

ASPECTS OF LEGAL PROTECTION FOR CHILDREN FROM CYBERCRIME

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Abstract

The 21st century has progressed further. As in Indonesia, currently, the development of technology is increasingly rapid. This certainly affects aspects of social life in society and its security. Today's threats are not only enemies in the military, but also non-military. Among them are the threats faced by internet users, the penetration rate shows a high cumulation, opening up opportunities for the emergence of cyber-based crimes. The development of infrastructure is in line with the development of technology. Increasingly sophisticated technology is not only used by the community for positive things. However, not a few are taking advantage of technological sophistication to reap benefits that result in losses for technology users themselves. This study aims to research, examine how legal protection for children from cybercrime. In this case, children become vulnerable to cybercrime in digital era. Why is that? Considering that the control for internet access, as well as legal products in Indonesia, cannot yet fully guarantee protection for victims of cybercrime. The method used in this research is to use the descriptive analysis approach. Assessing and analyzing legal protection for children from cybercrime based on legal theories and applicable laws and regulations. Besides, it also reveals the phenomena of the current situation in the community.

Keywords: *Children; Cybercrime; Legal Protection; Regulation; Social Media.*

A. INTRODUCTION

The Republic of Indonesia as a state law.¹ Adhere to the principles of protection law, protection of human rights for citizens country, and democratic principles, including protection of children, so it is absolute for state and government provide protection law and human rights to children as part of the nation's children who are expected to become continuation of the ideals of the struggle of the Indonesian nation.

1 Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia.

Precise in 2001, Indonesia stated its commitment to the Declaration of a World Worthy for Children. This is following the provisions The Convention on the Rights of the Child ratified by the government Indonesia through Presidential Decree Number 36 of 1990 and later also poured in Law Number 4 of 1979 concerning Child Welfare. Apart from that, the Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning Amendments to the Law Number 23 of 2002 concerning Protection Children and Law Number 11 of 2012² all about the Juvenile Criminal Justice System both put forward the principles general protection of children, namely non-discrimination, best interests of children, survival, and growth and respect for participation child.

Entering the 21st century, any country has its challenges. The threats faced are not only in the military field but also non-military. Several threats to national security and defense are carried out by non-state actors such as insurgency, terrorism, human trafficking, cybercrime, narcotics, piracy at sea, including violations of human rights. In a conflict asymmetric warfare, carried out by non-state actors as weak parties against the government.

The use of information technology, media, and communication in society, especially young students, has changed both the behavior of society and human civilization globally. The development of information and communication technology has also caused world relations to become borderless and caused significant social, economic, and cultural changes to take place so rapidly. Information technology is currently a double-edged sword because, in addition to contributing to the improvement of welfare, human progress, and civilization, it is also an effective means of acting against the law.³

The more sophisticated the technology is not a few who use it for positive activities, also not a few who use it for negative activities. In this research technology in terms of the use of cyberspace. Along with the development of the times, the use of technology cannot be separated from people's lives. This makes technology vulnerable to crime. Children at the age categorized as children following Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely under the age of 18 (eighteen) years. The internet is currently attached to the lives of today's children, even toddlers (babies under five years) can use gadgets to watch YouTube.

According to their age, children fall into the category of groups vulnerable to cybercrime. Children can easily access the internet anywhere and anytime. Things like this open the opportunity to become victims of cybercrime more easily. It was 2001 when the crime of a pornographic website in Texas was exposed. The two perpetrators who became the perpetrators were Indonesians. In 2006 the Polda Metro Jaya arrested Peter

2 Ridwan Mansur's opinion is quoted in Nevey Varida Ariani, Implementation of Law Number 11 of 2012 concerning the System Juvenile Justice to Protect Children's Interests, *Media Hukum Journal*, Volume 21, Nomor 1, 2014, page 108-109.

3 Ivan Fauzi Raharja, Wise to Use Social Media Among Students According to Law Number 19 of 2016 Concerning Electronic Information and Transactions, *Journal Selat*, Volume 6, Number 2, May 2019, page 236.

