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Criminal Liability for Online Sexual Exploitation of Children (OSEC) Crimes in Indonesia

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ABSTRACT

Online Sexual Exploitation of Children (OSEC) has become a global crime in Indonesia during the COVID-19 pandemic. There are difficulties in identifying and investigating perpetrators as they have continued to use technology to enable them to abuse and exploit children, while avoiding detection. This research aims to conceptualize criminal liability for online sexual exploitation of children after the enactment of Law No. 12/2022 on sexual violence. This research method uses an empirical approach, which involves collecting data through observation, interviews, and case studies to identify legal rules, legal principles, and their application in actual cases. Data was collected from various sources including legal documents; police reports; and interviews with legal experts and law enforcers involved in handling OSEC cases. The results of the research indicated that some small-scale cases of sexual exploitation have been found in the Philippines and Thailand, such as sexual grooming, dissemination of child pornographic content, and solicitations by sexting (sending indecent images). In the Philippines, the Thomson Reuters Foundation found cases of live streaming of child sexual abuse. This research is expected to contribute to the development of more comprehensive and effective legal policies in handling online sexual exploitation of children, and increasing the awareness and competence of law enforcement in identifying, investigating and prosecuting perpetrators of OSEC.

Keywords: Children, Crime, Criminal Liability, Sexual Exploitation

INTRODUCTION

Along with the recent crime rate, the rapid development and use of information technology has a significant impact on all levels of society, including children. Internet-based information technology allows children to interact in a virtual world that is abstract and universal, without being limited by place and time. One of the internet's benefits is the speed in providing and obtaining information.¹ Social life changes in the midst of the COVID-19 pandemic, which means more activities are being online, apply not only to adults but also to children.² UNICEF reported that COVID-19, which has led to school closures and strict lockdowns, has led to more than 1.5 billion children and adolescents spending more time online.³ This will potentially lead to an increase in cybercrime, both children as perpetrators of crimes such as illegal content, and as victims in Online Sexual Exploitation of Children (OSEC).⁴

There is a new and expanding form of sexual exploitation known as Online Sexual Exploitation of Children (OSEC). Several small-scale cases of sexual exploitation have been identified in the Philippines and Thailand, including grooming, distribution of pornographic content on the internet, and sexting (sending inappropriate sexual messages) in both countries. Meanwhile, in the Philippines, the Thomson Reuters Foundation has uncovered new cases of live-streamed sexual abuse of children.⁵

Global crime of the Online Sexual Exploitation of Children (OSEC) type is also becoming more prevalent in Indonesia during the COVID-19 pandemic. Moreover, there are difficulties in identifying and investigating perpetrators, as they continue to misuse technology to enable their sexual exploitation and abuse, while avoiding any detection. In addition, one of the issues that often appears is the inconsistent application of terminologies in enforcing the law. Although there are legal definitions of some exploitation offenses in Indonesia, especially in children's cases, there are still some inconsistencies in the use of legal terms that are not optimal.⁶

¹ Aditya Ahmad Fauzi et al., *Pemanfaatan Teknologi Informasi Di Berbagai Sektor Pada Masa Society 5.0* (PT Sonpedia Publishing Indonesia, 2023).

² M. Syukri Akub, "Pengaturan Tindak Pidana Mayantara (Cyber Crime) Dalam Sistem Hukum Indonesia," *Al-Ishlah: Jurnal Ilmiah Hukum* 21, no. 2 (2018): 85–93, <https://doi.org/10.56087/aijih.v21i2.19>.

³ Giovani Dio Prasasti, "UNICEF: Waspada! Kejahatan Pada Anak Di Dunia Maya Selama Pandemi COVID-19," *Liputan 6*, 2020, <https://m.liputan6.com/health/read/4235421/unicef-waspada-kejahatan-pada-anak-di-dunia-maya-selama-pandemi-covid-19>.

⁴ Samsul Arifin and Kholilur Rahman, "Dinamika Kejahatan Dunia Maya Mengenai Online Child Sexual Exploitation Di Tengah Pandemi COVID-19," *Al Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan* 1, no. 1 (December 24, 2021): 89, <https://doi.org/10.24252/ad.v1i1.19812>.

⁵ Ahmad Sofian, "Perlindungan Anak Dari Eksploitasi Seksual Online Selama COVID-19," BINUS Education, 2020, <https://business-law.binus.ac.id/2020/05/29/perlindungan-anak-dari-eksploitasi-seksual-online-selama-covid-19/>.

⁶ Arifin and Rahman, "Dinamika Kejahatan Dunia Maya Mengenai Online Child Sexual Exploitation Di Tengah Pandemi COVID-19."

