

Exploitation of Children Through Social Media in A Legal Perspective of Child Protection

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Abstract: One of the important elements that must exist in a rule of law is the protection of human rights, where the inclusion of rights and human rights of citizens in the constitution brings consequences for the state to recognize, respect and respect and fulfill the rights of citizens, including in including the fulfillment of the basic rights of children. Children are a mandate and a gift from God Almighty, which is inherent within them of dignity as a whole human being. In line with the development of the times, which requires a transfer in all aspects of people's life, which can be done manually to completely digital or can be referred to as digitalization, which then with the Covid-19 pandemic that hit the world community became the biggest factor in the acceleration of digitalization where children Children in the compulsory education age category use social media as a learning medium which, if not closely supervised by parents, can raise concerns about child exploitation through social media, it is necessary to discuss in this study the forms of sexual violence that can occur against children. through social media, as well as forms of legal protection for child victims of sexual violence. The research method used in this research is juridical-normative legal research, with library material that includes primary legal materials, namely the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, and Law Number 35 of the Year. 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, then secondary legal materials which include previous legal research, legal books, scientific journals, and other legal materials, then finally tertiary legal materials covering Indonesian language , and an encyclopedia.

Keywords: Child Exploitation, Social Media, Child Protection Law.

Introduction

One of the important elements that must be present in a rule of law is the protection of human rights. Human rights are upheld in the State of Indonesia as a mandate that is legally included in several articles in the Constitution of the Republic of Indonesia, namely in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), where Human Rights are a set of inherent rights. in essence and human existence as a creature of God Almighty and is His gift which must be respected, upheld and protected by the rule of law, government, and everyone for the honor and protection of human dignity (Article 1 paragraph (1) Law Number 39 of 1999 concerning Human Rights).

The Indonesian state has a very starting goal as set out in the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia, namely: "to advance public welfare, educate the nation's life, and participate in implementing world order based on independence, eternal peace and social justice." where the article emphasizes that the state is obliged to guarantee the welfare of every citizen. As a consequence of the rule of law regarding welfare, the state must guarantee the rights and obligations of citizens and their people in the state constitution, with the inclusion of rights and obligations of citizens in the constitution, which brings consequences for the state to recognize, respect and appreciate and fulfill the The rights of these citizens, especially the fulfillment of the human rights of citizens in real life. Therefore the importance of guaranteeing Constitutional Rights for every Indonesian citizen is one of the goals of the state.

For the welfare of every citizen of Indonesia, it is necessary to have legal protection and fulfillment of the human rights possessed by every citizen that has been guaranteed in the Indonesian Constitution, starting from Article 28A to Article 28J of the 1945 NRI Constitution, and is no exception. Legal protection for children based on Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that: "Every child has the right to live, grow and develop and has the right to protection from violence and discrimination." The State's commitment to child protection has existed since the establishment of the State of Indonesia, it can be seen in the Preamble of the 1945 Constitution of the Republic of Indonesia that the general welfare and intellectual life of the nation should be fulfilled, including for children.

Children are a mandate and a gift from God Almighty, which is inherent within them of dignity as a whole human being. Children also have human rights that are recognized by the people of the nations of the world. Recognized that in a period of physical and mental growth, children need special care, protection, and legal protection, both before and after birth. The definition of children according to article 1 point 2 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely: "a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb."

The definition of a child according to the Convention on the Rights of the Child (1989), which is "a child is every human being under the age of 18 years, unless based on what applies to the child it is determined that adulthood is reached earlier." Meanwhile, the definition of children according to Article 1 point 5 of Law Number 39 Year 1999 concerning Human Rights, namely: "a child is every human being under 18 (eighteen) years of age and not married, including children who are still in the womb if that is the case. is in his interest."

