

Indonesian Law Formulation in Overcoming Child Sexual Exploitation Through Internet Technology

Sharen Sindra¹, Elizabeth Ghozali²

^{1,2}Postgraduate, Department of Legal Studies, Universitas Katolik Santo Thomas, Medan, Indonesia.

Jl. Mataram Nomor 21 Petisah Hulu Medan-North Sumatera

Corresponding Email : sharensindra@gmail.com

ABSTRACT

Technology advances in the globalization era significantly impact the current social life, embodied in the innovation of the internet. The internet is very beneficial in helping people communicate and access information. This situation produces numerous social applications accessible online. Information technology development is a double-sided sword with all the advantages and disadvantages of technology utilization, particularly by irresponsible parties. In the same position, children are potential victims of technology misuse, primarily sexual exploitation in child pornography, child trafficking, and child sex tourism. Indonesia has many regulations to protect children, including legal instruments in technology and electronic transaction fields. However, not all regulations are optimized for actualizing legal protection for children.

Keywords : Child sexual exploitation, internet technology, formulation

I. INTRODUCTION

Current advances in information technology occur rapidly and significantly impact all levels of society, including children. This information-based technology is known as the internet. According to Mieke Komar Kantaatmadja, “internet technology facilitates each child to relate in a virtual world that is universally abstract, regardless of circumstances, place, and time.” The internet brings people to a condition without separation of space and time. One of the advantages offered by the internet is the speed of information provision and acquisition.¹

Technology advances will trigger another significant impact: child crime, both as perpetrators and victims, i.e., cyber crime via internet networks. Cybercrime in the current globalization era is massive, unlimited, regardless of time, and attacks anyone with various forms of mode by irresponsible parties. Cybercrime occurs via online and wireless facilities.

One of the cyber crimes that frequently occurs is child sexual abuse, where a child is in a deadly circle of the internet with numerous appealing facilities, e.g., friendship sites, social networking, online meeting, searching, uploading, and downloading facilities. Ultimately, Indonesian children will be easily recruited into the sex trade via the internet, i.e., “social network media,” as the uproar events occur in two hotels in West Jakarta. Dozens of teen girls were employed as sex workers in online prostitution. These girls were sold by their pimp to prostitutes via the MiChat application. After agreeing to the price, the perpetrator brought the victim to a hotel in West Jakarta to serve them. The perpetrator created a MiChat account and operated the application using their cellphone as a pimp.²

The process of prostitution and sexual exploitation among children is facilitated by the parties providing tourism services. Children who are mentally unstable and have immature thoughts should be protected by parents, family, society, and the government.

Article 1, paragraph 2 of Law No. 35 of 2014 on Amendment of Law No. 23 of 2002 on Child Protection asserts: “Child protection is all activities to ensure and protect children and their rights to live, grow, develop, and participate optimally according to dignity and receive protection from violence and discrimination.” Through this legislation, children’s rights should be ensured and protected from all kinds of exploitation, manipulation, abuse, or other actions that may disrupt their development.

¹ Mieke Komar Kantaatmadja, 2002, *Cyber Law: Suatu Pengantar*, Elips II, Bandung, hlm. 14

² <https://www.dw.com/id/polisi-ungkap-prostitusi-online-libatkan-anak-dibawah-umur/a-57649763>, diakses 1 Februari 2023.

Maidin Gultom explains that child protection can be differentiated into two parts, i.e., juridical child protection and non-juridical child protection, such as those in social, health, and education matters.³

Concerning internet use by children, juridical child protection in cyberspace is regulated in Law No. 11 of 2008 on Electronic Information and Transaction, as amended by Law No. 19 of 2016. This Electronic Information and Transaction Law attempts to provide comprehensive and thorough protection to all levels of society, including children. Fundamentally, the utilization of Information Technology and Electronic Transactions is based on legal certainty, benefit, prudence, good faith, and the freedom of technology selection or being technology neutral.⁴

The above explanation shows that the internet contributes to creating child exploitation. Based on this statement, in overcoming sexual exploitation issues of children via the internet, it is necessary to have an approach oriented towards criminal law policies.

Based on the background, the problem in this study is how is the formulation of Indonesian law in preventing and limiting the sexual exploitation of children through internet technology.

II. METHOD

The approach method employed in this study was juridical-normative since the study focused on legislation formulation to prevent the sexual exploitation of children through internet technology. Therefore, the study emphasized secondary data, while primary data were only used as supporting data to acquire study problems concerning the sexual exploitation of children.

Data were collected using literature study to obtain secondary data to acquire a theoretical basis in the form of expert opinions and existing information or legal materials in the form of applicable laws and regulations through the internet, news, journal magazines, documentation, legal books, study findings, and other results related to the problem.

