

JUDGES CONSIDERATIONS IN IMPOSING CRIMINAL PENALTIES ON PERPETRATORS OF CHILD ABUSE BY EDUCATORS

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ABSTRACT

The crime of molestation of children committed by educators is a form of moral crime that is aggravated by the power relationship between the perpetrator and the victim. This article aims to analyze the judge's considerations in imposing criminal penalties on perpetrators of child molestation by educators in Decision Number 401/Pid.Sus/2025/PN Gns and assess its conformity with the provisions of criminal law and the principles of child protection in Indonesia. This study uses normative legal research methods with a statute approach, a case approach, a philosophical approach, and a conceptual/theoretical approach. The results of the study show that the judge's consideration in the a quo decision is based on juridical considerations in the form of proving the elements of the criminal act as stipulated in Article 76E juncto Article 82 of the Child Protection Law and non-juridical considerations in the form of the defendant's position as an educator, the existence of a power relationship, and the psychological impact experienced by the victim. These considerations are in line with the Criminal Code, the Child Protection Law, the Sexual Violence Crime Law, and the principle

of the best interest of the child. However, there is room for strengthening in the form of the need for sentencing guidelines that explicitly place the abuse of power relations by educators as a measurable weighting factor, in order to ensure the consistency of court decisions throughout Indonesia.

Keywords: Judge's consideration, child abuse, educators, power relations, child protection.

A. Introduction

From this general constitutional premise, it can be deductively drawn that every form of crime that attacks the physical, psychological, and honor safety of children must be responded to by the state through strict criminal law instruments, including the crime of child molestation.¹ The relationship between teacher and student is basically hierarchical and contains power asymmetry which, if abused, can become a means of sexual exploitation of children.² This phenomenon is reflected in Decision Number 401/Pid.Sus/2025/PN Gns, where the Gunung Sugih District Court examined and prosecuted a teacher as well as a supervisor of extracurricular activities who was proven to have committed obscene acts against his students who were still 13 (thirteen) years old by taking advantage of the closeness, authority, and trust inherent in his profession.³ The pattern of deductive reasoning used in this article departs from the general constitutional and conventional premise regarding the state's obligation to protect children, then is derived from a special premise in the form of positive criminal norms, and finally tested for its applicability to concrete events in Decision Number 401/Pid.Sus/2025/PN Gns. Such a framework of thinking is in line with the character of normative legal research that places legal prescriptions (*das Sollen*) as the starting point for analysis

¹Article 28B paragraph (2) of the Constitution of the Republic of Indonesia in 1945.

²Lilik Mulyadi, *Judge's Decision in Criminal Procedure Law*, (Bandung: Citra Aditya Bakti, 2014), p. 112.

³Article 1 paragraph (3) of the Constitution of the Republic of Indonesia of 1945.

of legal facts (das Sein), so that the conclusions produced are evaluative as well as argumentative, not just descriptive.⁴

⁵ For educational institutions, the incident damaged public trust in schools as a safe space for children. For the judicial system, this event tests the judge's ability to formulate legal considerations (ratio decidendi) that are able to accommodate the complexity of the power relationship in a proportionate manner.⁶ The data can be illustrated through the following diagram: ⁷

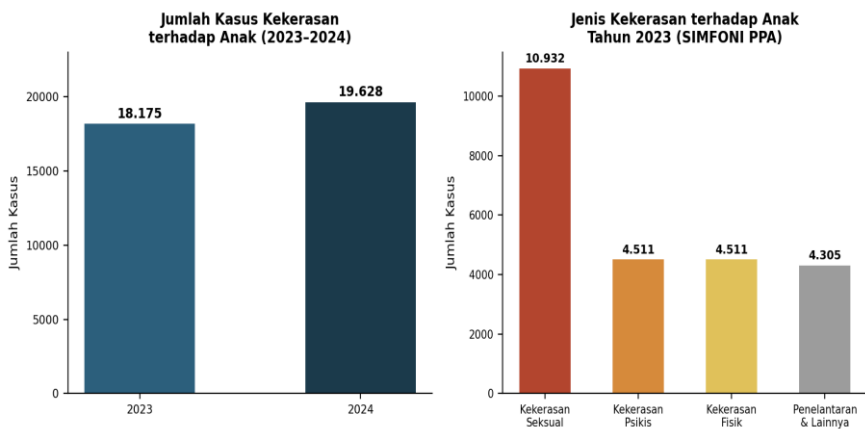


Diagram 1. Number and Types of Violence Against Children in Indonesia in 2023–2024 (Source: SIMFONI PPA, processed)

The data confirms that sexual violence, including molestation, is the most common form of violence experienced by Indonesian children, so its handling through criminal justice channels, including the quality of judges' consideration in

⁴Article 76E juncto Article 82 of Law Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection.

