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Legal Analysis of the Prevention and Prosecution of Child Pornography Crimes in the Digital Era

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Abstrak

Era digital telah membawa berbagai kemajuan teknologi yang memudahkan kehidupan sehari-hari namun juga meningkatkan potensi kejahatan termasuk tindak pidana pornografi anak. Kejahatan ini tidak hanya merusak moral masyarakat tetapi juga melanggar hak asasi anak sebagai korban eksploitasi seksual. Penelitian ini bertujuan untuk menganalisis upaya pencegahan dan penindakan tindak pidana pornografi anak di era digital berdasarkan perspektif hukum di Indonesia. Dengan menggunakan metode yuridis normatif penelitian ini mengidentifikasi isu hukum yang berkembang serta mengkaji peraturan perundang-undangan yang berlaku seperti Undang-Undang Pornografi, Undang-Undang Perlindungan Anak dan Undang-Undang Informasi dan Transaksi Elektronik beserta prinsip-prinsip hukum yang relevan. Hasil penelitian menunjukkan bahwa meskipun regulasi telah tersedia tantangan seperti anonimitas di dunia digital, kemajuan teknologi yang cepat dan keterbatasan penegakan hukum masih menjadi hambatan utama. Oleh karena itu diperlukan penguatan kerangka hukum, peningkatan literasi digital masyarakat dan optimalisasi peran aparat penegak hukum sehingga penelitian ini diharapkan dapat memberikan kontribusi normatif dan praktis dalam melindungi anak-anak dari ancaman pornografi di era digital.

Kata Kunci: *Pidana, Era Digital, Kejahatan Siber*

Abstract

A number of technical advancements have come with the digital age, making life simpler for everyone but also increasing the likelihood of criminality, such as child pornography. In addition to harming public morality, sexually exploiting minors is a violation of their human rights. It is the intention of this research to examine, from a legal standpoint, the current state of child pornography prevention and prosecution initiatives in Indonesia. This research uses the normative legal approach to investigate emerging legal concerns and review pertinent statutes and regulations, including those pertaining to electronic information and transactions, child protection, and pornography. Despite the availability of legislation, the research found that significant hurdles such as online anonymity, fast technology advancements, and inadequate law enforcement continue to be prominent issues. For this study to be useful in safeguarding children from online pornography, it is important to improve community digital literacy, tighten the legal framework, and make the most of law enforcement's role.

Keywords: *Crime, Child, Digital Era, Cybercrime*

INTRODUCTION

Governments throughout the world, including Indonesia's, are very worried about the proliferation of pornographic information and material. Having access to the internet has both beneficial and bad effects on Indonesia, and more and more people are turning to it as a source of knowledge. If you need to find anything at any time and you're at home, you can always use the internet to do it. The internet has many positive uses, but it also has the potential to hinder the dissemination of pornographic material if not used properly. As an illustration of the abuse of social media accounts, there has been a significant amount of pornographic video streamed live on one of these accounts recently. This stands for a very pornographic deed, and the player's material is monetized, which means the author may live the life they want (Permatasari et al., 2023).

Indonesian authorities are among those worried about the proliferation of pornographic information and media. There are both good and bad aspects to having an internet connection in Indonesia, and more and more people are turning to it as a source of knowledge. Assuming you have access to a computer at home, you may search for any kind of information you would need on the internet at any time. Even while the internet has many positive uses, its misuse may lead to the dissemination of pornographic material. As an illustration of the abuse of social media accounts, there has been a significant amount of pornographic video streamed live on one of these accounts recently. Players generate revenue that may improve the lives of content providers, and this act is rich in pornographic material. By prosecuting offenders under the ITE legislation for disseminating pornographic

sites via online media, the government may put an end to the propagation of cybercrime and pornographic content (Prasetyo, 2011).

Dutch authorities were able to track down 220,000 images and videos of child pornography, according to Radio Netherlands Worldwide (NOS, 2011, Newest Child Pornography Network Revealed, archieff.rnw.nl). The secret documents were discovered during an investigation into an international branch linked to a case of child sexual abuse in Amsterdam. A case involving a young Latvian guy called Robert M. was investigated after many websites were discovered on his computer. He shared the data he had with 20 other sites all across the globe, including one in the US. In a crackdown on child pornography, Canadian authorities detained around 350 individuals, including 65 Australian residents, according to Radio Australia's website on November 15, 2013 (Media, 2013).

The most concerning issue up to this point has been the proliferation of online communities where underage girls and boys are knowingly exposed to pornographic material in order to fulfill their sexual fantasies. The convenience of online transactions also makes it possible for the criminals to profit from their crimes. One example of the immoral abuse of modern technology is child pornography in cyberspace. This is very troubling since technology advancements are being used in a way that undermines their potential to enhance human well-being, rather than enhancing it (Nawawi, 2005).

