



## Implications of the decision of the Indonesian constitutional court number 21/PUU/XIX/2021 on the the criminal complaint of articles of child molestation

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### Abstract

The regulation of the article on child sexual abuse in the Indonesian Criminal Code is still categorized as an absolute criminal's complaint (*klacht delict*), while in the Indonesian Child Protection Law, the article on child molestation is an ordinary offense (*gewone delict*). The existence of two different substance of the application of the offense between the Criminal Code and the Child Protection Act becomes a question of which offense law is used against child molestation? Although the principle of *lex specialis derogat legi generalis* applies, it does not mean that the Criminal Code is no longer valid, the Criminal Code can be used if in a legal event the elements of the sentence are fulfilled. This issue was submitted for judicial review of the law to the Indonesian Constitutional Court against Article 293 paragraph 2 of the Indonesian Criminal Code with case register number 21/PUU-XIX/2021.

The research was conducted using normative legal research methods. This research method will analyze the main issue of complaint offenses in this child molestation article according to the legal provisions in the applicable laws and regulations including those in court decisions (in this case the decision of the Indonesian Constitutional Court).

The result of this research is that there is a legal problem when the Indonesian Constitutional Court's decision Number 21/PUU-XIX/2021 states that Article 293 paragraph 2 of the Criminal Code is unconstitutional and basically states Article 293 paragraph 2 of the Criminal Code as a relative criminal's complaint. The implementation of this decision has caused legal confusion in the community, this is because when talking about child molestation offenses in Article 76E of the Indonesian Child Protection Law it is an ordinary offense meaning that reporting is not only limited to reports from victims, parents, guardians or their proxies but the reporting can be done by the community so that the legal process cannot be revoked. The difference in the offense between the decision of the Constitutional Court which states it is a relative complaint offense and the offense of child molestation in Article 76E of the Indonesian Child Protection Law is an ordinary offense so that it becomes a question which offense is applied and whether the ordinary offense in Article 76E of the Child Protection Law is no longer valid? Therefore, in responding to this problem, the decision originating from the issuance of the Indonesian Constitutional Court has had legal force which is considered correct and valid so that there is no other choice or rationale for not implementing the decision of the Constitutional Court. Based on the juridical rule that the decision of the Constitutional Court is final and binding, it applies to everyone.

**Keywords:** child abuse, judicial review, constitutional court decision

### Introduction

Molestation is a type of crime that is still ongoing. R. Soesilo put forward the notion of obscenity, as: "all types of actions that violate decency and decency or can also be a heinous act belonging to the environment of lust, such as touching the genitals, kissing, touching the breasts and so on." (Soesilo, 1989) <sup>[9]</sup> While the definition of obscenity according to the Criminal Code (KUHP) as stated in Article 289 of the Indonesian Criminal Code: "Anyone with violence or threats of violence forces a person to commit or allow obscene acts to be carried out, is threatened for committing an act that attacks the honor of morality, with a criminal sanction. Imprisonment for a maximum of nine years." (Moeljatno, 2021) <sup>[6]</sup>

Observing the definition of obscenity from R. Soesilo and Article 289 of the Indonesian Criminal Code, it can be said again that obscenity is a heinous act that violates decency and decency, while the element is an act intentionally and unlawfully (*wederrechtelijk formal*). Then in the development of child molestation cases throughout 2021 as a record issued by the Indonesian Child Protection Commission (KPAI) and there were 859 cases that were categorized as sexual violence. In another statement, the

KPAI during the months of January to July 2022 as many as 12 cases. ((KPAI), 2022).

Based on the data records above, cases of child molestation continue to occur. That obscenity is included as a grouping of sexual crimes which are also categorized as serious crimes or *graviora delicta* becomes the urgency of a serious legal problem. Then in practice, what is still a problem until now is the application of reporting child abuse.

