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Criminal Liability Against Child Exploitation Perpetrators by Educators in Islamic Boarding Schools

Ahmad Ihsan Amri

ihsanahmadzoom@gmail.com

Postgraduate of Law Faculty in Narotama University Surabaya

ABSTRACT

The children exploitation that occurs within the scope of Islamic boarding schools is increasing and it is required for strict supervision from the government to take preventive measures against this crime even though the implementation of Islamic boarding schools that regulated in Law of Republic Indonesia No. 18/2019 concerning Islamic Boarding Schools. The aims of this research is divided into two types, to examine the effectiveness of positive law in Indonesia in law enforcement cases of crimes against children as victims and examine the legal sanctions from the actions of educators who exploit children in the Islamic boarding school environment.; also, to fulfillment of academic requirements of researcher to complete the task of child criminal course at the Postgraduate of Law Faculty in Narotama University Surabaya and add theoretical and practical knowledge in legal science, especially in criminal law. The method used is juridical-normative method combined with conceptual, statutory and case approach. The source data of this research consist of primary, secondary, and tertiary legal materials. In addition, the data collection used library research. The criminal sanctions for perpetrators of child exploitation in Islamic boarding schools are regulated in Child Protection Law in Article 76I and Article 88 which the perpetrator is threatened with a maximum imprisonment of 10 years and a maximum fine of IDR 200,000,000,- and the child as a victim can apply for restitution rights or compensation based on Government Regulation No. 43/2017 concerning the Implementation of Restitution for children who are victims of criminal acts.

Keywords: *Child Exploitation, Criminal Liability, Islamic Boarding Schools*

INTRODUCTION

Children is a part of the nation's next generation who are one of the potential human resources in continuing the ideals and struggles of the Indonesian nation in the future. Children's rights is part of human rights contained in international law and Indonesian national law which is the ratification of the international agreement. Broadly, children's rights regulate that every child in Indonesia has the right to a decent life, to grow and develop properly, and to get protection from threats of violence and discrimination.¹

The Indonesian government in performing its obligations in providing legal protection to children is guided by Law No. 17/2016 amendments to Law No. 23/2002 concerning child protection and the criminal code (KUHP) as material law used when there is a crime committed by perpetrators to children. The establishment of more specific laws along with clear and firm sanctions will cause Indonesian people to be more reluctant to commit crimes.²

Unfortunately, the established law is not cause the perpetrators deterrent to commit deviation. Nowadays, the condition of Indonesian children is still a concern, especially in terms of child exploitation, both sexually and commercially. Based on data from the Indonesian Child Protection Commission (KPI) until April 2021 cases of exploitation and trafficking of children that occurred in the country had reached 234 cases, even though throughout 2020 there were only 149 cases, which can be ascertained that in 2021 the cases will increase to almost 60% from previous years. Mostly, these cases came from the closest people to the victim, either relatives, parents, family, the surrounding community or even educators where the victim studied.³

Tragically, some of children exploitation cases occurred in the boarding school environment. Even though Islamic boarding schools is one of the Islamic educational institutions whose duty is to foster moral character and provide knowledge to children in order to provide benefits in the world, but also religious teachings as life guidelines and provisions in the afterlife.⁴ Islamic boarding school is a place of recognition and understanding of Islam as well as the center of Islamic religion. Most of the Islamic boarding schools were established as a form of reaction to certain patterns of life that were considered vulnerable, thus the establishment of Islamic boarding schools was one part of cultural transformation that took place in

¹ Irma Sahvitri Lawado and Na'imah Na'imah, "Strategi Pemberdayaan Anak Melalui Wadah Partisipasi Anak Sebagai Upaya Pemajuan Hak Asasi Manusia," *EGALITA* 13, no. 1 (November 2019).

² Widya Cindy Kirana Sari, "Perlindungan Hukum Terhadap Anak Sebagai Korban Kejahatan Eksploitasi Seksual," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 2, no. 1 (February 2022): 61–72.