W. Smith (an Australian citizen) who molested 50 (fifty) children from Indonesia, India, and Vietnam.⁴

The benefits of the virtual world so far provide social changes in people's lives, especially for children. Children are like a white paper, what we write down, that's where it will be drawn or formed because children have imitation qualities. Deviant behavior can occur in children. Data from the Indonesian Child Protection Commission shows that in 2016 there were 496 cases of pornography and cybercrime.⁵

Specifics regarding legal protection towards children, the state pays attention bypassing the Law Number 35 of 2014 which is the change of Law Number 23 of 2002 regarding Child protection. These changes are to emphasize the importance of weighting criminal sanctions and also fines for criminals against children to provide a deterrent effect, as well to encourage concrete steps for recover physically, psychologically, and also social children as victims and/or children as criminals as an anticipatory step so children as victims or not as perpetrators be the perpetrator of the same crime later day.

Currently, a new legal regime has been born, known as cyberlaw or telematics law. Cyberlaw is internationally used for legal terms related to the use of information and communication technology. Likewise, telematics law is the embodiment of the convergence of telecommunications law, media law, and informatics law. Other terms that are also used are the law of information technology, virtual world law, and cyberspace law. These terms were born considering activities carried out through computer systems networks and communication systems both locally and globally (internet) by utilizing computer system-based information technology which is an electronic system can be seen virtually.⁶

The emergence of this virtual version of social networks affects the relationship between people, generally teenagers. The community site above was created to fulfill the desire of individuals to communicate without any time and space restrictions. Not infrequently social networks often have the potential to influence a person's thinking patterns and shape individual personalities. A large number of social media users among junior and senior high school students at this time did not escape its spread to all corners of the country. However, these social media users have very little information about the existence of Law Number 19 of 2016 concerning Electronic Information and Transactions, which is a legal product that limits the freedom of social media users to be wiser in its use, especially among teenagers.⁷

As we know, teenagers are the largest community in Indonesian society who use social media regularly. The initial reason they are very

4 Data sourced from the Indonesian Child Protection Commission in 2011 – 2016.

5 Hardianto Djanggih, The conception of Legal Protection for Children as Victims of Cyber Crimes Through Penal and Non Penal Approaches, *Mimbar Hukum Journal*, Volume 30 Nomor 2, June 2018, page 318.

6 Ivan Fauzi, Op Cit, *Journal Selat*, page 237.

7 Ibid., page 238

active in using social media is to seek attention, ask for opinions, and foster an image, but over time they become dependent. Although social media has a positive impact on adolescents, when it is difficult for them to escape from activities related to social media, it will have a less positive impact. Several studies show that due to the excessive use of social media, adolescents are found to experience incongruence in their self-concept.⁸

Indonesian Internet User Services Association revealed the results of its released survey 2016 on children of internet users. The result of a survey showed 76.4% were not safe on the internet for the child.⁹ This is because of the internet or information technology is an instrument potential criminal instrument, and the second indicates the need for immediate Fixing the legal sector in the field of child protection as victims of cybercrime in Indonesia. The researcher in this case formulates several problem formulations including How is legal protection for children from cybercrime? Then, Providing Legal Protection for Child Victims from Cybercrime.

B. RESEARCH METHODS

Legal research is closely related to the concept of law used that according to Soetondyo Wigiyosoebroto of the five legal concepts, these legal concepts are as follows:

1. Law is the principle of truth and justice that applies naturally and applies universally;
2. Law is positive norms in the statutory system;
3. Law is what is decided by the judge (in concreto) and is systemized as a judge-made law;
4. Laws are institutionalized social behavior patterns that exist as empirical social variables; and
5. Law is a manifestation of symbolic meanings of social behavior as seen in their interactions.¹⁰

This study uses a descriptive-analytical literature method. Analytical descriptive research can be done without using a basic supposition or proposition, but it has begun with an outline of the thoughts and problems to be studied. The literature method is one of the data collection methods used in social research methodology to trace event record data ". The literature used in this research is sourced from journals, books, and other online literature contains the concept of legal protection for child victims of social media crimes in general as data in this paper.

