

# Legal review of the criminal act of taking away a woman who is not adult committed by a child (Case Study of the Decision) Number: 99/ Pid.Sus -Anak/2015/PN.MKS)

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## ABSTRACT

In writing the thesis, the writer discusses the problem of the criminal act To Bring the Running of Minors Done by Child Number 99Pid. Sus. Anak2015PN. MKS. This is motivated by the importance of determination and the role of somebody in an act frequent crimes happen in reality society. Purpose of writing This is 1. For know implementation law criminal material to case act criminal bring run women who have not adults committed by children. 2. For now consideration law by the judge to drop sanctions criminal to case act criminal to bring run women who have not adult acts committed by children in Decision Makassar District Court. 3 To know Islamic Law's View of Punishment for the perpetrators' Actions Criminal bring run women who have not mature done by children. To answer the problem, the author uses methodology namely 1 Interview with the judges handling the matter described in the background back. 2 Data analysis The writer uses qualitative data analysis, in which the author uses descriptive qualitative. Punishment for the perpetrator's Action Criminal bring run women who have not mature done by children is Criminal That must give Benefits So that the perpetrator is brought to justice criminal Become Afraid For do Again act criminal, and also to be able to prevent public do act criminal, which is in Ta'zir Law Punishment on violations that are not set the punishment in the Qur'an and Hadith which form as Punishment Light intended for someone who does jinayah / crime that has not been done fulfill condition For punished, no fulfill condition pay diyat / fine as law light For atone for his sins.

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## 1. INTRODUCTION

Indonesia is a country of law that upholds tall dignity and honor man as well as ensure welfare each and every inhabitant his country, including ensure protection child Because children also have the rights referred to in right basic human beings. So that every child later mom carry not quite enough answer as generation successor nation, then child get chance as wide as possible for grow and develop optimally, both mentally and physically and also social. So it is necessary done effort protection child to fulfillment child without There is discrimination Law No. 23 concerning Child

Protection. If we counting How many amount privilege woman in Islam, no right counted indeed. However There is some of us know from a number of knowledge gained. We share with each other share and mutual give knowledge as well as education for race Muslimah specifically.

Know that Islam has glorify women. Welfare child is a way of life child who can ensure growth and development with It is natural. Children have role strategic and has characteristics and traits special that guarantees continuity existence nation and state. The unitary state of the Republic of Indonesia guarantees welfare each and every inhabitant his country, including protection to right basic child. Child is the trust and grace of God Almighty, which is in it attached dignity and honor as child in its entirety. That child is a potential sprout, and a generation easy successor ideals struggle nation. 1 As generation successor nation child are the shoots of a future nation continue existence a nation, in matter This is Indonesian nation.

But in recent times This normal there is a act criminal bring run children under age. This is is a very big and dangerous threat for child. Action criminal bring run child women who have not mature is act common criminal offense occurs in society at the moment this, which is more worrying Again the perpetrator child child. Since traditional times until the modern era like moment Now this, crime run woman under age Keep going happened, there are those who formulate act criminal This as Run women below age, there are also those who use phrase run women who have not mature.

Whatever the term, which is certain in formulation That is action run a women whose age Not yet reach age adults. That after victim witnesses are allowed follow to Takalar, the victim's witness then leave to Takalar with the defendant riding pillion, while Friend The victim's witness, Nur Anisa, was hitchhiked by a man Chairil Iksan's friend. That after arrived in Takalar Regency around 15.30, the victim, the defendant , and the woman Nur Anisa and the man Chairil Iksan direct to House Kamal's man for grilled fish , and evening the day witness victim together with the accused , woman Nur Anisa and man Chairil Iksan Sleep stay at home Kamal man , with together sleep in the room Sleep guests , and at the time sleep in the room defendant want to have sex victim witness , but No So Because The victim witness was embarrassed to be heard by his friend so that at the time That victim witness only hugged and kissed . That the next day the day around 11.30 WITA the victim witness came home from Takalar, and after Arriving in Makassar, the victim witness did not direct go home to his house will However, the victim witness was accompanied by the defendant to House her grandmother in Mandai Kah.

In Research this, which becomes focus problem namely about implementation law criminal material to case act criminal bring run women who have not adults committed by children and considerations law by judge in to drop sanctions criminal to case act criminal bring run women who have not adults committed by children. And how view law Islam to criminalization for perpetrator act criminal bring run women who have not adults committed by children. With see background behind problem above, then writer formulate problem as following: How is it? application of criminal law material to case act criminal bring run women who have not adults done by children? ;How Legal considerations by the judge in to drop sanctions criminal to case act criminal bring run women who have not adults committed by children at Makassar District Court .