In the meaning and limitations of children contained in Article 1 point 2 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, it includes 2 (two) important issues that become elements of the definition of children, namely first, someone who has not 18 (eighteen) years old. Therefore, everyone who has passed the age limit of 18 (eighteen) years, including people who are mentally incapable, qualify as non-child, namely an adult. In this case, it does not question whether the status is married or not, then the two children who are still in the womb, this law expands the definition of a child which not only provides protection to a child who has already been born but is expanded to include children who are in the womb.

Child protection is any conscious effort by any person or government and private institution with the aim of endeavoring to fulfill the physical, mental and social welfare of adolescents in accordance with their interests and human rights. Child protection can be interpreted as efforts to maintain, guarantee or guard against possibilities that can cause harm to children. Child protection is an effort that supports the implementation of rights and obligations. A child who gets and maintains the right to grow and develop in life in a balanced and positive manner, means that he is treated fairly and is protected from harmful threats. Child protection efforts can constitute a legal action that has legal consequences, thus preventing children from arbitrary parental actions.

There are several legal instruments in the form of several laws and regulations that specifically provide protection for children that function to ensure the protection of human rights for children, one of which is the Law that specifically regulates Child Protection with Law Number 23 of 2002 concerning Child Protection which is an implementation of the ratification of international conventions on the Rights of the Child, namely the ratification of the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990 concerning Ratification of the Convention On The Rights of The Child (Convention on the Rights of the Child). Substantively this law has regulated several things among others, the problem of children who are dealing with the law, children from minority groups, children from victims of economic and sexual exploitation, children trafficked, children victims of riots, children who become refugees and children in situations of armed conflict, child protection carried out on the basis of non-Islamic principles. discrimination, the best interests of the child, respect for children's opinions, the right to live, grow and develop.

Law Number 23 of 2002 concerning Child Protection has been amended in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The State's obligation to provide protection for children is contained in Article 59 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which reads: "The Government, Local Government and other State Institutions are obliged and responsible for providing special protection to children." The special protection referred to in this article is further explained in Article 59 paragraph (2), which reads: "Some special protection for children as referred to in paragraph (1) is given to children in emergency situations, children who are in conflict with the law, minority and isolated groups, as well as children who are exploited economically and / or sexually. " Therefore, it can be seen that children need special protection because they are in a weak position and are vulnerable to being exploited.

In line with the development of the times, which requires a transfer in all aspects of people's life which can be done manually to completely digital or can be referred to as digitalization, which then with the Covid-19 pandemic that hit the world community became the biggest factor in the acceleration of digitalization where children children in the compulsory education age category use social media as a learning medium which, if not closely supervised by parents, can raise concerns about child exploitation through social media.

However, even though it has been given such guarantees for the protection of children, in fact exploitation of children still occurs a lot, where every day a number of cases of sexual violence against children with varying degrees of sadism are presented in front of the eye, both through print and electronic media. With so many cases of human rights violations against children, it is necessary to discuss in this study the forms of sexual violence that can occur against children through social media, as well as forms of legal protection for child victims of sexual violence. Based on the background above, the problem formulations to be discussed are as follows:

1. What are the forms of child exploitation through social media in the study of Child Protection Law?
2. What is the form of legal protection for child victims of social media exploitation?

Materials and Methods

The research method used in this research is juridical-normative legal research, with library material that includes primary legal materials, namely the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, and Law Number 35 of the Year. 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, then secondary legal materials which include previous legal research, legal books, scientific journals, and other legal materials, then finally tertiary legal materials covering Indonesian language , and an encyclopedia.

Discussion

1. Forms of Child Exploitation through Social Media in the Study of Child Protection Law

Children are a mandate and a gift from God Almighty, who is inherent in their dignity as a whole human being. Children are the younger generation as the successor to the ideals of the nation's struggle, besides that children have a strategic role and have special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future, where later the children will be able to assume this responsibility, so they need to have the widest opportunity -the extent to grow and develop optimally, both physically, mentally and socially and have a noble character.

