

CRIMINAL ACTIONS AGAINST PEOPLE EXPLOITING CHILDREN IN ACCORDANCE TO INDONESIAN CRIMINAL LAW

[1] M. Junaeddy;* [2] Budi Parmono; [3] Hanafi Arief;

[1][2] Malang Islamic University

[3] Islamic University of Kalimantan Muhammad Arsyad Al Banjari

Email: junaeddy1@gmail.com

* Corresponding Author

Citation: Junaeddy, M. et.al., Criminal Actions Against People Exploiting Children In Accordance To Indonesian Criminal Law. *Int' Journal of Law, Environment, and Natural Resources (INJURLENS)*, 2 (2), 200-212.

Academic Editor: Muhammad Hendri Yanova
Received: 25 May 2023
Revised: 10 June 2023
Accepted: 23 June 2023
Published: 03 July 2023

Publisher's Note: Scholar Center stays neutral with regard to jurisdictional claims in published maps and institutional affiliations.



Copyright:

© 2022 by the authors. Submitted for open access publication in International Journal of Law, Environment, and Natural Resources (INJURLENS) under the terms and conditions of the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 license (CC BY NC SA 4.0). For more information visit (<http://creativecommons.org>).

Abstract: Exploitation of children is now more widespread, not carried out by families but also by small to large institutional groups. The perpetrators are sometimes the parents themselves with the intention of making a profit. The purpose of this study is to describe the position of children in Indonesian criminal law and to analyze criminal sanctions for child exploitation. As normative legal research, this study examines laws and regulations related to child exploitation and criminal sanctions. Research results: Article 45 of the Criminal Code defines a child as an immature person if he is not yet 16 years old. Criminal law has positioned children as legal subjects who must protect themselves and their interests as well as the special rights of the state. Economic, social and sexual exploitation of children with the intention of benefiting oneself or others is a criminal act. Criminal sanctions for those who commit, order to do, and those who participate in committing the act; give or promise something by abusing power or dignity, by violence, threats or misdirection, or by giving opportunities, means or information, encouraging other people to take action; intercourse (not the wife) is punishable by imprisonment for a maximum of nine years

Keywords: Punishment, Exploitation, Criminal Law.

1. INTRODUCTION

Indonesia is one of the countries that signed the agreement on equal rights for all children by adopting the United Nations (UN) convention for children's rights on January 26, 1990, the Convention on the Rights of the Child (Convention on the Rights of the Child) The convention is the result of the UN session held on November 20, 1989. The contents of this convention regulate things that must be done by various countries so

that every child can grow and develop healthy, educated, protected, heard, and treated fairly.

Children are the nation's capital for sustainable development and as the next generation for the ideals of the nation's struggle as well as human resources in the future. Based on this thought, the main interests for the growth and development of children's lives must receive a very high priority. However, not all children have the same opportunity to realize their hopes and aspirations. Many of them are at high risk of not growing and developing in a healthy manner, getting the best education, due to family poverty, parents having problems, being mistreated, being abandoned by their parents, so that children cannot enjoy life properly. Even among them are also exploited for various purposes. And this happens everywhere in the country and even Indonesia.

Children are also the younger generation, potential human resources besides being the successor to the ideals of the nation's struggle. Children have a strategic role and have special characteristics and characteristics. Children need guidance and protection in order to guarantee their complete, harmonious, harmonious and balanced physical, mental and social growth and development. (Mohammad, 2013) Children are personal beings who have a special dimension in their lives, in addition to their growth and development they need the help of parents, environmental factors also have a very important role in influencing the child's personality when facing the maturity phase later. A child is someone who will bear responsibility in the future, so it is only natural for countries to provide protection. (Witanto, 2012)

As the successor of the nation, children are expected to bring the nation later towards an advanced nation. Therefore childhood is an important period in human life. At this time began to grow a high curiosity about something, whether seen, heard, and felt. Once the importance of childhood, then at this time must be used as well as possible by instilling things of positive value. Instilling moral education must be done early on so that moral education is instilled in the child's soul so that children can apply it in everyday life.

