

The Urgency of Punishment Policy for Buyers of Child Sexual Exploitation in the Form of Prostitution

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ABSTRACT

As the weakest and most vulnerable social beings in society, ironically, children are often put in a disadvantaged position, and become victims of a crime. One of the problems faced by children is the crime of sexual exploitation of children in the form of child prostitution. One of the reasons why child prostitution is increasing is the growing demand for the global sex market. Child sex buyers have a big hand in controlling child prostitution by creating a demand for it. Reflecting on the countries of South Korea, Philippines and Sweden which already have specific and firm national regulations in providing elements regarding the sexual exploitation of children and the punishment of buyers of child sex in the form of prostitution. This is what is needed to be accommodated in the current Child Protection Law in Indonesia by making clear, firm, and specific regulations so that it will not provide errors for all law enforcement officers in dealing with and resolving criminal cases of sexual exploitation of children in the form of child prostitution.

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I. INTRODUCTION

Children are a mandate as well as a gift given by God Almighty that must always be guarded because in them inherent dignity and rights as human beings. The state must guarantee and uphold children's human rights as indicated by the guarantee of protection and fulfillment of children's rights. As mandated by the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) Article 28B paragraph (2) which states that "every child has the right to survival, growth and development, and the right to protection from violence and discrimination".¹ As the weakest and most vulnerable social beings in society, ironically children are often placed in the most disadvantaged position, and become victims of violence and violations of their rights. This phenomenon is an illustration of the complexity of child problems that occur in Indonesia. Child labor can also be found easily at crossroads such as a group of children busking, begging for others, and even as commercial sex workers. The presence of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection (Law No. 35 of 2014) has shown the existence of child protection itself due to the many crimes and

¹ Indonesia, Law of the Republic of Indonesia Number 35 of 2014 Concerning the Amendment to Law Number 23 of 2002 Concerning Child Protection (State Gazette of the Republic of Indonesia Year 2014 Number 297, Supplement to the State Gazette of the Republic of Indonesia Number 5606), Explanation.

problems against children that make children victims of these crimes. One of the problems faced by children is the criminal act of sexual exploitation of children in the form of prostitution.

Based on NCMEC (National Center for Missing and Exploited Children) data, there has been an increase in the number of child sexual abuse and exploitation in January-September 2020 globally, with an increase of around 98.66%. Then, from January to April 2021, the number of TPPO and exploitation through prostitution of children has not shown a decrease. Based on 35 cases monitored by KPAI, 83% were prostitution cases. Indonesia has essentially regulated the sexual exploitation of children specifically in Law No. 35 of 2014 as stipulated in Article 76I which states that "every person is prohibited from placing, allowing, committing, ordering to commit, or participating in the economic and/or sexual exploitation of children". Then, the criminal penalty for this prohibition is regulated in Article 88 which explains "every person who violates the provisions referred to in Article 76I, shall be punished with a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp200,000,000.00 (two hundred million rupiah)." However, the Indonesian Child Protection Law does not provide any specifications regarding the category of child sexual exploitation. Furthermore, what is also a weakness is that the phrase in Article 76I "placing, allowing, doing, ordering to do, or participating in doing" does not provide specifications of the elements of which parties can be held criminally responsible.

Indonesia has ratified the Optional Protocol To The Convention On The Rights Of The Child On The Sale Of Children, Child Prostitution And Child Pornography through Law No. 10/2012 on the Ratification of the Optional Protocol To The Convention On The Rights Of The Child On The Sale Of Children, Child Prostitution And Child Pornography.² This protocol provides for legal reform by clearly outlining definitions for these phenomena, so as to help harmonize the rights of child victims and promote the recovery and reintegration of child victims. Between Law No. 35 of 2014 and Law No. 10 of 2012, there is a clear difference in the terms used, namely the use of the term "child prostitution" in the optional protocol, while in Law No. 35 of 2014 it is stated as "sexual exploitation". This difference in terminology is often a problem in law enforcement in Indonesia. Another difference is also related to the elements of the criminal offense, if in the Optional Protocol it is stated that "buying" child prostitution is included in one of the elements of the criminal offense, then the use of the term "sexual exploitation" is still considered not specific and strong criminal elements because it is still too broad a definition of the term sexual exploitation. One of the reasons why sexual exploitation of children is increasing is due to the growing demand of the global sex market. Sex buyers play a major role in controlling child sexual exploitation in the form of prostitution by creating demand for it. The demand keeps pimps looking for ways to fulfill it, and the demand-driven sex trade continues to exploit social inequalities and use coercion to recruit women and children into it. The lack of clear elements in criminalizing child sex buyers means that law enforcement officials need to understand all the criminal elements in the laws governing child sexual exploitation. The understanding shared between law enforcement institutions in Indonesia has also led to problems related to the criminal elements in determining whether or not a child sex buyer can be criminalized.

