

Punishment of Perpetrators of Criminal Acts That Intentionally Place and Carry Out Economic and Sexual Exploitation of Children is Linked to The Principle of Justice

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Abstract

Law is a social control instrument that may be used to decide or regulate people's conduct to ensure that it complies with the law. One of the crimes that is increasingly gaining attention worldwide is Commercial Sexual Exploitation of Children (CSEC), which is defined as the use of girls and/or boys for sexual activities that are paid for with cash or in kind items. Law enforcement and the government have made an effort to combat the crime of commercial sexual exploitation of minors by enforcing laws and implementing measures such as requiring judges to be courageous and experienced in executing the law in order to achieve justice. There are still many instances of child prostitution, which calls for a more thorough investigation.

I. Introduction

According to Article 1 paragraph (3) of the Constitution of the Republic of Indonesia, Indonesia is a legal state. Indonesia ensures everyone's protection as a legitimate state. Every human being on the planet is subject to laws. Any civilization, no matter how advanced or archaic, needs laws. Consequently, law is a global phenomenon and it is inextricably linked to society; in fact, they are mutually reinforcing.

Human existence is governed by law from conception to death. Even a deceased person's final will and testament is subject to legal restrictions. Furthermore, all facets of communal life—economic, political, social, cultural, defense, security, and so forth—are governed by law. Nothing of a person's existence in a society is exempt from the application of the law. People follow

the law because they are terrified of the consequences in the form of suffering if norms are violated, laws are also obeyed to maintain good relations with members of society.

According to scholars the definition of Law is as follows:

a. HMN. Poerwosutjipto, states that law is the totality of norms, which the state authorities or community authorities have the authority to establish laws, declare or consider as binding regulations for as or all members of society, with the aim of establishing an order desired by the authority.

b. Soerjono Soekanto, and Purnadi Purbacaraka, by explaining the meaning given by society to the law. The law is interpreted as follows:

- 1) Law as a science;
- 2) Law as a discipline;
- 3) Law as a rule;
- 4) Law as a legal system;
- 5) Law as an officer (law enforcement officer);
- 6) Law as a ruling decision;
- 7) Law as a government process;
- 8) Law as a steady attitude or orderly behavior; And
- 9) Law as values.

c. BC. Amen, law is a collection of regulations consisting of norms and sanctions and the purpose of law is to uphold order in human interactions, so that security and order in human interactions, so that security and order are maintained.

d. Utrecht, law is a collection of regulations (commands and prohibitions) that regulate the order of a society and therefore must be obeyed by that society.

e. According to J.C.T. Simorangkir, laws are coercive rules established by official bodies that govern how people behave in social settings. Violating these rules is grounds for enforcement action. with certain penalties.

From the several opinions mentioned above, it can be concluded that the law includes elements, namely:

1. Regulations of human behavior.
2. Regulations are implemented by official competent bodies.
3. The regulations are coercive.
4. Sanctions for violations of these regulations are strict (certain and can be felt clearly by those concerned).

One type of legal division, as discussed in the introduction to Legal Studies, is the divide between public and civil law based on the content of the laws. The following is an explanation of the terminology by L.J. Van Apeldoorn:

Civil law refers to rules of law with specific interests as their goal; interested parties decide whether or not to uphold these laws. Public law refers to laws whose purpose is to uphold the interests of the public, and whose enforcement is thus the responsibility of the state. Because the government is responsible for safeguarding the public interests, criminal law is a subset of public law. So, the government has the right or authority and is also burdened with the obligation to maintain criminal law.

Criminal law, in the words of D. Somins, is the entirety of directives and proscriptions that, if broken, could result in a particular punishment deemed "criminal" by the state or another public legal community; it also includes all rules that specify the circumstances under which the law's consequences can be imposed as well as all provisions for carrying out the crime.

Criminal law is one type of law that is separated into two categories: formal criminal law and material criminal law. One of the laws of Indonesia that governs the criminal law is the Criminal Code (Criminal Code). Wetboek van Strafrecht (WvS) is a type of legal codification used in Indonesia that is based on the idea of concordance, which was formally codified into law with the enactment of Law Number 1 of 1946. The foundation of Indonesian criminal law rules is the Criminal Code. However, there are other criminal law

regulations that fall outside of the Criminal Code, such as those pertaining to child protection.