³ Ayu Intan Setyono Novelianna, Hadibah Zachra Wadjo, and Yonna Beatrix Salamor, "Perlindungan Hukum Terhadap Anak Dari Eksploitasi Seksual," *Tatohi: Jurnal Ilmu Hukum* 1, no. 1 (2021): 12–16.

⁴ Rahmat Hidayat and Abdillah, *Ilmu Pendidikan Konsep, Teori Dan Aplikasinya*, ed. Candra Wijaya and Amiruddin, 1st ed. (Medan: Penerbit Buku Umum dan Perguruan Tinggi, 2019).

a relatively long period of time.⁵ Currently, the children exploitation that occurs within the scope of Islamic boarding schools is increasing and it is required for strict supervision from the government to take preventive measures against this crime even though the implementation of Islamic boarding schools is strictly regulated in Law of the Republic Indonesia No. 18/2019 concerning Islamic Boarding Schools.⁶

The act of child exploitation is a social crime that has a sustainable impact on the children life in the future. This act can destroy the victim's childhood and disrupt the child's development both physically, psychologically, and emotionally.⁷ Regardless of the educational environment, the Indonesian government must be able to draft laws and regulations that accommodate the protection of children's human rights so that there is no opportunity for certain elements to commit crimes against children because of the legal vacuum. In addition, the view of some Indonesians who think that the teacher utterances is truth.

In this research, the researcher will discuss the implementation of criminal liability against child exploitation perpetrators who come from among educators already exists and whether it is implemented in Indonesia properly, both from the child protection law and the boarding school law. Because as we know that there are several authorities of educators in *tuchrecht*, one of them is the right to discipline their students. Therefore, we are required to be able to distinguish which acts of educators are part of the discipline to their students and which acts of educators are criminal acts in exploiting their students.

The aims of this research is divided into two types, these are (1) objective aim such as to examine the effectiveness of positive law in Indonesia in law enforcement cases of crimes against children as victims and examine the legal sanctions from the actions of educators who exploit children in the Islamic boarding school environment; (2) subjective aim such as to fulfillment of the academic requirements of researcher to complete the task of child criminal course at the Postgraduate of Law Faculty in Narotama University Surabaya and add theoretical and practical knowledge in legal science, especially in criminal law.

RESEARCH METHODOLOGY

The method used is juridical-normative method combined with conceptual approach, statutory approach and case approach. The juridical-normative method is research using existing literature that has been processed by other researchers or

⁵ Muhammad Akbar et al., "Islamic Boarding School as a Role Model for Character Education," *KnE Social Sciences* (April 8, 2022): 623-632, <https://knepublishing.com/index.php/KnE-Social/article/view/10780>.

⁶ Moh Shohib, "Pengenalan Pengetahuan Santri Pesantren Al-Mansyhuriyah Terhadap Kejahatan Pedofilia," *Jurnal Abdimas* 5, no. 2 (2019).

⁷ Hadi Machmud, Nur Alim, and Rasmi Rasmi, "Eksplorasi Anak Di Kota Layak Anak (Studi Di Kota Kendari)," *Zawiyah: Jurnal Pemikiran Islam* 6, no. 1 (August 2020): 74.

only supporting or secondary data is studied.⁸ Also, the juridical-normative approach is an approach that is based on the main legal material by examining theories, legal principles and law regulations related to this research.⁹ The source data of this research consist of primary, secondary, and tertiary legal materials. The primary legal materials consist of Law No. 17/2016 amendments to Law No. 23/2002 on Child Protection (Law No. 17/2016), Law No. 18/2019 concerning Islamic Boarding Schools (UU No. 18/2019), and the Criminal Code (KUHP).¹⁰ Meanwhile, the secondary legal material come from literatures that provide some explanation of primary legal materials in the form of books, journals, articles, research results, papers, e-books, and others in which the topic of discussion is relevant to the problems discussed. Then the tertiary legal material is come from dictionaries or encyclopedias that explain certain meanings of primary and secondary legal materials. In addition, the data collection used library research. The data obtained comes from information that has been provided by competent experts then the research results become more credible because they are supported by relevant academic papers.