One of the problems related to differences in understanding that occurred was experienced by ECPAT Indonesia, where when the police arrested a man who bought child sex services and the police detained him on charges of having had sexual intercourse with a minor under Article 81 of Law No. 35 of 2014. Subsequently, when the investigation file was completed and sent, it turned out that the prosecutor could not find the right elements to charge the perpetrator, and the prosecutor eventually returned and rejected the alleged article because there were no criminal elements violated in the case. This was based on the prosecutor's opinion that it was not the perpetrator who persuaded the child to have sexual intercourse, but the victim who contacted the perpetrator and offered her sexual services. There are several countries that also have specific national regulations regarding child sexual exploitation and the criminalization of buyers of child sexual exploitation in the form of prostitution including Sweden, South Korea and the Philippines. Reflecting on the regulations of the three countries has provided evidence of how specific and firm these countries are in providing specific elements related to being able to convict buyers of sexual exploitation of children in the form of prostitution. This is what is needed to also be accommodated in the current Indonesian Child Protection Law by making clear, firm, and specific regulations in the future that will not provide complications and confusion for all law enforcement officials in dealing with and resolving cases of sexual exploitation of children in the form of prostitution. Departing from this background, the title of this research is "Urgency of Criminalization Policy for Purchasers of Child Sexual Exploitation in the Form of Prostitution in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection".

² Eddyono, Supriyadi Widodo, Rio Hendradan Adhigama Andre Budiman. *Fighting Child Prostitution in Indonesia and its Challenges*. Jakarta: Institute for Criminal Justice Reform, 2017.

II. RESEARCH PROBLEMS

1. What is the urgency of the policy of punishing buyers of child sexual exploitation in the form of prostitution in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection?
2. How the Government's Efforts in Overcoming Commercial Sexual Exploitation of Children?

III. RESEARCH METHODS

A. Type of Research

In conducting this writing, a normative research method will be used.

B. Research Specifications

Normative Legal Writing as according to Peter Mahmud Marzuki has a prescriptive nature where the object of legal science is a coherence between legal norms and legal principles, then between legal rules and legal norms, and between individual behavior and legal norms.

C. Method of Approach

The approach method used in this writer is a statutory approach or (statute approach).

D. Research Data Sources

- a. Primary Data Source
Primary data is obtained by conducting interviews.
- b. Secondary Data Source
Secondary data is obtained using library research.

E. Data Collection Method

In this research, the following legal sources were used:

- 1) Primary law, primary legal sources consist of laws and regulations, official records, and judge decisions.
- 2) Secondary Law, secondary legal sources in the form of publications on law that are not official documents.
- 3) Non-legal, namely materials that provide information about primary legal materials and secondary legal materials, such as legal dictionaries and encyclopedias. Collection of legal materials will be carried out in research.

F. Data Analysis Method

This research will conduct a deductive review of legal materials, such as examining the reasons and objectives of the formation of a related legislation, examining related views that have developed, to find out the causal relationship that can answer the problem under study.

IV. RESULT AND DISCUSSION

1. Urgency of Criminalization Policy for Buyers of Child Sexual Exploitation in the Form of Prostitution in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection

Existing laws and regulations in Indonesia do not regulate the criminalization of buyers of child sexual exploitation in the form of prostitution. Regulations regarding the sexual exploitation of children are contained in several related laws such as the Criminal Code, the Anti-Trafficking Law, the ITE Law, the Pornography Law and several other Regional Regulations. However, the problem that occurs is that the definition of criminal acts of exploitation of children in these laws and regulations is still very abstract.³ Although the prohibition of the act has been mentioned, the prohibition is still very vague and the elements of the prohibited act have not been specifically explained. The formulation of exploitation must be defined concretely, so that when the element is fulfilled, anyone involved in the criminal act of sexual exploitation of children can be punished. Criminalization, according to Sudarto, can be interpreted as the process of determining a person's actions can be punished, which ends with the process of making regulations or the formation of a law where the action can be threatened with sanctions in the form of punishment.