In terms of the offense itself, there are two legal rules that provide an explanation. First, based on Article 293 paragraph 2 of the Indonesian Criminal Code, it reads as follows: Paragraph (1): "Whoever by using a gift or agreement will give money or goods, by wrongly using excessive influence that exists due to a relationship that actually exists or by deceit, deliberately persuades other people to a minor whose conduct is blameless, which he knows or should reasonably suspect of being immature, will commit an obscene act with him or allow such an act to be carried out on him, shall be punished by a maximum imprisonment of five years." Paragraph (2): "Prosecution shall only be carried out on the complaint of the person who was charged with the crime." (Moeljatno, 2021) <sup>[6]</sup>

Whereas in Article 293 Paragraph (2), which is an absolute criminal's complaint, it means that only the victim has the right to report the case he has experienced. Apart from the victim, no one has the right to report the case, even though someone or more who witnessed the incident want to report or the victim's family feels aggrieved nor has the right to report the case. Then based on Law Number 35 of 2014 Child Protection (Indonesian Child Protection Law) in Article 76E it reads as follows: "Everyone who is prohibited from committing violence or threats of violence, coercing, deceiving, telling stories, or persuading children to do or not do something. commit lewd acts." (Tim, 2016) In the formulation of the article, it is an ordinary offense, meaning that anyone can report cases related to children or even victims of sexual abuse reporting that he experienced, it is the police who are obliged to investigate the case process.

The existence of two different substance of the application of the offense between the Criminal Code and the Child Protection Act becomes a question of which offense law is used against child molestation? To answer the legal question, what is applied is a special rule which can be said as *lex specialis derogat legi generalis* in this case the Indonesian Child Protection Law, *lex specialis derogat legi generalis* is as most often stated in this case and in order which legal provisions are the most between the general and the specific. (Irfani, 2020)<sup>[1]</sup>

If there are rules that are specific in nature, in this case called *lex specialis*, then laws or rules that regulate general rules must be carried out or known as *lex generalis*. So, what is applied is an ordinary offense, not an absolute complaint offense as in Article 293 paragraph 2 of the Indonesian Criminal Code.

Then even though there is a special rule, *lex specialis derogat legi generalis*, it does not mean that the Indonesian Criminal Code is no longer valid, the Indonesian Criminal Code can be used if in a legal event the elements of the sentence are fulfilled. That the conclusion is that the Indonesian Criminal Code can still be used by law enforcers, it means that the application of the offense of child molestation in the Indonesian Criminal Code is still relevant to be applied, it will cause a concern about the application of the offense and does not provide legal certainty and legal justice. This issue was then submitted for a review of the law specifically addressed to the Indonesian Constitutional Court against Article 293 paragraph 2 of the Indonesian Criminal Code submitted by the constitutional applicant who is a student from the Faculty of Law of the Universitas Kristen Indonesia, named Leonardo Siahaan and Fransiscus Arian Sinaga.

According to the applicant, Article 293 paragraph (2) of the Indonesian Criminal Code contradicts Articles 28D and 28G of the 1945 Constitution of the Republic of Indonesia, which reads as follows:

Article 28D: "(1) Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law. (2) Everyone has the right to work and earn."

Article 28G: "(1) Protection from the threat of fear to do or not do something which is a human right. (2) Everyone has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country."

In the application for judicial review, several things are noted in the references in Article 2 of the Regulation of the

Indonesian Constitutional Court Number 2 of 2021 concerning Proceedings in Cases of Judicial Review.

Then it becomes the basis of the reason for submitting a judicial review, the applicant can use the argument of actual constitutional loss or potential constitutional loss. Based on this understanding, actual constitutional losses are losses that are currently being experienced while potential losses are losses.

The judicial review submitted by the two law school students was due to concerns about the application of the absolute criminal's complaint in Article 293 Paragraph (2) of the Indonesian Criminal Code against child molestation cases. As the form of understanding of an absolute complaint offense, it is an offense which is when a criminal event occurs only people who experience or are victims of a criminal event have the right to report.

### Research problem question

What are the Implications of the Decision of the Indonesian Constitutional Court Number 21/PUU-XIX/2021 on the Criminal Complaint of Articles of Child Molestation?

### 1. Research purposes

There are 2 (two) aims of the research, namely:

- a. Theoretically, research in the form of this journal can develop new theories taken from various sources and become additional things that need to be seen in reviewing a phenomenon in the implementation of the decision of the Indonesian Constitutional Court, especially in the application of child molestation offenses. In terms of the decision of the Indonesian Constitutional Court Number 21/PUU-XIX/2021.
- b. The practical purpose that can be used from this research is as input in looking at the context of controversial aspects regarding the implementation of the Indonesian Constitutional Court's decision so that it is useful for law enforcement.

### 2. Research methods

The research was conducted using normative legal research methods. This research method will analyse the main issue of criminal complaint in this child molestation article according to the legal provisions in the applicable laws and regulations including those in court decisions (in this case the decision of the Indonesian Constitutional Court). In order for this research to be more effective, the approach used is a descriptive approach, where the data or legal materials obtained are presented descriptively and also analysed qualitatively.