In the Islamic perspective, children are sacred creatures when they are born. This is illustrated in the words of the Prophet who stated that every child is born in a state of purity and only his parents make him a Jew, Christian or Zoroastrian. This according to the Islamic view means that the immediate family environment has an important role in shaping children.

Child abuse or exploitation of children is now increasingly widespread. This exploitation is not only monopolized by families, but also small to large institutional groups. (freisthya,2010) Ironically, sometimes the perpetrators are their own parents with the intention of making a profit. So far, people's attention to child exploitation has been more focused on the grassroots community. The conditions and living environment of the grassroots are synonymous with poverty, destitution, ignorance and crime. This group of people is accused of being the cause of exploitation of children.

In the lower classes of society, exploitation of children in the form of employing children is inseparable from the reality of the family environment, so that children are forced or forced to help support the family's economy. has become a common sight and many of us meet.

2. METHODS

This research is normative legal research, using a statutory law approach that focuses on primary legal material, namely the Child Protection Act Number 35 of 2015 Amendments to Law Number 23 of 2002 concerning Child Protection. The nature of qualitative descriptive analysis. Collection of legal materials through document studies (library), processing of legal materials is carried out by means of checking (editing), marking (coding), reconstruction, and systematizing. Analysis of legal materials was carried out qualitatively, comprehensively and completely.

3. RESULTS AND DISCUSSION

3.1. Children Status in Indonesian Criminal Law

Each country has its own definition of a child. The United Nations (UN) in The Convention on The Right of The Child (CRC) or KHA stipulates the definition of a child "Child means every human being under 18 years of age, unless according to the law

that applies to children, maturity is reached earlier" (Hadi, 2010) A child according to Article 1 paragraph (1) of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.

In the explanation of Law Number 35 of 2014 concerning child protection in general it is said, children are a mandate as well as a gift from God Almighty, which we must always guard because in him inherent dignity, and rights as human beings which must be upheld tall. Children's human rights are part of human rights contained in the 1945 Constitution and the United Nations Convention on the Rights of the Child. In terms of national and state life, children are the future of the nation and the next generation of the nation's ideals, so that every child has the right to survival, growth and development, participation and is entitled to protection from acts of violence and discrimination as well as civil rights and freedoms.

Meanwhile children in Law no. 3 of 1997 concerning Juvenile Court is stated in article 1 paragraph (2) which states: "A child is a person in a delinquent case who has reached the age of 8 (eight) years but has not yet reached the age of 18 (eighteen) years and has never been married. " So in this case the meaning of children is limited with the following conditions: first, children are limited to ages between 8 (eight) to 18 (eighteen) years. While the condition of the two children has never been married. That is not currently bound in marriage or ever married and then divorced. if the child is still bound by marriage or the marriage is broken up due to divorce, then the child is considered an adult even though he is not even 18 (eighteen) years old.

The existence of Law Number 3 of 1997 is intended to protect children who are in conflict with the law so that children can face their long future and provide opportunities for children so that through coaching they will gain their identity to become independent, responsible and useful human beings. for yourself, your family, society, nation and country. However, in practice the child is positioned as an object

and the treatment of children who are in conflict with the law tends to harm the child. In addition, the law is no longer in line with the legal needs of society.

Even though Law Number 39 of 1999 concerning Human Rights has included children's rights, the implementation of the obligations and responsibilities of parents, families, communities, government and the State to provide protection for children still requires a law regarding child protection as a basis. jurisdiction for the implementation of these obligations and responsibilities. Thus, the formulation of this law was based on the consideration that child protection in all its aspects is part of national development activities, especially in advancing the life of the nation and state. Parents, families and communities are responsible for safeguarding and maintaining these human rights in accordance with the obligations imposed by law.

Likewise, in the context of implementing child protection, the state and government are responsible for providing facilities and accessibility for children, especially in ensuring their optimal and directed growth and development. This law emphasizes that the responsibilities of parents, families, communities, government and the State are a series of activities that are carried out continuously for the protection of children's rights. These series of activities must be sustainable and directed to ensure the growth and development of children, both physically, mentally, spiritually and socially.

This action is intended to create the best life for children who are expected to be potential successors to the nation, tough, have nationalism imbued with noble morals and Pancasila values, and are strong-willed to maintain the unity and integrity of the nation and state. Child protection efforts need to be implemented as early as possible, namely from the fetus in the womb until the child is 18 (eighteen) years old.

