

Juridical Analysis of Children's Sexual Exploitation Putusan Nomor 372/Pid.sus/2020/PN Bgl

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Abstract

Cases of child sexual exploitation (CSEC) have become a global threat. With this increasingly modern world, cases of sexual exploitation are becoming increasingly complex due to technological advances. CSEC is all forms of child sexual abuse or abuse by forced adults, followed by giving compensation in the form of money or the like to the child concerned or through a third party. This research tries to examine related to the juridical analysis of sexual exploitation of children (Decision Number 372/Pid.sus/2020/PN Bgl). By using a normative juridical approach. The results of this study state that economic and environmental factors have a major influence on the vulnerability of children to becoming victims of sexual exploitation followed by other factors such as education. the inability of the family from an economic point of view to meet the needs of children causes children not to get an education so they do not have the skills as capital to find workers. In terms of the judge's considerations in passing the decision Number: 327/Pid.Sus/2020/PN Bgl, one of them is based on aggravating and mitigating circumstances. The aggravating circumstances were that the defendant did not support government programs in terms of preventing child exploitation and the mitigating circumstances were that the defendant had never been punished and admitted that he regretted his actions. However, in this decision the judge imposed sanctions on the defendant which were still too light because the judge in considering the case only considered one aggravating circumstance for the defendant. In addition, the judge did not consider that the defendant as the owner of the massage parlor had disturbed the community as charged by the prosecutor, and the sentencing objectives that were considered by the judge only gave a deterrent effect to the perpetrators, in which efforts to prevent the community from committing similar crimes were not one of the judge's considerations for reduce the crime of exploitation of children in Indonesia.

Keywords

Analysis, Juridical, Exploitation, Children.

Abstrak

Child sexual exploitation cases (CSEC) are now considered a global threat. Due to technology advancements in today's more sophisticated society, sexual exploitation situations are getting more complicated. All kinds of coerced adult or child sexual exploitation are classified as CSEC when they are followed by the provision of financial or similar recompense to the victimized kid or through a third party. This study attempts to investigate the legal analysis of child sexual exploitation (Decision Number 372/Pid.sus/2020/PN Bgl). utilizing a normative legal strategy. According to the study's findings, economic and environmental variables have the greatest impact on children's susceptibility to sexual exploitation, followed by other factors like education. Children don't receive an education since their family is unable to support them financially, which prevents them from developing the abilities that would serve as capital. Children don't receive an education since their families are unable, financially speaking, to support their demands, and as a result, they lack the skills necessary to obtain employment. One of the factors taken into account by the judge in rendering judgment Number: 327/Pid.Sus/2020/PN Bgl is based on aggravating and mitigating circumstances. The defendant's opposition to government initiatives to prevent child exploitation was the aggravating factor, while the fact that he had never received punishment and had shown sorrow for his crimes was the mitigating factor. However, because the judge only took one of the defendant's aggravating circumstances into account while making this determination, the punishments the judge imposed on the defendant were still far too mild. Additionally, the prosecutor's claim that the defendant, as the proprietor of the massage parlor, had caused community disturbance was not taken into account by the judge, and the sentencing goals that were taken into account by the judge only served to deter the perpetrators from committing similar crimes.

Kata Kunci

Analysis, legal, child exploitation.

Children are a great asset to the nation because the future delicacy of a nation is determined by the current generation of children. Every child needs to get the widest opportunity to grow and develop both physically, mentally and socially, for this it is necessary to make safeguards to realize the welfare of the child by providing guarantees for the fulfillment of his rights.

Indonesia itself already has a legal instrument that provides legal protection for children, namely Law Number 35 of 2014 concerning Child Protection regulates the prohibition for all parties, including parents to exploit children, both economic and / or seksual exploitation.

Child sexual exploitation cases (CSEC) have become a global threat with the increasingly modern world conditions, sexual exploitation cases are becoming increasingly complex due to technological advances.

