LEGAL PROTECTION OF VICTIMS OF COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN THROUGH SOCIAL MEDIA

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ABSTRACT

The crime of Commercial Sexual Exploitation of Children (ESKA) is increasingly rife with the existence of social media as a means of transaction and promotion of children who are victims. However, there is currently a vacuum in regulations that specifically regulate legal protection of the rights of children victims of these crimes. This study aims to describe the applicable rules in protecting children victims of CSEC through social media and how legal policies will be in the future in handling these crimes. The research method used is normative juridical research. From the results of the study, it was found that there is more than one legal regulation that is currently used to protect child victims of commercial sexual exploitation crimes through social media, namely the Child Protection Law, the Pornography Law, the Electronic Information and Transactions Law and the Sexual Violence Criminal Law. Some of the obstacles in protecting CSEC victims include: 1) legal substance factors (overlapping laws and regulations that specifically regulate CSEC crimes through social media), 2) legal structure factors (there is no legal umbrella for investigators and public prosecutors to be able to quickly break the chain of dissemination of cases of commercial sexual exploitation of children on social media; 3) legal cultural factors (public awareness, lack of parental monitoring, and lack of sexual education in children). The suggestions for future legal policies include: 1) Revising the Child Protection Law and the ITE Law; 2) strengthen the authority of the Prosecutor's Office and the Police as investigators and public prosecutors to remove social media content containing commercial sexual exploitation of children from the investigation and prosecution stages; 3) Create a child-friendly complaint and reporting center that is easily accessible to child victims of sexual exploitation crimes.

Keywords: commercial sexual exploitation of children; social media; legal protection.

INTRODUCTION

Since in the womb, every child has rights that must be protected, both by parents as the closest individual, and more broadly protected by the state. Article 13 Paragraph (1) of Law Number 35 of 2014 concerning Child Protection (Child Protection Law), stipulates that every child has the right to protection from treatment: discrimination; exploitation, both economic and sexual; neglect; cruelty, violence, and persecution; Injustice; as well as other mistreatment.

Based on various findings, children are a vulnerable group who are often victims of violations of children's rights and criminal acts of exploitation and trafficking. Child victims are trafficked for the purpose of prostitution and other forms of exploitation, such as: forced labor, slavery and similar practices. The number of children who are victims of violence is increasing day by day, where in particular the threat that many children face today is commercial sexual abuse and exploitation.¹

Although Indonesia has committed to eradicating child exploitation, in fact Indonesia is one of the source and destination countries for child trafficking which is included in cases of commercial exploitation. "The results of research conducted by ECPAT and KPPPA in 10 tourism areas in 2017 show that children are still victims of violence and sexual exploitation".² Some regions in Indonesia with the highest numbers as child sex tourism destinations are: Jakarta, Bandar Lampung, Pontianak, Bandung, Lombok, Bali and Batam.³

From data from the National Police Criminal Investigation, during 2011-2017, there were 422 cases of child victims of human trafficking crimes, with the highest case being commercial sexual exploitation. Entering 2018, KPAI recorded 32 cases of exploitation experienced by children. Furthermore, the Ministry of PPPA noted that in 2019 there were 106 cases of child exploitation throughout Indonesia. In 2020 when the COVID-19 pandemic hit, the number of cases increased to 113, and until mid-2021 the number of cases of commercial sexual exploitation of children reached 165 or an increase of 50% compared to 2019. As for the trend of sexual exploitation cases, 46% are child trafficking for sexual purposes and the remaining 29% are online child prostitution.⁴

Along with the times, commercial sexual exploitation of children is not limited to being carried out directly, but also through social media networks and internet networks. Social media is a public space that has a role as a medium for exchanging ideas, discussing, and communicating democratically and freely.⁵ The existence of social media allows someone to interact with anyone without limitations of age, time, distance, and space. Although the development of social media has a positive impact on the progress of communication systems and information dissemination, it turns out that not a few crimes that occur using this media.

Data from the National Coalition for Commercial Sexual Exploitation of Indonesian Children causes the increasing number of CSEC cases, namely free and unlimited internet use.

¹ Fitriani, D. Haryadi dan Rakhmawati, D, "Peranan Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Anak (P2TP2A) dalam Memberikan Perlindungan Hukum terhadap Perempuan dan Anak Korban KDRT", PAMPAS: Journal of Criminal Law, Nomor 2 Edisi 2, 2021, hal. 104-122.

² Rani, Faisyal. Kirana. Ismandianto, "Kebijakan Pemerintah Indonesia dalam Menangani Kasus Eksploitasi Seksual Komersial di Indonesia", Nakhoda: Jurnal Ilmu Pemerintahan. Vol. 20 Nomor. 02, 2021. hal. 119-130.