Criminalization of buyers of child sexual exploitation in the form of prostitution needs to be done, because this act is an act that has many negative impacts. This criminalization also aims to control human sexual instincts and prohibit the distribution of sexual needs in commercial sexual activities such as prostitution. The criminalization of buyers of child sexual exploitation in the form of prostitution is not only a form of retaliation

³ Indonesia, Law of the Republic of Indonesia Number 35 of 2014 Concerning the Amendment to Law Number 23 of 2002 Concerning Child Protection (State Gazette of the Republic of Indonesia Year 2014 Number 297, Supplement to the State Gazette of the Republic of Indonesia Number 5606), Explanation.

for harmful acts and violating norms, but must pay attention to the objectives to be achieved from the criminalization. This punishment must make a There is a gap contained in the main element of child prostitution activities, namely the absence of the word "buy" which can be a touchstone for law enforcement in determining the actus reus of an act of child sexual exploitation in the form of prostitution of children.³³ The criminal element of "buying" children for sexual purposes has not been implemented into Indonesian national legislation. This can later lead to complications when law enforcement officials place children as victims in a prostitution activity, while existing laws and regulations have not been able to criminalize perpetrators who buy child sex. The understanding shared between law enforcement institutions in Indonesia also creates a problem related to the criminal element in determining whether or not a child sex buyer can be criminalized. Based on this statement, the punishment carried out against a person who buys child sexual exploitation in the form of prostitution fulfills these requirements, which are described as follows:

1. Criminal Act (Objective Elements)

A criminal offense is an act committed by a perpetrator that violates the provisions of the laws and regulations. The objective elements of a criminal offense, namely:

a. Against The Law

Against the law is an act that violates the written laws and regulations as well as an act that violates morality and decency in the social life in society.³⁵ Based on this statement, it can be interpreted that a person is said to be against the law when the act committed is an act prohibited by law. The act of buying a child's sex can be said to be an act that has violated the morals and ethics that live in society. Although there is no specific offense that can punish someone who buys a child's sex, but the act can result in the sexual exploitation of a child, where the prohibition has been regulated in the Child Protection Law Article 76I.

b. No Justification

Justification is the reason that removes the unlawful nature of an act, so that what is done by the defendant becomes a justifiable act. If it is seen that the act committed by the child buyer in a child prostitution activity does not have a justifiable reason because the act of buying a child is done out of personal desire or ordered by anyone for the purpose of being able to use child prostitution services, the act committed by the person who bought the child is not an act that should be justified.

2. Criminal Liability (Subjective Element)

a. Ability to be Responsible Van Hamel provides an understanding of responsibility that responsibility is a normal state of psychology and mind that has various abilities, namely:

- 1) being able to understand the meaning and the real consequences of one's own actions.
- 2) To be able to realize that the deeds are against the public order.
- 3) To be able to determine the will to act.

b. Willfulness (Dolus) Deliberation

Intentionality is an act that is known and willed by the perpetrator so that it can occur in accordance with what he has planned. In law, there are three types of intentionality, namely: Acts committed by someone who buys child sex in a child prostitution activity by deliberately making a child sexually exploited. The act has been willed and known by him in order to achieve his main goal, namely to be able to purchase child prostitution services and use the child's sexual services.

c. No excuse

The excuse of apology is the reason that eliminates the guilt of the defendant. In this case, the act committed by the defendant is still against the law. law, then it is still a criminal act, but the defendant is not convicted, because there is no guilt.

Reflecting on several countries that have specific national regulations regarding child sexual exploitation and the criminalization of child sex buyers in the form of prostitution such as South Korea, the Philippines and Sweden which have provided evidence of how specific and firm these countries are in providing specific elements so that in the future the regulations governing children in Indonesia, namely the Child Protection Law, can also criminalize child sex buyers in the form of prostitution with the formulation of child sex buyers offense. ⁴This is what is needed to be accommodated in future changes to the Child Protection Law in Indonesia by making regulations that regulate child sex buyers clear, firm, and specific that will not provide complications and mistakes for all law enforcement officials in dealing with and resolving cases of sexual exploitation of children in the form of prostitution and can be a form of preventive legal protection for children. ⁵

⁴ Eddyono, Supriyadi Widodo, Rio Hendradan Adhigama Andre Budiman. *Fighting Child Prostitution in Indonesia and its Challenges*. Jakarta: Institute for Criminal Justice Reform, 2017.