CSEC is any form of forced abuse or sexual abuse of children by adults, followed by the provision of monetary or similar rewards to the child concerned or through third parties.² Forms of CSEC include child prostitution, child pornography, child sex tourism, child marriage, and the sale of children for sexual purposes. According to data obtained by *the United Nations Children's Fund* (UNICEF) shows a significant increase in the number of CSEC victims, in 2015 in the Southeast Asia region around 2 million children have become victims of sexual exploitation.³ In 2016, Indonesia ranked 7th among countries in ASEAN for the most CSEC cases.⁴

There are several factors, both internal and external, that make Indonesian children vulnerable to CSEC. The environment of the child's living conditions and daily life are internal

²Pramesthi & . of Perlindungan Terhadap Korban of Seksual Di Kakak *RECIDIVE 6(2)*, (2007). 15–38.

³Sirait, M. *Sexual Commercial Anak Indonesia*, 2008),

⁴Faisyal Kirana *Policy Government Handling Exploitation Commercial di* , 20(2), (2021),

factors, while the child's environment and social environment are external factors that are likely to have a significant impact on children and cause them to fall into CSEC practices. Internal factors include things like poverty, family networks, and social networks, while external factors include things like the growth of the local travel industry.⁵ The situation of the implementation of child sexual exploitation protection in Indonesia seems to be still not optimal. This problem is a criminal act that threatens the physical and psychological integrity of the child. As with the child exploitation case that occurred on Jl. Jenggalu Kel. Lingkar Barat Kec. Gading Cempaka Kota Bengkulu on Thursday, April 30, 2020, massage parlor owners used minors as commercial sex workers. So that HENY SUSANTI Als PUTRI Binti Hermasyah as the owner of a massage parlor was arrested and accused of "placing, allowing, committing, ordering to commit, or participating in economic and/or sexual exploitation of children", as in the indictment violating Article 76 1 Juncto Article 88 of Law of the Republic of Indonesia Number 35 of 2014 concerning Child Exploitation

Based on the background of the problems described above, the author tries to identify several problems in this study as follows:

1. What are the factors that cause exploitation of children?
2. Is the decision made by the Panel of Judges with case Number 372/Pid.sus/2020/PN Bgl in accordance with the actions committed by the defendant?

Research Methods

The research approach used in this study is Normative Juridical⁶. Legal research is to find the truth of herence, namely whether there are legal rules that are in accordance with legal norms and whether there are norms in the form of orders or prohibitions in accordance with legal principles, and whether actions are in accordance with legal

norms or legal principles⁷.

The sources of legal materials needed in this study consist of three types, namely primary, secondary and tertiary sources of legal materials, each of which is as follows:

1. Primary legal material, this material consists of laws and regulations, government regulations and various other forms of regulations issued by authorized officials.
2. secondary legal materials, materials that are data obtained from literature studies, namely from articles, coverage, literature books, legal journals, papers and laws and regulations that are directly related to the problems in this study.
3. Materials that provide information explanations about primary legal materials and secondary legal materials consisting of bibliographies, Legal Dictionaries, Indonesian or English Dictionaries, and related Encyclopedias and can provide information explanations related to the matter under study when needed.

Data that has been obtained through data collection activities, then processed by grouping data and selecting data that is relevant to problem formulation. Data that is relevant and can answer the formulation of the problem will be used, while irrelevant data will be ignored. The process of grouping and selecting data is referred to as the editing process. After that, the data will be compiled systematically in the form of descriptions and analyzed.

The next activity that must be carried out in the preparation of a study is to analyze existing data. The data analysis method used in this study qualitative analysis method is to describe data in the format of sentence descriptions that are arranged, reasonable and efficient so as to facilitate understanding of the results of the analysis to solve an existing problem. Furthermore, this discussion will be concluded,

⁵Sugiharti, S. INGO "Save The In Case Sexual Anak Indonesia 2010-2015", Universitas , hlm

⁶ Soekanto Sri *Research Normative Review* (Jakarta: Grafindo 2003), 13.