Definition of Children according to article 1 point 2 of Law Number 35 of 2014 concerning Amendment to Law Number 23 of 2002 concerning Child Protection, namely: "a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb." Children are a gift in the family. Children should be protected and their rights are considered. The state, in this case, should naturally guarantee and protect children's rights, whether civil, social, political, cultural, and economic, but in reality, the family and even the state have not been able to provide decent welfare for children.

According to Soerjono Soekanto, law enforcement is an activity of harmonizing what is in the rules of a number of laws to create, maintain and maintain peace in social life. Legal protection for children can also be referred to as legal protection for freedom and human rights for children or can be referred to as fundamental rights and freedoms of children.

Today, social media is very important for all circles in Indonesia. Globalization is a process of world development that greatly affects human life in the fields of science and technology. All ages ranging from children, adolescents, to adults also use social media where social benefits are greatly felt by the community where in addition to communication media it can also improve the economic sector of the community towards uploaded content.

The notion of Social Media is "Any cell phone or internet based tool and applications that are used to share and distribute information". Social media is a page or application that allows users to create and share content or be involved in social networks. The use of social media by school age children can raise concerns about criminal acts in the form of child exploitation through social media if not closely supervised by parents .

According to the Big Indonesian Dictionary (KBBI) exploitation is exploitation, exploitation, or exploitation for one's own gain or extortion of energy against others is an act that is not commendable. Exploitation of children refers to discriminatory attitudes or arbitrary treatment against children by the family or society. Forcing children to do something for economic, social or political interests without paying attention to children's rights to get protection in accordance with their physical, psychological and social status. The definition of child exploitation in Martaja's opinion is the act of using someone unethically for personal gain or benefit.

Exploitation is exploitation, exploitation, exploitation for one's own gain, exploitation and extortion (human labor). Meanwhile, exploitation according to Article 1 point 7 of Law Number 21 of 2007 concerning the Crime of Trafficking in Persons, states that: "exploitation is an act with or without the consent of the victim which includes but is not limited to prostitution, forced labor or service, slavery or slavery-like practices. , oppression, extortion, exploitation of physical, sexual, reproductive organs, or illegally moving or transplanting organs and / or body tissue or utilizing one's energy or abilities by another party to gain both material and immaterial benefits."

Online-based forms of sexual exploitation include the use of children for pornographic purposes; grooming and sexting, namely introducing in cyberspace with a child using a false identity and then persuading the child to exchange pornographic photos; and sextortion, namely cyber extortion of children as a continuation of grooming and sexting by using photos containing child pornography as a threat.

According to Abdul Hakim Nusantara, who stated that the issue of legal protection for children is one side of the approach to protecting Indonesian children. The problem is not only that it can be approached juridically, but it needs a broad approach, namely economic, social, and cultural. Child victims of exploitation must receive protection from the state, government, society and parents, who are responsible for safeguarding and maintaining these human rights in accordance with the obligations imposed by law.

Based on Article 64 and Article 65 of the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, it is stated that every child has the right to receive protection from economic exploitation activities and any work that endangers him, so that it can interfere with education, physical health, moral social life, and mentally spiritual.

In providing protection for children as victims of commercial sexual exploitation through social media, it is regulated in several laws and regulations that specifically regulate this matter, such as Law No. 11 of 2008 concerning Information

and Electronic Transactions, Law no. 21 of 2007 concerning the Act of Trafficking in Persons, Law No. 44 of 2008, as well as the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, where the Law is a special law that regulates separate criminal acts beyond the existing provisions in the Criminal Code.

2. Forms of Legal Protection for Child Victims of Social Media Exploitation

Child protection is formal and material legal regulations that aim to carry out activities to promote or defend and protect the rights of criminal acts and illegal acts arising out of and or for the benefit of children. In Article 1 number 2 of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which states that "Child protection is all activities to guarantee and protect children and their rights in order to live, grow, develop, and participate optimally in accordance with human dignity, and receive protection from violent discrimination." The definition of protection and the purpose of child protection is in line with the convention on children's rights and protection of human rights as contained in the 1945 Constitution of the Republic of Indonesia.

