Sus/2021/PN.Lbp Jo Decision of the Medan High Court No. 2093/Pid.Sus/2021/PT.Mdn Jo Decision of the Supreme Court No. 2909K/Pid.Sus/2022.*

**Keywords:** Child Molestation, Sentencing Decision, Legal Enforcement

**INTRODUCTION**

The above issues are certainly very concerning, therefore, perpetrators of child molestation crimes deserve to be sentenced to a fairly high sentence, for example, as stated in Law No. 17 of 2016 concerning Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law where in Article 81 A paragraph (3) there is a criminal sanction in the form of chemical castration for perpetrators of child molestation. However, in reality, in law enforcement related to child molestation crimes where children are victims, not all perpetrators are sentenced to the maximum or severe sentence. The sentence given to perpetrators of child molestation crimes is reduced or not sentenced severely. This is as stated in the Decision of the LubukPakam District Court No. 2044/Pid.Sus/2021/PN.Lbp Jo Decision of the Medan High Court No. 2093/Pid.Sus/2021/PT.Mdn Jo Decision of the Supreme Court No. 2909K/Pid.Sus/2022, as follows:

1. Decision of the LubukPakam District Court No. 2044/Pid.Sus/2021/PN.Lbp dated December 1, 2021, reads:
  - a. Declaring that the Defendant, Liga Kumala, has been proven legally and convincingly guilty of committing the criminal act of "Persuading a Child to have sexual intercourse" as stated in the Primary indictment;

- b. Sentencing the Defendant to a prison sentence of 9 (nine) years and a fine of Rp. 60,000,000.00 (sixty million rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence of 3 (three) months;
  - c. Determine that the period of arrest and detention that the Defendant has served is deducted in full from the sentence imposed;
  - d. Determine that the Defendant remains in detention;
  - e. Charge the Defendant with paying court costs amounting to Rp. 5,000.00 (five thousand rupiah);
2. Medan High Court Decision No. 2909K/Pid.Sus/2022 dated February 3, 2022, reads:
  - a. Declaring that the Defendant, Liga Kumala, has been proven legally and convincingly guilty of committing the criminal act of "Persuading a Child to have sexual intercourse" as stated in the Primary indictment;
  - b. Sentencing the Defendant to imprisonment for 7 (seven) years and a fine of Rp. 60,000,000.00 (sixty million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 3 (three) months;
  - c. Determine that the period of arrest and detention that the Defendant has served is deducted in full from the sentence imposed;
  - d. Determine that the Defendant remains in detention;
  - e. Burdening the Defendant to pay court costs at both levels of court, which at this appeal level is set at Rp. 2,500.00 (two thousand five hundred rupiah);
3. Supreme Court Decision No. 2909K/Pid.Sus/2022 dated July 13, 2022, reads:
  - a. Rejecting the cassation application from the cassation applicant/defendant Liga Kumala;
  - b. Charge the Defendant to pay court costs at the cassation level of Rp. 2,500.00 (two thousand five hundred rupiah).

The above decision that is different is the decision at the first level with the decision at the appeal level and the cassation decision that agrees with the decision at the appeal level. The decision at the appeal level reduces the sentence from 9 (nine) years to 7 (seven) years based on the following considerations:

*"....however, regarding the length of the prison sentence imposed on the defendant, the Appellate Judge did not agree with the First Instance Court, which according to the Panel of Appellate Judges, the sentence was too long on the grounds that the relationship between the Defendant and the Child Victim had been going on for a long time and was based on mutual affection."*

## **LITERATURE REVIEW**

Based on the background above and to provide research limitations, several problems are formulated, as follows:

1. What is the judge's ratio decidendi in deciding a case against a child victim of a crime?
2. How is the criminal responsibility for the crime of indecent acts against children in the Lubukpakam District Court Decision No. 2044/Pid.Sus/2021/PN.Lbp in conjunction

with the Medan High Court Decision No. 2093/Pid.Sus/2021/PT.Mdn in conjunction with the Supreme Court Decision No. 2909K/Pid.Sus/2022?