Children are the progeny of asexual relationships between men and women, or generations. Children have a right to adequate protection since they are the country's future generation and play a significant role in its growth. In order for children to fully participate in the future growth of their country and state, protection efforts must be initiated as soon as possible¹¹. Children must be protected against criminal acts of physical and psychological abuse, discrimination, child sex exploitation, and violations of their civil rights and freedom in order for them to develop normally.

With regard to child safety, it is anticipated that children under the country's care would be able to successfully navigate their futures in both the home and communal settings. In order to prevent crimes against children, parents should provide their children with safety, affection, and supervision. They should also ensure that their children are well-educated and given proper attention. Parents are highly proactive in stopping child abuse, exploitation, and violence.

One type of sexual exploitation is the exploitation of minors. The use of a child for sexual reasons in order to earn funds, products, or services for exploiters, middlemen, agents, or other individuals who profit from the kid's sexual exploitation is known as child sexual exploitation. When children are used as both sexual objects and commercial commodities, it is considered sexual exploitation of children and a violation of their fundamental rights.

Child prostitution, child pornography, child trafficking for other reasons, child sex tourism, and child marriage are the five illegal acts of child sexual exploitation, according to ECPAT International. Other publications, however, classify sexual exploitation into three categories: child trafficking for sex, child prostitution, and child pornography. Child sex tourism and marriage, on the other hand, are only means of obtaining child exploitation.

Not only do adult women face violence, harassment, and sexual exploitation, but women who are considered minors (children) are also affected. Not only may this type of sexual crime happen in locations like offices, businesses, or other settings where individuals of different genders might interact, but it can also happen within the family. The rising trend of sexual crimes against adults and juveniles alike is concerning since it affects not only adult women but also adult women. These females are either trafficked or utilized as commodities to satiate the animalistic or depraved cravings of specific people or organizations who operate sex businesses in order to make numerous financial gains.

Special laws, such as the child protection legislation, the child welfare law, and the law controlling children, govern how children are protected from criminal prosecution. The Republic of Indonesia Law Number 4 of 1979, which addresses child welfare, states in Article 2 paragraphs (3) and (4) that "children have the right to care and protection both during pregnancy and after birth." Law Number 35 of 2014 about modifications to Law Number 23 of 2002 concerning Child Protection and the Law controlling children governs children's legal protection under criminal law.

In accordance with Law Number 35 of 2014, which modifies Law Number 23 of 2002, a child is any human who has not attained the age of eighteen (age), including unborn children. Furthermore, "child protection" encompasses any measure used to guarantee that children and their rights are respected, safeguarded, and permitted to exist, grow, and engage in society in a manner that optimally preserves their human worth and keeps them safe from discrimination and aggression. A child is defined as everyone who is not yet eighteen (18) years old, including children who are still in the womb, under Article 1 number 1 of Law Number 35 of 2014 respecting revisions to Law Number 23 of 2002 concerning the protection of children. The following constitute the illegal crime of sexual exploitation of minors, as defined by Law

Number 35 of 2014's Article 76 I:

a. Each person;

b. The element is prohibited from placing, allowing, carrying out, ordering, carrying out or participating in economic and/or sexual exploitation of children.

It seems as though child sexual exploitation is an ongoing occurrence. Child sex advocates "allowed" children to be eaten. The child sex "business" has grown to be an amazing industry with billion-dollar earnings, so those who stand to gain from it are not interested in just shutting it down. According to David Brazil, two of Indonesia's most well-known child launch facilities are in Batam and Bintan. These locations are referred to as the "love village" and the "chicken farm," and men travel there daily for sex.

Low economic conditions (poverty) and hiring children for sex as gratification in exchange for gifts of cash or other goods are the main driving forces behind the sexual exploitation of children. Family environmental factors are the main causes of children seeking a place to escape and making them susceptible to falling into the trap of sexual exploitation. victims of sexual exploitation as a result of parental neglect or abandonment, economic exploitation committed by parents who sell or hire their children to support the family, and social factors pertaining to lifestyle (consumptive) factors paid after the victim's child engages in sexual activity with a guest.