Article 22 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that: "Every child has the right to live, grow and develop and has the right to protection from violence and discrimination." In protecting children, there are several important aspects, namely: a) the guarantee and fulfillment of children's rights; b) Fulfillment of human dignity; c) Protection of children from violence and discrimination; d) The realization of children with quality, noble character, and prosperity. Child protection is an effort aimed at preventing, rehabilitating and empowering children who experience mistreatment, exploitation and neglect in order to ensure the child's survival and development naturally, both physically, mentally and socially.

- a. According to Barda Nawawi Arief, the definition of victim protection (in this study the victim is a child) can be seen from 2 (two) meanings, namely: can be interpreted as legal protection so as not to become a victim of a criminal act "(means protection of human rights or for one's legal interests);
- b. Can be interpreted as "protection to obtain legal guarantees / compensation for the suffering / loss of a person who has been a non-criminal victim" (Identical to victim support). The form of compensation can be in the form of restoration of good name (rehabilitation), restoration of inner balance (among others, with forgiveness), provision of compensation (restitution, compensation, social welfare insurance / compensation), and so on.

Children in receiving sexual exploitation are positioned as victims because they are on the weak side. According to Arief Gosita about victim right, what is meant by victims is "those who suffer both physically and spiritually as a result of the actions of others, who seek fulfillment from themselves or others, which are contrary to the interests and rights of those who suffer. Because that is necessary for protection of children in order to eliminate acts of exploitation of children.

Regarding legal protection for the fulfillment of children's rights, it is the obligation and responsibility of both the government and other state institutions as emphasized in Article 59 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely "Government and institutions Other countries have the obligation and responsibility to provide special protection to children in emergency situations, children in contact with the law, children from minority and isolated groups, children who are economically and / or sexually exploited, children who are trafficked, children who are victims of drug abuse, alcohol, psychotropic and other addictive substances (drugs), children victims of kidnapping, sale and trafficking, children victims of physical and / or mental violence, children with disabilities, and children victims of abuse and neglect."

Article 2 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states that the implementation of child protection is based on Pancasila and is based on the 1945 Constitution of the Republic of Indonesia and the basic principles of the Convention on the Rights of the Child includes: a) non-discrimination; b) the best interests of the child; c) the right to life, survival and development; and d) respect for children's opinions.

This protection for children is reflected in the rights of children regulated in Article 4 to Article 19 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Some of them are: 1) Every child has the right to rest and take advantage of free time, socialize with children of the same age, play, recreation, and create according to their interests, talents and intelligence level for self-development; b) Every child, while in the care of a parent, guardian, or any other party responsible for care, is entitled to protection from treatment: a) discrimination; b) exploitation, both economic and sexual; c) neglect; d) cruelty, violence, and persecution; e) injustice; and f) other mistreatment. Referred to as exploitation treatment, for example acts or acts of exploiting, exploiting, or blackmailing children to gain personal, family or group benefits.

The rights of children in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection are similar to several children's rights regulated in Law Number 39 of 1999 concerning Human Rights, namely, among others: 1) Every child has the right to rest, mingle with children of the same age, play, recreation, and create according to their interests, talents, and level of intelligence for the sake of self-development; 2) Every child has the right to obtain protection from economic exploitation activities and any work which endangers him, so that it can interfere with his education, physical health, morals, social life and mental and spiritual.

One form of protection that can be given to children for sexual violence is by performing the protection of repressive

laws whereby the protection of repressive laws is the ultimate protection given when an issue or has been committed, in order to give them a deterrent effect. On the deterrent effect, Bentham noted that there is a 3 (three) strategy for preventing a person from doing more crimes, as follows:

1. Eliminating the potential for physical strength to commit a crime.
2. Eliminating desire and desire to commit evil.
3. Making it deterrent to committing a crime.