3. What are the judge's considerations regarding the length of the sentence imposed on perpetrators of indecent acts with child victims in the LubukPakam District Court Decision No. 2044/Pid.Sus/2021/PN.Lbp Jo Medan High Court Decision No. 2093/Pid.Sus/2021/PT.Mdn Jo Supreme Court Decision No. 2909K/Pid.Sus/2022?

## **METHOD**

The theories used as tools to analyze problems in the study are the theory of criminal responsibility and the theory of the legal system. The theory of criminal responsibility is considered relevant because it is used to analyze criminal responsibility for indecent acts against children in Indonesia. The theory of the legal system is considered relevant because it is used to assess the Decision of the Lubuk Pakam District Court No. 2044 / Pid.Sus / 2021 / PN.Lbp Jo Decision of the Medan High Court No. 2093 / Pid.Sus / 2021 / PT.Mdn Jo Decision of the Supreme Court No. 2909K / Pid.Sus / 2022 in terms of the legal system, both the legal structure, legal substance and legal culture or legal system, whether it is appropriate or inappropriate to be imposed on the convict.

## **RESULTS AND DISCUSSION**

### ***Ratio of Decisions Judges in Deciding on a Case Against a Child Victim of a Crime***

*Ratio decidendi* in a decision is an obligation. This means that if the decision does not contain the ratio decidendi, the decision becomes worthless and weak. Referring to the correction system adopted by the courts in Indonesia, the existence of the ratio decidendi is very important. This is because if a decision does not contain a careful, good, and precise ratio decidendi, the judge's decision derived from the ratio decidendi will be canceled by the High Court/Supreme Court and so on.

Judges in issuing court decisions have many reasons in criminal law/ratio decidendi that can be used as a basis for judges to sentence perpetrators or defendants who are brought to court for committing a crime. This must of course be based on applicable laws and regulations, legal theory, jurisprudence and so on. This also applies to children as victims of criminal acts in addition to the laws and regulations included in the decision. The ratio decidendi contained in the decision must also contain the principle of the best interests of the child/The Best Interest of the Child.

Understanding the best interests of the child when faced with the general or (universal) then the implementation is to properly carry out every child's rights that have been regulated in the applicable laws and regulations. However, if it is against a child who is in conflict with the law, especially a child who has committed a crime, then every court decision cannot be free from the rights that have been protected in the laws and regulations. This means that all decision-making must always consider the survival and development of the child.

Furthermore, the application of the principle of the best interests of children must also pay attention to restorative justice. Restorative justice is justice that emphasizes a restoration to the original state before the crime occurred. Restorative justice was developed by a British criminologist, Tony F. Marshal, who in his writings put forward the definition of Restorative Justice as:

*“Restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future”*(restorative justice is a process where all parties involved in a particular event come together to resolve the consequences of the violation for the sake of the future).

Restorative justice view that this crime is not only the responsibility of the state but also the responsibility of society, therefore, it contains a deep meaning that crimes that cause losses must be restored for the losses borne by society. This recovery can be done in the form of compensation in a material sense because if it is demanded to restore the original state in the example of a criminal case of indecent assault which causes one of them to disrupt the child's psychological condition so that it must be returned to its original condition. Restorative justice has been included in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. In this law, restorative justice is carried out by means of diversion. Diversion is carried out to provide protection and rehabilitation. With the inclusion of the ratio decidendi, the judge in deciding the case of a child as a victim of a crime has legal validity (legal validity of law) in it. This means that legal validity (legal validity of law) can simply be determined by the constitution (supreme law) or a legal basis that contains social values and characters (social character).

