



Legal Protection for Children as a Victim of Criminal Pornographic Actions According to Law Number 44 of 2008

Sonny Pangeran BT; Rodliyah; RR. Cahyowati

Master of Law, Mataram University, Indonesia

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Abstract

The purpose of this study are as follows: 1) To find out and examine the form of Legal Protection for Children as Victims of Pornography Crimes According to Law Number 44 of 2008 concerning pornography. 2) To find out and study the efforts that must be made by the government in Law Enforcement Against Perpetrators of Pornography. The type of research used by the author in this thesis is normative legal research that studies law as the norm in legislation. Normative Legal Research is also called library research, document study, as well as doctrinal law research, because this research is conducted or aimed only at written legislation or other legal materials. In conducting normative legal research or also known as doctrinal research using statutory regulations, court decisions (jurisprudence), legal theory, and opinions of legal experts related to legal protection for children as victims of pornography crime according to law number 44 of 2008 about pornography. From the results of the research Based on the discussion and analysis that has been done, it can be concluded that the Legal Protection for Children as Victims of Pornography Acts according to Law Number 44 Year 2008 is to provide comfort to victims in providing special protection for children so that their trauma and mental illness are not disturbed and has the right to rehabilitation, And efforts by the government and the community to prevent the occurrence of pornography involving children by conducting seminars, appeals, socialization of the community so that the protection of children from cases of pornography is not widespread and prevented earlier. The form of criminal liability for pornography involving children is regulated in Article 37 of Law Number 44 Year 2008 concerning Pornography, that criminal sanctions are added 1/3 of the maximum threat of criminal. Where criminal sanctions can be given are imprisonment only, criminal fines in the form of money only, or imprisonment plus fines.

Keywords: *Legal Protection; Crime victim Pornography; Law Number 44 of 2008*

Introduction

Pornography is often known as the offense of decency or crime against decency in the Criminal Code (KUHP). But what comes close to understanding pornography itself is contained in Article 281 of the Criminal Code up to Article 283 of the Criminal Code. Pornography is actually a more adult theme, but currently pornography is not only known by adults, but young people are no exception. Pornography is addictive and can be addictive, disrupt child growth and development, trigger the child's hormonal

system and long-term nerve tissue damage. Pornography and porno-action are acts that negatively impact the development of young people's behavior. Many male and female children have been victims, both as pure victims and as "perpetrators as victims". "Where according to Sandra Fikawati, crime in the field of pornography is one of the fast-growing criminal activities caused by developments in the field of technology and information"¹.

Pornography is generally associated with writing and drawing, because that is the way most often found in exposing the problem of sexuality. Lately there is a new term in our society, namely pornoaction. What is meant is a person's appearance which more or less accentuates sexual things, such as stimulating movements or minimal dressing that reveals little or many parts related to the genitals, such as parts of the thighs. But not all protruding or disclosure can be referred to as action porn, because in a swimming pool for example, it is permissible for anyone to dress in a mini, even if only by wearing a bikini (swimsuit that only covers the genitals"². So the matter of porno-action is very relative, depending on human motivation. Pornography in Indonesia is a serious problem for the government, where the Associated Press states that Indonesia will become the next pornography paradise, because in Indonesia today various information or erotic or sensual images can easily be accessed which is only for watching or enjoying so that by unscrupulous people Certain elements, pornographic images that have been easily developed and exhibited"³.

The emergence of the Draft Law on Anti Pornography and Pornography (RUUAPP) increasingly completes an understanding that pornography / action has become a public discussion that almost daily graces various news media both print and electronic. Ismu Gunadi Widodo said that "Pornography / action is present as a" wave "of news and discourse that continues to roll fast and bribe into all the joints of the life of the nation. the community which was originally merely symbolic, but now is entering an area that is easily politicized"⁴.

A number of laws are deemed to have accommodated the concerns caused by pornography and porno-action, namely:

- a. In the Indonesian Criminal Code it is indeed an immoral crime which has been regulated in Book II regarding Crimes and Book III concerning Violations. Included in the category of crime have been formulated in Chapter IV Regarding Crimes Against the Ninth, regarding violations regulated in Chapter VI regarding Violations against the Ninth, in addition to the Criminal Code.
- b. In Act Number 33 of 2009 concerning Film, concerning matters relating to pornography.
- c. Law Number 40 of 1999 concerning the Press.
- d. Law Number 35 of 2014 concerning Child Protection.
- e. Law Number 32 of 2002 concerning Broadcasting.
- f. Law Number 11 of 2008 concerning Information and Electronic Transactions.
- g. Government Regulation Number 7 of 1994 concerning Film Censorship Institutions.