The data were arranged through a selection associated with the study, then analyzed normative-qualitatively using the descriptive-analytical method.

III. DISCUSSION

a. Formulation of Child Protection Law in Indonesia

Internet technology (information technology) development and advances provide added information required by the users and trigger the emergence of sophisticated cybercrime. It causes victims in the cybercrime perspective, although internet technology and its acceleration have remarkable positive impacts.

Cyberspace has transformed various human activities (political, social, economic, cultural, spiritual, and sexual) from the real world to a virtual world known as the unlimited world. A huge migration of human life is taking place, i.e., migration from living in the real world to the virtual world. This human migration significantly changes how every person lives and makes sense of life. Cyberspace development has affected social life at all levels. Cyberspace's existence has created a fundamental social transformation.⁵

The internet gives facilitation and positive benefits, which the users then develop them to conduct various cyber activities.⁶ The comfort of such activities is utilized by criminals to explore and exploit weaknesses in the internet network. Cybercrime's nature and characteristics seem invisible to bring violence to its victims, but it has changed its paradigm.

In each crime, there is always an offender and a victim. Children as victims of cybercrime in the form of online sexual abuse should be protected. The government has strived to provide legal protection for children to guarantee survival and livelihood as a human rights component. Article 20 of Law No. 35 of 2014 on Child Protection states, "Those who must protect children include parents or

³ Maidin Gultom, 2014, *Perlindungan Hukum terhadap Anak dalam Sistem Peradilan Pidana di Indonesia*, Refika Aditama, Cetakan Pertama, Bandung, halaman. 34.

⁴ Pasal 3 Undang-Undang 19 Tahun 2016 tentang *Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik*.

⁵ Abdul Wahid dan Mohammad Labib, 2019, *Kejahatan Mayantara*, Refika Aditama, Bandung, halaman. 20.

⁶ Aji Suprianto, 2013, *Pengantar Teknologi Informasi*, Salemba Infotek, Jakarta, halaman. 10

guardians, families, communities, government, and the state who are responsible and obliged to protect children.”

The state’s commitment to protecting children is formulated in positive law, both in the Criminal Code and regulations that can specifically protect children, such as Law No. 35 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection. The Law of Child Protection guarantees children’s rights to live, grow, develop, and participate optimally based on dignity and obtain protection from violence and discrimination. It follows a study by Triyani et al. (2014), stating that “Regulation of crimes of sexual violence against children in Indonesia according to the Criminal Code (KUHP) and Law No. 35 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection.”

Article 15 of Law No. 35 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection states: “Every child has the right to obtain protection from 1) Abuse in political activities; 2) Involvement in armed conflict; 3) Involvement in social unrest; 4) Involvement in events that contain elements of violence; 5) Involvement in war; and 6) Sexual crimes”.

Furthermore, Law No. 35 of 2014, in conjunction with Law No. 23 of 2002, regulates prohibited acts, whether sexual exploitation, economic exploitation, fornication, intercourse, or child trafficking. Some of these criminal provisions include: (a). Article 78 Law no. 23 of 2002, which essentially regulates the prohibition of an act in which anyone who knows and intentionally allows a child to be in an emergency, a child who conflicts with the law, a child from a minority and isolated group, a child who is exploited economically and/or sexually, a child traded,... shall be punished with a maximum imprisonment of 5 years and/or a maximum fine of Rp. 100 million; (b). Article 81 Paragraph (1) Law No. 35 of 2014, which regulates criminal provisions for acts where anyone who deliberately commits violence or threats of violence forces a child to have intercourse with them or another person, shall be punished by imprisonment for a minimum of 5 years and a maximum of 15 years, and a maximum fine of Rp. 5 billion; (c). Article 81 Paragraph (2) Law no. 35 of 2014 emphasizes that the provisions of Article 81 Paragraph (1) also apply to anyone who turns out to be deliberately deceiving, a series of lies, or persuading a child to have intercourse with them or another person. *Mens rea* referred to in Article 81 Paragraph (2) is an intention to commit deception, a series of lies, or persuade a child so that intercourse is carried out with the perpetrator and another person; (d). Article 82 Law no. 35 of 2014 emphasizes actions that violate the provisions of Article 76E in the form of a prohibition for anyone who intentionally commits violence or threats of violence, coerces, tricks, series of lies, or persuades children to commit or allows obscene acts to be carried out. For this act, Law no. 35 of 2014 threatens imprisonment for a maximum of 15 years and a minimum of 5 years, and a maximum fine of Rp. 5 billion. (e). Article 83 Law no. 35 of 2014 contains a prohibition for people who violate the contents of Article 76F, i.e., people are prohibited from placing, letting, doing, ordering to do, or participating in kidnapping, selling, and/or trading children. Criminal threats imposed for violations of Article 83 of Law no. 35 of 2014 are a minimum imprisonment of 3 years, a maximum of 15 years, and a minimum fine of Rp. 60 million and a maximum of Rp. 300 million.