#### **Criminal Liability for Child Indecent Acts in the Decision of the Lubukpakam District Court No. 2044/Pid.Sus/2021/PN.Lbp Jo Decision of the Medan High Court No. 2093/Pid.Sus/2021/PT.Mdn Jo Decision of the Supreme Court No. 2909K/Pid.Sus/2022**

The explanation of the fulfillment of the elements of criminal responsibility in accordance with Article 76 E of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection in accordance with the decision above, namely:

##### **1. Having the ability to be responsible**

Responsible ability if the opposite occurs (said to be unable to be responsible) then the convicted perpetrator of child molestation is mentally disturbed, then the convict cannot be held accountable as in the decision of the Lubukpakam District Court No. 2044 / Pid.Sus / 2021 / PN.Lbp Jo Medan High Court Decision No. 2093 / Pid.Sus / 2021 / PT.Mdn Jo Supreme Court Decision No. 2909K / Pid.Sus / 2022. The above conditions are present in the perpetrator (have been described in sub-chapter C part 1 above), so if they are not present in the convict, he must be released from criminal responsibility.

The ability to be responsible is based on the state and ability of the "soul" (geestelijke vermogens) and not on the state and ability to think (verstandelijke vermogens) of a person, although in the official term used in Article 44 of the Criminal Code is verstandelijke vermogens, but the meaning of the ability to be responsible is still

based on the condition of the soul, not the mind. Therefore, *verstandelijke vermogens* must also be translated from the perspective of the ability of the soul and the ability of the mind.

## 2. Error

Decision of the Lubukpakam District Court No. 2044/Pid.Sus/2021/PN.Lbp Jo Decision of the Medan High Court No. 2093/Pid.Sus/2021/PT.Mdn Jo Decision of the Supreme Court No. 2909K/Pid.Sus/2022 on the perpetrator of the crime was imposed (convicted) because it was proven to have committed a mistake in the form of "prohibited from making threats of violence, making a series of lies to children to commit obscene acts". If you look closely, the clause of the article is intentional. This is because intent (*dolus/opzet*) is related to the psyche which is more closely related to a prohibited act because an important element in intent is the intention (*mens rea*) of the perpetrator himself.

Intention as the intention of a certain action or consequence (in accordance with the formulation of criminal law) is the manifestation of the intent or purpose and knowledge of the perpetrator. Intention with intent (*oogmerk*) means that the perpetrator truly wants to achieve the consequence that is the main reason for the threat of criminal law (*constitutief gevolg*). This means that intention as a certainty that is relied on is how far the perpetrator's knowledge or awareness of the action and consequences is one of the elements of a crime that has occurred. The perpetrator must know the consequences of his actions.

Intention as a possibility that is the basis is the extent of the perpetrator's knowledge or awareness of the prohibited act and consequences and other consequences that may occur. The meaning is similar to intention as certainty, but in fact it is not. In intention as certainty, the perpetrator commits an act that is prohibited by law, while in intention as a possibility, the perpetrator does not commit a prohibited act but because of being careless, his act becomes prohibited. Some legal experts say that intention as a possibility is also included in negligence/negligence.

Decision of the Lubukpakam District Court No. 2044/Pid.Sus/2021/PN.Lbp Jo Decision of the Medan High Court No. 2093/Pid.Sus/2021/PT.Mdn Jo Decision of the Supreme Court No. 2909K/Pid.Sus/2022 on the convicted perpetrator of a criminal act proven to have intentionally committed a criminal act of indecency with the proof or disclosure of trial facts in the form of:

- a. The perpetrators of criminal acts involving child victims are men and women who love and care for each other or are dating;
- b. The perpetrator of the crime and the child victim had sexual relations at the perpetrator's house because the child victim ran away from home and lived at the perpetrator's house where at that time the house was quiet;
- c. The perpetrator had sexual intercourse with the victim's child by kissing the victim's lips first, which was then reciprocated by the victim's child, then the perpetrator groped the victim's child's genitals and then opened the victim's pants and underwear. After the perpetrator and the victim's child were no longer wearing clothes, the



perpetrator inserted his genitals into the victim's child's genitals while sucking and squeezing the victim's child's breasts and the perpetrator also shook his waist and then released his sperm outside the victim's child's genitals;