³ Subarkah, A. R, "*Peran ECPAT dalam Menangani Child Sex Tourism di Indonesia (Studi Kasus: Bali)*", *TRANSBORDERS: International Relations Journal*, 2(1), 67, 2018. hal. 4. https://doi.org/10.23969/transborders.v2i1.1148.

⁴ ECPAT. "Disrupting Harm in Indonesia: Evidence on Online Child Sexual Exploitation and Abuse", 2022. hal. 1-106.

⁵ Najemi, Andi. Hafrida. Tri Imam Munandar. Aga Hanum Praydhi, "*Meningkatkan Pemahaman Masyarakat terhadap Tindak Pidana Ujaran Kebencian melalui Media Sosial*, JOONG-KI: Jurnal Pengabdian Masyarakat Vol. 1 Nomor 3, September 2022, hal. 400.

This unlimited use of the internet has resulted in more opportunities for child sexual exploitation. Various diverse social media actually provide opportunities and seem to facilitate perpetrators to easily capture children to become victims of sexual exploitation and social media is used to promote to buyers or consumers. Perpetrators of child sexual exploitation crimes such as pedophiles, sexual tourists and perpetrators of child trafficking and child prostitution are increasing, even these child sexual exploitation activities are carried out in an organized manner. In fact, several studies have found that social media has become a container for 60% of cases of sexual exploitation to child labor in Indonesia.⁶ As another example, commercial sexual exploitation of children is carried out by utilizing social media where children are used as sex objects as perpetrators of pornographic video actors which are then traded so that the perpetrators make a profit.⁷

According to KPAI records, more than 60% of CSEC and child labor cases use social media networking applications as a means. The perpetrators used apps like: Michat 41%, Whatsapp 21%, Facebook 17%, unknown 17% and hotel apps virtually like Reddorz 4%.⁸ Social

media is used to recruit and lure victims, as well as conduct transactions between 'sellers' and 'buyers' of child sex services. The finding cases that make it even more sad is the increase in cases of sexual exploitation whose perpetrators are also in the category of children.

In May 2020, the Totosik Rapid Reaction Unit Team of Tomohon Police conducted security for six teenagers suspected of engaging in online prostitution using MiChat social media. Not long after, in October 2020, Manado Police arrested nine pimps and five teenagers at a Manado City hotel. Child victims of commercial sexual exploitation are trafficked for millions of rupiah through the MiChat app every month. There are also cases of child prostitutes recruited through social media. The Head of Public Relations of Polda Metro Jaya recently revealed cases of children aged 14-18 years old being trafficked as prostitutes in the Penjaringan area recruited through social media. Sexual exploitation suspects promise victims high salaries.⁹

In 2022, ECPAT, INTERPOL and UNICEF reported data on sexual exploitation experienced by Indonesian children, especially through online media. The report, entitled Disrupting Harm in Indonesia, shows a very high number of cases of online child sexual exploitation, namely 727,494 cases in 2017, 1,223,972 cases in 2018 and 840,221 cases in 2019. This figure is very likely not yet indicative of the true figure, given that it is very sensitive and there is a possibility that children do not realize themselves have been

⁶ Siregar F, Muslem, "*Eksploitasi Anak di Ruang Media: Sebuah Tinjauan Hukum*", Al-Qadha: Jurmal Hukum Islam dan Perundang-Undangan. Vol. 2 Nomor 3, 2022. hal. 215-230

⁷ Rizky, M. N., Fitriani, R. I., Sudibyo, M. W., Husnasari, F. A., & Maulana, F. "*Perlindungan Hukum Terhadap Anak Korban Eksploitasi Seksual Komersial Melalui Media Sosial*", *Media Iuris*, 2019. 2(2), hal. 197.

⁸ Baharman, "60% Kasus Eksploitasi Anak Lewat Medsos, Pemerintah Harus Proaktif", Media Indonesia, Artikel, Mei 2021. Laman <u>60% Kasus</u> Eksploitasi Anak Lewat Medsos, Pemerintah Harus Proaktif (mediaindonesia.com)

⁹ <u>Melalui Media Sosial, Anak-anak Korban Eksploitasi</u> <u>Seksual Diiming-imingi Gaji Tinggi (kompas.com)</u>

victims of commercial sexual exploitation through social media. Hafrida mentions:

"The purpose of exploitation has a very wide meaning, referring to both economic and sexual exploitation. In various cases, females and children as the victims of human trafficking suffers from complex exploitations, both sexual exploitation for the purpose of economic exploitation and even slavery. For the purpose of *exploitation*, various modes of recruitment were used, for example by persuasion to teenagers, usually in shopping malls, by offering them luxurious things and money".¹⁰

The various forms of exploitation as well as the forms of exploitation mentioned above are not only economic but also sexual and even slavery. The perpetrators also made various approaches to these child and adolescent victims such as taking shopping at malls and buying them luxury goods.