There are several articles in Law Number 35 Year 2014 concerning Amendments to Law Number 23 Year 2002 concerning Child Protection which provide a prohibition on sexual violence against children, as follows:

1. Article 76D of Law Number 35 Year 2014 concerning Amendment to Law Number 23 Year 2002 concerning Child Protection, which reads: "Everyone is prohibited from committing Violence or threats of Violence forcing Children to have intercourse with or with other people."
3. Article 76E of Law Number 35 Year 2014 concerning Amendment to Law Number 23 Year 2002 concerning Child Protection, which reads: "Everyone is prohibited from committing violence or threats of violence, coercion, deception, conducting a series of lies, or persuading the child to do or allow lewd acts to be committed."
4. Article 76I of Law Number 35 Year 2014 concerning Amendment to Law Number 23 Year 2002 concerning Child Protection, which reads: "Every person is prohibited from placing, allowing, committing, ordering, or participating in economic and / or sexual exploitation of Child."

The prohibition on sexual abuse of children against perpetrators is sanctioned as stipulated in the following articles, which can be described as follows:

- a. Article 81 of Law Number 35 Year 2014 concerning Amendment to Law Number 23 Year 2002 concerning Child Protection, which reads:
 1. Any person who violates the provisions referred to in Article 76D shall be sentenced to imprisonment for a minimum of 5 (five) years and no later than 15 (fifteen) years and a maximum fine of Rp.5,000,000,000.00 (five billion rupiahs).
 2. The criminal provisions as referred to in paragraph (1) also apply to Any Person who intentionally commits deception, a series of lies, or persuades the Child to have intercourse with him or with other people.
 3. In the case of a criminal offense as referred to in paragraph (1) carried out by Parents, Guardians, Child caregivers, educators, or education personnel, the penalty shall be added to 1/3 (one third) of the criminal threat as referred to in paragraph (1).
- b. Article 82 of Law Number 35 Year 2014 concerning Amendment to Law Number 23 Year 2002 concerning Child Protection, which reads:
 - (1) Any person who violates the provisions referred to in Article 76E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp.5,000,000,000.00 (five billion rupiahs).
 - (2) In the case of a criminal offense as referred to in paragraph (1) carried out by Parents, Guardians, Child caregivers, educators, or education personnel, the penalty shall be added to 1/3 (one third) of the criminal threat as referred to in paragraph (1).
 - (3) Article 88 of Law Number 35 Year 2014 concerning Amendment to Law Number 23 Year 2002 concerning Child Protection, which reads: "Anyone who violates the provisions as referred to in Article 76I, shall be punished with imprisonment for a maximum of 10 (ten) years and / or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah). "

In addition, other forms of legal protection that can be given to victims of child sexual violence as a form of special protection for victims are regulated in Article 69A of Law Number 35 Year 2014 concerning Amendment to Law Number 23 Year 2002 concerning Child Protection, which reads: "Special Protection for children who are victims of sexual crimes as referred to in Article 59 paragraph (2) letter j, they are carried out through the following efforts: a) education about reproductive health, religious values, and moral values; b) social rehabilitation; c) psychosocial assistance during treatment until recovery; and d) providing protection and assistance at every level of examination starting from investigations, prosecutions to examinations in court.

Conclusion

Based on the above discussion, the conclusions that can be put forward are to answer the formulation of the problem regarding the forms of child exploitation through social media in the study of Child Protection Law, including the use of

children for pornographic purposes; grooming and sexting, namely introducing in cyberspace with a child using a false identity and then persuading the child to exchange pornographic photos; and sextortion, namely cyber extortion of children as a continuation of grooming and sexting by using photos containing child pornography as a threat, while regarding how the form of legal protection for children victims of social media exploitation is in the form of imposing sanctions against perpetrators of sexual violence as regulated in Articles 81, 82 and 88 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in order to have a deterrent effect on perpetrators and by providing Special Protection to child victims of sexual crimes as regulated in Article 69A of the Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

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