


RESEARCH ARTICLE

Children and Crime of Pornography

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Ulim Ruslina 

Law and Policy Studies Center Jakarta, INDONESIA

 corresponding email: ulim_ruslina@gmail.com

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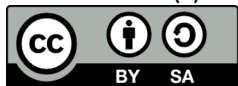
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Abstract

Children are one of the groups vulnerable to crimes, including sexual crimes and pornography crimes. Cases of pornography crimes involving children as victims are increasingly rampant amid the rapid flow of information and technology. This study aims to analyze child and pornography crimes from the legal and victim protection aspects in Indonesia. This study uses a normative approach by comparing various legal rules and legal theories and victimology related to cases of child crimes and pornography.

Keywords: *Child Protection, Crime, Justice, Criminal Sanction, Pornography*

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1. INTRODUCTION

Children are a noble gift from God Almighty therefore children must get their rights, namely from parents and the State. In line with human civilization, attention to children is growing rapidly. Children really need guidance and attention in their growth and development. Children need not only science but religion, law, sociology are also very important so that children's understanding is more rational and actual in a social environment.

Article 28B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter as UUD) which reads: every child has the right to survival, growth, and development and is entitled to protection from violence and discrimination. Furthermore, it is regulated in Law of the Republic of Indonesia Number 17 of 2016 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law in article 1 paragraph (1) A child is a person who is not yet 18 (eighteen) years old, including a child who is in the womb. Then in verse (2) stated that child protection is any activity to guarantee and protect children and their rights in order to live, grow, develop, and participate optimally in accordance with the dignity and dignity and dignity of humanity, as well as protection from violence and discrimination. With regard to protection for the child then the parents are the most responsible in this regard. Furthermore, the public and institutions authorized by the government and the State, this provision is regulated in Article 20 to Article 26 of Law Number 23 of 2002.

Some previous studies emphasized that it is undeniable that sexual violence against children has long existed in various forms and qualities have been fertile in Indonesian society. Everyday cases of sexual violence against children one after another go through both print and electronic media. Sexual violence is something that can be devastating, very dangerous, and frightening for children. A child who is a victim of sexual violence suffers losses not only material losses but also immaterial losses such as psychological and emotional shocks that can have an effect on his future (Lisnawati, 2013; Putri, 2019; Smith, 2020; Latief, Saleh & Abrar, 2022). In other studies, also highlighted that sexual violence of child increasing on the internet and disclosure era (Della Firdausi, Susanti & Sunarto, 2018; Widyawati, 2020; Latifiani, 2019; Erdianti & Al-Fatih, 2019).

Currently, the internet has become a primary need for people from various walks of life. With the internet, people really help people to increase knowledge. But the internet can also plunge us into negative things, one of which is pornography addiction. Pornography addiction is four times heavier than drug addiction. Pornography addiction can make us imagine more of something. So that makes us do deviant things. According to internet media, this case of sexual violence against children is carried out by people closest to the child, such as stepfathers, biological fathers, relatives, or relatives.

Based on the background that I have described above, the problem arises:

- 1) How does the law affect victims of child sexual abuse cases due to pornography-addicted perpetrators?
- 2) How is the criminal responsibility of perpetrators of child sexual abuse?

The purpose of this discussion is the interpretation of the formulation of this problem, namely:

- 1) Knowing the legal protection for victims of cases of sexual violence against children impacts perpetrators who are addicted to pornography.
- 2) Knowing the criminal responsibility of perpetrators of sexual violence against children.

2. METHOD

This research is a normative legal study, and normative legal research consists of research on legal principles, legal systematics, legal synchronization and comparative law. In this study, John Austin provides definitions and limitations regarding the scope of law. First, law is an order from the authorities, second, law is a logical system that is fixed and closed, third, positive law consists of elements of orders, sanctions, obligations and sovereignty, beyond that only positive morality. In general, the problem approach used in writing normative legal research consists of 5 (five) approaches, namely the statute

approach, conceptual approach, historical approach, case approach and comparative approach. The statute approach is research that prioritizes legal materials in the form of statutory regulations as a basic reference material in conducting research. The statutory approach (statute approach) is usually used to examine statutory regulations which in their norms still lack or even foster deviant practices both at the technical level and in practice in the field. This approach is carried out by examining all laws and regulations that are related to the problems (legal issues) that are being faced. This statutory approach, for example, is carried out by studying the consistency/compatibility between the Constitution and laws, or between one law and another law.