The sources of legal materials used are statutory regulations such as the 1945 Constitution of the Republic of Indonesia, the Indonesian Criminal Code, laws, and regulations relating to child protection and also the authority of the Indonesian Constitutional Court in conducting judicial review. While the secondary legal materials are in the form of explanations of the primary legal materials themselves, such as those found in books, journals, websites and also by not forgetting the need for tertiary legal materials that can be very helpful such as dictionaries, encyclopaedias, and supporting legal sources. other. With this legal research method, it is hoped that it will make it easier to answer a legal issue regarding the application or implications of the decision of the Indonesian Constitutional Court Number 21/PUU-XIX/2021

against the Criminal Complaint of Articles of Child Molestation.

## Result and discussion

### Implications of the Indonesian constitutional court decision number 21/PUU-xix/2021 on the criminal complaint of articles of child molestation

The authority of the Indonesian Constitutional Court in examining statutory regulations is based on the provisions of Article 24C of the 1945 Constitution of the Republic of Indonesia (Indonesian Constitution): "The Constitutional Court has the authority to judge at the first and last levels whose decisions are final to examine laws against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, to decide on the dissolution of political parties, and to decide disputes regarding the results of the general election."

According to Amrizal J. Prang, "The Indonesian Constitutional Court is designed to be both a guardian and an interpreter of the Constitution through its decisions. In carrying out its constitutional duties, the Constitutional Court describes in its vision the upholding of the constitution to realize the ideals of a state of law and democracy for the sake of a dignified national and state life. This vision becomes a guideline for the Constitutional Court in exercising its powers independently and responsibly in accordance with the constitutional mandate." (Prang, 2011)

The decision of the Indonesian Constitutional Court is considered as the first resort and the last resort in seeking constitutional justice. what is meant by the first attempt (the first resort) is the existence of potential losses referred to as potential constitutional losses of the applicant due to the enactment of an article, or paragraph in a law. For example, the application for Judicial Review Number 60/PUU-XIX/2021, the subject matter of the application is Article 16 Paragraph 1 letter d of Law Number 2 of 2002 concerning the Indonesian National Police which was submitted by Leonardo Siahaan and Fransiscus Arian Sinaga in their petition, the applicant considers: "The Petitioner as a citizen who always carries out activities every day both day and night, it is possible to be dismissed by police officers for identity checks or identification as mandated by Article 16 paragraph (1) letter d of the Police Law. During the examination, the Petitioners have the potential to experience things as described above."

In the implementation for Judicial Review Case Number 60/PUU-XIX/2021, the Judge of the Indonesian Constitutional Court gave a decision: "that the absence of limits on the authority of the Police as regulated in Article 16 paragraph (1) letter d of Law 2/2002 is not the cause of the Police officers taking actions that demeaning the dignity and honor of others. The problem that the Petitioners argue for is not a matter of the constitutionality of the norm, but a problem of the implementation of the norms of Article 16 paragraph (1) letter d of Law 2/2002. According to the Court, the issue of implementing norms related to the broadcast of Police activities in the mass media has clear boundaries as regulated in laws and regulations, professional codes of ethics, and other implementing regulations."

Meanwhile, what is meant as the last resort is the actual loss that is being experienced by constitutional justice seekers. Regarding the decision of the Indonesian Constitutional

Court, it is very different from the Court's decision in general, the Court's decision only applies to parties that are in dispute with the law, while the Indonesian Constitutional Court's decision does not only apply to the applicant and the petitioners who make a Judicial Review request to the Constitutional Court but also applies to the whole community (*erga omnes*). It can be understood that the decision of the Indonesian Constitutional Court is an interpretation of a law, which can act as a negative legislator or act as a positive legislator. What is meant as a negative legislator's decision of the Indonesian Constitutional Court is to cancel a norm, while a positive legislator is to formulate a new norm. The House of Representatives of the Republic of Indonesia in its opinion on page 84 of the Decision of the Indonesian Constitutional Court Number 48/PUU-IX/2011 "The authority to form laws (legislation functions) constitutionally is the authority of the DPR together with the Government. Thus, the formation of norms in the Act is not the authority of the Constitutional Court. If the Constitutional Court in its decision makes a new norm, then the Constitutional Court has exceeded the authority granted by Article 24C paragraph (1) of the 1945 Constitution." (Kurniawati, 2019)<sup>[2]</sup>