The illegality of pornographic material over internet is included in Article 9 of the Convention on Cybercrime. A great deal of material crosses with pornographic acts in cyberspace due to the rapid development of technology in the 4.0 age. It has to do with online social life, particularly in the realm of social media. The problem of pornographic content discussion on social media platforms is a global one (Widodo et al., 2020). Laws pertaining to electronic information and transactions (Law No. 19 of 2016) and child protection (Law No. 2) are already in place in Indonesia. Anonymity in cyberspace as a result of fast technological advancement and law enforcement constraints are the primary obstacles to safeguarding children from these dangers. Hence, in order to evaluate how well current laws handle instances of child pornography in the digital age, a thorough legal evaluation is required.

Image, sketch, illustration, photo, text, sound, noise, moving image, animation, cartoon, conversation, body movement, or other message conveyed through different communication media and/or public performances that includes sexual exploitation or obscenity that goes against societal moral standards is considered pornography according to Article 1 number 1 of

Law Number 44 of 2008. According to Article 15 of Law Number 44 of 2008 concerning Pornography, "everyone is obliged to protect children from the influence of pornography and prevent children from accessing pornographic information." This means that everyone is responsible for keeping children safe from pornographic content. Article 27, paragraph (1) of Law Number 19 of 2016 concerning Information and Electronic Transactions (hereinafter referred to as the ITE Law) regulates pornographic acts as follows: "Any person who intentionally and without the right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates morality."

Institutions of juvenile detention have not established protocols to safeguard minors exposed to pornographic content online in accordance with Law No. 35 of 2014, which amends Law No. 23 of 2002, which addresses child protection. Law 44 of 2008, which deals with pornography, regulates the industry. At the same time, Article 27, paragraph (2) of Law Number 19 of 2016 about Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions regulates the restriction on the electronic dissemination of illegal crimes using moral language (Tawang et al., 2021).

Articles 289–296 of the Criminal Code control what are known as obscene activities, which do not include the terminology of pornography or the word sexual acts. A person faces a maximum of nine years in jail for violating Article 289 of the Criminal Code, which stipulates that the use of violence or the threat of violence to conduct or permit an obscene act is an act that challenges the honor of morals (Darmawansyah, 2023).

As far as online material goes, pornography is really a tiny part of the bigger picture. Distributing pornographic content online and through social media does not necessitate advanced hacking abilities; all that is required is basic computer literacy, specifically the ability to access and transfer files; in theory, anyone with even rudimentary computer literacy should be able to pull this off (Wahab et al., 2023).

A number of laws and regulations have been enacted to address the issue of children being exposed to pornography on the internet and social media. One of these laws, Law Number 44 of 2008 concerning Pornography, protects children as stated in Article 16 of that law:

- a. Every kid who is a victim or offender of pornography has a right to advice, support, and the opportunity to rehabilitate in all areas of their social, physical, and mental health from the government, social services, schools, churches, and communities.

- b. Government regulation governs any further rules pertaining to coaching, mentoring, and healing from social, physical, and mental health issues mentioned in paragraph (1).

Every kid who is a victim or offender of pornography must get advice, aid, social recovery, physical and mental health from the state, social institutions, educational institutions, religious institutions, families, and communities, according to this legislation. The government should take action to stop porn from being made, shared, and seen (Fitriani, 2015).

Pornography is seen by the Indonesian government as a problem that impacts the whole community and requires a collective effort to address, particularly in regards to children. The goal of the law, which is to establish peace, may be accomplished most effectively by guaranteeing legal protection. Here, the people's hopes and dreams must be able to be absorbed by the state, which is an authority that has been entrusted with their mandate. Therefore, the state's existence is critical for the security of its citizens. In order to safeguard the community, it is essential to establish regulations concerning the criminalization of pornography. The government should define pornography, outline the steps to make pornographic content illegal, and make the prospect of punishment clear. To establish law and order and bring about justice, it is the responsibility of the state to craft policies that are in harmony with the people (Daily, 2022).

RESEARCH METHOD

This research employs a normative legal methodology, which is a way of approaching the study of law that places an emphasis on the study of precedent, case law, and other relevant legal materials in order to comprehend and address legal issues. One of the method's many strategic components is the identification of societal legal concerns, particularly those pertaining to the difficulties of preventing and punishing crimes involving child pornography in the digital age. Regulatory gaps, online anonymity, and the difficulty of keeping up with technology changes all contribute to these problems. To better understand the normative basis for dealing with child pornography crimes, this analysis examines legal principles and doctrines like the principle of child protection, the principle of justice, and the principle of legal certainty, and assesses how well these regulations have been put into place to deal with the dynamics of digital-based crimes.