Therefore, there is a clear concept in exploitation-related terminology in describing the characteristics of global abuse in recognizing Online Sexual Exploitation of Children (OSEC). Based on these conditions, it is necessary for researchers to examine and identify the terminology and characteristics of global abuse in recognizing Online Sexual Exploitation of Children from an *Ius Constitutum* perspective. In addition, this scientific research also identifies the dynamics of online sexual exploitation of children during the COVID-19 pandemic. Thus, the general public has a special interest in the law enforcement process in identifying the development of global criminal law and recognizing Online Sexual Exploitation of Children (OSEC) in the midst of the COVID-19 pandemic.

LITERATURE REVIEW

Criminal Liability

Criminal liability is a legal principle stating that every person who commits an act that violates the law and is prohibited by law, must be responsible for his actions and is ready to accept sanctions or criminal penalties imposed by the court. This criminal liability applies to every individual without exception, including criminals who knowingly or unknowingly commit criminal acts. In criminal law, the principle of criminal responsibility is the fundamental for the enforcement of law and justice in a country. According to Prof. Dr. Andi Hamzah, an expert on criminal law in Indonesia, criminal liability consists of two main components, which are *actus reus* and *mens rea*. *Actus reus* is an act prohibited by law, while *mens rea* is the intention or culpability in committing the act. He stated that these components must be present in order to punish someone for criminal offenses. Unless there is an unlawful act, there can be no guilt, and without guilt, the unlawful act itself cannot be held criminally liable.⁷

Online Sexual Exploitation of Children (OSEC)

Online Sexual Exploitation of Children (OSEC) is a form of crime perpetrated by perpetrators by utilizing communication technology in informal settings on the internet to falsify the occurrence of sexual abuse against children. Sexual exploitation against children online has become a phenomenon that continues to evolve with the development of technology. However, in fact, the development of technology has not always resulted in a positive impact on the growth and development of the internet. Sexual harassment against children such as the mentioned cases is one of the most common forms of sexual exploitation of children online, which has been occurring in technology-enabled platforms carried out by irresponsible people.⁸

⁷ Andi Hamzah, *Hukum Pidana Indonesia* (Jakarta: Sinar Grafika, 2017).

⁸ Illiyin Keikori, "Sebuah Petunjuk Mengidentifikasi Online Sexual Exploitation of Children (OSEC)," Rumah Faye, 2021, <https://rumahfaye.or.id/mengidentifikasi-osec/>.

Sexual violence is not always in direct physical violence, but can also be indirect violence such as that which occurs in the virtual world. In addition, children who are victims of online sexual exploitation can be victimized millions of times each time a photo, audio, or video is viewed, sent, or shared.

Cybercrime

Digital cybercrime is on the rise and current technical models to combat cybercrime are ineffective in limiting the rise of it. This suggests that more preventive strategies are required to minimize cybercrime.⁹ While it is important to understand the characteristics of criminals to properly comprehend the motivation for crime and, therefore, to develop and implement crime prevention strategies, it is equally necessary to understand the victims, i.e. the characteristics of information system users, to understand how these users become victims of crime. The term “cybercrime” has been used to describe a number of different concepts with varying degrees of specificity. Sometimes, and in its broadest sense, the term is used to refer to any type of illegal activity that results in the loss of property.¹⁰

This includes crimes where financial loss is an unintended consequence of the offender’s actions or where the offender does not intend to generate financial gain for himself or a loved one. For example, it is argued that to define cybercrime, it is necessary to understand the impact of information and communication technology on our society and how it has changed the world.

RESEARCH METHODOLOGY

This research method uses an empirical approach, which involves collecting data through observation, interviews, and case studies to identify legal rules, legal principles, and their application in actual cases. Data was collected from various sources including legal documents; police reports; and interviews with legal experts and law enforcers involved in handling OSEC cases.¹¹ Legal research is conducted not only to learn about something, but also to solve legal issues. In conducting legal research, it is not only a process of finding the law that takes place in the course of living a moral life, as Cohen argues.¹² Moreover, legal research is also a process of finding legal rules, legal principles, and legal doctrines to address the legal issues in question. In legal research, the validity of

⁹ Dhimas Joeantito Hartono and Sugiharto, “The Criminal Responsibility for Pornography Video Maker Through Digital Forensics on Social Media,” *YURIS: Journal of Court and Justice* 1, no. 2 (2022).

¹⁰ H. Zakaria, *Etika Profesi Di Bidang Teknologi Informasi* (Pascal Books, 2022), <https://books.google.co.id/books?id=2LqeEAAAQBAJ>.

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2010).