Then the Judges of the Indonesian Constitutional Court argued: "The character of procedural law in the Constitutional Court, especially in cases of judicial review of the 1945 Constitution is to defend constitutional rights and interests protected by the constitution, as a result of the enactment of a generally accepted law (*erga omnes*). Therefore, if the public interest so desires, the Constitutional Judges may not be fixated solely on the petition or *petitum* submitted. Even if what is granted from the Petitioner's petition, for example, only concerns one article, but if by stating that certain article is declared to have no binding legal force, and the article is a core article of the Law, then the other articles in the Law that are requested for review become impossible to enforce. treated again. Such a law cannot be defended and must be declared to have no binding legal force in its entirety."

The decision of the Indonesian Constitutional Court to act as a Positive Legislator is due to the Indonesian Constitutional Court's Decision Number 48/PUU-IX/2011 regarding the enforcement of Article 57 paragraph 2a letter c of Law No. 8 of 2011 does not have binding legal force and has violated or contradicted the Act. The Indonesian Constitution, the underlying matter is contained in page 94 of the Indonesian Constitutional Court's decision Number 48/PUU-IX/2011 the judges of the Constitutional Court considered: "The existence of Article 57 paragraph (2a) of Law 8/2011 resulted in the Court's obstruction of (i) examining the constitutionality of norm; (ii) filling the legal vacuum as a result of the Court's decision stating a norm is contrary to the Constitution and has no binding legal force. Meanwhile, the process of forming a law takes a long time, so it cannot immediately fill the legal vacuum; (iii) carry out the obligations of constitutional judges to explore, follow, and understand legal values and a sense of justice that live in society." (Setyawan, 2012)<sup>[8]</sup>

The decision of the Indonesian Constitutional Court is final and binding as stated in Article 24C of the 1945 Constitution and Article 29 of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power. However, every decision of the Indonesian Constitutional Court is not carried out properly and the decision of the

Indonesian Constitutional Court which states that a law is declared unconstitutional is still often re-enacted by the Legislature. Then the problem of law in action constitutional review naturally caused concern in the community. Then the opinion expressed by Hamda Zoelva argues that: "The reason for the formulation of the application of the clause in the constitution, the Constitutional Court was deliberately established to protect the purity of the constitution with a more in-depth and detailed legal interpretation. So that this interpretation can be used as a solution to the problem of certain authorities which are directly delegated by the constitution. Therefore, it is fitting that interpretation can be carried out only once, and the decision is binding, so that the decision issued is placed at the first and last level where an attempt to annul the constitutional decision cannot be made."

It becomes a legal issue when the Indonesian Constitutional Court's decision number 21/PUU-XIX/2021 states that Article 293 paragraph 2 of the Indonesian Criminal Code is unconstitutional regarding child molestation, which contains the article: "Prosecution is only carried out on complaints of people against whom the crime was committed." which later in its decision the Indonesian Constitutional Court argued that: "required in Article 293 paragraph (2) of the Indonesian Criminal Code often creates a dilemma, in which not every victim, including the victim's family, wants a report or complaint with the consideration that the disgrace will be exposed to the criminal incident that befell the victim. The Court is of the opinion that to overcome the limitations of minor victims, besides being able to be reported or complained by the child in question, reports or complaints regarding criminal events that occur can also be made by parents, guardians, or their proxies."

That it can be said that Article 293 paragraph (2) of the Indonesian Criminal Code is an absolute complaint offense so that it turns into a relative complaint offense into legal confusion in the midst of society, this is because when talking about child molestation offenses in Article 76E of the Indonesian Child Protection Law it is an ordinary offense meaning that the reporting is not only limited to reports from victims, parents, guardians or their proxies, but the reports can be made by the community so that the legal process cannot be revoked.