⁷ Sunggono, (*Jakarta: Raja Persada*, .

namely the way assumptions are based on general facts to get a clear and accurate explanation of the solution of the discussion carefully⁸.

Discussion and Discussion

Factors Influencing Sexual Exploitation of Children

Children are part of a family that needs maintenance, love and also a safe place for their development.⁹ Children are often used as tools to seek financial benefits by irresponsible parties by utilizing energy and time. Child prostitution is one form of exploitation committed against children. According to the Convention on the Rights of the Child, it is stated that forms of¹⁰ sexual violence are divided into four forms, sexual violence includes sexual exploitation including the sale of children for *the purpose of prostitution (Child prostitution) and pornography (Child pornography)*. Sexual violence can be in the form of sex, either through the vagina, penis, oral, using tools to expose the genitals, sexual coercion, sodomy, masturbation, sexual harassment or incest¹¹. According to Paola Viero there are five forms of sexual violence against children, namely:

1. Commercial sexual exploitation is the sexual violence against children for profit.
2. Child prostitution is using a child for sexual purposes such as sexual intercourse.
3. Child pornography is any performance and in any way that involves children in sexual activity.
4. Trafficking is an act of recruiting, transferring, sending children for the purpose of exploitation.
5. Child sex tourism is the commercial sexual exploitation of children by men and women who travel from one place to another, and they

have sex with children¹²

The rise of cases of sexual exploitation of children shows that the government has not been able to optimally address the problem of child exploitation¹³. The increase in cases of sexual exploitation of children is caused by various factors.

1. Economic Factors

Economic factors are the main reason for sexual exploitation of children. Mannheim's theory states that economic life is fundamental to the entire social and cultural structure, and therefore determines all affairs within that structure. Economic conditions and changes have a major influence on the occurrence of crime.¹⁴

Family economic conditions that do not meet basic needs cause some children to choose to work, this they do to help both parents in meeting the needs of life. In addition, in Indonesia, children are often seen as survival mechanisms to alleviate the pressure of poverty that cannot be fulfilled properly from the work of parents. Then it is also due to the many jobs that currently involve children to work regardless of age restrictions. So that certain conditions cause the child to be unable to continue their education because their time is used to work¹⁵.

Sometimes with this difficult condition in the economy makes it an excuse for parents to involve the child but do not consider the impact that will be caused. In addition, it is encouraged by population growth in Indonesia but not balanced with economic increase so that many families are found who cannot meet their needs.

Family Factors

The family is the closest environment for the child, and is very important for the child's development.

⁸ Abdulkadir Muhammad, *Law and Legal Research*, Prints. III, (Bandung: Citra Aditya Bakti, 2004), p. 81.

⁹ Yusuf, *Children Adolescents* Rosda Bandung p

¹⁰ by yang strong (feels to whose weak lemah or either in Physical non-physical to display suffering people weak itu. Ulfah (2018). Handling Affected And . *Journal: Gender* , 14 2. 145

¹¹ *Responsibility In Rights Victims Sexual Conformity Children* (Pasuruan: Publisher Media, p.

¹² Al Ria Ayurinanda, Protecting Early Childhood From Sexual Violence, Volume 1, December, 2016, p. 4

¹³ Mulyani, Ni Wayan Sri et al. (2021). Legal protection for child victims of domestic violence during the Covid-19 pandemic in Denpasar City. *Journal of Legal Analysis (JAH)*, Vol. 4 No. 1, p. 93.

¹⁴ Susanto, *Criminology*, (Yogyakarta: Genta Publishing, 2011), p. 87.