¹² Marzuki.

the hypothesis is not required to be proven, but rather it is required that the prescriptions recognize what should be implemented.¹³

RESULT AND DISCUSSION

Characteristics of Cybercrime Regarding Online Sexual Exploitation of Children in the Perspective of Positive Law

In the explanation of Article 66 of the Law on the Protection of Children, it is stated that the term “sexual exploitation” refers to any form of exploitation of sexual organs or other persons for the purpose of obtaining benefits, but in no case for the purpose of sexual exploitation or sexual abuse. There are several laws that are still relevant to be applied to recognize the sexual exploitation of children online, such as the Law on the Protection of Children, the ITE Law, the Anti-Trafficking Law, the Pornography Law, and the Sexual Offences Act. In addition to the mentioned types of child sexual exploitation, the latest form of crime that is being discussed around the world is online sexual exploitation of children (OSEC). Online Sexual Exploitation of Children (OSEC) is the act of exploiting children for sexual purposes through the internet or other digital media. This can include activities such as creating, downloading, sharing or selling sexual material involving children, soliciting or providing sexual services online to children, or exploiting children for live sexual performances online.

The shortcomings of the Indonesian positive law include the fact that there are no specific provisions specifically recognizing the sexual exploitation of children by using the internet, and the lack of an abstract definition of the term “criminal act of sexual exploitation of children” in the legal regulations. In a number of cases of sexual exploitation of children with the use of communication facilities, these cases are free from legal restrictions, and there is no specific provision in the positive law regarding sexual exploitation of children through online platforms.

Online sexual exploitation of children (OSEC) is a form of criminal behavior that severely harms all the victims in terms of psychological and physical consequences, such as depression, sleep disturbance, interpersonal relationship breakdown, and ongoing sexual trafficking. In addition, OSEC is also a serious offense against human rights within the law. OSEC is often perpetrated by adult perpetrators who have access to and the ability to exploit children online, such as pedophiles, malicious abusers, and others who wish to take advantage of the sexual exploitation of children. OSEC acts can also be perpetrated by individuals who are close to their partners, such as family members or friends, who exploit children for their own sexual interests. When examined from the perspective of its forms, these forms of sexual exploitation perpetrated against

¹³ Marzuki.

children online include: grooming, sextortion, sexting, and live streaming sexual abuse of children.

Criminal Liability for Online Sexual Exploitation of Child Following the Enactment of Law No. 12/2022 on the Crime of Sexual Violence

The concept of “liability” in criminal law refers to a person’s ability to be held legally responsible for their criminal acts. This concept involves consideration of a person’s mental capacity and ability to accept the consequences of their actions. Moeljatno concluded that, for the existence of the ability to be held responsible, there must be:

1. Ability to distinguish between right and wrong actions in accordance with the law and morality; and
2. The ability to determine one’s intention according to one’s judgment of whether the action is right or wrong.

The first is the intelligence factor, which is the ability to distinguish between acceptable and unacceptable behaviors. The second is the factor of feeling or intention, which is the ability to adjust one’s behavior with an awareness of the permissible and the impermissible. As a consequence, a person who is unable to determine his/her will according to his/her awareness of what is right and wrong is not culpable. Such a person cannot be held liable.

In the context of criminal law, a person is considered capable of responsibility if they have sufficient mental capacity to understand the characteristics and consequences of the criminal acts they commit. They must be able to understand that their actions violate the law and have the ability to control their behavior in accordance with applicable legal norms.

In the Criminal Code, provisions that point towards the ability to be held responsible are provided in Book I Chapter III Article 44 of the Criminal Code, which reads: “Any person who commits an act for which he cannot be held responsible because his mental capacity is disabled or impaired due to illness, shall not be punished.” However, this provision differs from what is stipulated in Law No. 1 of 2023 concerning the Criminal Code:

1. Article 38 of Criminal Code
Any person who at the time of committing a criminal offense is mentally disabled and/or intellectually disabled may have his/her punishment reduced and/or be subjected to an action.
2. Article 39 of Criminal Code
Any person who at the time of committing a criminal offense has a mental disability that is in a state of acute recurrence and is accompanied by psychotic features and/or intellectual disability of moderate or severe degree shall not be subject to punishment, but may be subject to an action.

In addition to the above, criminal liability cannot be imposed on children who are under the age of 12 (twelve) years at the time of committing the crime (Article 40 of the Criminal Code). Furthermore, Article 41 of the Criminal Code stipulates that in the event that a child under the age of 12 (twelve) years old commits or is suspected of committing a criminal offense, the investigator, community counselor, and professional social worker shall make a decision to:

1. Hand them back to their parents/guardians; or
2. Participate in education, training, and mentoring programs at government institutions and social welfare institutions within institutions that handle social welfare, both at the central and regional levels, within 6 (six) months at the latest.

CONCLUSION

The term Online Sexual Exploitation of Children (OSEC) refers to the act of exploiting children for sexual purposes through the internet or other digital media. This can include activities such as creating, downloading, sharing or selling sexual material involving children, soliciting or providing sexual services online to children, or exploiting children for live sexual performances over the internet. In contrast to the Philippines and Thailand, the shortcomings in Indonesian positive law are that there are no provisions that specifically recognize the sexual exploitation of children using the internet, and also the abstract definition of the term criminal exploitation of children in the legislation.

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