The above cases show that the practice of commercial sexual exploitation of children through social media networks has been rife. Most victims and perpetrators stated that the practice of prostitution and trafficking in sexual services was carried out using social media and electronic messaging applications. The rampant abuse of internet networks and social media in various modes opens up opportunities for crimes targeting children as victims. The problem is the rapid use of the internet and social media and the lagging behind of the rule of law to ensnare perpetrators, causing law enforcement to have problems in

¹⁰ Hafrida, H., Herlina, N., & Adamy, Z. (2019). **The Protection of Women and Children as Victims of Human Trafficking in Jambi Province**. *Jambe Law Journal*, 1(2), 207–230. hal. 208. anticipating and handling CSEC problems carried out electronically and internet networks.¹¹

In order to protect the rights of children victims of CSEC through social media networks, the state needs to be present through laws and regulations that specifically become the legal umbrella of the problem.¹² The existence of a set of rules specifically regulating electronic-based crimes and legal protection against the use of information technology and internet networks is needed to reduce the number of CSEC cases that use social media.

The devastating impact of commercial sexual exploitation crimes through social media will cause great trauma to victims, especially children. Children who experience sexual exploitation through social media are affected psychologically such as: deep trauma, loss of self-esteem, depression, increased risk of suicide, experiencing social anxiety, and unable to get along according to their age stage to sexual disorientation.¹³ Not only psychologically, children victims of sexual exploitation also suffer physical losses such as: the risk of pregnancy, sexual diseases, decreased immunity and injuries as well as social impacts such as dropping out of school, falling into

¹¹ Twenty Purandari. "*Pertanggungjawaban Hukum Pelaku Eksploitasi Seksual pada Anak melalui Internet*", Jurnal Media Iuris Vol. 2 No. 2, Juni 2019. hal. 233.

¹² Eddyono, Supriyadi Widodo dan Ermelina Singereta. "Penanganan Kasus Eksploitasi Seksual Komersial Anak (ESKA) di Indonesia: Belajar dari Pengalaman Penanganan Perkara Kasus-Kasus ESKA di Indonesia", Jakarta: Institute for Criminal Justice Reform (ICJR), 2016. hal. 12.

¹³ Tim Peneliti ChildFund Internasional Indonesia. *Memahami Perundungan Online dan Eksploitasi Seksual dan Kekerasan Online terhadap Anak dan Orang Muda di Indonesia.* Kementerian Sosial Republik Indonesia. Jakarta. 2022. hal. 17.

promiscuity, engaging in bullying and the possibility of becoming perpetrators of sexual violence in the future.¹⁴ Therefore, the role of the state in regulating the protection of child victims of commercial sexual exploitation crimes specifically carried out through social media is urgently needed.

The state plays an important role in providing legal protection and guaranteeing the rights of children who are victims of commercial sexual exploitation through social media. However, until now, there are no rules that specifically regulate these crimes. This research is expected to analyze in depth how legal arrangements regarding protection are provided to children as victims of commercial sexual exploitation through social media according to laws and regulations in Indonesia and analyze future legal policies to ensure legal protection for children as victims of sexual exploitation, specifically through social media.

RESEARCH METHOTDS

The research method used is normative juridical research. This method focuses on examining the application of norms and rules in positive law. The normative nature of legal research is associated with the character of legal scholarship itself. The author is limited by the formulation of the problem, the object of research, and the tradition of legal scholarship.¹⁵ The approach used is a statute approach by examining all laws and regulations related to legal issues under study and a conceptual approach that leads to legal principles and concepts, as well as legal principles found from the findings of scholars or legal doctrines, relating to legal protection of child victims of commercial sexual exploitation through social media in the perspective of legislation in Indonesia.

FINDINGS AND DISCUSSION

The definition of ESKA based on Presidential Decree Number 87 of 2002, namely: sexual violence by adults and the provision of rewards in the form of cash or goods to children, or third persons, or other people. In simple terms, ESKA is interpreted as a form of violence against children, where children are used as sexual objects that are rented or traded for profit.¹⁶ In the case of CSEC, children are not limited to being sex objects, but are traded as 'commodities' in a transaction. The existence of transaction and profit elements in child sexual exploitation is what distinguishes CSEC from other forms of child sexual exploitation.