RESULT AND DISCUSSION

Legal regulations in Indonesia regarding the prevention and prosecution of child pornography crimes in the digital era

Article 1 number 1 of Law Number 44 of 2008 concerning Pornography (Pornography Law) provides a specific definition, stating that pornography is "any visual representation, whether in the form of an illustration, photograph, text, voice, sound, moving image, cartoon animation, conversation, body movement, or other message conveyed through various communication media and/or public performances that contains sexually explicit material in violation of societal moral standards." According to Article 4 of the Pornography Law, which prohibits and places restrictions on all types of pornography, violators face fines of at least Rp. 250,000,000.00 and jail terms ranging from 6 months to 12 years. It is clearly established in Article 4 that:

"Everyone is prohibited from producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, selling, renting or providing pornography that explicitly contains...(Putri & Tantimin, 2022)":

- a. intercourse, including deviant intercourse
- b. sexual violence
- c. masturbation or onani
- d. nudity or the appearance of nudity
- e. genitals
- f. child pornography"

In addition, the definition of pornography is now a complete ban in the Criminal Code, rather than a restriction as in the US. According to Article 281 of the Criminal Code, it poses the following penalties: a fine of up to 4,500 rupiah or imprisonment of up to 2,800 months:

"Whoever deliberately and openly violates decency and whoever intentionally and in front of other people goes against his will, violates decency."

In this regard, the state must intervene to ban pornographic content production, dissemination, and consumption. It is the responsibility of the government, society, and families to ensure that children do not have access to pornographic material through social media or the Internet. One way to do this is to block pornographic content on the internet and filter out any materials that contain it. Another way is to supervise children when they are using electronic devices, such as in internet cafes, and to make sure that parents always keep an eye on their children when they use their phones or other devices (Said, 2010). There are a number of initiatives taken by the police in this case, in addition to the statutory

regulations found in positive Indonesian law. These initiatives range from pre-emptive (instilling norms/values) measures to prohibitive measures, and finally, repressive measures. To learn more about what the police have done so far in relation to this (Isvany et al., 2022).

Cyber child pornography is a complicated issue that requires a methodical and organized response by the state and its regulators, who have a right to state security. Cybercrime is a major problem in Indonesia, which has taken several steps to address the issue, including:

- a. ITE Law. As a legal approach to cyber security, Indonesia has had the Electronic Information and Transactions Law to prevent cyber crime, but this ITE Law still needs to be re-evaluated because many articles are less relevant.
- b. Blocking, this effort is carried out by the government to protect Indonesian children or teenagers from being exposed to negative content such as pornography sites.
- c. The National Cyber and Crypto Agency (BSSN), which aims to prevent cyber crime, has 8 functions. Among them are related to identification, detection, protection and handling of e-commerce, encryption, cyber diplomacy, cyber crime management center, recovery of vulnerability handling, incidents and/or cyber attacks.
- d. Focusing on human resources, the government is organizing various programs that focus on improving trained human resources, such as training for informatics change agents (CAKAP internet and ICT volunteers) as well as organizing technology-based competitions.(Dharma, 2022).

Furthermore, to combat child pornography on the internet, the Indonesian government does not only use technology and blocking efforts or even the formation of laws. However, empowering human resources (HR) is very important to combat child pornography on the internet. Both the government and private companies have tried to educate the public, including:

1. The blocking of adult sites by the government must also be supported by parents as the child's first facilitators.
2. The Indonesian National Police has also launched a child safety program in cyberspace (savechildren on the internet) to prevent children from being exposed to negative content on the internet.
3. The newly formed National Cyber and Crypto Agency (BSSN) can provide outreach to the public in dealing with cyber child pornography and a public complaints body regarding malware attacks.

4. Sociocultural approach and community socialization through seminars, training and competitions. Some of the trainings that have been held and will continue to be held are informatics change agent training (CAKAP internet and ICT Volunteers) which aim to improve networking skills and conduct trainings to schools and universities to socialize materials ranging from networks, mikrotik, to healthy internet utilization.
5. Making a digital animation video of the Indonesian hero (Digihero) as a form of government outreach on how to use the internet properly and correctly.

However, we can't let our guard down when it comes to protecting children; this is a crucial duty that the state as a whole must uphold. The state's well-designed rules, social monitoring of children's connections, and guidance within the home context are all important parts of these protective efforts. Everyone in society is responsible, to the extent of their ability, for ensuring the safety of others via a variety of techniques. So, protecting children is everyone's business, not just parents'. It's a societal and governmental obligation.

