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### THE POSITION OF EXHIBITIONIST PERPETRATOR IN CRIMINAL LAW

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#### **ABSTRACT:**

Exhibitionism is the act of exposing deliberately to the public the body parts of a person which are normally covered for example; breast, genitals, or buttocks. However, so far it still becomes a controversial whether this action is a criminal act that has consequences or not because of its existence which is considered as a disease. This study aims to find out whether the act of exhibitionism is a criminal act and how the perpetrator is responsible to his action. The type of the study used was legal (normative) research. Exhibitionist acts in Indonesian laws and regulations could be regulated in the Article 281 and the Article 289 to the Article 296 of the Criminal Code, the Article 81 and the Article 82 of Law Number 35 of 2014 concerning Child Protection, Article 10 and Article 36 of Law Number 44 of 2008 concerning Pornography.

**Keywords:** Criminal Law, Exhibitionist, Sexuality Deviation.

#### **INTRODUCTION**

Along with the time that is so fast, it makes social life and culture increasingly develops (Luo et al., 2015). This affects the mindset of a person and will affect the behavior in society. The behavior in society is assessed from the applicable norm, the value of norm that is very inherent in the society, one of the examples is the norm of decency (S M Berliana et al., 2019).

The values of decency normare generally related to sexuality. Sexuality is about how a person experiences, appreciates and expresses himself as a sexual being. According to Palm, Essén, & Johnsdotter(2019) the important points in responding sexuality are desire, passion, orgasm, and resolution. This also become the initial concept of desire/ sexuality, such as in other Asian countries according to Basuki et al., (2002) Indonesian also has a broad sexual sector.

Sexuality if it is seen in a good way is usually related with positive activity for continuing generation. Continuing generation in Indonesia itself is usually through a legal marriage. In the study of Berliana, Utami, Efendi, & Kurniati (2018) the Indonesian Government determines the minimum legal age of men and women for marrying respectively of 19 and 16 years old, provided that parental consent is granted. In fact, not only the positive impacts that can occur from the influence of sexuality, there must be negative impacts that can occur due to sexual deviation/ wrong.

Sexual deviationisa sexual violation that violates the norms of decency. According to Allmark & Wahyudi, (2019) there are many violation of norms relating to sexuality such as the presence of LGBT community, woman and woman have an intercourse, and many others. One of the most common forms of sexual deviation in Indonesia is sexual harassment. There are various types of sexual harassment containing in the Law, one of which is sexual harassment by the definition of molestation given by R. Sugandhi, (1998) is any act that violates decency or is a heinous act related to the lust. The types of molestation, KartiniKartonoin her book mentions several types of terms about molestation, namely:

1. *Exhibitionism Sexual* : deliberately showing off genitals;
2. *Voyeurism* : peeping act;
3. *Fondling* : stroking/ touching the genitals;
4. *Fellatio* : make mouth contact.

One of the focuses of this study is the molestation of the exhibitionism sexual type. Exhibitionism sexual or exhibitionism is a term of molestationin which the perpetrator deliberately shows off their genitals to the children (Kartini Kartono, 2009).

Molestationofthis exhibitionism type is not something new in Indonesia. One of quite controversial exhibitionism casesis in the mid-December of 2011 involved a 37-year-old man,Darobi, who showed his genitals to a young child and a housewife. The Darobi's case was initially sentenced to three years ofimprisonmentbecause of committing molest acts to the minors and violating the Article 290 of the Criminal Code. However, at the next trial the prosecutor submitted cassation. The decision of the Supreme Court Number 865/K/Pid.Sus/2013 Wicaksono, (2015)decides that the defendant Darobi experienced a sexual deviation disorder of the exhibitionism type in accordance with the visum/ health statement et repertum Number

441.6//36/V/2012 on May 10, 2012. Thus, according to the Assembly's consideration, the cassation of the act that committed cannot be controlled, and the juridical consequences of the defendant must be released from all lawsuits. The study aims to obtain the clarity of the position towards the criminal law for the exhibition perpetrator which is considered a disease of sexual deviation that cannot be tangled up any punishment.