¹⁵ Mervat Rishmawi, *A Commentary on the United Nations Convention on the Rights of The Child, Article 4, The Nature of States Parties' Obligation*, (Leiden : Martinus Nijhoff Publisher, 2006), hlm. 1

The family not only plays a role in providing financial needs, but the family also plays a role in providing psychological needs. Because basically every child has the right to get the right to affection, the right to protection, and the right to life. However, when referring to the data submitted by KPAI that currently many children are found who are victims of family care or alternative care.¹⁶ It was noted that in 2020 there were 1,622 child complaints, broadly speaking this report contained children who were victims of family destruction, such as family disharmony had an impact on the parenting style given to the child. The child's discomfort when in the family environment can also encourage children to run away from home, some of them run away because they want to feel freedom from parental restraints and to get the comfort they think will be obtained in the outside environment, Children who choose to live in this outside environment are vulnerable to being victims of exploitation by irresponsible¹⁷ people . Before involving the child to be invited to participate, usually the perpetrator persuades the victim by being lured to get a large income, in addition to that not a few victims are forced to get violence from the perpetrator to carry out activities to get wages or salaries.

Education Factors

Education is one of the most important factors that every child must have, it can help educate children's lives. But in Indonesia today children's education still needs attention, it can be seen that there are still many children who are trapped in conditions of not being able to make choices to be able to go to school. Generally, in rural communities that are still difficult to get access to education, so parents feel that education is not so important for children so parents usually focus children on doing work such as gardening or

farming.

In addition, this lack of education can lead to a lack of understanding for some individuals of the dangers of exploiting children. In line with the explanation of one of the figures of Edmons who stated that low education will have an impact on income receipts, this will also have an impact on low investment in education for the next generation, so of course this will affect the life of a country in the future. In addition, this lack of education will have an impact on the level of information and knowledge in children related to the ways or efforts that must be taken for parents or children to report if children are involved or victims of sexual exploitation.

Environmental Factors

In addition to family and educational factors, environmental factors play an important role in shaping the personality of the child. In this case, the character of children is also influenced through the environment they live in and socialize. In general, the problem of exploitation of children is often found in the lower communities, they often ignore the rights and impacts that will be caused to the child so that there is a lack of supervision and guidance provided.

Based on the Differential Association Theory (Differential Association Theory) proposed by E.H. Sutherland explained that criminal behavior is learned through social interaction.¹⁸ In addition, Social Learning Theory also explains that a person's behavior is influenced by learning experiences, social experiences along with¹⁹ values and expectations in social life²⁰. So in this case, the neighborhood where the majority of the population works as prostitutes and sexually exploits children has an impact on other residents who interact socially with residents in the neighborhood to imitate the way they earn income

¹⁶ KPAI, Protection Case Data, 18.

¹⁷ Kandedes, Iin. (2020). Violence against Children during the Covid-19 Pandemic. *Harkat Journal : Gender Communication Media*, Volume 16, Number 1

¹⁸ Susanto, Criminology, Genta Publishing, Yogyakarta, 2011, p 93

¹⁹ Cherry, Kendra. "Social Learning Theory: An Overview of Bandura's Social Learning Theory." The article is available online in the

developmentalpsychology/a/social-learning/http://psychology.about.com/od/.

²⁰ Albert Bandura, "Influence of Models' Reinforcement Contingencies on the Acquisition of Imitative Responses," *Journal of Personality and Social Psychology*, Vol. 1, No. 6 (Juni 1965), hlm. 589-595.

and participate in exploiting children as well as those around them in their environment.

Application of Law

A judge's decision is a judge's statement pronounced in a court session, which can be in the form of conviction, acquittal or release from all lawsuits and in the manner stipulated in the Law. The verdict handed down by the judge is intended to end or settle the case submitted to him. To decide a criminal case, the judge must first examine the case. In making decisions and imposing criminal sanctions on defendants, judges must have juridical and non-juridical considerations.

In relation to the case that is meticulous by the author and focuses on the judge's decision and consideration in deciding the case, thus to be able to see whether the judge's decision is in accordance with the criminal act charged by the Public Prosecutor, according to Sudarto, the judge's decision is the culmination of the criminal case, so the judge must consider other aspects apart from the juridical aspect, So that the judge's decision fully reflects sociological, philosophical, and juridical values.