⁵Lilik Mulyadi, Op.Cit., p. 112.

⁶Article 418 paragraph (2) letter b of Law Number 1 of 2023 concerning the Criminal Code.

⁷Ministry of Women's Empowerment and Child Protection, "SIMFONI PPA v.3 Improve Women and Child Protection Services", <https://www.kemenpppa.go.id/siaran-pers/simfoni-ppa-v3-tingkatkan-layanan-perindungan-perempuan-dan-anak>, accessed July 28, 2026.

imposing crimes, is crucial as the last line of child protection.⁸ However, in judicial practice, a number of problems were found. First, proving criminal acts of abuse often face obstacles because events usually occur without direct witnesses and in closed spaces, so judges are highly dependent on the testimony of victims who are psychologically vulnerable to inconsistencies due to trauma. Second, the power relationship between teachers and students creates structural barriers for victims to report, because of fear, reluctance, and dependence on the perpetrator. Third, there are no sentencing guidelines that specifically regulate the weight of criminal charges for perpetrators who work as educators, so there is a potential disparity in verdicts between courts for factually similar cases. Fourth, non-judicial considerations regarding the psychological impact of the victim have not always been described in a structured manner in the decision, even though this aspect is a tangible manifestation of the principle of the best interests of the child.⁹

This condition has the potential to cause inter-victim injustice, which is a situation in which victims with similar power relations characteristics receive different legal protection simply because of the difference in the emphasis of the judge's arguments in the decision of each case. Based on these problems, this study departs from the hypothesis that the judge's consideration in Decision Number 401/Pid.Sus/2025/PN Gns has basically adequately accommodated judicial and non-judicial considerations, but still requires reinforcement through a more explicit elaboration of the element of abuse of power relations as an independent ballast variable. As a turning point or solution offer, this article proposes the strengthening of the theoretical framework of power relations in the judge's ratio decidendi and the formulation of sentencing guidelines based on

⁸Katadata/Databoks, "There are 20 Thousand Victims of Violence Against Children in 2023, This Is the Type", <https://databoks.katadata.co.id/demografi/statistik/ea3d5d57b0f2d5c/ada-20-ribu-korban-kekerasan-terhadap-anak-pada-2023-ini-jenisnya>, accessed July 28, 2026.

⁹Barda Nawawi Arief, *Bunga Rampai Politik Kriminalana Legal*, (Jakarta: Kencana, 2014), p. 47.

relational aggravating factors as a complement to the conventional sentencing framework which has so far relied solely on the severity of physical consequences. Based on the above background description, the problems in this study are formulated as follows: how do judges consider imposing criminal penalties on perpetrators of child molestation by educators in Decision Number 401/Pid.Sus/2025/PN Gns? and whether the judge's consideration in the decision was in accordance with the provisions of criminal law and the principles of child protection in Indonesia?

B. Research Methods

As a doctrinal research, this study aims to find the appropriate legal prescription (*das Sollen*) for the phenomenon of child molestation by educators, not just describing legal facts (*das Sein*).¹⁰ Four approaches were used cumulatively in this study. First, the statute approach is used to examine the relationship between norms in the Criminal Code, the Child Protection Law, the Sexual Violence Crime Law, and the Judicial Power Law. Second, the case approach is used to examine the ratio decidendi of Decision Number 401/Pid.Sus/2025/PN Gns as the main unit of analysis to understand the application of norms in a concrete context. Third, the philosophical approach¹¹. Fourth, a conceptual/theoretical approach is used to analyze the concept of power relations, ratio decidendi, and the principle of the best interest of the child as stipulated in the Convention on the Rights of the Child. The legal materials used consist of primary legal materials in the form of laws and regulations and court decisions; secondary legal materials in the form of books, scientific journals, and the results of previous research; as well as tertiary legal materials in the form of legal dictionaries and official government statistical data. The technique of collecting

¹⁰Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana, 2016), p. 60. See also Soerjono Soekanto, *Introduction to Legal Research*, (Jakarta: UI Press, 2014), p. 51.