8 Pamela Felita and Friends, Use of Social Media and Self Concept in Teens, *Psikologi MANASA Journal*, Volume 5 Nomor 1, March 2016, page 31

9 Ministry of Communication and Information of the Republic of Indonesia, Indonesian Internet User Penetration and Behavior, <https://aptika.kominfo.go.id/index.php/berita/274-rilis-hasil-survei-penetrasi-dan-perilaku-pengguna-internet-indonesia-tahun-2018>, accessed on 22 September 2020, 09.55 o'clock

10 Setiono, *Understanding of Legal Research Methodology Postgraduate Law studies of Sebelas Maret University*, 2010, page 20

C. RESULT AND DISCUSSION

1. The Concept of Child Protection as Victims of Cyber Crime

According to Phillips in his book *A First Book English Law*, as quoted by Andi Hamzah, which is seen as a goal the current punishment is a variation from deterrent forms, good addressed to violations of the law itself as well as those who have potential become criminals, protection to society from evil deeds, improvement or reform to criminals. The latter is the most modern and popular today, not only for purposes improve imprisonment conditions but also looking for other alternatives that are not criminal in fostering lawbreakers.¹¹

Frequently asked questions criminal law experts in various seminars are the question of how to criminal law should or should at this time and future. This question is related to the field of criminal law politics (penal policy), namely how better criminal law should be it is created, structured, and used to organize or controlling human behavior in Public. especially to cope with crimes committed by members society as well as by the authorities.¹²

Crime is a deviant behavior that will always exist and cling to every form of society. Crime is the oldest social problem therefore must be overcome. Judging from the consequences of crime can disturb or destroy and hinder the achievement of national goals and also prevent optimal use of national sources Sudarto stated that the use of means penal in tackling crime cannot be released from its connection with legal policy criminal or political criminal law (criminal law policy). In this connection, then Soedarto argued that implementing criminal law politics meant making an assessment and elections to achieve statutory results criminal at best, in a sense meet the requirements of justice and efficiency.

Efforts to find alternatives penalties for deprivation of liberty in the short term were also supported by the Union Nations. In the 2nd UN Congress regarding "The Prevention of Crime and Treatment of Offenders" in 1960 London recommended that the practice is thorough removal short term imprisonment is not maybe. only realistic solutions can be achieved by reducing the number of uses.¹³ That gradual reduction by increasing substitute forms or alternative to conditional punishment, supervision/probation, fines, work outside the agency. and actions others that do not contain deprivation independence.

Sudarto had a very good reason relation to cybercrime phenomenon this one of which resulted in the child being victim, so to overcome it must with the formulation and use of legislation precisely so that the purpose of that law can be achieved. In Indonesia, child

11 Andi Hamzah, *Indonesian Criminal and Criminal System from Retribution to Reform*, Printed for 2, Pardnya Paramita, Jakarta, page 16.

12 Faizin Sulitio, etc, *Alternative Model of Crime of Cyber Pornography Crime*, *Arena Hukum Journal*, Volume 9, number 3, 2016, page 359.

13 *Ibid.*,

protection from harmful effects of cyber exploitation can be found in various laws, namely:

- a. Article 38 paragraph (3) of the Law Number 32 of 2002 concerning The broadcast stated that "Fill broadcast must provide protection and empowerment to the public specifically, namely children and adolescents.¹⁴
- b. Article 15 Law Number 44 2008 about the Pornography states that "Everyone obliged to protect children from pornography influence and prevent children's access to information pornography.¹⁵
- c. Article 43 of Law Number 33 of 2009 concerning Film emphasized that "Business actors movies are prohibited from doing dubbing import movie sound into language Indonesia, except for imported films educational interests and/or research.¹⁶
- d. Article 27 of Law Number 19 of 2016 concerning Change Law Number 11 of 2008 concerning Information & Transactions Electronic confirms prohibition of distribution and/or transmits and/or creates Electronic Information accessible and/or Electronic Documents has a charge that breaks decency and gambling.¹⁷
- e. Article 59 of Law Number 35 of 2014 concerning Change Law Number 23 of 2002 on Child Protection states that "the Government and other state institutions are obliged and responsible for provide special protection to children in emergencies, children in conflict with the law, children from minority groups and isolated exploited children economic and/or sexual, child who is trafficked, the child who is fall victim to abuse narcotics, alcohol, psychotropic drugs, and other addictive substances (drugs), children victims of kidnapping, sales and trafficking, victim's child.¹⁸

2. Legal Protection for Child Victims from Cybercrime

Indonesia itself as a country that has ratified the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990 dated August 25, 1990, has further integrated children's rights into national law, namely into Law Number 23 of 2002 concerning Child Protection¹⁹ which has been amended by-law number 35 of 2014.