## RESEARCH METHODS

The type of the study used was legal research (normative), which studied about the legal condition intrinsically, namely the law as a value system and the law as a social norm (Lawson & Manning, 2002). The approaches which used was the statutory approach, conceptual approach, the source of material: the Law Number 1 of 1946, the Law Number 73 of 1958 concerning Criminal Law Regulation for the Entire Territory of the Republic of Indonesia and Amending the Criminal Law, the Law Number 23 of 2002 concerning Children Protection, the Law Number 44 of 2008 concerning Pornography, the Law Number 35 of 2014 concerning the Children Justice System.

## RESULT AND DISCUSSIONS

### *Exhibitionism*

The American Psychiatric Association (APA) classified this condition in a larger group called paraphilic disorder. All people who have exhibitionistic disorder had a pattern of sexual behavior called exhibitionism, but not all the exhibitionists were qualified to be diagnosed with exhibitionistic disorder (First, 2014). Specific criteria for diagnosing that disease was contained in the fifth edition of the APA reference guide, namely DSM V. The criteria for exhibitionistic disorder in DSM V were:

1. Repeated, intense, and occurs for 6 months, fantasies, urge, behavior that cause sexual arousal by showing off the genitals to other people who is not known and is not expected.
2. The related person is acting based on that urge, or the urge and fantasy cause that person suffers a lot or experiences interpersonal problems.

### *Emergence Factor of Abnormality inside Humans*

The growth of abnormalities in a person occurred due to several factors Kartawiguna, (2001), namely:

1. Heredity Factor

It included the event of idiopathic, psychosis, tuberculosis, neurosis, idiocy, syphilis psychosis (by syphilis disease).

2. Factor before the Baby was Born

It was due to the lack of nutrition, infection and injury, and poisoning when the baby was in the womb. The fetus was poisoned, or has an infection (Wicaksana, 2019). These events generally caused the womb to fall.

When mother was being pregnant, she suffered from illness, such as cholera, typhus, chronic tropical malaria, mumps, and others, thus there was a bad influence on the fetus. The baby who was born may suffer from toxemia,

namely a poisoned event in the blood, thus abnormality in the nervous system was occurred.

### 3. Factor when the Baby was Born

- a) The difficult birth with the assistance of tangverlossing. It was about 5% of the total babies who born with this method experienced mental retardation. There was also the baby who experienced mental defect and mild neurosa.
- b) Asphyxia, which was born without breathing. The baby seems to be suffocated. This was caused by the presence of lender in the baby's breathing apparatus, or there was fluid in the lungs. Asphyxia could also be caused by using too many tranquilizer, which caused mental retardation in the baby.
- c) Prematurity or baby who was born before their time. It was about 5% of these babies experience a mental defect.

### 4. Factor after the Baby was Born

- a) Traumatic experience, i.e., injuries on the head or inside the head because the baby has fallen, been hit, or experienced an attack of sunlight.
- b) Seizures or stuip, occurred because the baby suffered from disease, and the body heat was very high. The baby also has an infection and has seizure, or suffered from epilepsy, especially if seizure often occurred.
- c) Infection of the brain or the brain membrane by cerebral meningitis, measles, diphtheria, inflammation of the ear containing pus, and others. In general, these babies experienced retardation or slowness in their intelligence function, beside that made them to be apathetic.
- d) Lack of nutrition, nutrients and vitamin.
- e) Psychological factor, namely abandoned by mother, father, or both parents. Or the baby was forced to be treated in an institution, in which they get very little attention and love.

## ***Exhibitionism within Indonesian Regulation***

### 1. Regulation of Exhibitionism in the Criminal Code

Regulation which regulated someone's action by showing off parts of his body that could hurt a person's honor and violated immoral or molest was contained in Article 281 of the Criminal Code Pangemanan, (2018) whose contents was as follows: Threatened with a maximum imprisonment of two years and eight months or a maximum fine of five hundred rupiahs :

- |        |                                                                                                                      |
|--------|----------------------------------------------------------------------------------------------------------------------|
| First  | anyone who intentionally and openly violatesthe decency;                                                             |
| Second | anyone who intentionally and in front of others who were there, in which their willcontradicts, violatesthe decency. |

This Article regulated the prohibition of a person from acting or showing off an action that violated immorality in public and contradicted with the will of the people who was there. The violated action of immorality which meant was in accordance with the applicable norms and standards in society.