¹¹Sudikno Mertokusumo, *Legal Discovery: An Introduction*, (Yogyakarta: Liberty, 2010), p. 82.

legal materials is carried out through library research, while the analysis is carried out qualitatively with a prescriptive-argumentative method to formulate conclusions that are both evaluative and solutionive.¹²

C. Results and discussion

1. Judge's Considerations in Imposing Criminal Penalties on Perpetrators of Child Abuse by Educators in Decision Number 401/Pid.Sus/2025/PN Gns

- a. Judge's Juridical Considerations: The victim's statement as a victim witness is considered by the judge to be in accordance with the testimony of other witnesses and supported by written evidence in the form of psychological examination results, so that the principle of at least two valid pieces of evidence (*unus testis nullus testis*) is fulfilled.
- b. Judges' Non-Juridical Considerations: Three non-juridical elements appear to be dominant in a *quo verdict*.¹³ In terms of mitigating circumstances, the judge considered the defendant's attitude during the trial, including confessions for some acts and had never been convicted before.¹⁴ However, the weight of the mitigating circumstances proportionately does not reduce the significance of the aggravating circumstances, considering the position of the defendant as an authoritative figure in educational relations.¹⁵
- c. Ratio Decidendi: Synthesis of Juridical and Non-Juridical Considerations:¹⁶ Thus, it can be stated that the judge's consideration in Decision Number 401/Pid.Sus/2025/PN Gns has answered the formulation of the first problem of this study, namely that the sentencing is based on a combination of formal evidence that meets the requirements of criminal

¹²Gunung Sugih District Court Decision Number 401/Pid.Sus/2025/PN Gns.

¹³Hasbullah, *Basics of Education*, (Jakarta: Raja Grafindo Persada, 2012), p. 23.

¹⁴Ninik Aprilianda, "Protection of Child Victims of Sexual Violence through a Restorative Justice Approach", *Legal Arena*, Vol. 10 No. 2 (2017), p. 315.

¹⁵Maidin Gultom, *Legal Protection of Children and Women*, (Bandung: Refika Aditama, 2018), p. 97.

¹⁶Andi Hamzah, *Speciale Delicten*, (Jakarta: Sinar Grafika, 2017), p. 45.

procedure law and a substantive assessment of the power relationship and the impact of the victim that reflects the substantive justice approach.¹⁷

- d. Recapitulation of Judges' Considerations: In order to facilitate the reading of the entire judge's considerations as described in sections b and c, the following is presented a comparative recapitulation between juridical and non-juridical considerations in Decision Number 401/Pid.Sus/2025/PN Gns:

Aspects	Juridical Considerations	Non-Juridical Considerations
Assessment Resources	JPU's indictment, witness/expert statements, letters, instructions, defendant's statements (Article 184 of the Criminal Code)	Background, motives, social conditions, impact of victims
Normative Basis	Article 76E jo. Article 82 of the Child Protection Law	The value of justice that lives in society (Article 5 paragraph (1) of Law No. 48/2009)
Focus of Analysis	The fulfillment of the elements of dedelicacy formally	The position of the defendant as an educator and power relations
Function in the Decision	Determining the proven/not of a criminal act	Determining the severity of the crime (weight of burden)
Nature of Proof	Formal-normative, measurable	Contextual-sociological, qualitative

Table 1. Recapitulation of Juridical and Non-Juridical Considerations of Judges in Decision Number 401/Pid.Sus/2025/PN Gns

The recapitulation emphasizes that the two categories of considerations have complementary functions: juridical considerations function as an absolute condition (*conditio sine qua non*) for the proof of criminal acts, while non-juridical considerations function as an instrument of criminal

¹⁷Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power.

individualization that adjusts the severity of sanctions to the concrete characteristics of the perpetrator and victim.¹⁸ This consistency strengthens the argument that power relations have been widely accepted in judicial practice as a relevant variable, even though as described in the section above there has been no uniformity in measuring their weight quantitatively.¹⁹ The use of psychological examinations as a reinforcement of these clues reflects the sensitivity of judges to the typical characteristics of proving criminal acts of molestation which are usually lacking direct witnesses, as well as being a methodological bridge between juridical-formal evidence and the assessment of non-judicial impact on the victim.²⁰