Starting from the conception of child protection that is complete, ordered and comprehensive, this law places the obligation to provide protection to children based on the principles of: non-discrimination, the best interests of the child, the right to life, survival and development, respect for opinions child. in carrying out guidance, development and protection of children, the role of the community is needed, whether

through child protection agencies, religious institutions, non-governmental organizations, community organizations, social organizations, the business world, mass media, or educational institutions. (Mohammad, 2013)

In Law no. 35 of 2014 explains the definition of child protection in Chapter I General Provisions Article 1 (2) which reads "Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with the dignity and human dignity, and receive protection from violence and discrimination".

3.2. Criminal Sanctions on Children Exploitation in Accordance to the Criminal Law

Law Number 23 of 2002 as amended by Law number 35 of 2014, article 13 paragraph (1) states, every child while in the care of parents, guardians, or any other party responsible for upbringing, has the right to protection from treatment of exploitation, both economic and sexual" (Anonim. 2013) Exploitation of children means caring for, using, exploiting for one's own benefit, exploitation, extortion, (person's labor) on other people. (Widasari. 2013) Thus it can be said that the exploitation of children is the use for personal gain through minors. In other words, children are used as a medium to make money. In general, child exploitation is the employment of a child with the aim of making a profit. (Widasari. 2013)

Exploitation of children is a violation of human rights. This act is done openly or secretly. In general, this exploitation is carried out solely for economic purposes. Victims of exploitation are the children themselves in the form of physical and mental abuse. Many factors cause exploitation. One of them is the enforcement of the child protection law which is not optimal. Even though quite severe sanctions have been prepared in this law.

In this research, the writer needs to define the term "exploitation" as an operational word. In legal terminology, the word exploitation has the meaning of using for one's own gain, exploitation, exploitation, extortion of others only for economic purposes and such actions are actions that cannot be justified. Thus child exploitation is

an act of using children improperly for the benefit or benefit of parents or other people.

Exploitation of children as regulated in the Child Protection Act No. 23 of 2002 in conjunction with Law no. 35 of 2014, among others:

3.2.1. Economic Exploitation

What is meant by economic exploitation is an act with or without the consent of a child who becomes a victim which includes but is not limited to prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, physical, sexual, reproductive organ exploitation, or against the law of transferring or transplanting organs and/or body tissues or utilizing the child's energy or abilities by other parties to gain material benefits.

Economic exploitation is the use that is carried out arbitrarily and excessively against other people for economic interests solely without considering the sense of decency, justice and compensation for the welfare of children. Economic exploitation is the misuse of child labor to be used physically and physically to work for the benefit of others and to direct children to work that they should not have done. Economic exploitation is the use of children in work or activities for the benefit of others, but is not limited to child labour. Economic exploitation is related to certain benefits obtained from the process of production, distribution and consumption of goods/services (supply chain) where children are employed in that cycle. These material interests have an impact on the economy of a particular unit, be it the state, society or family. For example: child domestic workers, child soldiers in armed conflict, child slavery, the use of children for drug dealers, involvement of children in hazardous work and others.

In the explanation of Article 66 of the Child Protection Act, it is stated that what is meant by "economically exploited" is an act without the consent of a child which includes prostitution, forced labor or services, slavery, oppression, extortion, use of physical/sexual reproductive organs to be transferred or transplanted by other parties. for material gain.

Economic exploitation has a very clear negative impact on a child's life, where currently economic exploitation activities have become a common problem in society. Children who are God's gifts really have a function and play a big role in social life in the future. Activities that can plunge children into victims of economic exploitation are actually inseparable from several factors that cause a child to fall into economic exploitation activities.

Child exploitation can also change children's behavior, such as being mature before their age, getting along hard, being disobedient, knowing material things before their time, being dependent on money, being difficult to manage, being lazy at school, and so on.

3.2.2. Social Exploitation

Social exploitation is any form that impedes a child's emotional and social development. According to Rousek and Warren, sociological or environmental factors are the shapers of personality, where sociological or environmental factors are understood as factors that shape a person's personality to be in accordance with the behavior or personality of the group or community environment.