2. Research Method

By looking through library resources, this research technique applies a normative juridical approach to library law study. Two (two) approach methods are used in this research: (a) Statute Approach, which looks at all laws and regulations that are relevant to the legal issue being handled; and (b) Approach Case (Case Approach), which looks at cases that are relevant to the

issue at hand and have resulted in court decisions that have permanent legal force.

In addition to focusing on relevant laws and regulations and applying descriptive analysis, this study specification also makes connections between it and the theories and applications of positive law. An overview and analysis of the factors the judge took into account while making decisions on the commercial sexual exploitation of children will be given by this research.

3. Results and Discussion

Application of the Principles of Justice in Judges' Decisions Against Perpetrators of Commercial Sexual Exploitation of Children

The Republic of Indonesia's Supreme Court has ruled that judgments made by judges must be held accountable for justice, which is the fundamental principle of the law. According to Gustav Radburch, while charging someone with a crime, you should also consider the goals of the law, which are to uphold the three fundamental principles of justice, expediency, and certainty. If there is a disagreement between the three, nevertheless, the value of justice wins out above the values of certainty or advantage. That the values of justice that should be realized by criminal justice in imposing a crime on the defendant must take into account all aspects, as follows:

1. From the perspective of moral justice, the defendant's actions can be evaluated based on the opinions of the general public and the rules of the religion that the defendant follows. In this case, the defendant has exploited the sexual organs of women under the age of eighteen in order to obtain material benefits. In addition, the defendant, being an adult, ought to consider ways to prevent and shield victims who are still minors from engaging in high-risk prostitution, particularly the risk of contracting HIV/AIDS provisions adhered to by the Defendant which prohibit approaching adultery.

2. Article 20 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states that the State,

Government, Regional Government, Community, Family, and Parents or Guardians are obliged and support the implementation of protection children. From the perspective of social justice, the actions taken by the Defendant are contrary to the aims and objectives of Child Protection, namely guaranteeing the rights of children so that they can live, grow, develop, and participate optimally in accordance with human dignity, as well as receive protection from violence and exploitation in order to create quality and prosperous Indonesian children.

3. From the perspective of legal justice, the Criminal Code (KUHP) against the Defendant, which the Panel of Judges imposed on him with a sentence of one year and three months, is too light in comparison to the demands of the Public Prosecutor because it disregards the legal principle of *Lex Specialis Derogat Legi Generalis*. This will lead to social unrest because, inadvertently, the Judge's decision has taught the public a bad legal lesson because, generally speaking, the public is ignorant of the law and will determine whether or not the criminal act "puts and allowing sexual exploitation" is not a crime with special regulations that carry severe penalties.

Criminal Sanctions Policy Against Perpetrators of Child Exploitation Based on Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 About Child Protection Today

Every crime has to have its own set of criminal penalties, tailored to the specific offense the offender committed. The criminal sanctions policy currently draws from Book I of the Criminal Code as general guidelines and Law Number 23 of 2012 in conjunction with Law Number 35 of 2014 concerning Child Protection as a special regulation in an attempt to legally protect children as both perpetrators and victims.

Law may be regarded from a variety of perspectives, one of which is its intended use, which is to represent justice (Safaruddin Harefa, 2019: 44). It is believed that a sense of justice, benefit, and equality is not provided by law

enforcement or legal certainty. Since justice and law are fundamentally related and may be distinguished but not separated. The crimes that people perpetrate against children are so varied. From commonplace transgressions to exceptional ones. A number of crimes frequently affect children, including as physical and/or sexual abuse, child neglect, emotional abuse, rejection, parents' indifference, terrorizing children, alienating them, being a negative influence on them, and exploitation. The exploitation of children is one of the crimes against children that happens frequently in today's world. To clarify the definition of criminal acts of economic and sexual exploitation, the author presents the definition in more detail and is easier to understand. So a more detailed understanding of the crime of economic and sexual exploitation is:

a) What is meant by economically exploited is an action with or without the consent of the child who is the victim which includes but is not limited to prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, physical, sexual use, reproductive organs, or unlawfully moving or transplanting organs and/or body tissue or exploiting a child's energy or abilities by another party to gain material gain.

b) What is meant by sexually exploited is any form of use of a child's sexual organs or other bodily organs to obtain profit, including but not limited to all activities of prostitution and sexual abuse.