This principle requires that every person who is suspected, arrested, detained, prosecuted, and/or brought before the court must be presumed innocent before a court decision declaring his or her guilt and having obtained permanent legal force. In the *a quo* verdict, the judge still provides space for the defendant to submit evidence and defense as a form of fulfillment of the defendant's right to a fair trial, before finally issuing a verdict based on the conviction formed from the entire evidence.²¹ The balance between the fulfillment of the defendant's right to a fair judicial process and the state's obligation to protect children as victims is a challenge in a case of morality against children, considering that the psychological vulnerability of the victim can affect the consistency of the information provided, while on the other hand the defendant is entitled to valid and convincing evidence before being found guilty. The *a quo* verdict shows that the judge seeks to maintain this balance through a careful assessment of the suitability of the victim's testimony with other supporting evidence, so that the judge's conviction is not built solely from one source of evidence, but from the convergence of various corroborating evidence.

¹⁸Syamsudin Pasamai and Reky Rifiano Rahmatullah, *Op.Cit.*, p. 24.

¹⁹Article 188 paragraph (1) and paragraph (2) of the Criminal Procedure Code.

²⁰Law Number 12 of 2022 concerning the Crime of Sexual Violence.

²¹Article 8 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power.

2. The Suitability of the Judge's Considerations in the Decision with the Provisions of Criminal Law and the Principles of Child Protection in Indonesia

Furthermore, the application of the principle of legality in a quo verdict also meets the requirements of *lex certa*, namely the norms used as the basis of the indictment are formulated clearly and not multi-interpreted, so that the defendant can understand exactly the prohibited acts and their criminal threats.²² The clarity of these norms is important to prevent arbitrary application of the law (*rule by law*) and at the same time ensure legal certainty for all parties involved in the judicial process, including the defendant himself.²³ When the ethical obligation is violated through the criminal act of obscenity, the violation that occurs is twofold, namely a violation of criminal law norms as well as a violation of the professional code of ethics, so as to arguably strengthen the legitimacy of imposing heavier penalties on educators than perpetrators of obscenity in general.²⁴ From the aspect of legal certainty, a quo verdict shows a judicial process that is in accordance with the criminal procedure law, starting from investigation, prosecution, to examination at trial, and is based on evidence and legally applicable laws and regulations. From the aspect of justice, the verdict seeks to present legal recognition of the victim's suffering through criminal imposition of the perpetrator, while emphasizing that the educator profession does not provide immunity from criminal liability.

From the aspect of utility, the decision has a general preventive function (general deterrence) for other educators and an educational function for the community that educational institutions must be a safe space for children.²⁵ Thus,

²²Article 1 paragraph (1) of the Criminal Code.

²³R. Soesilo, *The Criminal Code (KUHP) and its Complete Commentaries Article by Article*, (Bogor: Politeia, 2013), p. 287.

²⁴Barda Nawawi Arief, *Bunga Potpourri Política Criminal Law*, (Jakarta: Kencana, 2014), p. 45.

²⁵Syamsuddin Pasamai and Reky Rifiano Rahmatullah, "Judges' Considerations in Imposing Judgments on Cases of Trafficking in Persons (Study of Decision Number:

substantively the a quo decision has reflected the implementation of the best interest of the child principle, although the editorial of the decision does not explicitly mention this principle as a direct normative reference.²⁶ The a quo verdict shows strength in this case because the judge explicitly identifies the defendant's position as a teacher and the accompanying power relations as part of a non-juridical consideration.²⁷ The crimes imposed in a quo verdict can be analyzed as a representation of a combined theory, namely providing proportionate retribution for the defendant's mistakes (retributive justice) while providing a deterrent and protection effect on the community and other students in the future (preventive justice).²⁸ Thus, a quo verdicts, even if they have fulfilled the purpose of punishment at the level of a concrete case, need to be seen as an element in the broader child protection ecosystem.

