

DOI: <https://doi.org/10.31933/unesrev.v6i3>

Received: 6 May 2024, Revised: 17 May 2024, Publish: 30 May 2024

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Criminal Liability for Teachers Perpetrating the Rapes of Their Students: Child Protection Law Perspective

Firly Mega Agrianty¹, Sartika Dewi², Muhammad Abas³

¹ Faculty of Law, Buana Perjuangan University Karawang, Indonesia

Email: hk20.firlyagrianty@mhs.ubpkarawang.ac.id

² Faculty of Law, Buana Perjuangan University Karawang, Indonesia

Email: sartikadewi@ubpkarawang.ac.id

³ Faculty of Law, Buana Perjuangan University Karawang, Indonesia

Email: muhamad.abas@ubpkarawang.ac.id

Corresponding Author: hk20.firlyagrianty@mhs.ubpkarawang.ac.id¹

Abstract: Rape is an act of sexual violence that forces someone into sexual relations, including those between a husband and wife. According to records from the Federation of Indonesian Teachers' Unions (FSGI), from the beginning of the year until May 2023, 31.08% of sexual violence cases against minors involved teachers. This study, using Normative Juridical research, examines the criminal liability of teachers who rape students and the judicial considerations in Decision Number: 156/Pid.Sus/2020/PN.Pkb. Findings indicate that teachers violating Article 81 paragraphs (1) and (3) are subject to criminal sanctions, including a minimum prison sentence of 5 years and a maximum of 15 years, as well as a fine of IDR 5,000,000,000.00 (five billion rupiah). Additionally, one-third of the principal penalty may be added. In the referenced case, Decision Number: 156/Pid.Sus/2020/PN.Pkb, the defendant received a sentence of 6 years in prison and a fine of IDR 10,000,000.00 (ten million rupiah). Failure to pay the fine would result in an additional 3-month prison term. Given the damage to the reputation of teachers, the panel of judges should have the authority to impose further punitive measures, such as publicizing the perpetrator's identity through print and social media. It is hoped that such measures will create a deterrent effect, discouraging similar offenses in the future.

Keyword: Teachers, Rape, Educator.

INTRODUCTION

The fourth paragraph of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) contains the state's aim to increase the nation's intelligence. One way to implement this is to educate young generations who are superior and qualified, especially in the world of education. To give birth to the nation's next generations in the world of education, a teacher is needed to act as a benchmark in the nation's progress, especially in the world of education.

Teachers play an important role in the field of education, acting as educators and being able to replace the role of parents at school. In their field of expertise, the teacher's task is to educate, which means encouraging the development of life values, teaching, namely increasing understanding of science. As well as training, namely developing students' abilities (Sopian, A., 2016). Teachers are obliged to comply with ethical principles, religious values and the teacher's code of ethics. However, not all teachers carry out their functions well to shape students' character and tarnish the school's name with actions that violate a teacher's code of ethics. One of them is a teacher who commits sexual violence against students.

Anyone who is influenced by individuals or groups to carry out educational activities is called a student. Students are an important component in educational contact activities (Djamarah, S. B., 2010). Students who should be cared for and receive protection actually become victims of sexual violence at school.

The National Commission Against Violence against Women (Komnas Perempuan) explained that the increase in incidents of sexual violence became a hot topic on social media during the Covid-19 pandemic in Indonesia. Such as incidents of sexual harassment of female students at various universities, rape of female students in several Islamic boarding schools, forced abortions, sexual attacks on children carried out by parents, uncles, grandfathers and neighbors. The majority of victims are minors. The figure increased by 10% (ten percent) in the private realm and 8% (eight percent) in the public realm. In 2021, incidents of sexual violence, especially against women, are estimated to double compared to 2020 (Komnas, 2024).

Cases of sexual violence against children in the records of the Federation of Indonesian Teachers' Unions (FSGI) from the beginning of the year to May 2023, where the perpetrators were teachers, increased significantly. FSGI noted that 31.08% of the perpetrators were teachers. Followed by Islamic boarding school owners or administrators at 18.2%, school principals at 13.63% and Koran or non-formal education teachers at 13.63%. FSGI recorded 18 (eighteen) regencies/cities from 8 (eight) provinces, one of which is South Sumatra, where sexual violence occurs at school among children (FSGI, 2024).

Sexual violence in the Big Indonesian Dictionary refers to the act of committing violence against someone by force. Meanwhile, rape is explained as a process or method of carrying out this act with violence (Ebta Setiawan, 2023). The crime of rape in Article 285 of the Criminal Code which reads:

"Anyone who, by force or threats, forces a woman who is not his wife to have sexual intercourse with him, for rape, shall be punished with imprisonment for a maximum of twelve years."