The basis of the difference between sexual exploitation for commercial purposes and not seen from the presence or absence of exchange for money, goods, services or certain promises of sexual exploitation acts committed on children.¹⁷ CSEC crimes are different from sexual

¹⁴ Sari, Widya Cindy Kirana, "Perlindungan Hukum terhadap Anak sebagai Korban Kejahatan Eksploitasi Seksual", Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal. 2021. Vol 2 (1). hal. 10.

¹⁵ Sahuri Lasmadi, *Pertanggungjawaban Korporasi Dalam Perspektif Kebijakan Hukum Pidana Indonesia*, Disertasi Program Pascasarjana Universitas Airlangga, Surabaya, 2003

¹⁶ Frias, Sonia. Gomez Zaldivar Mariajose. *Child and Adolescent Commercial Sexual Exploitation in Mexico: The Exploiters and the State.* Dignity: A Journal of Sexual Exploitation and Violence Vol. 2 Number 4, 2014. Hal. 76.

¹⁷ State of Florida Department of Children and Families. *Commercial Sexual Exploitation of Child*

violence against children because of the remuneration factor. In sexual violence, there is no purpose of commercial gain obtained. Meanwhile, in the case of CSEC, children are used for sexual purposes to obtain money, goods, or services and profit for exploiters, intermediaries or other agents involved in the crime mode.

Along with the development of communication media, the case of CSEC has also developed in various modes, including online prostitution and child pornography. There are many incidents where children become victims of techno crimes without realizing it. This also happens in Indonesia which is included in the country that uses the internet the most. Indonesians who are in the category of children are very active in using the internet, where 95% of them access social media at least twice a day. Furthermore, around 500,000 Indonesian children stated that they had been victims of sexual exploitation and mistreatment in cyberspace in 2020.¹⁸ Thus, the opportunity for child criminals and predators in finding victims and sexually exploiting is getting bigger by utilizing the development of information technology.¹⁹

Perpetrators of EKSA crimes are directly involved, but some are not. Direct commercial sexual exploitation includes: pimps, sex buyers, and trafficking syndicates such as: connectors, transporters, recruiters, observers and promoters. The perpetrators of indirect commercial sexual exploitation, among others: civilians who give permission, ignorant public authorities, transportation entrepreneurs, hotel owners and other employers who indirectly benefit from child sexual exploitation.²⁰ There are several forms of commercial sexual exploitation of children, including: child prostitution, child trafficking and child pornography.²¹ Other views classify forms of commercial sexual exploitation of children, namely, child prostitution, child pornography, and trafficking for sexual purposes. Other forms of CSEC are child labor in sex tourism and child marriage.

1. Legal Protection Arrangements for Children Victims of Special Commercial Sexual Exploitation Carried Out through Social Media in the Perspective of Indonesian Legislation

Law Number 35 of 2014 concerning Child Protection and Law Number 13 of 2006 concerning Protection of Witnesses and Victims regulate forms of protection for children who are victims of commercial sexual exploitation. These two rules provide legal protection in the form of: rehabilitation; protection of the dissemination (reporting) of identity in the mass media (preventing labeling from the wider public), ensure health, provide assistance/advocacy during court and post-trial processes; and provide information on the progress of the course of the

⁽CSEC) User Guide Prepared for State Florida Department of Children and Families. 2013. Hal. 36-37.

¹⁸ ECPAT, I. U. **DISRUPTING HARM IN INDONESIA:** Evidence on online child sexual exploitation and abuse. <u>https://ecpat.org/wp-content/</u>

¹⁹ Supriyadi, Widodo Eddyono. Ermelina Singereta. *Penanganan Kasus Eksploitasi Seksual Komersial Anak (ESKA) di Indonesia: Belajar dari Pengalaman Penanganan Perkara Kasus-Kasus ESKA di Indonesia.* 2016. Jakarta: Institute for Criminal Justice Reform. Hal. 33.

²⁰ Frias & Gomez Zaldivar. *Loc.Cit.*

²¹ Kartini Kartono. *Loc.Cit.*

case. Children victims of CSEC crimes have the right to restitution and receive recovery assistance as stipulated in Article 30 of the Sexual Violence Law (TPKS) and Article 71D of the Child Protection Law. The following is the description of the rights to restitution, compensation and rehabilitation of children as stipulated in the Law.

Restitution

Child victims of sexual exploitation crimes suffer losses due to the criminal acts they suffer. The losses in question can be in the form of material and immaterial losses. Punishment of perpetrators of crimes is not enough to fulfill the sense of justice for children who are victims. The rule of law also needs to compensate victims and victims' families. This is the basis for the formation Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children Victims of Criminal Acts. in order to regulate the mechanism for providing restitution and fulfilling the rights of victims due to losses suffered.