- d. The perpetrator promised the victim's child that he would be responsible for the actions that both of them had committed;
- e. The perpetrator and the child victim had sexual relations more than once or repeatedly after the first incident at the perpetrator's house and at that time the house was also quiet;

The mistake made by the convict was intentional with the intention where his actions were intentionally committing a criminal act of indecency against a child by making a series of lies to the child to commit the indecent act was truly realized. This was proven in the trial of the child convict, the perpetrator of the crime admitted his actions where they were done intentionally because of the intention to commit indecent acts by making a series of lies to the child.

Criminal liability for convicted child perpetrators of crimes in the Lubukpakam District Court Decision No. 2044/Pid.Sus/2021/PN.Lbp Jo Medan High Court Decision No. 2093/Pid.Sus/2021/PT.Mdn Jo Supreme Court Decision No. 2909K/Pid.Sus/2022 is not based on the element of negligence, but rather he was truly aware of the intent of his actions. The convict committed an indecent act by telling a series of lies to the child, realizing and imagining the consequences of his actions, which is a prohibited act.

3. There is no reason to remove the criminal penalty

Reasons for criminal deletion are divided into 2 (two), namely justification reasons and excuse reasons. Indecent acts by making a series of lies to children stating that the perpetrator of the crime is guilty are also caused by the absence of reasons for criminal deletion which are included in the category of excuse reasons.

Decision of the Lubukpakam District Court No. 2044/Pid.Sus/2021/PN.Lbp Jo Decision of the Medan High Court No. 2093/Pid.Sus/2021/PT.Mdn Jo Decision of the Supreme Court No. 2909K/Pid.Sus/2022 which stated that the perpetrator of the crime was not based on coercive power so that there was no reason to forgive to eliminate his mistake, but he was truly aware of the intent of his actions. The perpetrator of the crime committed an act in the form of an indecent act by telling a series of lies to the child with the intention (able to be responsible), not coercive power, not a forced defense or carrying out office orders.

Based on the description above, it is clear that the convicted child perpetrator of the crime in the Lubukpakam District Court Decision No. 2044/Pid.Sus/2021/PN.Lbp Jo Medan High Court Decision No. 2093/Pid.Sus/2021/PT.Mdn Jo Supreme Court Decision No. 2909K/Pid.Sus/2022 which stated that the convicted child perpetrator of the crime met the elements of criminal responsibility, both the ability to be responsible, intent and reasons for forgiveness so that they are worthy of being subject to sanctions in accordance with Article 76 E of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection. This means that the perpetrator of the crime of indecent acts against children can be held accountable for their actions, namely:

- a) There is the ability to be responsible where the perpetrator is aware of his actions. This means that reason and mind are able to realize that his actions are wrong.
- b) There is a mistake in the form of intent. This means that the perpetrator of the crime of indecency against a child does have the intention or desire to have sexual intercourse by giving a lure in the form of a promise to be responsible for the actions that both have done.
- c) There is no reason to eliminate criminal penalties where in Article 76 E of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection which tends to be a reason for not having a reason to eliminate criminal penalties is a reason for forgiveness.