Frequently asked questions criminal law experts in various seminars are the question of how to criminal law should or should at this time and future. Law Number 19 of 2016 Although this law is not specific regulates pornography, but regulations on that matter are also regulated in this law. One of them is regulated in Article 27 paragraph

14 Law Number 32 of 2002 concerning The broadcast.

15 Law Number 44 of 2008 about the Pornography.

16 Law Number 33 of 2009 concerning Film emphasized.

17 Law Number 19 of 2016 concerning Change Law Number 11 of 2008 concerning Information & Transactions Electronic.

18 Law Number 23 of 2002 on Child Protection.

19 Indah Setyowati, Ida Musofiana, Juridical Studies Against Diversion In Criminal Justice System, *Jurnal Pembaharuan Hukum*, Volume 6 Number 2, 2019, page 241.

(1), namely: "Every people knowingly and without rights distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents has a charge that violates decency. "The meaning of decency regulated in the article includes related to pornography.

The internet further supports the child sex tourism industry by providing patrons of the detours a means by which to easily connect with other like-minded steps throughout the world.²⁰ Constitution in protecting children from cyber exploitation, according to the author has not been able to reach there is a cybercrime development resulting in children as victims. Author's reason is that there are still forms of cybercrimes that need to be criminalized and necessary also, formulate the appropriate form of punishment for cybercriminals who resulted in children as a victim.

Protection efforts for victims of a criminal act is an effort to recover losses that have been obtained by the victim. This will be more interpreted if victims are directly involved in the process of settlement of criminal cases. Enforcement law is a development effort which is continuous aiming realizing national life and a safe, orderly, and peaceful state dynamic environment in the world independent.²¹

The purpose of providing compensation is not others to develop justice and the welfare of the victim as community members by benchmarks in practice, victims are given rights and obligation to be developed as people, children are also people. Therefore, required strict, simple regulations, and easy to understand so it can avoid discrimination in the application by law enforcement and intimidation from certain parties which exacerbates it the condition of the victim in its suffering prolonged.

In the development of laws and regulations in Indonesia, penalties for compensation disadvantages are not only the domain of civil law but has also entered into criminal law. Development this happens because it is increasing world community attention to access victims of criminal acts in the justice system criminal.²²

The penalty for damages is a crime that obliges someone who has acted detrimentally to others to pay some money or goods to the injured person.

The existence of the Criminal Code which is Dutch heritage that was formed in 19th century did not recognize the punishment of change loss. This is because the paradigm at the time of its formation more to retribution (retributive). However, Article 14c of the Criminal

20 Ahmad Taufan Damanik, *The Efforts of ASEAN-ACWC in Addressing the Trend of Sexual Crimes Against Children Online*, *Makalah, Conference on Sexual Crime against Children Online: Law Enforcement and Regional Cooperation*, Jakarta, 29 – 30 October 2012.

21 Thantawi, et al., *Protection of Victims of Crime Cyber Crime in the Indonesian Criminal Law System*, *Journal Ilmu Hukum*, Vol. .2, No. 1, 2014, page. 39.

22 Hardianto Djanggih, *The conception of Legal Protection for Children as Victims of Cyber Crimes Through Penal and Non Penal Approaches*, *Mimbar Hukum Journal*, Volume 30 Number 2, June 2018, page 323.

Code has provisions conditional criminal stating that judge in imposing conditional punishment against the perpetrator of a criminal act other than determining general conditions can also impose special conditions in the form of replacement losses that must be met before the term the experiment ended. Apart from the Criminal Code, it is deep Another positive criminal law provision about indemnity is also known. Corruption Criminal Act in Article 34 regulates additional penalties in the form of payment of replacement money in the amount as much as possible as wealth objects obtained from corruption.