A quo decisions cannot be separated from their implications for child protection policies in the wider education unit. The imposition of criminal penalties against educators who abuse power relations provides a normative signal that the state does not tolerate sexual exploitation in educational relations, while encouraging educational units to strengthen internal prevention mechanisms, such as policies prohibiting closed interactions between educators and students without supervision, training on the recognition of signs of sexual violence for education personnel, and providing safe and confidential complaint channels for education workers. students. The alignment between criminal law instruments and education sectoral policies ultimately determines the long-term effectiveness of protecting children from sexual violence by educators. In a quo decision, an indication of the fulfillment of these rights can be

110/Pid.Sus/2025/PN.Gns)", JLEB: Journal of Law Education and Business, Vol. 4 No. 1 (2026), p. 21.

²⁶Maidin Gultom, *Legal Protection of Children in the Juvenile Criminal Justice System in Indonesia*, (Bandung: Refika Aditama, 2014), p. 55.

²⁷Moeljatno, *Principles of Criminal Law*, (Jakarta: Rineka Cipta, 2008), p. 54.

²⁸Fuad, Muhammad, Dewiana Novitasari, and Destiana Kumala, *Strategic Management*, (PT. Sonpedia Publishing Indonesia, 2026), p. 74.

seen from the consideration of the victim's information in its entirety, the protection of the victim's identity during the trial process, and the use of the psychological impact of the victim as part of the criminal consideration.

However, a criminal verdict, no matter how strict the sanctions imposed, does not automatically restore the immaterial losses suffered by the victim. Therefore, the conformity of the decision with the principle of child protection should ideally also be measured by the existence of advanced recovery mechanisms, such as restitution, psychological rehabilitation, and social reintegration of the victim into the educational environment, the implementation of which is outside the direct scope of the criminal decision but remains part of the overall child protection system that is comprehensive and sustainable.²⁹ The phrase "other party responsible for the child" in the provision explicitly includes educators, so that the a quo decision that places the defendant's position as a teacher as a weighting factor is in line with the spirit of the international legal instrument in question.

In addition, the Lanzarote Convention (Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse), although not an instrument that binds Indonesia, is often used as a comparative reference by international criminal law academics because it specifically regulates the state's obligation to aggravate crimes for perpetrators of sexual violence against children who have a relationship of trust, authority, or influence on the victim. The alignment of the direction of the enforcement policy in Indonesian criminal law with international best practices strengthens the argument that the power relationship-based approach is not only a domestic need, but also in line with the global trend of criminal law reform of morality against children. This offer is the turning point proposed by this study to answer

²⁹Convention on the Rights of the Child, Article 19, as ratified through Presidential Decree of the Republic of Indonesia Number 36 of 1990.

the problem of decision disparity as described in the background section.

D. Conclusion

Based on the results of the research and discussion, two main things can be concluded. First, the judge's consideration in imposing a criminal sentence on the perpetrator of child molestation by educators in Decision Number 401/Pid.Sus/2025/PN Gns was built through a synthesis of juridical considerations, namely the proof of the elements of the criminal act based on evidence as stipulated in Article 184 of the Criminal Code and the application of Article 76E juncto Article 82 of the Child Protection Law, with non-juridical considerations, namely the position of the defendant as an educator, There is a power relationship between the perpetrator and the victim, as well as the psychological impact experienced by the victim as a criminal aggravating circumstance. Second, the judge's consideration in the a quo decision is in accordance with the provisions of Indonesian criminal law, both the Criminal Code, the Child Protection Law, and the spirit of the Sexual Violence Crime Law and has reflected the value of legal certainty, justice, and usefulness as well as the principle of the best interest of the child.

Nevertheless, this study recommends normative strengthening through the formulation of penal guidelines that explicitly categorize the abuse of power relations by educators as measurable weighting factors, in order to ensure the consistency of court decisions throughout Indonesia and strengthen the function of criminal law as a protective and preventive child protection instrument. In addition, strengthening supervision in education units and a complaint mechanism that is safe for students needs to be mainstreamed as a complement to criminal law enforcement in order to create a truly safe educational environment for children. Finally, this study emphasizes that the quality of a criminal verdict is not only measured by the accuracy of the application of the article, but also by the sensitivity of the judge in exploring the values of substantive justice that live in

society, especially in cases involving children as victims and educators as perpetrators. The synergy between strict criminal law enforcement, protective education policies, and strengthening the theoretical framework of power relations in the judge's ratio decidendi are three pillars that must be built simultaneously in order to realize a criminal justice system that is responsive to the best interests of children.

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