**Judge's Consideration Regarding the Length of Criminal Sentences for Perpetrators of Indecent Acts with Child Victims in the Decision of the Lubukpakam District Court No. 2044/Pid.Sus/2021/PN.Lbp Jo Decision of the Medan High Court No. 2093/Pid.Sus/2021/PT.Mdn Jo Decision of the Supreme Court No. 2909K/Pid.Sus/2022**

The legal considerations/ratio decidendi of different judges are found in the Decision of the LubukPakam District Court No. 2044/Pid.Sus/2021/PN.Lbp and the Decision of the Medan High Court No. 2093/Pid.Sus/2021/PT.Mdn. The first-level judex factie does not consider all the facts of the trial revealed which are then used as legal considerations. The first-level judex factie only considers the criminal acts committed by the perpetrator of the obscene crime as indicted and/or demanded by the public prosecutor. This is in contrast to the appellate judex factie which not only considers the criminal acts committed by the perpetrator of the obscene crime but also considers the relationship between the perpetrator of the obscene crime and the child victim, namely: "the relationship between the Defendant and the Child Victim has been going on for a long time and is based on mutual affection." This causes a difference in the length of the sentence imposed by the first-level judex factie with the appellate judex factie where the first-level judex factie sentences the perpetrator of the indecent act to 9 (nine) years in prison while the appellate judex factie sentences the perpetrator to 7 (seven) years and the judex juris confirms the decision of the appellate judex factie. This means that if you look at the description, the appellate judex juris provides considerations/ratio decidendi based on the trial facts that are revealed as a whole.

The decision handed down by the appellate judex factie by reducing the sentence of the perpetrator of the crime of indecent acts against children must of course also be seen from the side of the legal system. This means that the sentencing carried out by the appellate judex factie by considering, "the relationship between the Defendant and the Child Victim has been going on for a long time based on mutual affection" is contrary to or not contrary to the legal system.

The legal system referred to as stated by Lawrence M. Friedman who divides it into 3 (three) components, namely: legal structure, legal substance, and legal culture. Lawrence M. Friedman's opinion can be equated with Soerjono Soekanto's opinion regarding the factors that influence law enforcement, namely the legal structure is equated with the law

enforcement factor and means or facilities, the legal substance is equated with the legal factor while the legal culture can be equated with society and culture. The description is as follows:

#### 1. Legal factors

Soerjono Soekanto legal factors are limited to statutory regulations only. Laws are a means to achieve spiritual and material welfare for society and individuals through preservation and renewal. This means that the lawmakers are not arbitrary or that the law can be enforced or applied in society.

The law referred to above must of course also contain values that are certain, just and beneficial. The imposition of the LubukPakam District Court Decision No. 2044/Pid.Sus/2021/PN.Lbp in conjunction with the Medan High Court Decision No. 2093/Pid.Sus/2021/PT.Mdn in conjunction with the Supreme Court Decision No. 2909K/Pid.Sus/2022 which imposes a prison sentence for perpetrators of child molestation as stated in Article 82 paragraph (1) of Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection into Law where the prison sentence imposed by the article is at least or a minimum of 5 (five) years and at most or a maximum of 15 (fifteen) years. This means that the prison sentence imposed on the perpetrator of the crime of indecency against a child is still within the above decision, namely the first level *judex factie* sentenced the perpetrator of the crime of indecency to 9 (nine) years in prison, while the appellate level *judex factie* sentenced the perpetrator to 7 (seven) years and the *judex juris* confirmed the decision of the appellate level *judex factie* which is still in accordance with statutory regulations.

The reduction in the length of the sentence as carried out by the appellate *judex factie* and strengthened by the *judex juris* shows the nature of judges in criminal trials that are very attached to the principle of active judges. This means that judges can determine the scope of the main case, then judges may add and reduce including having to actively lead the trial.

#### 2. Law enforcement factors

Law enforcement is very broad in scope because it includes those who are directly and indirectly involved in the field of law enforcement. Law enforcement in this discussion focuses on judges. Judges in their position as decision makers are clearly very competent to impose sentences that contain interpretations of unclear legal rules and/or legal rules that cannot be applied in society. This is because judges have the ability/authority to provide interpretations, understandings and views on the law.