In addition to the Criminal Code, Indonesia also has regulations that also regulate the prohibition to involve children in the production of pornographic products, namely Law No. 35 of 2014 concerning Child Protection. In the Act, there are several articles that regulate the prohibition to sexually exploit children, one of which is Article 78. Legally, Law Number 44 Year 2008 Regarding Pornography has

¹Sandra Fikawati, *Pornografi Dan Kesehatan Reproduksi Remaja*, di akses dari <http://www.google.co.id/artikel/pornografi>, tanggal 18 Maret 2013

²RB Barrong, *Pornografi*, di akses dari <http://www.google.co.id/artikel/pornografi>, tanggal 18 Maret 2013

³ Onti-Rug, di akses dari <http://www.lawtesis.com>, published on October 2010

⁴ Ismu Gunadi Widodo, *Aspek Yuridis Pornografi/Aksi*. Airlangga University Press, 2009. Hlm 12.

been established and its validity is valid when it has become a state political decision. This means that, apart from the various pros and cons, both legally and politically in the state administration, a large part of the Indonesian people supports the existence of a law governing pornography, and this must be respected by every Indonesian citizen.

Based on the description above, it is necessary to have a writing with the theme "Legal Protection for Children as Victims of Pornography Crimes According to Law Number 44 Year 2008 Regarding Pornography".

Methodology

The type of research used in this paper is normative legal research that studies law as the norm in legislation. Normative Legal Research is also called library research, document study, as well as doctrinal law research, because this research is conducted or aimed only at written legislation or other legal materials.

In conducting normative legal research or also known as doctrinal research using statutory regulations, court decisions (jurisprudence), legal theory, and opinions of legal experts related to legal protection for children as victims of criminal acts of pornography according to law number 44 of 2008 about pornography.

Result and Discussion

Legal Protection for Children as Victims of Pornography Crimes According to Law Number 44 Year 2008

In Law No. 35 of 2014 concerning Child Protection has provided a very broad opportunity for a child to grow and develop optimally, both physically and mentally so that an ideal generation will be created⁵. Protection of children involving various aspects of life and livelihood, so that children can truly grow and develop properly in accordance with their human rights. As well as aiming to provide comfort to children who are victims of criminal acts of pornography so that their mental and mental trauma is not disturbed, child victims of pornography are also entitled to rehabilitation.

It can be seen that the need for legal protection for children can cover various fields / aspects, among others:

1. Protection of children's rights and freedom
2. Protection of children in the judicial process
3. Protection of child welfare
4. Protection of children in the matter of detention and deprivation of liberty of children, prostitution, pornography, trafficking or misuse of drugs, manipulating children in committing crimes, etc.
5. Protection of children from all forms of exploitation
6. Protection of street children
7. Protection of children against acts of violence

⁵ Irma Setyowati, *Aspek Perlindungan Hukum Anak*, Bumi Aksara, 2010, hlm 53.

The role of the government in preventing pornography as referred to in Article 17, the government is authorized:

1. Terminating the network of making and disseminating pornographic products or pornographic services, including blocking pornography through the internet in its area
2. Supervise the making, dissemination and use of pornography in the area
3. Collaborating with and coordinating with various parties in the prevention, manufacturing, dissemination and use in the region
4. Develop a system of communication, information and education in the context of prevention in the region

Whereas the role of the community in the prevention, distribution and use of pornography is contained in Article 21 paragraph 1, namely:

1. Report violations of this Act
2. Conduct a claim for representation to the court
3. To socialize the regulation of legislation that conducts pornography
4. Conducting guidance to the public against the dangers and effects of pornography.

Pornography and porno-action are considered to have contributed greatly to the moral decline of the Indonesian nation from day to day. The results of Thomas Bombadil's research from the British National Party explained 77% of perpetrators of sodomy and 87% of female rapists are those who routinely deal with pornographic material, both reading and viewing ". Apart from these problems, the impact of pornography and porno-action is now increasingly alarming, including frequent rape, adultery, and even murder or abortion. The people who are victims of the crime are not only adult women, but many victims are still children, both boys and girls.