## 2. METHOD

Action terms criminal in Language Latin called with Delictum or Delicta, in Language English known with the term Delict, which means a the act of the perpetrator can charged punishment, Meanwhile in Dutch action criminal known with term pleasure, consisting of from three words, namely straf, baar, and feit. Straf translated with criminal and legal. Words baar translated with can and may. While that, for the word feit translated with actions, events, violations, and deeds or part from a reality. 1 In fact literally pleasure can interpreted as from a the reality that can punished. From the understanding said, can withdrawn conclusion that which can punished is reality, action, or event, not the perpetrator. The following is a number of understanding strafbaarfeit put forward by experts Roeslan Saleh, giving translation free food thank you is give limitation action criminal there is contradictory act with layout or provisions required by law, conditions main from existence action criminal is fact that There is rules that prohibit.

Pompe against term strafbaarfeit provide two kinds definition, namely definition of nature theoretical and definitions that are legislation. According to him to definition of nature theoretical is The Battle thank you is a violation of disturbance norms to orderly the law with which on purpose or

No with on purpose has done by a perpetrator, where the sentence was imposed punishment to perpetrator the is necessary for maintenance orderly law and its guarantee interest general or as normovertrading verstoring der rechtsorde, waaraan de overtreder to sleep on contracting service dienstig is voor de handhaving der rechts order en de behartiging van het algemeen welcome.

Framework conceptual study is a connection or connection between draft One to other concepts from the problem you want examined. Framework draft This its use For connect or explain in a way long wide about a the topic to be discussed . Framework This obtained from draft the theory used as runway research results obtained in chapter review library or if may said by the author is summary from review linked library with the appropriate line variables studied. Review library containing all knowledge theory, concept, principle, law and also proposition that will later Can help For compile framework concept and operation study.

Findings results researchers who have there is very helpful and easy researcher make framework conceptual. Framework conceptual expected will give overview and directing assumption about the variables that will be examined. Framework conceptual give instruction to researchers in formulate problem research . Researcher will use framework conceptual that has been arranged For determine which questions should be answered by research and how procedure empirical used as tool For find answer to question said. Framework conceptual obtained from results synthesis from the thinking process deductive application theory and inductive existing facts, empirical, then with ability creative innovative, ended with draft or a new idea called framework conceptual. If the rules Constitution This run with both by the Police, Prosecutors, and Court will come true system justice good criminal, which remains ensure rights as suspect.

Understanding criminal is a what misery the State inflicts on people who have do a act criminal. Misery is a taste of taste sad or sadness. The party that can impose misery That no everyone, but is authority from the country to can impose or drop it to the person who does act criminal. Criminal That must be give benefits , so that give preventive measures aimed at to perpetrator act criminal It means for perpetrator act criminal with dropped criminal , he become Afraid For do Again act criminal acts in the future come.

Definition a contract of a criminal nature legislation or law positive according to Pompe it is nothing other than a action according to a formulation Constitution has stated as actions that can be punished. Conducting data collection through interview and library techniques, Interview techniques Namely by conducting questions and answers with the parties involved. related to or concerning this criminal act, including judges in Makassar District Court which decided this case, as well as other parties who took part in this case and Library Engineering It is a normative review technique of several regulations. legislation and court decision files related to this crime and a review of several pieces of literature relevant to the material which is discussed.

In this writing, the data obtained was then collected properly both primary and secondary, and analyzed quantitatively. Next submitted descriptively, namely by explaining, outlining and describe the problem with its associated solution In this writing, the data obtained and collected are both primary and secondary data Secondary data is analyzed qualitatively, which is a research method that. carried out in order to find qualitative truth, qualitative analysis or data collected is descriptive in the form of words or images, data This was obtained from the results of interviews, notes, field observations, portraits, personal documents, memorandums and official documents, so that the author can provide an assessment regarding the Legal Review of Criminal Acts Carrying Away An Underage Girl Done By A Child, then presented descriptively, namely by explaining, describe and illustrate the problems and their solutions closely related to this writing.