Thus, it is clear that the factors of social interaction that occur between these children in the family environment, the family conditions of these children are able to influence the activities carried out by these children. Family is one of the reasons that require them to do so to sustain their life and that of their family. Therefore social exploitation will have a negative impact on the development of the child himself

3.2.3. Sexual Exploitation

Some sexual exploitation involves children as victims and also children as perpetrators. Most of these children become victims to be sold as commercial sex workers or commercial sex workers by people for personal gain. Most sexual exploitation is carried out by adults, but some are carried out by children and the victims themselves are also children. This form of exploitation involves children in

sexual activities that they do not understand. Such as an act that leads to the word pornography, immorality, pornographic words, stripping children naked for pornographic products or involving children in the prostitution business. Sexual exploitation behavior can cause psychological trauma for children as victims.

Child victims of sexual exploitation often experience torture, beatings and inhumane sexual harassment by clients, pimps and pimps. The impact on children is in the form of physical harm, such as children who experience sexual and commercial exploitation are at high risk of contracting HIV/AIDS. Children are also very vulnerable to physical abuse. The psychological effects of sexual exploitation and the threats used usually last the rest of their lives. Children will get psychological pressure such as trauma, stress, and even want to commit suicide.

Exploitation of children is a criminal act. Therefore, people who exploit children according to criminal law are given criminal sanctions. Law No. 35 of 2014 provides sanctions for people who exploit children, such as:

Article 78, states

Everyone knows and intentionally allows children to be in emergency situations as referred to in Article 60, children who are in conflict with the law, children from minority and isolated groups, children who are exploited economically and or sexually, children who are trafficked, children who are victims of narcotics abuse, alcohol, psychotropics, and other addictive substances (drugs), children who are victims of kidnapping, children who are victims of trafficking, or children who are victims of violence as referred to in Article 59, even though the child needs help and must be assisted, shall be punished with imprisonment for a maximum of 5 (five)) year and or a fine of up to Rp. 100,000,000.00 (one hundred million rupiah).

Article 81, states

- (1) Any person who intentionally commits violence or threatens violence to force a child to have intercourse with him or with another person, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years and a fine of up to Rp. 300,000. 000.00 (three hundred million rupiah) and a minimum of IDR 60,000,000.00

(sixty million rupiah).

- (2) The criminal provisions referred to in paragraph (1) also apply to anyone who intentionally commits deception, lies, or persuades a child to have intercourse with him or with another person.

Article 82, states

Anyone who intentionally commits violence or threatens violence, forces, commits deception, series of lies, or induces a child to commit or permits obscene acts to be carried out, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years years and a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah) and a minimum of Rp. 60,000,000.00 (sixty million).

Article 83, states

Everyone who trades, sells, kidnaps children for themselves or to sell, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah) and a minimum of IDR 60,000,000.00 (sixty million rupiah).

Article 87, states,

Everyone who unlawfully recruits or uses children for military purposes as referred to in Article 63 or abuses them in political activities or involves them in armed conflicts or involves them in social unrest or involves events that contain elements of violence or involves them in wars as referred to in Article 15 shall be subject to imprisonment for a maximum of 5 (five) years and/or a fine of a maximum of Rp. 100,000,000.00 (one hundred million rupiah).

Article 88, states,

Anyone who exploits children economically or sexually with the intention of benefiting themselves or others, shall be punished with imprisonment for a maximum of 10 (ten) years and or a fine of up to Rp. 200,000,000.00 (two hundred million rupiahs).

Article 89 states,

1. Everyone who intentionally places, allows, involves, orders to involve children in the abuse, production or distribution of narcotics and/or psychotropics shall be punished with death penalty or life imprisonment or imprisonment for a maximum of 20 (twenty) years and imprisonment for a minimum 5 (five) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah) and a minimum of Rp. 50,000,000.00 (fifty million rupiah).

2. Everyone who intentionally places, allows, involves, orders to involve a child in the abuse, production or distribution of alcohol and other addictive substances shall be punished with imprisonment for a maximum of 10 (ten) years and a minimum of 2 (two) years and a fine of up to Rp. 200,000 000.00 (two hundred million rupiah) and a fine of at least Rp. 20,000,000.00 (twenty million rupiah).