By definition, the crime of obscenity is the definition of a criminal act which has the intent of a category of prohibited acts or in more detail a series of acts that intentionally or omission is a crime, then the definition of sexual intercourse is expressed by R. Soesilo with the guidance of *Arrest Hoge Raad 1912*, contains: "a competition between the male and female genitalia which is carried out to obtain children, so the male genitalia must enter the female genitalia so that semen is released." (Soesilo, 1989) <sup>[9]</sup> Therefore, by definition, the crime of obscenity is as follows: "a series of acts of intentionally coercing, deceiving, committing a series of lies, or persuading that obscenity occurs and attacks the honor of decency." (Marpaung, 2004)

Juridical molestation is explained in Article 285 of the Indonesian Criminal Code which reads: "Whoever by force or threat of violence forces a woman to have sex with him outside of marriage, is threatened with rape with a maximum imprisonment of twelve years." While the juridical rules for child molestation are explained in Article 293 paragraph (1) of the Indonesian Criminal Code which reads: "Whoever by using a gift or agreement will give

money or goods, by wrongly using excessive influence that exists due to a relationship that actually exists or by deceit, deliberately persuades an immature person who has no defects in his conduct, which he knows or should reasonably suspect as immature, will commit an obscene act with him or allow such an act to be carried out on him, shall be punished by a maximum imprisonment of five years."

Then child molestation or child sexual abuse in Article 76E of the Indonesian Child Protection Law which reads: "Everyone is prohibited from committing violence or threats of violence, coercing, deceiving, committing a series of lies, or persuading children to commit or allow obscene acts to be carried out."

Article 293 of the Indonesian Criminal Code as an offense which has the intent of an element of *pro parte dolus pro parte* means an offense containing a partial element which is applied as a condition of "knowing" or "should be suspected", then if one of the elements is sufficient as a basis for imposing it criminal.

Article 293 of the Indonesian Criminal Code is an act of deliberately carrying out a motive by means of persuasion, giving promises and deceit so that the victim can follow the wishes of the perpetrator to commit molestation or allow the victim to be influenced so that the perpetrator is free to commit molestation and the victim in question should not be an adult or still a child.

Elements of a crime based on the description of the article can be suspected of the perpetrator committing an act of persuasion or deception. Then what is meant by persuasion or deception is a way for someone to deceive the victim and be able to obey the will of the perpetrator so that it can be said that it is not an act of coercion from the perpetrator to the victim. And the most important element in the provisions of Article 293 of the Indonesian Criminal Code is that there is a loss from the victim and the loss is only the victim who has the legal right to sue the perpetrator.

Article 293 paragraph 2 of the Indonesian Criminal Code is an absolute complaint offense which means that only victims who can report are experiencing legal problems and the proof is burdened to the victim. Absolute complaint offenses which are included in private offenses provide the intent of prosecuting the victim's judgment or that the legislator has its own purpose with the reason for including the absolute complaint offense as providing an opportunity for the victim whether a legal event he is experiencing is still subject to a prosecution or resolved by restorative justice.

The limitations of the victim's ability to report related legal cases that she experienced became a fairly serious obstacle, especially the victims were minors, seeing the controversial application of the absolute complaint offense being an obstacle in prosecuting the perpetrators of the crime of obscenity while the offenses regarding child abuse contained in Article 293 paragraph (2) of the Indonesian Criminal Code is different from the application of the offense of child molestation listed in Article 76E of the Indonesian Child Protection Law which is an ordinary offense.

Ordinary offenses as a criminal act that is said to disturb the community so that the state is the party representing the community demands the perpetrators so that the philosophy of applying ordinary offenses Article 76E of the Indonesian Child Protection Law, obscenity as a fairly serious crime or category *graviora delicta* and disturbing the interests of the

community and violating values moral. So, being categorized as a *graviora delicta* or a serious crime is very relevant to the application of an ordinary offense.

If it is observed that other laws other than the Indonesian Child Protection Law which apply ordinary offenses, the same thing is applied in Article 6 letter C of Law Number 12 of 2022 concerning the Crime of Sexual Violence, as for the following: “Everyone who abuses his position, authority, trust, or bearing arising from deception or a relationship of circumstances or taking advantage of a person's vulnerability, inequality or dependence, forcing or by misleading that person to commit or allow sexual intercourse or obscene acts to be carried out with him or with another person, shall be punished with imprisonment of at most 12 (twelve) years and/or a maximum fine of Rp.300,000,000.00 (three hundred million rupiah).”

The occurrence of differences in the offense of child molestation that is applied between Article 293 paragraph 2 of the Indonesian Criminal Code, Article 76E of the Indonesian Child Protection Law and Article 6 letter C of Law Number 12 of 2022 concerning the Crime of Sexual Violence, theoretically applies *lex specialis derogat legi generalis*, namely: “contained in the general rules are still valid, the exception is that the general rules do not apply if there are special rules; and The provisions of *lex specialis* must be equal to the rules contained in the *lex generalis*. The provisions of the *lex specialis* in general must be in the same corridor as the *lex generalis*. Such as the Indonesian Commercial Code and the Indonesian Civil Code are included in the civil scope.”