Elements of the crime of exploitation in Article 76I of the Law 35 of 2014 concerning Child Protection which includes:

a) Everyone;

b) It is prohibited to place, allow, carry out, economically or sexually exploit children, namely by employing or trading children in the sexual sector for profit;

c) With the intention of benefiting oneself or others. A person who sexually exploits children has the intent and purpose of benefiting himself or others by committing a criminal act of sexual exploitation towards children,

where a child must receive protection and be kept away from prostitution activities that are contrary to his or her dignity.

For someone who has been proven to have violated the provisions in Article 76I and has fulfilled the elements of child exploitation, that person will be subject to criminal sanctions. Where these criminal sanctions have been regulated in writing in Article 88 Law Number 35 of 2014 concerning Child Protection which states that:

“Any person who violates the provisions as intended in Article 76I, shall be punished with imprisonment for a maximum of 10 (ten) years and/or a maximum fine of IDR 200,000,000.00 (two hundred million rupiah).”

In the imposition of criminal sanctions, it is known as punishment, which means the stage of determining sanctions or the stage of giving sanctions to perpetrators of criminal acts in criminal law. The word criminal can generally be interpreted as law, while punishment can be interpreted as punishment (Andi Hamzah, 2000: 43). The theory of punishment used in this case is the theory of punishment which is commonly known in the Continental European legal system, namely absolute theory, relative theory and combined theory. Children as victims of sexual crimes will not actually be satisfied with demands for high amounts of compensation (restitution), what they need is how to restore their physical and mental condition to the way it used to be. This should exist as a form of restitution where the obligation to make material and immaterial restitution for victims should not only be the responsibility of the state, but also the responsibility of carrying out restoration of the victim's condition. So the concept of restorative justice is important to be emphasized in Law Number 35 of the Year 2014 concerning Child Protection. Therefore, it is crucial to outline for the victim what the offender must do in order to make amends. This is also in line with the principles of restorative justice, which call for restoring the situation that the offender damaged to its pre-crime state and raising awareness of those who commit exploitation crimes. It is anticipated

that medical and/or psychological treatment can allow victims of exploitation crimes to live normally again, despite the fact that it is extremely difficult to return victims to their pre-exploitation state.

4. Conclusion

The following conclusions were reached: while Law Number 23 of 2002 and Law Number 35 of 2014 concerning Child Protection serve as the foundation for the policy of criminal sanctions against child exploitation offenders, it is currently insufficient to fully offer legal protection to children who are exploitation victims. Because the provisions of this legislation only impose criminal penalties—that is, fines and imprisonment—on those who engage in exploitation. If you look closely at these criminal penalties, you will see that they solely offer legal protection to the offender—not the victim. The guidelines of In the future, offenders of child exploitation shall face not only jail time and/or penalties under Law Number 23 of 2002 in connection with Law Number 35 of 2014 concerning Child Protection, but also restitution (compensation) to the victim's kid. Nevertheless, Law Number 35 of 2014 about Child Protection does not specifically address this compensation in writing, particularly in Article 88, which imposes criminal penalties on those who abuse children.

The goal of implementing criminal penalties in the form of restitution (compensation) is to safeguard children who are exploited since the money paid by the offender to the state treasury will be used to pay the fine. The use of criminal consequences for reparation also aims to dissuade future offenders. It is necessary to implement a strict monodualistic balance in enforcing criminal law by paying attention to aspects of victimology in order to balance the rights of the perpetrator and the victim, as the criminal law policy contained in the Law on Child Protection does not balance the interests of the victim with the interests of the perpetrator of the crime. By doing this, it is hoped to better

balance the rights and interests of those who have been harmed by criminal activity against those of suspects, accused, and offenders. In order to comply with Pancasila's legal philosophy, which upholds the principle of protection, there will be a shift in perspective in the future Criminal Procedure Law (*ius constituendum*) from retributive justice (neglect of victims' rights) which is offender oriented to a restorative justice system, namely justice which is victim oriented. and monodualistic balance for every member of society as an equal before the law and the courts, seeking justice (equality before the law and before).

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