Referring to the Decision of the Lubuk Pakam District Court No. 2044/Pid.Sus/2021/PN.Lbp in conjunction with the Decision of the Medan High Court No. 2093/Pid.Sus/2021/PT.Mdn in conjunction with the Decision of the Supreme Court No. 2909K/Pid.Sus/2022, in this case the accuracy lies in the appellate level *judex factie* where the appellate level *judex factie* does not only see the occurrence of indecent acts on the child victim committed by the perpetrator of the crime. However, it also looks at the things that underlie the act.



The child victim at the time of the crime of sexual abuse was 17 (seventeen) years old, at which age the child victim would have been able to distinguish between prohibited and permitted acts. Although in reality, children as long as they are still within the age that is legally categorized as children are still vulnerable psychologically (mentally), socially and physically.

*Judex facts* The appeal level in reducing the sentence is based on the relationship between the perpetrator and the child victim, namely "the relationship between the Defendant and the Child Victim has been going on for a long time and is based on mutual affection". This is stated in the indictment of the public prosecutor, the statement of the child victim and the testimony of witnesses and written evidence submitted by the child victim's attorney in the form of a Statement Letter made by the child victim which in essence explains that the child victim and the perpetrator of the crime love each other.

Referring to the description above, it can also be observed that the *Judex factie* at the appellate level basically in providing *ratio decidendi* carefully considers the principle of the best interests of the child. This means that the perpetrator of the crime is someone he has loved for a long time and if he is sentenced to a high enough sentence, it is likely to cause mental disturbance to the child so that it can be seen that the decision regarding the length of the sentence being reduced at the appellate level is the right thing to do because it is part of the best interests of the child.

Furthermore, if observed, the incident involved the role of the victim's child, namely: "the victim's child kissed the defendant's neck so that the defendant was aroused" (stated in the public prosecutor's indictment). This is certainly a description if there is a role for the victim's child so that the criminal incident occurred. Theoretically, there are several roles of victims that can result in crimes, as follows:

- a. The act was initiated by the victim himself;
- b. What may be detrimental is the result of cooperation between the victim and the perpetrator;
- c. Victims who suffer losses due to crimes that should not have occurred if there had been no provocation from the victim.

Referring to the role of the victim which can result in the crime above, then based on the degree of the victim's guilt, it can also be divided into 5 (five) types, namely:

- a. A completely innocent victim;
- b. Victims who become victims due to negligence;
- c. The victim is as guilty as the perpetrator;
- d. The victim is more guilty than the perpetrator;
- e. The victim is the only one at fault.

The description above basically describes the judge's freedom in making decisions for the sake of legal values and a sense of justice. This means that the judge's belief is one of the factors underlying a decision. This is certainly very much in accordance with criminal procedure law where the judge decides a case not only based on 2 (two) valid pieces of evidence but also based on the judge's belief (*negative wettelijke*) so that the appellate *judex factie* reduces the sentence and is strengthened by the *judex juris*.

### 3. Facilities or infrastructure factors

Facilities are a very important part of law enforcement. Facilities include skilled human resources, good organization, adequate equipment, sufficient finances and so on.

The facility and infrastructure factors focus on skilled human resources and good organization. A skilled organization certainly means that the organizational structure has a good structure and management. The judicial power has a good organizational structure. This can be seen from Article 18 of Law No. 48 of 2009 concerning Judicial Power and Article 20 paragraph (2), Law No. 48 of 2009 concerning Judicial Power. This shows the correction system adopted by the judicial institution under the authority of the Supreme Court.

The correction system in question is if the parties are dissatisfied with the decision of a lower judge, then the higher judge must make corrections and issue a decision, either to strengthen or to give a different decision. It should be understood that judges must have skilled human resources. This means having good knowledge. Judges in criminal trials must also be skilled, especially judges who have the highest position, namely the Supreme Court. The skills of a judge are very much needed, where they must have 5 (five) types of skills, namely: intellectual skills, learning verbal information, learning intellectual skills, motor skills and attitudes. With these skills, a judge can improve a person's interpretation, understanding or view of something, including the intellectual skills of judges in enforcing the law.