Furthermore, the rise of child pornography in the digital age poses a grave danger as it goes against both societal moral standards and the victims' human rights. There is a need for more focus on issues like online anonymity, weak law enforcement, and inadequate digital literacy in Indonesia, despite the fact that the country's legal system is already rather robust. Consequently, we need to take comprehensive strategic measures by enhancing legislation, raising public awareness, and making the most of our law enforcement personnel. By doing this study, the author aspires to address the issue of pornography in a way that safeguards children, who are the nation's future.

Despite the government's best efforts, children in Indonesia continue to be exposed to pornographic content online. To combat this, the country's public and private sectors must join forces to ensure that children can grow up in an environment free from harmful influences. To keep up with the ever-changing digital landscape, new approaches based on adaptive technology are also required. It is believed that Indonesia can safeguard its youth from pornography by implementing robust rules, ensuring optimum law enforcement, and promoting enhanced digital literacy. For the sake of society's moral ideals and the protection of children's human rights, this study is also anticipated to serve as a basis for policymakers and legal practitioners to develop more effective ways for prevention and management.

What are the obstacles faced in implementing regulations related to the prevention and prosecution of child pornography crimes in the digital era?

Crimes involving the loading of pornographic materials on online media, more often known as cyber pornography, have been on the rise in recent years, among those using internet telecommunications networks and electronic communication systems. The morality of society as a whole is undermined by pornographic crimes. When people use online media to access pornographic information that is freely accessible in cyberspace, it's the same as undermining the legal interests of a feeling of inner peace in the realm of general morality.

This complicates efforts by law enforcement to apprehend criminals who use dispersed networks, data encryption, or other advanced technology to remain anonymous online. When it comes to prosecuting and preventing offenses involving child pornography in the digital age, the following are some of the challenges:

1. There are obstacles of an internal and external technical nature

Numerous internal and external technological challenges hamper the gathering of evidence pertaining to pornographic offenses perpetrated via social media. There are a number of internal technical obstacles that investigators face, such as a general lack of knowledge and expertise in IT and a lack of proper socialization about the usage of social media within the Kerinci Police environment. The significance of enhancing human resource capability to facilitate the efficient investigation, inquiry, and arrest procedure in dealing with various types of criminal situations is highlighted by this.

2. Lack of Modern Facilities

One internal technological barrier to the government's ability to gather evidence of pornographic offenses is the absence of current capabilities for looking for evidence. Because cyber evidence is processed and handled differently than other types of criminal evidence, investigators still lack a technical grasp of how to handle witnesses and evidence in cases involving cybercrime. For instance, software that prevents evidence loss when investigators power off and unplug a laptop or computer used, and methods for cracking codes that the offender has set up in a manner that changes the presented data when investigators attempt to access them (Frananda, 2021).

3. There is freedom for children to access the internet and no supervision

Children are especially susceptible to sexual crimes committed via social media because of their lack of knowledge about the dangers lurking in cyberspace, the ease with which they may use the internet, and the lack of parental supervision. Adverse

- effects on children's mental health, including serious depressive disorders that might last into adulthood, will compound the physical harm that pedophilia does to children.
4. The existence of buying and selling activities of pornographic content on social media Transactions involving pornographic material Simple to find and complete; all that's required is a mobile phone. Smartphones equipped with social media apps like WhatsApp, Telegram, Facebook, Instagram, Twitter, and so on have made it easy to get pornographic material without actually visiting a porn site. In this pattern, the offender advertises pornographic material to users of social media in the hopes that they would purchase it (Permana et al., 2022).

Laws pertaining to the prevention and punishment of child pornography infractions face several substantial legal obstacles in the modern digital age. One big problem is that current rules don't keep up with technological progress. The fast evolution of digital technology has created new problems that many current laws are ill-equipped to handle. For example, Law 44 of 2008, which deals with pornography, and Law 19 of 2016, which deals with information and electronic transactions (ITE). Next, there are initiatives using less-than-ideal infrastructure and amenities. This pornography case definitely requires more advanced technology, but the lack of adequate operational support facilities and infrastructure is severely limiting the investigation and its progress. So, it's expected that the authorities would modernize and enhance the infrastructure and capabilities available to them in order to settle internet pornography cases as efficiently as possible.

Furthermore, investigators have a number of external technological challenges while gathering evidence of pornographic offenses, including: Because this is a cyber crime case, the only evidence to carry out the investigation is electronic information and documents. Since the crime scene (TKP) occurred on the internet, investigators trace and observe using the internet and, if needed, collaborate with other agencies related to pornography via the internet. However, if the investigators still do not find enough evidence, the investigation is halted.

CONCLUSION

In conclusion, improving the prevention and prosecution of child pornography offenses involves coordinated efforts, adaptation to technological advances, and active participation from a variety of parties, particularly in the present digital age. This is especially true in light of the fact that the legislative framework is already in place.

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