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Submission date: 05-Jul-2024 08:12AM (UTC+0700)
Submission ID: 2412652494
File name: tional_Legal_Response_To_Children_As_A_Victim_Of_Pornography.pdf (109.22K)
Word count: 2436
Character count: 13633

INTERNATIONAL LEGAL RESPONSE TO CHILDREN AS A VICTIM OF PORNOGRAPHY

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ABSTRACT

The crime of pornography is seen as a crime against humanity and is a form of violence against women and children both physically and visually. Children with sexy poses in a photo that is commercialized and disseminated in cyberspace or the internet can be categorized as a child as a victim of pornography. In the Indonesian state view of life, pornography is classified as a phenomenon that is contrary to religion and culture so that it rejects pornography in any form. The research method used is normative legal research, which puts the law as a building of a norm system. The norm system in question is about principles, norms, rules of legal arrangements, court decisions, agreements and doctrines. The results of the study found that child pornography also includes sexual violence and a fundamental violation of children's rights. The violation is in the form of sexual violence by adults with the provision of rewards to children, children are treated as sexual objects. Legal protection of child victims of pornography crimes in international law is contained in several Conventions, including the Convention on Cyber Crimes, this Convention became the first international treaty to criminalize child pornography perpetrators committed in cyberspace and became the universal standard for the prosecution of prohibited content. The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse obliges States parties to take legislative and other measures necessary to make offences against child pornography criminal offences through their national laws.

Keywords: International Law, Children, Pornography

INTRODUCTION

The spread of pornographic content is a universal problem experienced by every country in different parts of the world. Along with the rapid advancement of information systems and technology in addition to providing considerable benefits, it also has a very large negative impact as well. Even child pornography is often created and disseminated using information and communication technology and the internet.

The development of new technologies and the growth of the internet create more opportunities for child exploiters and users of child pornography, facilitating the development and expanding the reach of child pornography distribution networks.

Children as the next generation of the nation have the right to be protected from all forms of the worst work or all actions that endanger the development of children both physically and mentally. Article 1 of the *Convention on the Rights of Child 1989 (CRC*) states that a child is any person under the age of 18. The *Convention On The Right Of The Child* is also the first International Legal instrument to explicitly recognize children as active owners of their own rights. This Convention sets out standards of treatment, care and protection for all children.

A phenomenon that occurs a lot is the presence of children who are wrong in associating towards free sex. Even in their association to be able to share or exchange sexy personal photos. Then the photo is disseminated by irresponsible friends or adults so as to position the child as an object and victim in the photo. Children with sexy poses in a photo

that is commercialized and disseminated in cyberspace or the internet can be categorized as a child as a victim of pornography. Pornographic photos and/or videos can be strong evidence that violence against children has occurred.

RESULT AND DISCUSSION

A. The Relationship of Pornography and Sexual Exploitation

The development of communication technology is increasingly advanced and makes it easier for humans to connect with each other in all corners of the world. The relationship includes exchanging pictures and videos taken from the internet and mobile phones. This condition will be even more worrying if the image or video is immoral or pornographic. Spread through the internet, content about pornography is easy to express digitally as a form of sexual satisfaction through cyberspace, some of the factors that cause pornography anxiety on the internet are the availability of fast networks, and the easy dissemination of content. Thus porn videos uploaded on internet sites are very easy to display, distribute, and access all circles (Suliant, 2010).

Law Number 44 of 2008 concerning Pornography says that pornography is images, sketches, illustrations, photos, writing, sounds, sounds, moving images, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication media and/or public performances, which contain obscenity or sexual exploitation that violates the norms of decency in society. Children are tricked or coerced into sexual acts for the manufacture of pornographic materials or perhaps the images are made in the process of sexually exploiting a child without the child's knowledge. These images are then disseminated and traded (A. A. Putri, 2023).

End Children Prostitution, Child Pornography, and the Trafficking of Children for Sexual Purposes International (ECPAT International) defines commercial sexual exploitation of children as a fundamental violation of children's rights. The offense is sexual violence by an adult in exchange for a child, or a third person, or other persons. Simply put, children are treated as sexual and commercial objects. It is the embodiment of forced labor and modern slavery of children. This is because it is not uncommon for children to be forced to experience physical violence and trauma.

Child pornography exploits children in a variety of ways. Children may be deceived or coerced into sexual acts for the production of pornographic materials or they may be made in the process of sexually exploiting a child without the child's knowledge. These images are then disseminated and traded (A. A. Putri, 2023) The most obvious use of children is to cause sexual appetite and sexual satisfaction.

Pornography industry players exploit women's bodies, sexuality, and even children for their business interests. Not infrequently the interests of pornography industry business people carry out their interests with threats, coercion, fraud, even by abusing power (A. F. Putri &; Tantimin, 2022).

B. Legal Protection of Child Victims of Pornography Crimes in the Perspective of International Law

Child protection is nothing new, in fact it has been part of the child since birth. The protection provided is an effort to establish situations and conditions that allow the humane implementation of children's rights and obligations. This means the protection of children to obtain and defend their rights to life, survival, and growth and development (Simatupang &; Faisal, 2018).