### 3. RESULTS AND DISCUSSION

Action criminal bring run women who have not mature is act common criminal offense occurs in society at the moment this, which is more worrying Again in case This the perpetrator is children. In Article 332 paragraph 1 ke-1e of the Criminal Code it reads with punishment prison forever and ever seven year, goods Who run women who have not mature No with his parents ' will or his guardian, but with will Woman That Alone with Meaning will have Woman That Good with marriage, or no with marriage. As for the elements act criminal the is as following Whoever here is subject the law that has ability responsible answer is based on on conditions and abilities his soul cute vermogens, which in doctrine law criminal interpreted as in condition aware. Based on facts that emerged at trial

revealed that the defendant Andi Firmansyah is subject deep law conditions and abilities his soul show condition healthy and not disturbed his soul so that by law considered speak or capable responsible answer account svat baar, therefore about element 1 whoever This has fulfilled. Escape women who have not adult, no with his parents ' will or his guardian but with will Woman That Alone Actions bring go that is called verse 1 means need action active the man.

### **3.1 Civil Law and Islamic Law**

Position Not yet adult and not is at under parental authority, is under guardianship on basic and with method as regular in part third, fourth, fifth and sixth chapter This. In the Civil Code Article 330 has explained that somebody it is said has mature if He has reach age exactly 21 years old or who has Marry although Not yet aged exactly 21 years old, and if his marriage has end or divorce still it is said adult and not will back to the state of ' not yet ' ' adult '. No longer is at in the power of his parents or is at under guardianship.

With thus so Civil Code look at someone who has aged adult (21 years old) maturity in a way biological and psychological considered able and capable for do action law civil That itself. Compilation of Islamic Law article 9 paragraph (1), " Age limit capable child stand Alone or mature is twenty One year, throughout child the No disabled physique or mentally or Not yet Once carry out marriage". It means mature when Already 21 years old or already married, no disabled or crazy, and can responsible on himself alone.

### **3.2 Constitution Marriage**

Law no. 1 of 1974 concerning Marriage article 47 paragraph (1), "Children who are not yet reach age 18 (eight) twelve) years or Not yet Once carry out marriage is below the power of his parents during they No revoked from his authority." and Article 50 paragraph (1), "Children who are not yet reach age 18 (eight) twelve) years or Not yet Once carry out marriage, which is not be under parental authority, is under power guardian." It means mature when already allowed married, age 18 years. Law Child Protection Law no. 23 of 2002 jo 35 of 2014 concerning Child Protection article 1 paragraph (1), "Children are someone who has not aged 18 (eight) twelve) years, including children who are still in content". This means the age limit mature according to rule This is 18 years old to on.

Age limit differences mature This is not is wrong thing, provided in its implementation referring to the principle of Lex specialist derogat legion generalis (special law) put aside general law) and can come true in a way appropriate target. Before writer to describe implementation law criminal material to act criminal bring run women who have not adult acts committed by children in matter, then need known moreover formerly position cases and convictions decision by the panel of judges with view inspection event usually at the Makassar District Court which examines and tries cases case This.

#### **3.2.1 Case Position**

Action criminal bring run women who have not adult committed by suspect ANDI FIRMANSYAH against victim AMELIA ASHARI's self with method at first namely on the day Sunday May 18, 2014 at 11.30 WITA the victim together with his friend Sister NUR ANISA AMIR is coming to House boarding house suspect, coincidentally at the time That Friend suspect on Name Brother KAMAL will go home to his village in Takalar so that at the time that's the victim and his friend request follow to Takalar will but Brother KAMAL forbids with say Don't until wanted with your parents so that the victim answers nope if until the afternoon in Takalar, so that when That KAMAL's brother agreed that the victim would come along so that the victim and the suspect direct go with riding a motorbike or riding tandem, while Sister NUR ANISA AMIR was also taken by her boyfriend named Brother CHAIRUL IKSAN, then the victim left together with his friends, and arrived in Takalar around 3 pm.

#### **3.2.2 Public Prosecutor 's Charges**

As for the contents indictment to action bring go women who have not mature without the permission and knowledge of his parents which was read out at the trial by a single judge Makassar District Court which in essence as following That defendant Andi Firmansyah on the day Sunday May 18, 2014 at around 13.00 WITA or at least in the month May 2014 took place on the street criticism subdistrict my heart Makassar city, or at least in other places that are still including in area.