This explanation requires that sexual relations, if not with the wife, must not be carried out under the threat of violence or coercion. If a minor is a victim, this is confirmed separately in the Child Protection Law. This crime of rape has a negative impact on the victim because it disrupts his mental condition. So that it affects the victim's personal development when they grow up.

Rape cases often occur in elementary school to tertiary education. So that incidents like this do not happen again, the government must take part in implementing teacher morality and professionalism programs. Teachers who are proven to have committed acts of rape should be given appropriate legal sanctions to be held accountable for their actions, be it imprisonment, fines or additional penalties to deter the perpetrators. This law is regulated in Indonesian legislation regarding minors as victims of rape in Article 285 of the Criminal Code, Law Number 23 of 2002, Law Number 35 of 2014 and Law Number 17 of 2016 concerning Child Protection.

Based on decision No:156/Pid.Sus/2020/PN.Pkb, there was a rape committed by Fadli Kholil S.Pd Bin Jalil S.Pd against his 16 (sixteen) year old student at SMAN 1 Muara Padang

named Dhea Meilarika Binti Datim Prabowo in the OSIS room at SMAN 1 Muara Padang which is located on route 20 of bridge III, Banyuasin Regency, South Sumatra Province. This incident made parents worried, because the child they had entrusted to their care became a victim of rape by their teacher.

Considering the increasing number of rape cases where the perpetrators are teachers, it is urgent to carry out this research by formulating the problem of how criminal responsibility is for teachers who rape their students in terms of Law Number 17 of 2016 concerning Child Protection; and what are the Judge's considerations in Decision Number: 156/Pid.Sus/2020/PN.Pkb

METHOD

This research uses normative juridical research methods. According to Soerjono Soekanto, legal research is carried out by reviewing rules and literature related to research problems as well as by reviewing study materials and secondary data as a basis for research (Soekanto, S., & Mamudji, S., 2014). Furthermore, to ensure the correctness of the judge's conclusions and the imposition of criminal sanctions, the primary and secondary legal materials obtained were analyzed qualitatively (Iftitah, 2023a) based on the Pangkalan Balai District Court Decision No:156/Pid.Sus/2020/PN.Pkb in accordance with applicable legal provisions.

RESULTS AND ANALYSIS

Criminal Liability for Teachers Who Rape Their Students in View of Law Number 17 of 2016 Concerning Child Protection

Criminal culpability refers to an individual's responsibility for criminal acts they have committed. Criminal error results from a criminal act committed by a person (Ali, M., 2015). According to Roeslan Shaleh (Saleh, R., 2002) criminal liability can be interpreted as continuing objective punishment for a criminal act and subjectively fulfilling the criminal requirements that apply to the act. The principle of legality (*nullum delictum nulla poena sine pravia lege*) is the basis of criminal error, but criminal error is caused by individual criminal acts. This means that the perpetrator is punished if he commits the crime (Iftitah, 2023b).

This shows that whether or not the elements of a criminal act are proven is the basis for holding someone accountable for their actions. It is determined that the elements of a criminal act are automatically subject to punishment after being found guilty, meaning that parts of the criminal act contain criminal errors (Raghib, F., 2015). According to Sudarto, a person who has criminal responsibility must fulfill the following elements (Amrani, H., & Ali, M., 2015):

a. There is a criminal act committed by the perpetrator

Because individuals cannot be punished because they have not committed an unlawful act, one of the main components of criminal responsibility is the element of action. Based on the facts of the trial, the defendant Fadli Kholil S.Pd Bin Jalil S.Pd was declared to have committed rape as stated in Article 285 of the Criminal Code which is described as follows:

- 1) Illegal sexual relations without marriage by means of violence, threats and coercion.
 - 2) The sexual relations were not carried out with his wife so the victim was afraid.
- Because the victim is a minor, it is specifically regulated in the Child Protection Law.

b. There is an element of error, namely intentional or negligence

Intentional occurs when someone commits a criminal act intentionally or with clear intent. In this case, the perpetrator has full awareness of his actions and the purpose of carrying out these actions. Meanwhile, negligence occurs when someone commits an unlawful act without any malicious intent or intention. This error can occur due to negligence,

ignorance in acting. Based on the facts of the trial of the defendant Fadli Kholil S.Pd Bin Jalil S.Pd carried out the act deliberately and intended to rape the victim's child in the OSIS room at SMAN 1 Muara Padang.