Compensation given to the victim or his family by the perpetrator or third party based on a court decision with permanent legal force for material and/or immaterial losses suffered by the victim or his heirs is called Restitution. Restitution is an effort to provide a sense of justice for child victims in court. Cooperation and coordination between victims, parents or guardians, investigators, public prosecutors and the Witness and Victim Protection Agency (LPSK), as well as other elements of the court are needed.

Compensation

Compensation is compensation provided by the state because the perpetrator of a criminal act is unable to fully compensate for which he is responsible. If the perpetrator of the crime is unable to pay restitution, then based on Article 35 of the TPKS Law, the state compensates the child victim. Compensation given in the amount with underpaid restitution is based on the results of 35 court decisions. Furthermore, Article paragraph (2) of the TPKS Law explains that compensation is paid in the form of victim assistance funds.

Rehabilitation

Rehabilitation is a process that aims to enable people with disabilities to obtain optimal function in terms of physical, psychological, five senses, intellectual, and/or social. This is done by utilizing tools or devices that can support him to achieve an independent life. Rehabilitation is defined as "a measuring tool that helps individuals who have disabilities, to achieve optimal functioning in interaction with their environment." Rehabilitation is important so that child victims who have limitations can stay and return to the community, participate in education, be able to live independently, and live a civil life comfortably and safely.

Perpetrators of commercial sexual exploitation of children through social media in the perspective of Indonesian legislation are charged with criminal responsibility as follows:

> In Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, there is a formulation of criminal acts in Article 76I. Criminal sanctions are regulated in

Article 88, in the form of: imprisonment for a maximum of 10 (ten) years and/or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah);

- 2. Law No. 21 of 2007 concerning the Eradication of Trafficking in Persons, there is a formulation of criminal acts in Article 6. Sanctions are imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years with a fine of at least Rp. 120,000,000.00 (one hundred twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah). Specificity: Article 7 paragraph (1) If the victim suffers serious injury, severe mental illness, other infectious diseases that endanger his life, pregnancy, or impaired or loss of reproductive function: criminal threat plus 1/3 (onethird) of the criminal threat Article 6. If resulting in death: punishable with a maximum imprisonment of 5 (five) and a maximum of life vears imprisonment with a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 5,000,000,000.00 (five billion rupiah). If the perpetrator is an organized group, then every criminal in the group is punished with the same crime as referred to in article 2 plus 1/3 (onethird).
- In Law No. 44 of 2008 concerning Pornography, there is a criminal formulation in Article 4 paragraph (1). Criminal sanctions are regulated in

Article 29 in the form of a crime with a maximum imprisonment of 6 (six) months and a maximum of 12 (twelve) years and/or a fine of at least Rp. 250,000,000,000 (two hundred fifty million rupah) and a maximum of Rp. 6,000,000,000.00 (six billion rupiah). Specifically in Article 37, every person who involves a child in activities and / or objects as referred to in Article 11 shall be punished the same as the crime referred to in Article 29, plus 1/3 (one-third) of the maximum criminal threat.

- 4. In Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions, there is a formulation of criminal acts in Article 27 paragraph (1). Criminal sanctions are regulated in Article 45 paragraph (1) in the form of imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). Article 52 paragraph (1) explains that in the case of criminal acts as referred to in Article 27 paragraph (1) involving decency or sexual exploitation of children, one-third of the principal crime is subject to one-third of the principal crime. Article 52 paragraph (4) explains that in the event that a criminal act as referred to in Article 27 is committed by a corporation, it shall be punished with the principal crime plus two-thirds.
- In Law No. 12 of 2022 concerning Sexual Violence, there is a criminal formulation in Article 4 paragraph (2),

Article 10 paragraph (1), Article 10 paragraph (2), Article 12, Article 14 paragraph (1), For crimes in Article 10, criminal sanctions with a maximum imprisonment of 9 (nine) years and/or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah). For crimes in Article 12, criminal sanctions are in the form of imprisonment for a maximum of 15 (fifteen) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). For Article 14 paragraph (1), convicted of committing electronic-based sexual violence, with a maximum imprisonment of 4 (four) vears and/or a maximum fine of Rp. 200,000,000.00 (two hundred million Specifically, Article rupiah), 14 paragraph (3) stipulates that electronicbased sexual violence as referred to in paragraph (1) is a complaint offense, unless the victim is a child or person with a disability. In Article 14 paragraph (3) in the event that the victim of electronic-based sexual violence as referred to in paragraph (1) letter a and letter b is a child or person with disabilities, the will or consent of the victim does not eliminate criminal charges.