Competent Makassar District Court law examine and judge the case, the defendant has bring go a women , who have not adult, without wanted by his parents or his guardian but with his consent, with Meaning For ensure mastery to woman that, both inside or outside marriage, which was carried out by the defendant with ways as following That initially on the day Sunday May 18 2014 at around 11.30 WITA, the victim witness Amelia Ashari together with with her friend Nur Anisa Amir came to House boarding house the accused, and at the same time Friend the defendant named Kamal will

go home to his village in Takalar, so that when the victim's witness and her friend named Anisa asked for follow to Takalar, will but Kamal's man forbids with say don't until wanted with your parents, so that victim witness answers nope if until the afternoon in Takalar, so that when Kamal's man also agreed victim witness also to Takalar.

That after victim witnesses are allowed follow to Takalar, the victim's witness then leave to Takalar with carried by the defendant, while Friend The victim witness named Nur Anisa was given a ride by a man Chairul Iksan.

#### **Claims Public Prosecutor**

About Claims Public Prosecutor against case bring run women who have not adults carried out by Andi Firmansyah, then The Public Prosecutor conveyed the facts revealed in court in a way consecutive put forward in the form of information witnesses, evidence, letters and statements the accused. Based on information the one witness with others each other in accordance with information the defendant, then obtained proof instruction about has the occurrence action criminal in the form of act criminal bring run women who have not adult done the accused. Based on the facts revealed at the trial so come to the proof about elements act the crime charged to defendant namely Article 332 paragraph 1 of the Criminal Code. Based on provision applicable laws and regulations namely Article 182 paragraph 1 of the Criminal Procedure Code, especially Article 332 paragraph 1 ke-1e of the Criminal Code, and other applicable and related laws and regulations. with case this, then the Public Prosecutor at the Prosecutor's Office with Case Register Number PDM-59MKSEp042015.

#### **Verdict**

Based on the demands of the Public Prosecutor in matter This only use form indictment single and the facts revealed in court that is information defendant and statement witnesses who have faced with in front of trial. Considering the Articles of provision applicable laws and other related provisions with case This, especially Article 332 paragraph (1) 1 of the Criminal Code, Judges:

1. State The defendant Andi Firmansyah has proven in a way valid and convincing guilty do act criminal offense "Bringing go a women who have not mature without parents want or his guardian but with his consent with Meaning For ensure mastery to woman That good inside or outside marriage";
2. Dropping criminal to defendant Andi Firmansyah because of That in the form of coaching outside the Institution, inside matter this is in the Department of Social Affairs for follow Coaching, Education and Training Work for 6 (six) months;
3. Set that the detention period has been carried out by the defendant taken into account as a period of Coaching, Education and Training Work that has been done carried out by the defendant;
4. Determine so that defendant issued from prison inmates for follow Coaching, Education and Training Work in the Department of Social Affairs;
5. Charge cost case to defendant amounting to Rp. 2.000,- (Two thousand rupiah);

That's it decided in meeting deliberation The panel on Thursday, May 7, 2015, by Nathan Lambe, SH., MH as Chief Justice, the decision of which was read out in open court. For common on the day that too by the Panel of Judges with assisted by Yulianti Azis, S.H., M.H as Clerk Replacement as well as attended by Julianty S, SH as the defendant's Public Prosecutor. Analysis of Article 332 paragraph (1) ke-1e of the Criminal Code, which reads: "Because he escaped Woman punished with punishment prison forever and ever seven year, goods Who run the woman below age without his parents ' consent or his guardian, but with will Woman That alone, with Meaning For own Woman That Good with marriage and also without marriage." Based on analysis case the on there is instruction act crimes committed by the suspect man Andi Firmansyah, because fulfilled the elements formulated in Article 332 paragraph (1) 1 of the Criminal Code.

Understanding criminal is a what misery the State inflicts on people who have do a act criminal. Misery is a feeling of sadness or sadness. The party that can to impose misery That no everyone, but is authority from the State to can to impose or drop it to the person who does no criminal. Criminal That must be give benefits, so that give reventive aimed at to perpetrator act criminal It means for perpetrator act criminal with dropped it criminal, he become Afraid For do Again act criminal acts in the future come.

On the other hand, the benefits criminal it can also be prevent public do act criminal, It means with sentenced criminal penalties for perpetrators who have do act criminal expected people who do not do act criminal law to become Afraid For do act criminal. Likewise, the matter his with the Islamic

Law in question with Tazir Law is Punishment on violations that are not set the punishment in the Koran and Hadith in its form as punishment light. Tazir Law intended for for someone who does criminal unsolved crime fulfil condition for sentenced to had or no fulfil condition pay money as law light for redeem his sin consequence from his actions. The Prophet said No may beaten 10 times on the bag except the punishment that has been determined by Allah SWT. So Tazir more punishment light all of them handed over to judge's considerations for example Because gambling, fighting, teasing, disturbing other people, and including cheating heavy scales and others.