c. There is a maker who is responsible

Responsible actors are generally considered to have sufficient mental ability or intelligence to understand the consequences of the actions or decisions they take. They are considered to have the ability to understand their rights and obligations in a legal context. Based on the facts of the trial, the defendant Fadli Kholil S.Pd Bin Jalil S.Pd raped the child victim Dhea Meilarika Binti Datim Prabowo and threatened her so that the child victim would not tell her parents, in this case the author believes that the defendant is capable of taking responsibility for the actions he has committed.

d. There is no excuse

Reasons for eliminating mistakes that originate from the perpetrator include inability to take responsibility, coercion and forced defense. Based on the facts of the trial, the defendant Fadli Kholil S.Pd Bin Jalil S.Pd was proven to have committed conscious rape against the victim's child without any coercion.

Based on Law Number 14 of 2005 concerning Teachers and Lecturers, teachers are professional educators whose main responsibility is carrying out learning, teaching, training and evaluating their students from elementary to tertiary education. Where teaching is a noble profession, regardless of whether the teaching profession has Civil Servant (PNS) status or not, it is very worrying that if teachers commit prohibited acts and are threatened with criminal penalties, they will be subject to Government Regulation Number 17 of 2020 concerning Management of Civil Servants, Article 250 d reads:

"Civil servants are dishonorably dismissed if they are sentenced to imprisonment based on a court decision which has permanent legal force for committing a criminal act with a prison sentence of at least 2 (two) years and a crime committed with a plan"

Based on the description that has been explained, the elements of criminal responsibility carried out by the defendant Fadli Kholil S.Pd Bin Jalil S.Pd have been fulfilled and the defendant Fadli Kholil S.Pd Bin Jalil S.Pd has been proven to have violated the teacher's code of ethics. Based on a statement from the Principal of SMAN 1 Muara Padang No. 800/062/SMAN1/MP/2020 dated March 12 2020 is a teacher/educator/educational personnel who should uphold their professionalism and code of ethics as a teacher in order to avoid criminal acts.

A teacher can be said to have committed a criminal act of rape against his students if his actions are proven in accordance with the provisions of the following article:

Article 76D of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states that:

"Every person is prohibited from using violence or threats of violence to force a child to have sexual intercourse with him or another person"

Article 81 paragraphs (1) and (3) of Law Number 17 of 2016 concerning Child Protection states that:

Article 81 paragraph (1) reads:

"Any person who violates the provisions as intended in article 76D shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah)"

Article 81 paragraph (3) reads:

"In the event that the criminal act as referred to in paragraph (1) is committed by parents, guardians, people who have family relationships, child caretakers, educators, educational staff, officials in charge of child protection, or is committed by more than one

person together. -the same, the penalty is increased by 1/3 (one third) of the criminal threat as intended in paragraph (1)"

In Decision No:156/Pid.Sus/2020/PN.Pkb, where the defendant Fadli Kholil S.Pd Bin Jalil S.Pd is obliged to be held accountable for his criminal actions. Based on the legal facts of the case, the judge decided that the defendant had violated Article 81 paragraph (3) of Law Number 17 of 2016 concerning Child Protection jo. Article 76D of Law Number 35 of 2014 forces a minor to have sexual intercourse with him as in the first indictment, he can be imprisoned for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and then fined IDR 5,000,000,000.00 (five billion rupiah) and add 1/3 (one third) of the sentence to the main sentence because the perpetrator is an educator or educational staff.

According to the author's analysis, regarding the legal rules described above, the act of a teacher raping his student is an act that tarnishes the world of education. The criminal sanction that the judge gives should be increased in the form of announcing the perpetrator's identity in print, electronic and social media as regulated in Article 81 paragraph (6) Law Number 17 of 2016 concerning Child Protection.

Judge's Considerations in Decision Number: 156/Pid.Sus/2020/ PN.Pkb

The judge's consideration is the stage for the panel of judges to consider the factual information obtained during the trial. When evaluating the value of a judge's decision including justice, legal clarity and benefits for the litigants are very crucial considerations. If the judge does not consider carefully, maturely and logically, the High Court and Supreme Court will cancel the decision. In considering a case, the judge needs evidence whose results become the basis for the judge in making a decision on the case. Evidence is the most important step considered during a trial. The purpose of evidence is to ensure that the information provided is accurate and correct to enable the court to make a fair and appropriate decision. The judge cannot make a decision if it is not clear that the incident is true enough to be proven (Arto, M., 2004).