RESULT AND DISCUSSION

The Crime of Children Exploitation by Educators in Islamic Boarding Schools

A. The Forms of Children Exploitation by Educators in Islamic Boarding Schools

In Article 1 point 7 of Law No. 21/2007 on the Eradication of the Crime of Human Trafficking (Law on the Eradication of the Crime of Human Trafficking) states that exploitation is an act with or without the consent of the victim which includes prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, physical, sexual exploitation, reproductive organs, or unlawfully removing or transplanting organs or body tissues and utilizing one's power or ability by another party to obtain material or immaterial benefits.

Children exploitation is an act of using children arbitrarily by their families or other people and forcing children to do something that can interfere with their mental and physical growth and development. Children exploitation means eliminating children's rights in life and developing themselves which will later become the nation's next generation. Children exploitation shows discriminatory attitudes or arbitrary actions against a child conducted by parents or the community that forces a child to do something for economic, social or political interests without

⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Penerbit Universitas Indonesia (UI-Press), 2015).

⁹ Pratiwi Setiawan and Wahyu Tris Haryadi, The Child Custody Status from Unregistered Marriage: An Islamic Law on The Basis of Constitutional Court Decision. *YURIS (Journal of Court and Justice)* 1, no. 3 (2022).

¹⁰ Fitri Wahyuni, *Dasar-Dasar Hukum Pidana Di Indonesia*, ed. Rizqi Azmi, 1st ed. (Tangerang Selatan: PT Nusantara Persada Utama, 2017).

regard to the child's rights in obtaining protection in accordance with physical development, psychological and social status.¹¹

Every child has the right to survive, grow and develop and is entitled to protection from violence and discrimination as mandated in the 1945 Constitution of the Republic Indonesia.¹² Children exploitation is also an act that violates Human Rights because Article 52 Paragraph (1) of the Human Rights Law states that every child has the right to protection by parents, family, society and the state. In general, the factors causing and driving the problem of child exploitation such following below:

1. Poverty

The low family economy is the dominant factor that causes children to be involved in earning a livelihood.

2. Socio-Cultural

The economic phenomenon in children exploitation cannot be separated from the reality that exists in society. Culturally, they consider children as potential families who are obliged to be devoted to their parents.

3. Education

The main factor that a child is economically exploited is because of their backwardness to be able to get an education.

4. Production Process Changes

The current development also demands the sophistication of technology to make several companies in developing the production process using sophisticated tools.

5. The Lack of Supervision and Limited Institutions for Rehabilitation

The existence of regulations to protect children who are economically exploited is not balanced with the implementation of these rules, therefore it is very possible that there are many problems that arise in child labor that cannot be resolved by law enforcement officials.

Based on Article 54 of the Child Protection Law, it is stated that (1) children in the education environment must receive protection from physical acts, psychological violence, sexual crimes, and other crimes committed by educators, education staff, fellow students, or other parties; (2) the protection as referred to in Paragraph (1) is committed by educators, education staff, government officials, or the public.

Islamic Boarding Schools as part of the educational environment should participate in implementing the article. Unfortunately, not all Islamic boarding

¹¹ Sita Sarah Aisyiyah, "Tindak Pidana Eksploitasi Pekerja Anak Di Bawah Umur Di Wilayah Tangerang; Kajian Hukum Positif Dan Hukum Islam," *SALAM: Jurnal Sosial dan Budaya Syar-i* 5, no. 4 (June 2018).

¹² Endah Triwulandari and Edy Tarsono, Socio-Juridic Analysis of Abortion According to Article 75 of Law Number 36/2009 Concerning on Health and Law Number 35/2014 Concerning on Child Protection, *YURIS (Journal of Court and Justice)* 1, no. 2 (2022).

schools can apply it, then child exploitation can still occur in the Islamic boarding school environment. Children exploitation that occurs in Islamic boarding schools is usually in the form of economic and sexual exploitation. Children exploitation in Islamic boarding schools is usually committed by unscrupulous teachers in Islamic boarding schools and other parties. It can be occurred because the child is indoctrinated to do an act that he/she believes is right and then the child as a victim is reluctant to convey it to others because of the doctrine of that person.