3. RESULT AND DISCUSSION

A. Legal Protection for Victims of Cases of Sexual Violence Against Children Impact of Perpetrators Who Are Addicted to Pornography

Talking about the protection that can/will be given to/against people who suffer violent acts, it is also necessary to know in advance the form of the violent act. Regarding the forms of violence that can be carried out in the household, the main arrangement is contained in Article 5 of Law No. 23 of 2004 which specifies that 'everyone is prohibited from committing domestic violence against people within the scope of his household, by:

- 1) physical violence;
- 2) psychic violence;
- 3) sexual violence;
- 4) domestic neglect (Yunisa, 2014).

In the explanatory part of the article, it is stated that what is meant by 'sexual violence' in this provision is:

- 1) any act that is the coercion of sexual intercourse,
- 2) coercion of sexual intercourse in an unnatural and/or unwelcome manner
- 3) coercion of sexual relations with others for commercial and/or specific purposes.

From what has been formulated and explained about the formulation in Article 8, the dimensions that include sexual violence include actions that lead to sexual solicitation or urging such as touching, groping, kissing, or performing other actions that the victim does not want, forcing the victim to watch pornographic products, sexual jokes, derogatory and harassing remarks with a gender aspect.

In addition, there are also other common forms of sexual violence, namely: sexual harassment in the form of pornographic jokes, comments about body shapes that are demeaning, demeaning and lead to sexual thoughts, unwanted touches to the coercion of sexual intercourse. Acts of violence can also occur directly, can also be indirectly associated with formal positions, but give rise to fear and psychological, physical and social impacts for the victim (Makara, et.al, 2014).

In Article 46, it is determined that everyone who commits an act of sexual violence as referred to in Article 8 letter a, shall be sentenced to a maximum of 12 years imprisonment or a maximum fine of Rp. 36,000,000.00 (thirty-six million rupiah) (Yunisa, 2014).

The most egregious sexual assault is rape. Because it not only leaves a disgrace that cannot be addressed by the victim but also has a very big impact on the survival of the victim. Rape is a sexual relationship that is carried out without a common will, imposed by one of the parties on the other. The victim may be under physical and/or psychological threat, violent, unconscious, or unconscious, underage, or mentally retarded and other disability, so unable to resist what happened, not understand, or be unable to take responsibility for what happened to her.

According to E. Kristi Poerwandari, rape is a pseudo-sexual act, in the sense that it is a sexual behavior that is not always motivated by sexual drive as the primary motivation, but rather is related to mastery and domination,

aggression and degradation on one side (victim) by the other party (the perpetrator) (Poerwandari, 2000).

As already mentioned, rape is one of the most egregious acts of sexual violence. The meaning of rape so far seems to have been clearly formulated in the provisions of the law. In fact, when viewed in the Criminal Code, the so-called 'rape' according to Article 285 is: "*... with violence or threats of violence forcing a woman who is not his wife to have sex with him....*".

The formulation in Article 285 of the Criminal Code, stipulates several criteria for categorizing an act as rape, namely: a. with violence or threats of violence: not only violence used as a means, but even threats also to commit violence are sufficient. b. forcing women: in this case it means that there is no consent or consent from the woman. c. who is not his wife: If the woman being forced is the perpetrator's own wife, this does not fall under rape, despite the violence/threat of violence. d. to intercourse: the meaning of copulation itself, according to R. Soesilo, still refers to the Netherlands, with reference to the Arrest Hoge Raad of February 5, 1912, namely: "*A mixbetween male and female pubic members who are run to get children....*".

From what is referred to in Article 285 of the Criminal Code and the elements that must be met to be said to have committed an act of rape, the forms of sexual violence that do not meet the above criteria are not rape. It is clear that this narrow definition of 'rape' poses many problems for both women and children who are victims.