### 2. Regulation in the Child Protection Law

Article 82 of Law Number 35 of 2014 (Wilani, 2015):

- 1) Every person who violates the provision as referred to in Article 76E shall be penalized to a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp.5,000,000,000.00 (five billion rupiah) ;

2) In the case of the criminal act as referred to in paragraph (1) is committed by parents, guardian, child sitter, educator, or educational staff, then the criminal is added 1/3 (one third) of the criminal threat as referred to in paragraph (1).

The two articles above contained material about the protection of children from molest treatment by others against minors. Article 81 paragraph (3) and Article 82 paragraph

(2), provided additional criminal sanctions to the perpetrators as much as 1/3 (one third) of criminal threats if it was done by parents, guardian, child sitter, educator or educational staff. The people mentioned above had an obligation to take care, educate, and look after minors. Thus, it was deservedly that the punishment given to them be increased by 1/3 (one third).

3. Regulations in Law Number 44 Year 2008 concerning Pornography

Besides the Criminal Code and the Child Protection Law, the regulation which regulated the action that showed off violation of honor and immorality or molest acts were the Pornography Law. More detail was regulated in Article 10 jo. Article 36 of the Pornography Law which stated:

The Article 10 of the Pornography Law

*Everyone is prohibited from showing off themselves or others in a performance or in public that describes nudity, sexual exploitation, sexual intercourse, or other pornographic content.*

The Article 36 of the Pornography Law

*Any person who shows off themselves or others in a performance or in public that describes nudity, sexual exploitation, sexual intercourse, or other pornographic content as referred to in Article 10 shall be penalized to a maximum imprisonment of 10 (ten) years and/ or a maximum fine Rp. 5,000,000,000.00 (five billion rupiah).*

In both articles there were the words "other pornography", what was meant by "other pornography" was sexual violence, masturbation in accordance with the explanation of the Pornography Law.

### ***Position Case***

Ahmad Darobi was charged with molest crime containing in Article 82 of Law Number 23 of 2002 concerning Child Protection, the Article 290 of the Second Criminal Code, and the Article 281 of the Second Criminal Code alternatively. This case reached the level of cassation because the Public Prosecutor was not satisfied with the decision of Kebumen District Court Number 86/Pid.Sus/2012/PN, thus resulting in one year imprisonment and the Semarang High Court decision Number 390/Pid.Sus/2012/PT.SMG which only reinforced the decision of Kebumen District Court unexpectedly, on the contrary the Supreme Court gave the decision to acquit Ahmad Darobi from all lawsuits (Wicaksono, 2015).

Darobi committed two criminal acts, which was showing off his genitals to others in public as many as three times towards the two minors and once

towards an adult and other criminal acts was stroking the genitals of a minors, therefore, he was sentenced to crime.

### *Case Analysis*

#### *1. Judge's Decision*

From the decision of the Supreme Court Number 865/K/Pid.Sus/2013 Ahmad Darobi was declared not to violate the provision of Article 290 of the Second Criminal Code and Article 281 of the Criminal Code (Tampi, 2015). Based on this decision, Ahmad Darobi's action was in accordance with the Article 82 of Law Number 23 of 2002 concerning Child Protection. However, Ahmad Darobi was acquitted of all lawsuits based on the Article 44 of the Criminal Code, which was because he suffered from the sexual disorder of exhibitionism according to Visum et Repertum Number 441.6//36/V/2012 on May 10, 2012.