The definition of child pornography can be found in several international legal instruments, Article 2 (c) of the Optional Protocol on the Rights of the Child on the Sale of

Children, Child *Prostitution and Child Pornography* defines child pornography as "any representation, in any way, of a child engaging in sexual activity whether real or simulated or any reperentation of the sexual part of a child for primary sexual purposes", while Article 9 paragraph 2 of the *Council of Europe Convention on Cyber Crimes* states that child pornography includes pornographic material that visually depicts:

a. Minors who engage in sexually explicit behavior
b. A person who appears to be a minor who engages in sexually explicit conduct;
c. Realistic images depicting minors engaging in sexually explicit behavior.

The development of the internet and the increase in cybercrime encouraged regulatory bodies to make and enforce these regulations in the early 20th century, there were several international legal instruments related to child pornography, including (Simamora &; Putu Tuni, 2022):

1. *Council of Europe Convention on Cybercrimes*.

The Council of Europe in 1996 recognized the rapid development of the Internet and had given birth to new crimes committed in cyberspace and in an unregulated domain, so the Council of Europe established a working group to deal with it. On November 23, 2001, *the Convention on Cyber Crimes* opened for signature and entered into force on July 1, 2004. This convention became the first international treaty to criminalize child pornography perpetrators committed in cyberspace and became a universal standard for the identification and prosecution of prohibited content in it (Yukins, 2017).

The issue of offences against child pornography is mentioned in Article 9 which says about the obligation of the State party to take legislative and other measures necessary to establish it as a criminal offence under its national law if it is committed intentionally and without the right of offences as follows:

a. Producing child pornography content for distribution through computer systems;
b. Offer or make available child pornography content through computer systems;
c. Dissemination or transmission of child pornography content using computer systems;
d. Procurement of child pornography content using computer systems for oneself or others;
e. Have child pornography content in a computer system or computer data storage media.

Article 9 paragraph 2 regulates the purpose and / or category of child pornography, material that in essence depicts / reflects children engaging in sexual behavior, as explained earlier

2. *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*.

Following up on Article 9 of the Convention on *Cyber Crimes*, the Council of Europe on 25 September 2007 produced a convention called the "*Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*". This Convention has 3 main objectives stipulated in Article 1, namely;

a. Prevent and combat sexual exploitation and sexual abuse of children;
b. Protect the rights of children who are victims of sexual exploitation and sexual abuse;
c. Promote national and international cooperation against sexual exploitation and sexual abuse of children.

The Convention also obliges States parties to take legislative and other measures necessary to establish offences against child pornography as criminal offences through their national laws. This is regulated in Article 20 and Article 21, where article 20 paragraph 1 regulates the subject (Sabatini, 2019); a. Producing child pornography; b. Offer or make available child pornography; c. Disseminate or transmit child pornography content; d. Procurement of child pornography content either for oneself or others; e. Has child pornography content.

Meanwhile, Article 20 paragraph 2 explains the meaning of the word "child pornography", which is any material that visually/visibly depicts a child engaging in explicit sexual behavior, whether real or simulated, or anything that depicts a child's sexual organs for sexual purposes. And Article 21 stipulates violations related to children's participation in pornographic performances, as for the qualifications of criminal acts in this article, namely: a. Recruiting a child to participate in a pornographic performance or causing a child to participate in such a performance; b. Forcing a child to participate in pornographic performances or taking advantage of or exploiting a child for such purposes; c. Knowingly attending pornographic performances involving children.

3. *Convention on The Rights of Child 1989 (CRC)*

The first convention that applies universally to child pornography is the *United Nations Convention on the Rights of Child (CRC)* and which provides a definition of the nature of the child. This Convention has five principles, among others, the principle of prohibiting discrimination, the principle of the best interests of children, the principle of state responsibility, the principle of the right to life and development to the maximum, and the principle of the right to participate (Riyadi, 2019) CRC provides guidance on the fulfillment and enjoyment of children's rights,

4. *Optional Protocol on The Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*

This Additional Protocol provides for the definition of child pornography as "any representation of a child engaging in actual or simulated explicit sexual activity or a representation of sexual parts of a child for the purpose of sexual interest". Although there are different definitions of child pornography in the Additional Protocol and the *Convention on Cybercrimes*, most of the proposed rules mean the same thing. First, the Additional Protocol requires national laws to criminalize the production and distribution of child pornography, even if the act is committed outside the territory of the country concerned or can be said to be "extra territorial". Second, the Additional Protocol encourages States parties to take all necessary measures to establish jurisdiction over violations whether the offence is committed on the territory of a State or on board a ship or aircraft registered or registered in that State.

5. *Worst Forms of Child Labour Convention 1999*

In 1999 the ILO published a convention called the "*Worst Forms of Child Labour Convention*". The Convention categorizes child pornography as one of the worst forms of child labour, as stipulated in Article 3(b) which mentions the use, procurement or offering of a child for prostitution, the production of pornography or for the performance of pornography. The Convention obliges States parties to the Convention to take immediate effective measures and designates the prohibition and elimination of the worst forms of child labour as a matter of urgency. This includes increasing international cooperation between countries and/or international organizations.

This victim protection aims to provide a sense of security to children as victims, for example in providing information in every criminal justice process. Children here as victims and not as objects of a crime.

Conclusion

Child pornography law enforcement mechanisms can be carried out by states through international cooperation, namely: extradition, mutual assistance, sending convicted persons, joint investigations, and transfer of cases. International cooperation can be carried out between countries with other countries and / or countries with international organizations. International legal arrangements related to child pornography are regulated in various instruments including: Council of Europe Convention *on Cybercrimes.Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse,*

CRC, Optional Protocol on The Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Worst Forms of Child Labour Convention.

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