Thus, the judge must be careful in determining the elements of the criminal act to be determined, so that the decision is a fair decision for both the victim and the perpetrator. In decision No:156/Pid.Sus/PN.Pkb, the panel of judges determined that the defendant Fadli Kholil S.Pd Bin Jalil S.Pd was guilty of raping his student, who at the time of the incident was 16 years old according to Birth Certificate No:AL 5920147000 On 10 November 2011, signed by Population and Civil Registration, a girl named Dhea Meilarika bint Datim Prabowo was born in Banyuasin on 22 May 2003. Taking into account the following aspects:

Considering, that the element "every person" is someone who must be held accountable for the criminal acts they have committed. Based on the testimony of witnesses at the trial of the defendant Fadli Kholil S.Pd Bin Jalil S.Pd, namely that it was true that the defendant was being examined in the trial as intended by the Public Prosecutor in his indictment, then this element was fulfilled, there was no error (error in persona).

Considering that violence is any physical act committed against a person and carried out against the law, such as kicking, kicking, or using any weapon, and resulting in the victim feeling sick or helpless. Based on the facts of the trial, the defendant Fadli Kholil S.Pd Bin Jalil S.Pd, while carrying out his action, pulled the hands of the victim's child Dhea Meilarika Binti Datim Prabowo, then pushed the body of the victim Dhea Meilarika Binti Datim Prabowo's child so that it fell on the floor mat of the OSIS room at SMAN 1 Muara Padang has been fulfilled.

Considering that the threat of violence in question is a physical threat that has not yet occurred, it will be exploited if the attacker believes the victim is helpless and the threat is not real. Victims of threats of violence may become mentally helpless even though no physical injury has occurred because of the increasing perception of the victim that bodily strength is

used if at any time the victim opposes the perpetrator's will. Based on the facts of the trial, Defendant Fadli Kholil S.Pd Bin Jalil S.Pd threatened the victim's child Dhea Meilarika binti Datim Prabowo not to tell anyone about his actions and would disturb the victim's child forever if the victim's child did not want to come to the OSIS room at SMAN 1 Muara Padang to meet the defendant has been fulfilled.

Considering that the meaning of coercion in the law does not explain this, however, the panel of judges gave an interpretation, namely that actions for individuals are related to the nature of pressure or the individual's desires and create feelings of discomfort or helplessness so that they do something contrary to their wishes. Based on the facts of the trial, the defendant, Fadli Kholil S.Pd Bin Jalil S.Pd, suppressed the will or desire of the child victim, Dhea Meilarika Binti Datim Prabowo, which could cause feelings of anxiety or helplessness in the child victim, Dhea Meilarika Binti Datim Prabowo, so that the child victim was forced to have sexual intercourse. contrary to the wishes of the child victim Dhea Meilarika Binti Datim Prabowo has been fulfilled.

Considering, that the children referred to in article 1 paragraph (1) of the Child Protection Law are "children who are not yet 18 (eighteen) years old, including children who are still in the womb". Based on the facts of the trial in the Birth Certificate Number: AL5920147000 dated November 10 2011 which was signed by the Population and Civil Registration Service, the victim's child, Dhea Meilarika Binti Datim Prabowo, is 16 (sixteen) years old.

Considering, that intercourse is defined as a competition between the male and female genitals so that sperm comes out which is often carried out in order to produce offspring. Based on the statements of the defendant, witnesses and post-mortem. The defendant Fadli Kholil S.Pd bin Jalil S.Pd, on Friday 10 January 2020, 17 January 2020 and 31 January 2020 at around 14.00 WIB, raped his student in the OSIS room at SMAN 1 Muara Padang and the defendant has admitted his actions. The method was to push the genitals into the genitals of the victim Dhea Meilarika Binti Datim Prabowo, then the defendant wiggled his genitals and after a while the defendant's genitals were removed from the genitals of the victim Dhea Meilarika Binti Datim Prabowo's child, then the defendant released white fluid (sperm) on the victim's thigh. The results of post mortem et repertum No.02/VER/RSIA.MA/III/2020 on March 19 2020 were made and ratified by Dr. Doddy Tisna Ameijaya, Sp.OG, RSIA Palembang ob-gyn specialist, explained that on February 1 2020 he had examined Dhea Meilarika Binti Datim Prabowo with a diagnosis conclusion (as far as possible without mentioning the term expertise): OLD HYMEN REAR as a result of what the child victim experienced: HYMEN NOT INTACT.

Considering, that what is meant by educators/educational personnel is based on the statement from the principal of SMAN 1 Muara Padang No.800/062/SMAN 1/MP/2020 dated 12 March 2020 and the statements of witnesses that the defendant is a physical education/sports teacher and teacher non-permanent (GTT) at SMAN 1 Muara Padang from 03 July 2017 to 6 February 2020.