B. Economic Exploitation by Educators or Other Parties in Islamic Boarding Schools

The meaning of children exploitation economically is the unethical use of children in order to obtain economic benefits in the form of money or the equivalent of money. The main point is they think if the children as money-printing machines that can meet the needs. Children exploitation economically in Islamic boarding schools environment is conducted by employing children to obtain financial benefits. Unscrupulous educators in Islamic boarding schools usually use religious arguments to exploit children in doing work that they should not do, then it caused the children surrender and cannot fight back the commanding. One example of this case is the decision of Bandung District Court No. 989/Pid.Sus/2022/PN.Bdg in which the convict Herry Wirawan has committed economic and sexual exploitation of his students. Economic exploitation of children by Herry Wirawan includes making his students into money machines; he commanded them to make proposals to ask donations from the society; he commanded his students to work as construction workers to build his Islamic boarding school building; not recognizing the child of the victim so that the child becomes an orphan; and asked the female students to work as school officers until 2 a.m. The actions that have been committed by Herry Wirawan have violated the Child Protection Law in Article 76 I which states that everyone is prohibited from placing, allowing, carrying out, ordering, or participating in economic or sexual exploitation of children.

C. Sexual Exploitation by Educators or Other Parties in Islamic Boarding Schools

In a Islamic boarding school environment, sexual exploitation can occur because an educator abuses the authority to influence and exploit children's beliefs for the purpose of personal sexual satisfaction. Due to the position of the child in the Islamic boarding school as a student, the perpetrator uses his religious knowledge to take advantage of the students to do whatever he wants. In addition, the factor of students age who are classified as children underage and not yet adults is also a factor that is vulnerable and easily influenced, then the perpetrator give deviant doctrines and students will comply with his/her requests.

Based on the general explanation in the Law on the Eradication of the Criminal Acts of Human Trafficking, it can be said that based on empirical

evidence, women and children are the group most commonly victims of criminal acts of human trafficking such as exploitation, especially sexual exploitation. Violence against women and children can be seen from the type, perpetrator, place of occurrence, time, age and consequences of violence acts. The violence against women and children previously mentioned is generally applicable and has no relevance to the type of education, occupation, income, social position, religion, belief, ethnicity, ethnicity and race inherent in men and women.

It means that all types of social level, violence against women and children can and will continue to occur as long as inequality in the relationship between men and women is still believed and manifested in social life. In terms of perpetrators, violence against women and children can be committed either by individuals or groups, such as community groups, social organizations, companies, or the state, either through policies that discriminate against women or violence acts directed to women and children. The forms of violence committed by the perpetrators are not limited in women and children trafficking, it can be formed in various violence acts such as prostitution, terror or the killing of women activists because of their work.

Commercial sexual exploitation of children is a violation of children's rights and includes criminal practices that degrade and threaten the physical and psychosocial integrity of children. The Stockholm Action Agenda defines the commercial sexual exploitation of children as a fundamental violation of children's rights. Such violations consist of sexual violence by adults and the provision of rewards in cash or in kind to children, or third persons, or other persons. The child is treated as a sexual object and as a commercial object. Commercial sexual exploitation of children is a form of coercion and violence against children, and leads to modern forms of forced labor and slavery.

It is the same as economic exploitation case in the Islamic boarding school environment in which the case of Herry Wirawan is also one of examples in the case of sexual exploitation in the Islamic boarding school environment. In the facts of the trial, Herry Wiawan was proven to have molested 12 of his students who were still underage. The act was committed from 2016 to 2021 and some victims were pregnant and to childbirth. The total of nine babies were born caused of his actions. The mode used by Herry Wirawan is by giving the temptation to his students that he will be paid for their tuition fees, he will make them as boarding school administrators or even policewomen.

In the decision at the appeals level, Herry Wirawan was found guilty of committing a crime in Article 81 Paragraph (1), Paragraph (3) and (5) in conjunction with Article 76D of Law No. 17/2016 concerning Amendments to Law No. 23/2002 concerning Child Protection in conjunction with Article 65 Paragraph (1) of the Criminal Code as the first indictment.