Article 82: “1) Any person who violates the provisions referred to in Article 76E shall be subject to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000,- (Five Billion Rupiah). 2) If the crime referred to in paragraph (1) is committed by parents, guardians, nannies, educators or educational staff, then the penalty is added to 1/3 (one-third) of the criminal penalties referred to in paragraph (1).” Punishment is aimed at the personality of the individual who violates the crime. Sanctions or punishments in criminal law are a differentiator of criminal law from other laws.

b. Formulation of Legal Protection for Child Victims of Online Sexual Exploitation

Technology advances through the internet enable physical human trafficking process, which then exploited online or an entirely online trafficking process using the chatting facilitation or web camera.⁷ One of the human trafficking process forms is child sex tourism conducted by foreign people. When one travels to a country, they are involved in sexual activity with a child. In this case, sexual abuse occurs between a foreign person overseas and a child from the destination country.

Law No. 11 of 2008 on Information and Electronic Transactions as amended by Law No. 19 of 2016 (Law No. 11 of 2008 in conjunction with Law No. 19 of 2016) in the provisions of Article 27

⁷ Go Lisanawati, 2013, “*Cyber Child Sexual Exploitation dalam Perspektif Perlindungan atas Kejahatan Siber*”, *Jurnal Pandecta*, Unnes, Semarang, Vol. 8, Nomor 1, Januari 2013, halaman. 10.

confirms the prohibition for anyone who intentionally and without the right to distribute, transmit and/or make Electronic Transaction Information and/or Electronic documents accessible that contain content that violates decency. It is further explained in Article 52 Paragraph (1) of Law No. 11 of 2008 in conjunction with Law No. 19 of 2016 that violations of Article 27 Paragraph (1), which when it comes to decency or sexual exploitation of children, then the perpetrator is subject to weighting as much as 1/3 of the principal criminal threat.

Regarding the sexual exploitation of children, Law No. 11 of 2008, in conjunction with Law No. 19 of 2016 and Law No. 44 of 2008 on Pornography (Pornography Law), have been strictly regulated, particularly regarding pornographic content. In essence, legal protection for children can be created through the synergy of parties related directly or indirectly to the development of children.

Accessing the internet allows the distribution of child pornography materials and all child exploitation matters. Another effect is the high demand and offers on the internet for child pornography and sexual exploitation materials, causing difficulty in preventing and eradicating child sexual crime in cyberspace. UNICEF, in its study report, explains that children as sexual abuse victims correlate with severe impacts.⁸ Therefore, the principle of the child's best interests must always be in mind and be the main priority for all levels of society to realize the best legal protection for children.

The Indonesian Government has ratified the Optional Protocol to the Convention on the Rights of the child on Child trafficking, prostitution, and pornography through Law No. 10 of 2012. It shows Indonesia's commitment and seriousness in realizing legal protection for children, especially in responding to the development of sexual crimes against children through online media. For this reason, Indonesia, as part of the international community, should participate actively in preventing, eradicating, and punishing the perpetrators of the crime of child trafficking, prostitution, and pornography.

The Indonesian Government and all levels of society understand that child trafficking, pornography, and prostitution, including child sex tourism, are forms of sexual exploitation leading to crime. Hence, taking preventive and eradication actions relevant to the crime is necessary. Based on this ratification result, and as discussed in the optional protocol, it is expected for the state parties to be serious through several obligations related to the prohibition of child trafficking, prostitution, and pornography. It remains challenging, considering that the legal arrangements related to the crime in question have not been integrated, especially related to cybercrime.

IV. CONCLUSION

The government, law enforcement officers, and all levels of society must prioritize preventive and eradication actions against online child sexual exploitation. Children who are immature and have no sufficient maturity of soul, mind, and understanding must always be prioritized in protecting the child's best interests. Given the massive online child sexual exploitation in child trafficking and pornography, including sex tourism, it requires energy and synergy from legislation and the willingness of law enforcement officers and all levels of society, including the primary ones, i.e., parents and family. The legal instruments currently owned by Indonesia must be operationalized intelligently and effectively, even though they encounter many obstacles due to their distribution within various laws and regulations that have not been properly integrated, so they still require more interpretation to be implemented effectively. Law enforcement officials need a good will to harmonize existing legal regulations, allowing integration into the implementation of the law. The judge's *ratio decidendi* must later provide a proper foundation for thinking.

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⁸ Unicef. "Indonesian Sexual Exploitation Factsheet", Report, July 2010, sebagaimana dikutip dari Go Lisanawati, *ibid*, halaman. 14

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