With the existence of the Child Protection Act, it is hoped that children's lives in Indonesia will be even better. In this way, Indonesian children can enjoy their rights as children and live happily in child independence.

4. CONCLUSIONS

Based on the description and discussion above, it can be concluded as follows:

1. Article 45 of the Criminal Code defines a child as an immature person if he is not yet 16 years old. Criminal law has positioned children as legal subjects who must protect themselves and their interests as well as the special rights of the state.
2. Economic, social and sexual exploitation of children with the intent to benefit oneself or others is a criminal act. Criminal sanctions for those who commit, order to do, and those who participate in committing the act; giving or promising something by abusing power or dignity, by violence, threats or misdirection, or by giving opportunities, means or information, encouraging other people to take action; intercourse (not the wife) is punishable by imprisonment for a maximum of nine years.

5. SUGGESTION

1. In order to avoid child exploitation, parents, guardians or other parties who are responsible for or are given responsibility for caring for children should take care of children according to statutory responsibilities.
2. To those who know that child exploitation has occurred, so that they can participate in prevention, either by informing law enforcement or other institutions concerned with the physical and spiritual development of children (NGOs).

REFERENCES

Books

Anonim, 2013 .*Perlindungan Anak*. PT. Permata Press.

Hadi Supeno, 2010, *Kriminalisasi Anak*. Jakarta: Gramedia Pustaka Utama

Mohammad Taufik Makarao, et al, 2013, *Hukum Perlindungan Anak dan Penghapusan Kekerasan Dalam Rumah Tangga*, Jakarta: PT Rineka Cipta

Muladi, 2009, *Hak Asasi Manusia Hakekat, Konsep dan Implikasinya dalam Perspektif Hukum dan Masyarakat*, Bandung: PT Refika Aditama.

Witanto, 2012, *Hukum Keluarga Hak dan Kedudukan Anak Luar Kawin*, Jakarta: Prestasi Pustaka.

Legislation

Kitab Undang-Undang Hukum Pidana (KUHP)

Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia

Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Anak.

Undang-Undang RI Nomor 35 Tahun 2014 tentang Perubahan Atas Undang-Undang RI Nomor 23 Tahun 2002 Tentang Perlindungan Anak

Journals

Auriel Karina S. Z, Nunung Nurwat, Hubungan Eksploitasi Anak dalam Perspektif Hak Asasi Manusia dengan Tingkat Kematian Anak, *Jurnal Pekerjaan Sosial*, Vol. 3, Nomor 1, Tahun 2020

Isti Rochatun, Eksploitasi Anak Jalanan Sebagai Pengemis di Kawasan Simpang Lima Semarang, *Jurnal Unnes*, Vol. 1 No. 1 Tahun 2011

Yuwono, Eksploitasi Terhadap Anak Ditinjau dari Undang-Undang Republik Indonesia No. 23 Tahun 2002 (Tentang Perlindungan Anak), *Repository, Fakultas Hukum Universitas Udayana*, 2016.

Website/Internet

<http://docs.google.com/eksploitasiekonomianak>

Jely Agri Famela. 2012, Anak Jalanan Sebagai Korban Eksploitasi Oleh OrangTua..www.lifeinpeacestory.com.org/center/adr.

Pandangan+Islam+tentang+anak&safe=strict&rlz=1C1CHNY_enID861ID861&sxsrf=ALekK02XO4.

[www.freisthya.blogspot.com.org/ center/adr2010-03-anonim html](http://www.freisthya.blogspot.com.org/center/adr2010-03-anonim.html), 2010, Solusi Untuk Tindak Eksploitasi Anak.

Widasari. 2013. Pengertian Eksploitasi Anak. hlm 23, [www.wordpresss.com.org/ center/ adr, windasari html](http://www.wordpresss.com.org/center/adr,windasari.html)

[www.freisthya.blogspot.com.org/ center/adr2010-03-anonim html](http://www.freisthya.blogspot.com.org/center/adr2010-03-anonim.html), 2010, Solusi Untuk Tindak Eksploitasi Anak.