The judge's expertise is reflected in the decision of the appellate judge *factie* in the *a quo* case. This means that in reducing the sentence, the appellate judge *factie* thoroughly examines the criminal incident that occurred so that it can provide a *ratio decidendi* that causes a reduction in the length of the prison sentence that must be received by the perpetrator of the crime.

### 4. Social and cultural factors

Cultural and societal factors can basically be discussed one by one but it would be better to discuss them together because society and culture are like a coin “different sides but inseparable”. Society is a place where culture grows and develops so that if there is no society then there is no culture or if there is no culture then it is clear that there is no society.

The public certainly realizes that law enforcement in Indonesia has not been carried out optimally so that the legal culture in Indonesia is not yet said to be good. This is reflected in the attitude of taking the law into one's own hands from the community, for example beating up thieves who are caught, parading adulterers around the village and so on.

The public understands that the law must contain the values of certainty, benefit and justice. Although sometimes these three things cannot go hand in hand, the most important thing is that there is a reflection of the legal product, especially the judge's decision. The existence of the LubukPakam District Court Decision No. 2044 / Pid.Sus / 2021 / PN.Lbp in conjunction with the Medan High Court Decision No. 2093 / Pid.Sus / 2021 / PT.Mdn in conjunction with the Supreme Court Decision No. 2909K / Pid.Sus / 2022 with the first level

judex factie sentencing the perpetrator of the crime of indecency to 9 (nine) years in prison, while the appellate level judex factie sentenced him to 7 (seven) years and the judex juris confirmed the decision of the appellate level judex factie certainly illustrates the values of certainty, justice and benefit where the perpetrator of the crime of indecency against children is still subject to punishment with the consideration of still paying attention to the best interests of the child.

## **CLOSING**

### **Conclusion**

- a) *Ratio decidendi* Judges in deciding a case against a child victim of a crime must pay attention to the principle of the best interests of the child victim of the crime.
- b) Criminal liability for the crime of indecent acts against children in the Lubukpakam District Court Decision No. 2044/Pid.Sus/2021/PN.Lbp in conjunction with the Medan High Court Decision No. 2093/Pid.Sus/2021/PT.Mdn in conjunction with the Supreme Court Decision No. 2909K/Pid.Sus/2022 is the fulfillment of the element of responsibility of the legal subject in this case humans (adults), The existence of intent from the perpetrator of the crime of indecent acts against children does have the intention or desire to have intercourse by giving a lure in the form of a promise and there is no reason to eliminate the crime in the form of no reason for forgiveness.
- c) The judge's considerations regarding the length of the sentence imposed on the perpetrator of indecent acts with child victims in the LubukPakam District Court Decision No. 2044/Pid.Sus/2021/PN.Lbp Jo Medan High Court Decision No. 2093/Pid.Sus/2021/PT.Mdn Jo Supreme Court Decision No. 2909K/Pid.Sus/2022 where the appellate judex factie reduced the length of the prison sentence for the crime of indecent acts against children because of the reason/ratio decidendi in the form of "the relationship between the Defendant and the Child Victim has been going on for a long time based on mutual affection" and there was a role from the child victim, namely: "the child victim kissed the defendant's neck so that the defendant was aroused", so that the crime occurred between the two.

### **Suggestions**

1. It is hoped that judges in making decisions against perpetrators of indecent acts with child victims will base their decisions on the ratio decidendi in the form of the best interests of the child so that the decision can be beneficial, certain and just.
2. It is hoped that in the explanation of Article 76 E of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, changes will be made from the original "quite clear" to an explanation of the elements of the article including the elements of criminal responsibility.
3. It is hoped that the crime of child molestation committed consciously (aged between 15 (fifteen) years and 17 (seventeen) years) will be created specifically so that the perpetrator can be more clearly held accountable for his actions.

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