Article 76D containing that everyone is prohibited from using violence or threats of violence to force a child to have sexual intercourse with him or with other people.

Article 81 Paragraph (1) containing that any person who violates the provisions as referred to in Article 76D shall be sentenced to a minimum imprisonment of five years and a maximum of fifteen years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).

Article 81 Paragraph (3) containing that in the event that the criminal act as referred to in Paragraph (1) is committed by parents, guardians, people who have family relationships, child caretakers, educators, education personnel, officers who handle child protection, or it is committed by more than one person jointly. the same, the penalty is added 1/3 (one third) of the criminal threat as referred to in Paragraph (1).

Article 81 Paragraph (5) containing that in the event that the criminal act as referred to in Article 76D causes more than one victim, causes serious injury, mental disorder, infectious disease, is disturbed or lost reproductive function, or the victim dies, the perpetrator may be sentenced to death, life imprisonment, or imprisonment at least 10 years and maximum 20 years.

Article 65 Paragraph (1) containing that in the event that several acts must be considered as independent acts so that they constitute several crimes, which are threatened with the same principal punishment, only one sentence shall be imposed.

Criminal Sanctions Against Child Exploitation Perpetrators by Educators in Islamic Boarding Schools

A. Child Exploitation Crime

Underage children exploitation for prostitution is an act that is contrary to the Human Rights (HAM) regulated in the Human Rights Act. In that law, there is an important principle that for the protection of human rights that is in Article 65 states that every child has the right to obtain protection from sexual exploitation and abuse, kidnapping, child trafficking and from various forms of narcotics, psychotropic and other addictive abuse.

In certain cases of children exploitation, especially those related to acts of children exploitation based on economic motives, law enforcers often have difficulty in handling such cases. Law enforcers understand that the act of employing or allowing underage children, such as being buskers, beggars, or selling food on the roadside or at red light intersections is a mistake. On the other hand, the absence of reports and the authority of other parties, in this case the Civil Service Police Unit (Satpol PP) or the local social service, which usually acts as a party to discipline and take care of the existence of the child, causes law enforcement authorities not to take direct action, either to child victims of exploitation or the parents who are directly responsible for the existence of the child.

It is different in relation to child exploitation acts, especially in the field of sexual exploitation. Actions and law enforcement are committed firmly. The act of exploiting children in the sexual field is considered one of the most serious offences.

Children as victims of sexual exploitation have their rights and human dignity violated. Handling and law enforcement must also be firm. Both to parties who enjoy the services of such sexual exploitation or to parties who are directly involved in these actions. Victims of sexual exploitation, either by coercion or of their own volition, will experience the impact of psychological disturbances. Therefore, handling and action against victims of sexual exploitation must also be carried out intensely and deeply.

B. The Sanctions for Child Exploitation Crime

Criminal sanction is a causal punishment, the cause is the case and the effect is the law. People who are affected will be punished either by going to prison or by other punishment from the authorities. Criminal sanctions are a type of sad sanctions that are threatened or imposed on acts or perpetrators of criminal acts or criminal acts that can interfere with or endanger legal interests. Basically, criminal sanctions is a guarantor to rehabilitate the behavior of the perpetrators of these crimes, but it is not uncommon that criminal sanctions are created as a threat to human freedom itself. Criminal punishment is suffering or misery that is intentionally imposed on people who committed actions that meet certain conditions. The basis for the existence of a criminal act is the principle of legality, while the basis for punishing the maker is the principle of error. This implies that the maker or perpetrator of a criminal act can only be convicted if he has made a mistake in committing the crime.¹³

In addition to imprisonment for perpetrators of child exploitation, child victims can also apply for restitution based on Government Regulation No. 44/2008 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. In Article 1 point 1 of Government Regulation No. 43/2017 concerning the Implementation of Restitution for Children who become victims of crime states that restitution is the payment of compensation charged to the perpetrator based on a court decision with permanent legal force for material and/or immaterial losses suffered by the victim or his heirs.¹⁴

Prior to this Government Regulation, in the event of a crime against a child, the victim does not only bear the material losses (which can be calculated) and immaterial losses (which cannot be counted) in the form of shame, loss of self-esteem, low self-esteem, and/or or excessive anxiety of a traumatic nature.