Children victims of commercial sexual exploitation crimes deserve the fulfillment of the rights to restitution and recovery services as stipulated in Article 71D of the Child Protection Law and Article 30 of the TPKS Law.

2. Forms of Legal Protection Provided to Children as Victims of Commercial Sexual Exploitation through Social Media

Children are individuals who are vulnerable to becoming victims of adult crime. A child is at high risk of being a victim of sexual exploitation, violence, neglect and others. Therefore, in general, children need to get protection from: emergencies or dangerous circumstances, legal abuse, discrimination and exploitation including violence and neglect.²²

Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection contains special protection rules for child victims of sexual exploitation. The form of protection received by children in certain situations and conditions in order to obtain a guarantee of security against threats that are dangerous to themselves and the soul in children's growth and development is Children special protection. victims of exploitation receive special protection from the state as stipulated in Article 59 Paragraph (1) and (2) of the Child Protection Law, which states::

> The Government, Local Government, and other state agencies are obliged and responsible to provide Special Protection to Children. Special Protection to Children as referred to in paragraph (1) is given to: a. Child in emergency situations; b. Children facing the law; c. Children from minority and isolated groups; d. Children who are economically and/or

²² Ismael et al. *Loc.Cit.*

sexually exploited; e. Children who are victims of abuse of narcotics, alcohol, psychotropics, and other addictive substances; f. Children who are victims of pornography; g. Children with HIV/AIDS; h. Child victims of abduction, sale, and/or trafficking; i. Child victims of physical and/or psychological violence; j. Child victims of sexual crimes; k. Child victims of terrorism networks; l. Children with Disabilities; m. Child victims of mistreatment and neglect; n. Children with deviant social behavior; and o. Children victims who are of stigmatization from labeling related to the condition of their parents.

Article 59A of the Child Protection Law regulates special protection for children as referred to in Article 59 paragraph (1) through efforts:

- a. prompt treatment, including physical, psychological, and social treatment and/or rehabilitation, as well as prevention of diseases and other health problems;
- b. psychosocial assistance during treatment until recovery;
- c. provision of social assistance for children who come from poor families; and
- d. provision of protection and assistance in every judicial process.

Article 66 of the Child Protection Law states that Special Protection for Children who are exploited economically and/or sexually as referred to in Article 59 paragraph (2) point d is carried out through:

- a. dissemination and/or dissemination of laws and regulations relating to the Protection of Children who are economically and/or sexually exploited;
- b. monitoring, reporting, and imposing sanctions; and
- c. involvement of various companies, trade unions, non-governmental organizations, and communities in the elimination of economic and/or sexual exploitation of children.

Article 69A of the Child Protection Law states that Special Protection for Children victims of sexual crimes as referred to in Article 59 paragraph (2) point j is carried out through efforts:

- a. education about reproductive health, religious values, and moral values;
- b. social rehabilitation;
- c. psychosocial assistance at the time of treatment until recovery; and
- provision of protection and assistance at every level of examination starting from investigation, prosecution, to examination in court hearings.

Law Number 35 of 2014 concerning Child Protection, especially in Article 64, states that rehabilitation is one of the efforts to handle child victims of violence (including commercial sexual exploitation). Rehabilitation guarantees for victims of child violence are also contained in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims. Article 6 of Law Number 13 of 2006 states that victims of child violence are entitled to medical assistance, psychosocial and psychological rehabilitation assistance.

Article 1 point 2 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System states that children who face the law are children who are in conflict with the law, Children who are victims of criminal acts and children who are witnesses to criminal acts. Children who are victims of criminal acts are protected by law, including in the investigation process. Article 59 of the Child Protection Law states that special protection must be given to children who face the law.

Children who are victims of commercial sexual exploitation through social media are entitled to legal and other assistance and receive assistance from Community Advisors or other companions as stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). Furthermore, Article 89 explains that Child Victims and/or Child Witnesses are entitled to all protections and rights stipulated in the provisions of laws and regulations. Furthermore, Article 90 paragraph (1) states::

> (1) In addition to the rights stipulated in the provisions of laws and regulations as referred to in Article 89, Child Victims and Child Witnesses have the right to:

- a. medical rehabilitation and social rehabilitation efforts, both within the institution and outside the institution;
- b. safety guarantees, whether physical, mental, or social; and

c. ease of obtaining information about the development of the case.