So even though by definition *lex specialis derogat legi generalis*, namely special rules that set aside general rules, the regulation of punishment for perpetrators of committing obscene acts against victims who are not yet adults or children as regulated in the Indonesian Criminal Code and similar or related laws and regulations are still used by law enforcers. Determined depending on the legal event and the fulfilment of the elements of the sentence.

There is a difference in the offense between the decision of the Indonesian Constitutional Court Number 21/PUU-XIX/2021 which is a relative complaint offense and the offense of child molestation in Article 76E of the Indonesian Child Protection Law, which is an ordinary offense so that it becomes a question which offense is applied and what is the usual offense in Article 76E The Child Protection Act is no longer valid? Therefore, in responding to this problem, the decision originating from the issuance of the Indonesian Constitutional Court has had legal force which is considered correct and valid so that there is no other choice or rationale for not implementing the decision of the Indonesian Constitutional Court. Based on the juridical rule that the decision of the Indonesian Constitutional Court is final and binding, it applies to everyone.

Mahfud MD emphasized his statement that: “The Constitutional Court does not carry out its main duties and functions so that it becomes political. There are 10 things that are emphasized, namely: The Constitutional Court in issuing a decision is prohibited from containing regulations, including the method, content, and institutions that regulate the contents of the Law, because this is the scope of the legislative body so that the Indonesian Constitutional Court can only issue a statement that the Law The law being tested is contradictory or contradictory or does not conflict with the contents of the Act with the constitution; The Indonesian

Constitutional Court is prohibited from making a decision other than that requested by the applicant/*ultra petita*, because it can interfere with legislative tasks; the decision of the Indonesian Constitutional Court which annuls the entry into force of a law is prohibited from basing it on other laws. Because the main task of the Constitutional Court is to examine the constitutionality of the law, with the touchstone being the Indonesian Constitution.” (Maulidi, 2019) <sup>[4]</sup>

The Indonesian Constitutional Court through: “its decision is prohibited from interfering with the duties of the legislative body; The Indonesian Constitutional Court in making a decision is prohibited from having reasons based on a theory that is not adopted by the constitution. Including in the case of comparative studies with other countries which are completely contrary to the philosophical basis and sociological facts between people; The Indonesian Constitutional Court is prohibited from making a decision on a case that is in accordance with its own interests, with regard to the principle of *nemo iudex in causa*; The Indonesian Constitutional Court is prohibited from expressing an opinion to the public that is in accordance with the case being examined in order to maintain neutrality when making a decision.” (Mahfud, 2009) <sup>[5]</sup>

The Indonesian Constitutional Court is prohibited from seeking cases, or inviting anyone to submit a case application to the Constitutional Court; judges of the Constitutional Court are prohibited from offering themselves to mediate in political disputes between state institutions or between political institutions; The Constitutional Court is prohibited from giving an opinion to the public in commenting on the goodness or badness of the Indonesian Constitution or commenting that the Constitution should be amended or maintained. (Maulidi, 2019) <sup>[4]</sup>.

A problem in the implementation of the Indonesian Constitutional Court Decisions among law enforcement officers or in its implementation is that problems often occur as stated by Wahiduddin (Constitutional Court Judge) who issued a research result related to the implementation of the Indonesian Constitutional Court's decision. In 2018, the results of the study stated that a total of 59 judicial review decisions or a total of 54.12% had been fully complied with by state institutions; a total of 6 decisions (5.5%) were partially complied with; a total of 24 decisions (22.01%) were not implemented; and a total of 20 decisions (18.34%) with unknown status. "It is not yet known in this case, the compliance has not yet been identified. (MKRI, 2021)

Non-compliance in carrying out the Indonesian Constitutional Court's Decision has boomeranged against the justice of the people's constitution, the article is that the people who are harmed by one of the laws relating to the phrase Article, paragraph or in terms of the formal formation of the law and the results of the latest research reported by the Indonesian Constitutional Court as many as 1549 cases Examination of the Act is carried out.

**Table 1**

No	Case	Amount	Percentage
1	Judicial Review	1549	46%
2	Disputes on authority between state institutions	29	1%
3	Disputes over election results	679	20%
4	Disputes over the results of regional head elections	1136	34%
	TOTAL	3390	100%

Then as many as 104 cases of judicial review were granted, 184 cases of judicial review were partially granted, 570 cases of judicial review were rejected, 495 cases of judicial review were not accepted, 24 cases of judicial review were rejected, and 14 cases were judicial review. The law is declared incompetent.