Based on court decision Number: 327 / Pid.Sus / 2020 / PN Bgl the Bengkulu Court on the facts tried with evidence presented in the trial, decided that the defendant Heny Susanti Als Putri Binti Hermansyah was legally and conclusively proven guilty of committing a criminal act of exploitation of children. Where in that case the defendant opened a massage parlor business with sexual services by employing minors. In the judge's judgment in the case, the incriminating condition of the defendant is that the defendant does not support government programs in terms of preventing child exploitation while the mitigating condition is that the defendant admits and regrets his actions and the defendant has never been convicted. The judge in this case then decided to give a lighter criminal sanction than the Public Prosecutor's demand. In the prosecution, the Public Prosecutor demanded 4 (four) years imprisonment, while the judge's decision was 3

(years) imprisonment and a fine of Rp. 200,000,000 (two hundred million rupiah).

Various legal considerations of the Bengkulu District Court Judge and the Public Prosecutor who examined and tried this case, should look as carefully as possible not only at juridical considerations and existing evidence, but also need to consider the purpose of the conviction. One of the purposes of the judge's conviction on Heny Susanti Als Putri Binti Hermansyah was to remember the nature and purpose of the punishment was not for revenge, but how to make the defendant realize and realize his actions. The basis of the judge's reasoning is the Theory of Fixing (*Verbeterings Theorie*) which says that the crime should aim to correct the person who has done evil, so as to cause a deterrent effect for the accused, thus not repeating it in the future.

According to the author, the sanctions imposed by the judge on the case of sexual exploitation of children committed by Heny Susanti Als Putri Binti Hermansyah are still too light. Because the defendant in this case provided a minor to perform an improper job. Based on existing data, cases of sexual exploitation in Indonesia according to research by the *United Nations Children's Fund* (UNICEF) are ranked 7th among countries in ASEAN for the most CSEC cases. Then a report entitled *Disrupting Harm In* Indonesia found in the report stated that children aged 12-17 years around 500,000 children in Indonesia stated that they had been victims of sexual exploitation and mistreatment in cyberspace in the period 2020-2021. This shows that what should be part of the judge's consideration should not only have a deterrent effect on sexual exploitation, but also prevent others from committing similar crimes. In line with the utilitarian view, it sees punishment in terms of benefits or uses where what is seen is the situation or situation that wants to be produced by the imposition of the crime. On the one hand, punishment is intended to improve the attitude or behavior of the convicted person and on the other hand it is also intended to prevent others from possibly committing similar acts. This view is considered forward-looking and at the same time

has a preventive nature (*deterrence*).²¹

Conclusion

There are several factors that cause sexual exploitation of children, economic and environmental factors are major influential factors on the vulnerability of children to become victims of sexual exploitation followed by other factors such as education. The inability of families in terms of economy to meet the needs of children causes children not to get education so they do not have skills as capital to find workers. In addition, the child's responsibility to help the family economy causes the child to accept the offer of work from his social environment with the lure of high income, which in fact traps the child in the trade for sexual exploitation. Family dysfunction and lack of parental understanding of sexual education cause children not to understand the risks that will be caused by sexual activity both in terms of physical and mental health. In terms of the judge's consideration in handing down the decision Number: 327/Pid.Sus/2020/PN Bgl, one of them is based on aggravating and mitigating conditions. There was an aggravating condition that the defendant did not support government programs in terms of preventing child exploitation and a mitigating condition that the defendant was never convicted and claimed to regret his actions. However, in his ruling, the judge imposed sanctions on the defendant was still too light because the judge in considering the case only considered one aggravating situation for the defendant. In addition, the judge did not consider that the defendant as the owner of the massage parlor had disturbed the community as charged by the prosecutor, and the purpose of the sentence considered by the judge only had a deterrent effect on the perpetrators, where efforts to prevent the community from committing similar crimes were not one of the judge's considerations to reduce child exploitation crimes in Indonesia.

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²¹ Andi Hamah, 1986, Indonesia's Penal and Penal System from Retribution to Reform, Jakarta, First Printing, PT Pradnya Paramita, p 1

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