The SPPA Law stipulates that child victims are entitled to assistance starting from the examination stage, the course of the trial process, until after the inkracht trial. In Article 41 paragraph (1) of the TPKS Law, the form of assistance provided to child victims is the implementation of psychological strengthening and safety guarantees carried out by the Technical Implementation Unit of the Women and Children Protection Area (UPTD PPA). Furthermore, Article 41 paragraph (1) of the TPKS Law states::

> UPTD PPA, technical implementation units and regional technical implementation units in the social sector, and/or 1, Community-Based Service Providers must:

- a. receive reports in a special room that ensures the security and confidentiality of the Victim; and
- b. organizing psychological strengthening for victims, in the event that victims submit reports and/or information through UPTD PPA, technical implementation units and regional technical implementation units in the social sector, and/or community-based service providers.

Article 46 paragraph (1) of the TPKS Law states: The Central Government has the authority to delete and/or terminate access to electronic information and/or electronic documents containing Sexual Violence Crimes. Thus, based on the current law, the authority to remove or cut off access to electronic information dissemination containing criminal acts of sexual violence (including commercial sexual exploitation through social media) lies with the central government through the Ministry.

The rights of children victims of commercial sexual exploitation are expected to be accommodated by the existence of the TPKS Law. Article 67 paragraph (1) states that the rights of child victims, including: the right to treatment; the right to Protection; and the right to Remedy. Furthermore, Article 68 states::

The Right of Victims to Handling as referred to in Article 67 paragraph (1) point a includes:

- a. the right to information on all processes and outcomes of Handling, Protection and Remedy;
- b. the right to obtain documents resulting from Handling;
- c. the right to legal services;
- d. the right to psychological reinforcement;
- e. the right to health services including medical examinations, measures, and treatment;
- f. the right to services and facilities in accordance with the specific needs of the Victim; and
- g. the right to removal of sexually explicit content for cases of sexual violence with electronic media.

Various forms of assistance and protection provided to children victims of CSEC crimes are efforts to fulfill Children's Human Rights. The fulfillment of children's human rights is carried out so that the child's condition can heal and recover psychologically and physically and recover in terms of the status of children in community life. The government through the regional/provincial Office of Women's Welfare and Child Protection as well as UPTD PPA also plays a role in protecting and fulfilling the rights of children who are victims.

The government provides legal protection by: providing assistance in the examination process until trial; providing legal counseling and psychological counseling services; provide psychological assistance to heal children's psychics; provide rehabilitation services if needed; and provide counseling in the room with a safe and comfortable atmosphere and maintain the confidentiality of children.²³ This aims to ensure that children receive protection and psychological assistance throughout the entire court process.

3. Obstacles in Providing Protection to Children Victims of Commercial Sexual Exploitation through Social Media

Providing protection to child victims of commercial sexual exploitation through social media still faces several obstacles. The existing obstacles come from several factors, including: 1) legal substance factors, where overlapping laws and regulations and the absence of rules that

²³ Fawwas Aufaa Taqiyyah Prastiwi, Aroma Elmina Martha. *Perlindungan Hukum terhadap Anak sebagai Korban Eksploitasi Seksual melalui Media Online*. Prosiding Seminar Hukum Aktual: Idealita dan Problematika Implementasi Undang-Undang Tindak Pidana Kekerasan Seksual. 2023. Hal. 48. Diakses pada 23 Februari 2024.

specifically regulate CSEC crimes through social media, 2) legal structure factors, namely the absence of a legal umbrella for investigators and public prosecutors to have the authority to quickly break the chain of dissemination of content containing commercial sexual exploitation of children on social media since the investigation and prosecution stages, 3) legal culture factors that include public awareness and parental monitoring, where low monitoring and lack of sexual education in children make them vulnerable to becoming victims of crime.

problem of In the child sexual exploitation, not a few roles of society and the environment take part. The lack of public attention to violence and discrimination against children makes this criminal practice continue to be rife. This is evident from the increasing cases of sexual abuse of children from year to year. The state should already have rules that protect the interests of children, But what is also an obstacle is that the target of perpetrators of commercial sexual exploitation crimes are children who lack supervision from the surrounding environment, especially parents.²⁴ In addition, the lack of sexual education and psychological factors of children such as: shame, trauma, instability make the handling of CSEC cases that occur through social media not optimal.

4. Future legal policies in Indonesia in ensuring legal protection of children as victims of sexual exploitation through social media

Law Number 35 of 2014 concerning Child Protection which is expected to be able to eliminate commercial sexual exploitation of children has not been able to accommodate optimally. In this Law there is no article that regulates Commercial Sexual Exploitation of Children, be it about child pornography, child prostitution, or child trafficking for sexual purposes, but only generally regulates the crime of sexual violence. The Child Protection Law only regulates child victims of economic and sexual exploitation but does not specify the types of sexual exploitation.²⁵ In fact, commercial sexual exploitation of children also includes the practice of child pornography, child prostitution, child trafficking for sexual purposes, child sex tourism workers and child marriage.