The results of the decisions of the Indonesian Constitutional Court are often neglected. For example, an article, paragraph, or law that has been declared unconstitutional is re-enacted with unreasonable reasons. The reason for not implementing the Constitutional Court Decision is because the Government is still having difficulties in translating the Constitutional Court Decision which will be poured into the norms of legislation or often the Government interprets otherwise what has been declared unconstitutional by the Constitutional Court for the government's interpretation that a content of an article, or paragraph stated contrary to the law, it still deserves to be re-enacted in the public interest.

For example, insults to the President and Vice President in the Draft Indonesian Criminal Code (RKUHP). Article 218 of the RKUHP paragraph 1 states that: "Everyone who publicly attacks the honour or dignity of the President or Vice President shall be punished with imprisonment for a maximum of 3 (three) years and 6 (six) months or a maximum fine of category IV." (Rahmasari, 2022) <sup>[7]</sup>

While Article 219 RKUHP reads: "Everyone who broadcasts, displays, or attaches writing or pictures so that they are visible to the public, listens to recordings so that they are heard by the public, or disseminates by means of information technology which contains attacks on honour or dignity against the President or Vice President. with the intention that the contents are known or more publicly known, shall be punished with a maximum imprisonment of (four) years and 6 (six) months or a maximum fine of category IV."

The basis for the Government to reimpose the Article on Insulting the President and Vice President lies in the application of the offense in the form of an absolute complaint offense and is different from the Indonesian Constitutional Court Decision Number 013-022/PUU-IV/2006.

The Indonesian Constitutional Court Decision Number 013-022/PUU-IV/2006 regarding the examination of insults to the President and the Vice President, in the decision of the Constitutional Court stated: "that Article 134, Article 136 *bis*, and Article 137 of the Indonesian Criminal Code can cause legal uncertainty (*rechtsonzekerheid*) because they are very vulnerable to interpretations of whether a protest, expression of opinion or thought constitutes criticism or insult to the President and/or Vice President. This is constitutionally contradictory to Article 28D Paragraph (1) of the Indonesian Constitution and at one time may hinder efforts to communicate and obtain information, which is guaranteed by Article 28F of the Indonesian Constitution."

That the above example serves as an explanation for the reasons why the Indonesian Constitutional Court Decision is difficult to implement properly. This is a concern for the implementation of the criminal/offense complaint of child molestation in the Decision of the Indonesian Constitutional Court Number 21/PUU-XIX/2021. The basis for the consideration of the Indonesian Constitutional Court is: "Article 293 paragraph (2) of the Indonesian Criminal Code often creates a dilemma, where not every victim, including the victim's family, wants a report or complaint with the

consideration that the disgrace of the criminal incident that befell the victim will be exposed.

However, on the other hand, a criminal act as regulated in Article 293 paragraph (2) of the Indonesian Criminal Code is a serious crime and cannot be justified, both in terms of religion, decency, and public order. Therefore, "to balance the protection of victims and law enforcement for crimes that have been committed, the absence of reports or complaints from victims cannot be used as an excuse for not disclosing these criminal events. Thus, the Court is of the opinion that to overcome the limitations of minor victims, in addition to being able to be reported or complained by the child in question, reports or complaints regarding criminal events that occur can also be made by parents, guardians, or their proxies."

## Conclusion

Child molestation is a serious crime or category *graviora delicta* and disturbs the public interest and violates moral values. So, being categorized as a *graviora delicta* or a serious crime is very relevant to the application of an ordinary offense. The differences in the application of the offenses against child molestation of various laws, namely: Article 293 paragraph 2 of the Indonesian Criminal Code, Article 76E of the Indonesian Child Protection Law and Article 6 letter C of the Indonesian Sexual Violence Law, in theory apply *lex specialis derogat legi generalis* creating legal confusion, especially in its implementation. Decisions of the Indonesian Constitutional Court that are final and binding as stated in Article 24C of the 1945 Indonesian Constitution or applicable to all parties (*erga omnes*) are expected to be able to answer the question of legal confusion, decisions that have been issued by the Indonesian Constitutional Court and have legal force must be considered so that there is no other choice not to implement it, considering that the decision of the Indonesian Constitutional Court is also final and binding.

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