Article 2 Paragraph (1) Government Regulations No. 43/2017 states that every child who is a victim of a criminal act has the right to obtain restitution. Then, in Article 3 of Government Regulations No. 43/2017 states that restitution for children who are victims of criminal acts in the form of: (a) compensation for

¹³ Dhimas Joeantito Hartono, "The Criminal Responsibility for Pornography Video Maker Through Digital Forensics on Social Media," *YURIS, Journal of Court and Justice* 1, no. 2 (2022).

¹⁴ Imron Anwari, *Kedudukan Hukum Korban Kejahatan Dalam Sistem Peradilan Pidana Indonesia Melalui Putusan-Putusan Pengadilan Pidana*, 1st ed. (Yogyakarta: Genta Publishing, 2014).

property loss; (b) compensation for suffering as a result of a crime; and (c) reimbursement of medical and/or psychological treatment costs.

In addition to being regulated in the Government Regulations, restitution is also regulated in Supreme Court Regulation No. 1/2022 concerning Procedures for Completion of Applications and Granting of Restitution and Compensation to Victims of Criminal Acts (Supreme Court Regulation No. 1/2022), which the content of Article 1 No. 1 of the Regulation states that restitution is compensation given to the victim or their family by the perpetrator of a crime or a third party.

Article 1 point 3 of Supreme Court Regulation No. 1/2022 states that victims are people, including children who are not yet 18 (eighteen) years old or still in the womb, who experience physical and mental suffering, and/or economic loss caused by a criminal act.

Restitution is more directed at the responsibility of the perpetrator for the consequences caused by the crime than the main target is overcoming all the losses suffered by the victim. The benchmark used in determining the amount of restitution given is not easy to formulate because it depends on the social status of the perpetrator and the victim. When the victims has a lower social status than the perpetrator, they will prioritize compensation in the form of material, and vice versa if the victims' status is higher than the perpetrator, the restoration of dignity and good name will be prioritized.

This demand for restitution has also been applied in the Herry Wirawan case. The Public Prosecutor in his claim filed for restitution of IDR 331.000.000 (three hundred and thirty million rupiah) for the twelve child victims. In an appeal decision, the judge granted the demand, then Herry Wirawan was sentenced to death and paid the amount of restitution.

CONCLUSION AND SUGGESTION

Conclusion

Children exploitation that occurs in Islamic boarding schools is usually in the form of economic and sexual exploitation. Children exploitation in Islamic boarding schools is usually committed by unscrupulous teachers in Islamic boarding schools and other parties. It can be occurred because the child is indoctrinated to do an act that he/she believes is right and then the child as a victim is reluctant to convey it to others because of the doctrine of that person. The criminal sanctions for perpetrators of child exploitation in Islamic boarding schools are regulated in the Child Protection Law in Article 76I and Article 88 which the perpetrator is threatened with a maximum imprisonment of 10 years and a maximum fine of IDR 200,000,000,- and the child as a victim can apply for restitution rights or compensation based on Government Regulation No. 43/2017 concerning the Implementation of Restitution for children who are victims of criminal acts.

Suggestion

For the public to supervise Islamic boarding schools' activities in order to protect the students from unscrupulous educators by tightening preventive supervision of irregularities that occur to students in Islamic boarding school environment so that they act quickly and precisely on incidents such as children exploitation. Then, the government must make guidelines that regulate the obligation to build a safe space for the entire pesantren community, including the supervision of sexual violence. For the government, it is required to conduct preventive counseling related to the children exploitation to the community in order to maintain and supervise each other regarding the rights of children in Islamic boarding schools; and repressively in terms of law enforcement, take firm action against the accused perpetrators of child exploitation in the Islamic boarding school environment.

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