#### *2. Formulation of Criminal Acts on the Article 82 of Law Number 23 of 2002 concerning Child Protection*

There were several differences in the regulation between the Article 82 of Law Number 23 of 2002 concerning Child Protection and the Article 82 of Law Number 35 of 2014 concerning Amendments to the Law Number 23 of 2002 concerning Child Protection. Specifically in Article 82, namely: The shortest imprisonment increased to 5 years from previously only 3 years of imprisonment, There was a penalty of imprisonment of 1/3 (one third) from the length of imprisonment imposed if the perpetrator was people who have certain roles towards victims. Basically, this article was the same, all party wanted to increase protection for children from the crime of molest acts.

#### *3. Formulation of Article 44 of the Criminal Code and the Basis that Eliminates Penalty and Prosecution*

*Discussion of Article 44 paragraph (1) of the Criminal Code which stated as follows:*

Anyone who commits an act which cannot be accounted for because his soul is defective in growth or is disrupted by the disease, it is not penalized.

After analyzing the article, it was clear that according to the provision of Article 44 paragraph (1) of the Criminal Code, a person could be referred to as "irresponsible" for his actions if the person fulfilled one of the conditions, namely whether he/ she had "imperfect growth of common sense", thus his soul was defective or he had a disease of his common sense ability.

The legal certainty was determined by the Judge, while Visum et Repertum Afandi, (2008) as written expert testimony remained the material for making legal decision. Generally, Visum et Repertum was made after a doctor examined the object (patient, suspect).

The legal enforcement officials found it difficult to translate medical terms if they have received a visum that the criminal perpetrator suffered from mental disorder, then, the perpetrator would be acquitted from criminal charges, even though we did not know the extent of the mental disorder. On the other hand, if the information through visum stated that the perpetrator did not suffer

from mental disorder, then the perpetrator of the criminal act was immediately sentenced to severe crimes.

As happened in the Darobi case, the Supreme Court Judge immediately gave the decision to be free only because there was a *Visum et Repertum* which stated that Darobi had a sexual disorder in the form of exhibitionism. In fact, if it was seen from the case of his position, Darobi committed two criminal acts, which was showing off his genitals to others in public as many as three times towards the two minors and once towards an adult and other criminal acts was stroking the genitals of a minors, therefore, he was sentenced to crime.

Furthermore, Darobi was penalized based on his behavior stroking the genitals of minors, but he was instead acquitted by the Supreme Court Judge for his sexual disorder in the form of exhibitionism. The author sees an oddity in this case. The author doubted the relationship between sexual disorder in the form of exhibitionism towards Darobi's behavior which stroking the genitals of minors. It was clear that the action of Darobi which stroking the genitals of minors was not the influence of his sexual disorders, because sexual disorders in the form of exhibitionism caused the sufferer to exhibit or show off their body parts or generally their genitals to others, in which this action has done by Darobito some people and was an act which was different from his action towards minors as mentioned above.

## CONCLUSION

Exhibitionism was a harmful act and was a criminal act. The Article 281 of the Criminal Code and molestation offenses could be applied in exhibitionism cases. The regulation regarding exhibitionist act in Indonesian laws and regulations was regulated in the Article 281 and the Article 289 to the Article 296 of the Criminal Code, the Article 81 and the Article 82 of Law Number 35 of 2014 concerning Child Protection, the Article 10 and the Article 36 of Law Number 44 of 2008 concerning Pornography.

In the case of Ahmad Darobi, he committed at least two crimes, namely showing off his genitals in public, and touching the genitals of a minor. Thus, the Judge penalized Ahmad Darobi with the Article 82 of the Child Protection Law, but the Supreme Court Judge acquitted him based on the Article 44 of the Criminal Code and *visum et repertum* that stated Darobi was suffering from sexual disorder of exhibitionism.

In reality, Darobi could be responsible criminally for his action in that case. Because he was at least aware of what he was doing, it was proven by doing it over and over again and understanding of his action, because Darobi was an adult. Even though, he may not be able to control his desires due to the sexual disorder that suffered.

Referring to the method of proof from the Forensic Psychiatrist, at least Ahmad Darobi could be responsible partially for his actions, namely the

criminal sentence which charged to him could be reduced by one third (one third).

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