⁵ Hiariej, Eddy O.S. *Principles of Criminal Law*. Revised Edition. Yogyakarta: Cahaya Atma Pustaka, 2016.

2. Government Efforts to Address Commercial Sexual Exploitation of Children

1. Research Studies

In the period of 2017-2019 the Indonesian government and ECPAT have conducted several researches in Indonesian cities, the researches generally focus on tourist destination cities. Some of the research that has been conducted are: The first research to find out what the causal factors of minors are based on the high number of such problems every year, was conducted in 2017 together with the Ministry of Social Affairs through the Center for Research and Development of Social Welfare Services (B2P3KS) Yogyakarta. The research was conducted in 5 cities in Indonesia, namely Yogyakarta, East Jakarta, Mataram, Magelang and Makassar.⁶The result of the research was the formation of several recommendations to both the government and related parties. These recommendations include: (ECPAT, 2017):

1. The government is expected to immediately fix the regulations regarding the protection of children from sexual violence.
2. Increase the capacity of social workers in terms of assisting cases of sexual violence.
3. The government is expected to make specific derivative regulations regarding the diversion of children so that children can be guaranteed their rights. so that children can be guaranteed their rights.
4. Related parties can control the use of the internet in children.
5. Provide special therapy for victims and child perpetrators of child sexual abuse.
6. Improve education for perpetrators.
7. Improve synergy between child social protection institutions and law enforcement.
8. Make legislative changes in handling child sexual abusers.

2. Advocacy

One of ECPAT Indonesia's most important strategies is advocacy. ECPAT as an organization that focuses on commercial sexual exploitation of children will be easier if it can directly oversee government policies and cooperate with the government. can directly supervise government policies and cooperate in carrying out activities related to tackling this. ECPAT conducts various kinds of advocacy and cooperation with both the Indonesian government and international parties. Policy advocacy and cooperation with the government carried out by ECPAT include advocacy regarding the implementation of the Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC) together with ECPAT Indonesia and Kinder Not Hilfe (KNH). Indonesia has ratified the OPSC since 2012 through law No. 10 of 2012. The consequence of ratifying it is to make an initial report at least 2 years after the date of ratification, and a government report at least 4 years after ratification. report at least 4 years after ratification. Indonesia has a non-self-executing principle where if Indonesia ratifies an optional protocol, the law does not automatically enforce the protocol. Therefore, it is necessary to reformulate the law so that it can be implemented with Indonesian legal policies. Therefore, ECPAT Indonesia made various program plans and several targets so that the government can write a report on OPSC implementation in Indonesia.

Indonesia has not done a state report to the UN about the implementation of the OPSC. In the OPSC there are 9 main aspects that are the focus, namely the prohibition of sexual exploitation of children, extradition, confiscation of children, and the prevention of sexual exploitation of children. exploitation of children, extradition, confiscation of assets, fulfillment of victims' rights, prevention, rehabilitation, international cooperation, monitoring and evaluation, and state report. international cooperation, monitoring and evaluation, and state report. None of these 9 focuses have been well implemented in Indonesia, 7 out of 9 are partially implemented and 2 are partially implemented.

3. Training

Training in the effort to tackle child sexual exploitation is very important to to prepare parties who are better equipped to help child victims and have the knowledge to deal with the perpetrators of this crime. victims and have the knowledge to deal with the perpetrators of this crime. Training that conducted by ECPAT in collaboration with many parties, this training is also carried out for two groups, namely civil society and law enforcement. groups, namely civil society and law enforcement. In 2018, ECPAT Indonesia and KPPPA conducted training on the formation of child pornography-free villages on August 7-8, 2018. free of child pornography on August 7-8, 2019. The training was conducted in Kota Waringin Barat. Through the training, several recommendations were made, namely making a map map of the village situation and identifying areas that are considered vulnerable to child pornography. Until 2019, KPPPA and ECPAT have formed and assisted 9 villages that have declared their villages as child pornography-free villages. villages that have declared their

⁶ ECPAT. (2015). *ECPAT 25 Years: Rallying the World to End Child Sexual Exploitation*. ECPAT International

villages to be child pornography-free villages (ECPAT, 2020). (ECPAT, 2020). KPPPA and ECPAT Indonesia, also joined by Google, conducted training to prevent child sexual exploitation. This program is based on the MOU from the conference that was conference held in 2018 with the theme safer internet day, the conference was attended directly by the Minister of Communication and Information with the Minister of Communication and Information. The lack of education for both parents and children is the cause of the high number of cases of child sexual exploitation. children is the cause of the high number of online child exploitation cases.