In this case, the compensation is given to the state because the state is the victim (collective victim). In the context of pornography cyber then this compensation sanction can also be in the form of collective victims represented by the state and their use for mental rehabilitation victims of pornography. Also, compensation can be given to people who directly fall victim to pornography cyber.

Based on the results of interviews with Police investigators, a special criminal investigation Unit 1 in the section of cybercrime, explained that during the pandemic era that had started in Indonesia last March 2020. The results of the police report in Unit 1, only one case of a child victim of cybercrime in the Central Java Regional Police.²³ in the implementation of legal protection for victims by the articles violated by the perpetrator. since the perpetrator is a child, then diversion is done.

Sanctions for damages as referred to has stated above is the sanction intended to protect victims of action criminal. Apart from that, there are still some other benefits that provide added value on compensation sanctions if included in the new KUHP.

D. CONCLUSION

The conclusion in this article is that it is preferable to use social media following applicable regulations and subject to the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions. As well as the need for an active role from the community and parents in supervising children in using social media so that they are not entangled with criminal sanctions and/or compensation.

23 Nanung, Reksrimbus Investigator At The Central Java Police, Cybercrime Unit 1, 26 October 2020

BIBLIOGRAPHY

Book:

Ahmad Taufan Damanik, 2012, *The Efforts of ASEAN-ACWC in Addressing the Trend of Sexual Crimes Against Children Online*, Paper Conference on Sexual Crime against Children Online: Law Enforcement and Regional Cooperation, Jakarta;

Journal:

Hardianto Djanggih, The conception of Legal Protection for Children as Victims of Cyber Crimes Through Penal and Non Penal Approaches, *Mimbar Hukum Journal*, Volume 30 No. 2, June 2018;

Ivan Fauzi Raharja, Wise to Use Social Media Among Students According to Law Number 19 of 2016 Concerning Electronic Information and Transactions, *Journal Selat*, Volume 6, Number 2, May 2019;

Nevey Varida Ariani, Implementation of Law Number 11 of 2012 concerning the System Juvenile Justice to Protect Children's Interests, *Media Hukum Journal*, Volume 21, Nomor 1, 2014;

Pamela Felita and Friends, Use of Social Media and Self Concept in Teens, *Psikologi MANASA Journal*, Volume 5 Nomor 1, March 2016;

Rochmawati, Weny, Internet Utilization of Behavior (Descriptive Study of Using the Internet for Entertainment and Academic Interests among Children in the City of Surabaya), *Journal Libri-Net*, Vol. 1, No. 1, 2012;

S., Kandi Aryani, Youth Acceptance of Pornography Discourse on Sex Sites in Online Media, *Journal Penelitian Dinamika Sosial*, Vol. 7, 2008;

Setiono, Understanding of Legal Research Methodology Postgraduate Law studies of Sebelas Maret University, 2010;

Sulistio, Faizin, et al., Alternative Model of Crime of Cyber Pornography Crime, *Journal Arena Hukum*, Vol. 9, No. 3, 2016;

Thantawi, et al., Protection of Victims of Crime Cyber Crime in the Indonesian Criminal Law System, *Journal Ilmu Hukum*, Vol. .2, No. 1, 2014;

Ulinuha, Masyari, Protecting Children from Internet Negative Content: A Study of Children's Web Browsing, *Jurnal Sawwa*, Vol. 8, No. 3, 2013;

Legislation:

KUHP;

Law Number 32 of 2002 concerning The broadcast;

Law Number 44 of 2008 about the Pornography;

Law Number 33 of 2009 concerning Film emphasized;

Law Number 35 of 2014 Change Law Number 23 of 2002 on Child Protection;
Law number 19 of 2016 change Law 11 of 2008 Concerning Electronic
Information and Transactions;

Website:

Ministry of Communication and Information of the Republic of Indonesia,
Indonesian Internet User Penetration and Behavior,
[https://aptika.kominfo.go.id/index.php/berita/274-rilis-hasil-survei-
penetrasi-dan-perilaku-pengguna-internet-indonesia-tahun-2018;](https://aptika.kominfo.go.id/index.php/berita/274-rilis-hasil-survei-penetrasi-dan-perilaku-pengguna-internet-indonesia-tahun-2018)

The Indonesian Child Protection Commission in 2011 – 2016. www.kpai.go.id;