The draft criminal code no longer sees rape as a moral offence but also includes the issue of anger and violence, which is considered a violation and denial of human rights, particularly women's human rights. This crime of rape in the Draft Criminal Code is regulated in Article 489 which states that:

- (1) *Shall be punished with imprisonment for a minimum of three years and a maximum of twelve years for committing the crime of rape:*
 - a. *a man has intercourse with a woman, contrary to the will of the woman;*
 - b. *a man enters into intercourse with a woman, without the woman's consent;*
 - c. *a man enters into intercourse with a woman, with the consent of the woman, but such consent is achieved through threats of death or injury;*
 - d. *a man enters into intercourse with a woman, with the woman's consent because the woman believes he is her legal husband;*
 - e. *a man enters into intercourse with a woman under the age of 14, with her consent;*
 - f. *a man who has intercourse with a woman, even though it is known that the woman is in a stupor or helpless state.*
- (2) *It shall also be deemed to have committed the crime of rape, with imprisonment for not less than three years and not more than twelve years, if in the circumstances mentioned in subsection (1) letters a to f above:*
 - a. *a man inserts his genitals into the anus or mouth of a woman;*
 - b. *the male inserts an object that is not part of his body into the woman's vagina or anus.*

According to Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, children who are victims of criminal acts of sexual abuse are entitled to protection as stipulated in Article 9, Article 15, Article 59 paragraph (2) letter J and Article 76D, and those who commit criminal acts of child sexual abuse get sanctions as stipulated in Article 81. The articles read as follows: Article 9 paragraph (1) point a: "*Every child has the right to protection in the education unit from sexual crimes and violence committed by educators, education staff, fellow students, and/or other parties*" (Law No. 35 of 2014). Article 9 paragraph (1) points out a: "*Every child has the right to protection in the education unit from sexual crimes and violence*

committed by educators, education staff, fellow students, and/or other parties". Article 15: "Every child has the right to protection from:

- a. abuse in political activities;
- b. involvement in armed disputes;
- c. involvement in social unrest;
- d. involvement in violent events;
- e. involvement in warfare, and
- g. sexual crimes.

In the explanation, it is stated that: The protections in this provision include activities of a direct and indirect nature, from acts that endanger a child physically and psychically (Child Protection Law). Article 59 paragraph (2) letter J: "Special protection to children referred to in paragraph (1) is given to 'child victims of sexual crimes". The purpose of article 59 paragraph (2) letter J is that special protection of the child is the obligation and responsibility of the Government, Local Government and other State Governments. "

Pornography addiction is indeed very dangerous and can plunge into one's own imagination more than drug addiction. Pornography addiction causes the person to do things that might not have been done to others. Because the perpetrator of sexual violence against a child is the closest person to the victim, the parents who play an important role in this case are like educating the child, such as which parts of the body should not be held by others.

B. Criminal Liability of Perpetrators of Sexual Violence

Criminal liability is defined as the passing of objective reproach on criminal acts and subjectively those who are qualified to be convicted for their actions. The principle of legality is the basis for the existence of a criminal act, while the basis for being convicted is the principle of guilt, which means that the perpetrator of a criminal act will only be convicted if he has a mistake in committing the crime.

Criminal liability can also be interpreted as the accountability of people for the criminal acts they committed. Strictly speaking, what the person is responsible for is what he has done. Criminal liability is also an act that is despicable by society, and it is accountable to the maker. For the existence of criminal liability, it must be clear in advance who can be held accountable, or this means that it must first be ascertained who is declared to be the maker of a criminal act.

Conviction is a result of the accountability of a criminal act by the perpetrator. The definition of "non-accountability of the maker" is a condition in which a result of the non-fulfillment of the elements of criminal liability even though the criminal act committed is proven. So the accountability or non-accountability of the maker will be determined after the fulfillment of all elements of the criminal act. Similarly, the conviction or non-conviction of the maker will be determined after the author's accountability because of an assessment of criminal liability (Rusianto, 2015).

Mistakes are very important to make mistakes. Without it, criminal liability would never exist. Therefore, criminal law recognizes the principle of "No Criminal Without Error" (*geen straf zander schuld*). This principle of error is fundamental in criminal law, so fundamental is it that it permeates and echoes in almost all-important doctrines in criminal law. There are two things in the definition of error, the first is the existence of a psychological state, namely the mental relationship (*psychis*) of the maker with his deeds, and the second there is a reproach against the maker who committed the deed (Rusianto, 2015).