4. Socialization

Socialization is also a key strategy and plays the most significant role in preventing child sexual exploitation preventing child sexual exploitation. The initial stage to prevent ESKA can start with education and basic knowledge about the dangers of ESKA. Socialization can be done in many ways such as seminars, campaigns, discussions, conducting workshops, and others. The Ministry of Education and Culture (Kemendikbud) together with ECPAT conducts the Education program for the prevention of criminal acts of persons. This socialization discusses many things such as curbing trafficking, migration, the dangers of online child sexual exploitation and education to families delivered by each of the Ministry of Education and Culture (MoEC). Education to families delivered by each facilitator from the Ministry of Education and Culture and ECPAT Indonesia in turn and ECPAT Indonesia in turn. At the end of the activity, there was also a question and answer session and further plans after participating in this socialization. The results of this socialization are representatives from the school are interested in making socialization at school so that students can avoid the crime of human trafficking (ECPAT Indonesia)void the crime of human trafficking (ECPAT, 2018). Another form of the Indonesian government and ECPAT program in the field of socialization is the Kids Aren't Souvenirs campaign. This campaign is an initiative created by cooperation between ECPAT Indonesia, KPPPA and KPAI. The background of the organization of this campaign is the experience of child sexual exploitation that was found during the organization of international sporting events in various regions. The goal of this campaign is to make Asian Games into a child-friendly event. The meaning of the phrase "Kids Aren't Souvenirs" is that someone who buys a child to be sexually exploited is destroying them (Kids Aren't Souvenirs). sexually exploited is tantamount to destroying them (ECPAT, 2018). The tool This campaign tool is a keychain in the form of a child doll, but tourists are not allowed to buy it to buy, but instead the store clerk will convey the meaning of the campaign. This campaign also supported by social media Twitter, Facebook and also ECPAT International together with 15 other ECPAT members in with 15 other ECPAT members in Asia.

V. CONCLUSION

Children are the weakest and most vulnerable social beings in society, ironically children are often placed in the most disadvantaged position, and become victims of violence and violations of their rights. The number of crimes and problems against children that make children victims of these crimes. One of the problems faced by children is the criminal act of sexual exploitation of children in the form of child prostitution. One of the strong reasons why sexual exploitation of children is increasing is due to the growing demand of the global sex market. Sex buyers play a major role in controlling child prostitution by creating demand for it. The demand keeps pimps looking for ways to fulfill it, and the demand-driven sex trade continues to exploit social inequalities and use coercion to recruit children into it. The absence of clear elements in criminalizing child sex buyers means that law enforcement officials need to understand all the criminal elements in the laws governing child prostitution. Reflecting on several countries that have specific national laws on child sexual exploitation and criminalizing child sex buyers in the form of prostitution, such as South Korea, the Philippines and Sweden, have provided evidence of how specific and strict they are. In the implementation of policy formation, the government of Indonesia and ECPAT work together with other parties related to the implementation of the fight against child sexual exploitation such as community organizations, private sector, academia, international agencies and the child sexual exploitation sector such as community organizations, private sector, academia, international agencies and other sectors. other sectors. The policies and programs that have been carried out by the Indonesian government with ECPAT in Indonesia, namely conducting research or collecting data related to child exploitation, advocacy to related parties, and advocacy to other parties exploitation of children, advocacy to related parties, training with related institutions to be better prepared to handle the problem of sexual exploitation of children. The problem of child sexual exploitation, and socialization such as campaigns, workshops, or online education, where the role of socialization is the most influential and has a direct impact on the community impact directly on the community. The role of socialization is very impactful because it is directly to the field and directly educates important parties in the prevention of ESKA, such as socialization at the smallest scale. ESKA prevention such as socialization at the smallest scale, namely families, schools, villages to the private sector and socialization to enforcers. to the private sector and socialization to law enforcement and government.

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