Currently, the Child Protection Law has not clearly stated the mechanism of restitution and compensation for child victims of commercial sexual exploitation. Although restitution and compensation rules are recorded in the Criminal Procedure Code, their realization often does not occur as it should. In addition to realization, the rules on restitution and compensation for child victims do not yet have a detailed calculation mechanism and payment stages. Without a clear calculation measure and payment mechanism, the right of child victims to restitution and compensation is often neglected.

Article 47 of the TPKS Law stipulates that in the public interest, prosecutors can submit a request to the chairman of the district court to order the Ministry that administers government affairs in the field of communication and

²⁴ Rio & Supriyadi, *Loc.Cit*.

²⁵ Eddyono & Hendra. *Loc.Cit.*

information to delete electronic information and/or electronic documents containing sexual violence crimes. Supposedly, the authority to delete electronic information and/or electronic documents containing sexual violence crimes should not only be at the Ministry level, but also at the level of investigators and public prosecutors. The removal of social media content containing commercial sexual exploitation by investigators and public prosecutors aims to protect children's rights in maintaining the confidentiality of their identities and break the chain of dissemination of content containing commercial sexual exploitation of children as soon as possible.

In Law No. 1 of 2023 concerning the Criminal Code, there is no definition of the criminal act of commercial sexual exploitation of children specifically, so conceptually there is no meaning to this crime. The meaning of CSEC criminal acts is still guided by doctrine and references to international legal instrument documents which first defines it such as the Stockholm Declaration, or the Optional Protocol to the Convention on the Rights of the Child concerning the Sale of Children and Child Pornography ratified by Indonesia through Law Number 10 of 2012.²⁶

Based on the explanation above, future legal policy policies to ensure legal protection of children as victims of sexual exploitation through social media can be carried out, including: 1) the existence of special articles regulating the criminal act of commercial sexual exploitation of children; 2) the existence of regulations that contain mechanisms for calculating and paying restitution and compensation to child victims of commercial sexual exploitation; 3) There are special rules governing the authorization to remove social media content containing commercial sexual exploitation to investigators and public prosecutors.

The results of research by Hafrida et al. in 2018 concluded that trafficking victims with child and adolescent victims were still carried out partially and were not comprehensive. For this reason, it is still necessary to expand access to services such as socialization, advocacy, technical supervision and assistance to children and adolescents victims of sexual exploitation. The handling of CSEC victims is still carried out partially and not comprehensively. To address these conditions, it is necessary to: expand access to socialization, advocacy, technical supervision, and assistance services in order to stop and prevent trafficking crimes early.

I. CONCLUSION

Protection of child victims of commercial sexual exploitation through social media uses several rules. Among them: 1) Law No. 21 of 2007 concerning the Eradication of Trafficking in Persons; 2) Law No. 44 of 2008 concerning Pornography; 3) Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection; 4) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions jo Law Number 11 of 2008 concerning Electronic Information and Transactions; and 5) Law Number 12 of 2022 concerning Sexual Violence.

Providing protection to child victims of commercial sexual exploitation through social media still faces several obstacles. The existing obstacles come from several factors, including: 1) legal substance factors, where overlapping laws and regulations and the absence of rules that specifically regulate CSEC crimes through social media, 2) legal structure factors, namely the absence of a legal umbrella for investigators To be able to quickly break the chain of dissemination of cases of commercial sexual exploitation of children in electronic media. as well as harmony between law enforcement and related agencies in terms of handling CSEC cases, 3) legal cultural factors that increase public awareness and parental monitoring, where low monitoring and lack of sexual education in children make them vulnerable to becoming victims of crime.

Based on the conclusions above, there are several suggestions, namely: First, for the Government to revise Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, by adding articles that specifically regulate the criminal act of commercial sexual exploitation of children. Second, to strengthen the authority of the Prosecutor's Office and the Police as investigators and public prosecutors to remove social media content containing commercial sexual exploitation of children from the investigation and prosecution stages. The Government may revise Law Number 12 of 2022 concerning Sexual Violence which only authorizes the Government through the Ministry of Communication and Information Technology to delete electronic information and/or electronic documents which contains criminal acts of sexual violence which include criminal acts of commercial sexual exploitation through social media. This aims to protect children's identities and rights, and as soon as possible break the chain of dissemination of content containing commercial sexual exploitation of children that circulates quickly through social media.

Third, for the government to revise Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions and Law Number 11 of 2008 concerning Electronic Information and Transactions in order to strengthen the authority of the Prosecutor's Office and the Police as investigators and public prosecutors to remove social media content containing commercial sexual exploitation of children from the investigation and prosecution stages.

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