Considering, that the panel of judges was unable to find any evidence in the facts of the trial which eliminated criminal responsibility as an explanation or defense, so Fadli Kholil S.Pd Bin Jalil S.Pd must be held accountable for his actions.

Considering that the evidence is: 1 (one) blue floral patterned underwear, 1 (one) black shorts with green stripes, 1 (one) black Saudi brand headscarf, 1 (one) blue junior high school long skirt and 1 (one) the cream colored long-sleeved Muslim dress belonging to the victim's child Dhea Meilarika Binti Datim Prabowo was returned to the victim's child.

Considering that the sentence imposed by the defendant Fadli Kholil S.Pd Bin Jalil S.Pd, the panel of judges considered the aggravating circumstances that had damaged the

victim's future and the mitigating circumstances that the victim did not have a criminal record.

Based on Decision No: 156/Pid.Sus/2020/PN.Pkb, which has the authority to examine, try and decide criminal cases in the first level general court, the panel of judges sentenced the defendant Fadli Kholil S.Pd Bin Jalil S.Pd, declaring him guilty of committing the threat of violence forcing the child victim to have sexual intercourse with him as regulated in Article 81 Paragraph (3) of Law Number 17 of 2016 concerning Child Protection in conjunction with Article 76D of Law Number 35 of 2014 has been fulfilled. The panel of judges sentenced the defendant to 6 (six) years in prison and a fine of Rp. 10,000,000.00 (ten million) rupiah. If the fine is not paid, the defendant will be subject to imprisonment for 3 (three months). According to the author's analysis, the panel of judges used to impose the defendant's principal sentence too minimally. The defendant Fadli Kholil S.Pd Bin Jalil S.Pd should have had his rights as a teacher revoked because he had tarnished the image of education and the punishment could have been increased (Hidayat, 2023).

Protection for victims of sexual violence, especially children, is part of the right to life and the right to be free from slavery or servitude. These rights are universal and eternal, applying to every individual regardless of origin, gender, religion or age. Therefore, every country has an obligation to uphold these rights without exception (Nuraeny, H., & Utami, T. K., 2021). Considering this, law enforcement must be based on the formation of a just legal culture. If justice is the main basis of positive law and the benchmark for human behavior, then law enforcement can aim to achieve balance in life among humans, thereby creating justice, peace, order and general goodness in society. The success of law enforcement is very dependent on the legal culture of the community, namely the various ideas, attitudes and expectations of the community towards the law (Adwi Mulyana Hadi, Anik Iftitah, 2023). This legal culture is influenced by educational background, environment, culture, position and interests of community members. Thus, when the substance of positive law is correct and reflects the justice of society, and the legal structure is adequate, the final determining factor is the legal culture of the society itself. All stakeholders, from law makers, regulated communities, to legal officials who implement sanctions, play an important role in shaping this legal culture (Rahayu, D. P., 2014).

CONCLUSION

A person can be considered criminally responsible if they fulfill the requirements for criminal responsibility, which include criminal acts that are prohibited by applicable law, the existence of an error (whether intentional or negligent), the ability to be responsible for their actions, and the absence of a pretext for forgiveness that frees them from the error. . Criminal liability for teachers who commit criminal acts includes a criminal penalty that is increased by 1/3 (one third) in accordance with the provisions of Article 81 paragraph (3) of Law Number 17 of 2016, and if the teacher has the status of a Civil Servant (PNS), he can be dismissed or not. yours faithfully. The author believes that it is necessary to add punishment in the form of publication of the defendant's identity as regulated in Article 18 paragraph (6) of Law Number 17 of 2016. In decision No: 156/Pid.Sus/2020/PN.Pkb, the panel of judges declared the defendant Fadli Kholil S.Pd Bin Jalil S.Pd is guilty of raping a student, thus fulfilling the provisions of Article 81 paragraph (3) of Law Number 17 of 2016 concerning Child Protection jo. Article 76D of Law Number 35 of 2014, and imposes a prison sentence of 6 (six) years and a fine of Rp. 10,000,000 (ten million rupiah) which if not paid must be replaced with a prison sentence of 3 (three) months, and the defendant is burdened with paying court costs of Rp. 2,000 (two thousand rupiah). The author believes that the panel of judges in handing down a decision should consider the principles of justice from the victim's perspective, because the criminal fine of Rp. The 10,000,000 (ten million rupiah) determined by the panel of judges was considered not appropriate considering that the defendant's

behavior had destroyed the victim's life and caused material and immaterial harm to the victim.

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