Criminal liability can only occur if a person has previously committed a criminal act. Moeljoatno said, "a person cannot be held accountable (for a criminal sentence) if he does not commit a criminal offence". If the result is still in doubt for the judge, it means that the ability to be responsible does not stop, so that the blame does not exist,

and the criminal cannot be imposed. Based on the principle of not being punished if there is no wrongdoing, in the Criminal Code the issue of the ability to be responsible is contained in Article 44 paragraph 1: "Whoever commits an act which cannot be accounted for to him because his soul is defective in growth or impaired by defect, is not convicted".

Criminal liability is applied with conviction, which aims to prevent criminal acts by enforcing legal norms for the sake of community protection; resolving conflicts that criminal acts cause; restoring balance; bringing a sense of peace in society; popularizing convicts by providing coaching so as to become good people and relieve guilt in convicts.

Criminal liability should take into account that criminal law should be used to realize a just and prosperous society materially and spiritually equitable. The law is used to prevent or overcome unwanted acts. In addition, the use of criminal legal facilities with negative sanctions must pay attention to the cost and ability of the work power of the relevant institution, so that there is no overcrowding in carrying it out.

The criminal liability or guilt of a person whether or not he is convicted must meet the following formulation:

1) Able to be responsible

According to Simons: "the ability to be responsible can be interpreted as a state of *such psychis*, which justifies the application of an attempt at punishment, both from a general angle and from the person". It is said further that a person is able to take responsibility, if his soul is healthy, that is, if:

- a. He is able to know or realize that his actions are contrary to the law; and
- b. He can determine his will according to that consciousness (Sudarto, 2018).

2) Offence

The error here has the broadest meaning, that is, it can be reproached by the deed. This includes the existence

of unlawful acts, the ability to be responsible for the perpetrator of the criminal act and the inner relationship between the perpetrator and his criminal act in the form of intentionality or also known as negligence. The mental connection or mental attitude of intentionality exists, if the maker wants the prohibited act or knows/imagines the consequences of the prohibited act. Besides the mental attitude in the form of intentionality, there is also an inner attitude in the form of forgetfulness. It is found in several delict (Sudarto, 2018).

In book II of the Criminal Code, there are several articles that contain elements of negligence, namely:

- a. Article 188: because negligence causes a breakdown, fire, explosion, flood, or so on.
- b. Article 231: because its negligence gives rise to loss or so on of confiscated goods.
- c. Article 359: because his negligence caused the death of another person.
- d. Article 360: because his negligence caused another person to be seriously injured.
- e. Article 409: because negligence caused the buildings to be destroyed, damaged, unusable, or so on.

3) There's no forgiving reason

Book I of Chapter III of the Criminal Code contains the basis of reasons that destroy, reduce, and incriminate criminals. M.v.T of the Criminal Code (Netherlands) in his explanation of the reasons for the removal of this piadana, put forward the so-called "reasons for the inability to account for a person or reasons for the inability to convict a person" (Sudarto, 2018) i.e. it states there are two:

- a. The reason for the unaccountability of a person lies in that person or can be said to be imperfect or abnormal growth of the soul and a young age.

- b. the reasons for the inability to account for a person located outside that person, namely regulated in the Criminal Code Articles 48 to 51, include:
- (1) coercive force (Article 48)
 - (2) forced defense (Article 49)
 - (3) implementing laws (Article 50)
 - (4) execute the order of the department (Article 51)

According to the Criminal Code (KUHP). The criminal sanctions for perpetrators of obscenity against minors according to the Criminal Code are as follows:

- 1) Article 285 of the Criminal Code specifies that: "Whoever by force or threat of violence forces a woman who is not his wife to have sex with him, is punished, for rape, with imprisonment for a term of twelve years". In article 285 above a person who commits child molestation is threatened with a maximum of twelve years in prison, but in this article, it does not specify the category of the victim or the age of the victim, only mentioning that the victim is a woman which means that the entire classification including the elderly and children can be categorized in this article.
- 2) Article 286 of the Criminal Code specifies that: "Whoever has intercourse with a woman who is not his wife, he knows, that the woman fainted or is helpless, is punished with imprisonment for a period of nine years" In this article, it is stated that if the perpetrator of obscenity against a minor for the fulfillment of his sexual desires by taking substances or drugs that make the victim faint or helpless is threatened with imprisonment for a maximum of nine years.
- 3) Article 287 (1) of the Criminal Code specifies that: "Whoever has sex with a woman who is not his wife, is in his knowledge or should be questioned, that the woman's age is not enough 15 years if it is not real how old she is, that the woman is not yet in time to marry, shall be punished with imprisonment for a term of nine years". In this article, it is explained that obscenity

against minors is carried out by forcing the will of adults against minors which is carried out without or with violence in order to achieve the fulfillment of sexual desires. The fulfillment of sexual desires carried out without violence can occur in the way or efforts of adults by persuading the victim by luring the victim with something or gifts that make the victim happy and interested, thus the perpetrator finds it easier to do his intention to support the victim.

- 4) Article 288 paragraph (1) of the Criminal Code specifies that: "Whoever has intercourse with his wife whom he knows or should reasonably suppose that the woman has not been married, shall be punished with imprisonment for a term of four years, if the act results in the woman's body being injured". This article explains that if having sex with an underage woman but does not result in injury is not punished, but if the copulation results in injury, then the man can be subject to this article.
- 5) Article 290 of the Criminal Code specifies that: With imprisonment for a term of seven years is punished:
 - (1) Whoever commits an obscene act with a person, he is aware that the person fainted or was helpless.
 - (2) Whoever commits an obscene act with a person, is known to him or should be questioned, that the person is not 15 years old enough or if it is not real how old he is, that the person is not yet time to be married.
 - (3) Whoever persuades (tempts) a person, whom he knows or deserves to be aware of, that the person is not yet 15 years old or if it is not real how old he is, that he is not yet in the time to mate, will do or allow to be done to himself an obscene act, or will have intercourse with another person unmarried.
- 6) Article 292 of the Criminal Code specifies that: "An adult who commits an obscene act with another person of the same sex, whom he knows or should reasonably suspect

to be immature, shall be punished with imprisonment for not more than five years"

A person who is sentenced is a person who is guilty of violating a criminal law regulation or committing a criminal act or crime. The crime of obscenity against children needs serious attention, especially from law enforcement.

The considerations used by law enforcement officials to resolve cases of sexual crimes are often not based on the interests and sense of justice of the victim, but rather based on the following considerations:

- 1) For reasons of public order.
- 2) To prevent the embarrassment of families, traditional leaders, religious leaders, local community leaders.
- 3) To prevent widespread conflict from occurring.

It is appropriate for law enforcement officials to provide appropriate sanctions for perpetrators of criminal acts of obscenity so that the rule of law is truly enforced and order is created in society. Sanctions are expected to have a deterrent effect on perpetrators of obscenity crimes so that they will not repeat their actions and prevent others from committing these crimes because of the threat of severe sanctions.

4. CONCLUSION

The most egregious sexual assault is rape. Because it not only leaves disgrace that cannot be addressed by the victim but also has a very big impact on the survival of the victim. Rape is a sexual relationship that is carried out without a common will, imposed by one of the parties on the other. The victim may be under physical and/or psychological threat, violent, unconscious or unconscious, underage, or mentally retarded and other disability, so unable to resist what happened, not understand, or be unable to take responsibility for what happened to her.

A person who is sentenced is a person who is guilty of violating a criminal law regulation or committing a criminal act or crime. The crime of obscenity against children needs

serious attention, especially from law enforcement. The considerations used by law enforcement officials to solve cases of sexual crimes are often not based on the interests and sense of justice of the victim but rather those that prioritize considerations for reasons of public order, to prevent the shame of the family, traditional leaders, religious leaders, local community leaders, or so on. The sanctions given to perpetrators of sexual violence should be able to deter the perpetrator and not repeat the act and can make a lesson to others not to do the same.

5. DECLARATION OF CONFLICTING INTERESTS

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