In the jurisprudence criminal law, discussion concerning problem around violation sharia and rights basic humans, in particular fellow race muslim. Because, fiqh criminal That Alone is science that discusses understanding about law related terms with problem prohibited acts crimes and their punishments, which are taken from arguments detailed, or in other words the law criminal That is a series regulations that govern problem act crimes and their punishments.

Understanding criminal is a what misery the state inflicts on people who have do a act criminal. Criminal That must be give benefits, so that give preventive measures aimed at to perpetrator act criminal It means for perpetrator act criminal with dropped criminal, he become Afraid For do Again act criminal acts in the future come. On the other hand, the benefits criminal it can also be prevent public do act criminal, meaning with sentenced criminal penalties for perpetrators who have do act criminal expected people who do not do act criminal become Afraid For do act criminal. In jurisprudence Jinyah, the discussion concerning problems around violation sharia and rights basic humans, in particular fellow race muslim.

Because, fiqh Jinnah That Alone is science that discusses understanding about law related shara with problem prohibited acts the punishment and the punishment, which was taken from arguments detailed, or in other words the law criminal That is a series regulations that govern problem act criminal and its punishment. Fiqh jinyah This to study around related issues with violation sharia and rights basic human beings to create peace and tranquility in life socialize.

Miscellaneous incoming law to in discussion study jurisprudence Jinnah This very much many, namely all law act related crimes with violation sharia and rights basic man with put forward noble morals. In general, the laws the grouped into 3 types, namely law qiss and diyat, had law or hudd, and law tazr. Main meaning punishment is for maintain and create welfare human and guard they from things that are beneficial, because Islam is as mercy for all, for give instructions and lessons to human. Punishment That must have basic, good from the Quran, hadith, or institution legislature that has authority set punishment for case tazr, Besides that punishment That must nature personal.

#### 4. CONCLUSION

Based on the results of the research that has been conducted and the discussion as explained in previous chapter, in writing this proposal Several conclusions can be drawn based on the author's description above, the author can conclude: Application of material criminal law in decision number 99/Pid.Sus.Anak/2015/PN.MK is in accordance with the provisions regulated in the Law Code Criminal Article 332 paragraph (1) 1 of the Criminal Code, the judge in imposing a prison sentence against the accused has many considerations, starting from the prosecutor's demands Public Prosecutor, all elements of the public prosecutor's indictment have been fulfilled so that he was declared guilty, as well as aggravating and mitigating factors so that the defendant must be held responsible for his actions. Legal considerations by judges in imposing criminal sanctions in cases Decision Number: 99/ Pid. Sus. Anak/ 2015/ PN. MKS based on considerations Public Prosecutor and Judge, then the sanctions imposed are in the form of Guidance in outside the institution in this case the Department of Social Affairs to participate in coaching, Education, and Job Training for 6 (six) months Judge in The decision to issue this verdict was certainly not without reason, because the judge also also consider the age aspect, seeing the condition of the child who is still able to improve the future, the psychological condition of the child, do not disturb the community and have never had any dealings with the law Islamic Law's View on Criminal Punishment for Criminal Offenders. Carrying away a minor girl is a crime committed by a child it must provide benefits so that the perpetrator who is sentenced becomes Fear of committing another crime, and also to prevent it society commits a crime, where in Ta'zir Law the punishment for violations for which the punishment is not specified in the Qur'an and Hadith is in the form of a light punishment. for someone who

commits jinayah/crimes who do not meet the requirements to be punished, do not fulfill the requirement to pay diyat/fines as a matter of law light to atone for his sins.

### ACKNOWLEDGEMENTS

As for the suggestions that can be writer give in connection with writing thesis This is: The need for improvement coordination, professionalism, facilities as well as infrastructure in give protection law so that rights child can fulfilled. Enforcement return all over the principles that have been set up as protection law for child in conflict with law. To case act criminal bring run the woman who is the perpetrator is child, in do examination and investigation to child must treated with method family and remain consider background children's social life moment This in effort give protection to child. For society in general and especially parents in particular to pay attention socializing children they as well as control activity child design outside home, and notify knowledge A little the amount about danger interactions and the impacts they cause.

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