The perpetrators were not only strangers, or people who did not have a kinship with the victim. In the elucidation of Law No. 35 of 2014 concerning Child Protection, it was said that "the Unitary State of the Republic of Indonesia guarantees the welfare of each of its citizens, including the protection of children's rights which are human rights. "Therefore, the State as a government organization that has a primary role in tackling pornography and porno-action should have an effective strategy. No one can deny that children are the nation's assets. As part of the younger generation, children play a very strategic role, namely as the heir (successor) of the nation, the successor to the ideals of the nation's struggle as well as the potential of human resources for national development (National Development). Children who are the younger generation who succeed the ideals of the nation's struggle, have a strategic role and have special characteristics and traits that guarantee the continued existence of the nation and state in the future ". It should be protected and prevented from association and negative things that can have a negative impact on the lives of Indonesian people, especially to create a sustainable generation of young people with a healthy physical and spiritual, mental and physical health with behavioral patterns that comply with the rules or norms. life norms that apply in society.

The efforts to reform and equip the young generation certainly start from childhood, namely by providing education, guidance, maintenance and welfare improvement. So that the children (who are expected to be the next generation of development) are truly capable of holding and taking responsibility for the survival of their nation well. In this connection, we do not deny the general opinion that "the future of a nation / state is on the shoulders of the younger generation", in this case including children as the seeds."⁶.

⁶ Romli Atmasasmita, *Problema Kenakalan Anak-Anak/Remaja*, Amirco, 2009. hlm.3

In the explanation of Article 4 paragraph (1) letter (f) of Law Number 44 Year 2008 Concerning Pornography, child pornography is "all forms of pornography involving children or involving adults who play a role or behave like children." So, child pornography means pictures, sketches, illustrations, photographs, writing, sounds, sounds, moving pictures, animations, cartoons, conversations, gestures, or other forms of messages that contain child sexual abuse or exploitation or involve adults who play a role or behave like a child.

Related to the definition of child pornography mentioned above, Zubairi Hasan asserted that child pornography is not only related to the description of sexual intercourse involving children, but also includes a description of sexual activity that encourages children to fall into sexual activity, both sexually like or through rape. This is in accordance with the definition of pornography itself (Article 1 number 1 of the Law on Pornography) which is based on sexual immorality (*zendelos*) or sexual exploitation, where sexual immorality means sexual acts and the beginnings of sexual intercourse which if watched by children can encourage them to commit sexual immorality⁷.

Law Enforcement Against Pornography Criminals

1. Criminal Liability Against Pornography Offenders Involving Children

It can be seen that all the articles contained in Law Number 44 of 2008 concerning Pornography not only contain a prohibition on the crime of pornography. But it also contains a prohibition on pornography involving children. This is in accordance with Article 11 of Law Number 44 of 2008 concerning Pornography, that "Everyone is prohibited from involving children in activities and / or objects as referred to in Article 4, Article 5, Article 6, Article 7, Article 8, Article 9, or Article 10".

These articles are contained in Chapter II of Law Number 44 Year 2008 Regarding Pornography, which regulates the Prohibition and Restriction of Pornography. These articles are as follows:

Article 4 paragraph (1) Every person is prohibited from producing, making, multiplying, duplicating, distributing, broadcasting, importing, exporting, offering, selling, buying or renting, or providing pornography that explicitly contains:

- a. sexual relations including sexual deviance
- b. sexual assault
- c. masturbating or masturbation
- d. nudity or an impressive display of nudity
- e. genitals or
- f. child pornography.

Paragraph (2) Every person is prohibited from providing pornographic services:

- a. presents explicitly nudity or an impressive display of nudity
- b. explicitly present the genitals
- c. exploiting or exhibiting sexual activity or
- d. offer or advertise, directly or indirectly, sexual services

Article 5: Everyone is prohibited from lending or downloading pornography as referred to in Article 4 paragraph (1).

⁷ Zubairi Hasan, *Kenapa Berbikini Tak Langgar UU Pornografi*, Katulistiwa Press, 2009, hlm. 45-46.

Article 6: Everyone is prohibited from playing, showing, utilizing, possessing or storing pornographic products as referred to in Article 4 paragraph (1), except those authorized by statutory regulations.

Article 7: Everyone is prohibited from funding or facilitating acts as referred to in Article 4.

Article 8: Every person is prohibited intentionally or with his / her consent to be an object or model that contains pornographic content.

Article 9: Everyone is prohibited from using others as objects or models that contain pornographic content.

Article 10: Everyone is prohibited from showing themselves or other people in a performance or in public that depicts nudity, sexual exploitation, sexual intercourse, or other pornographic content.

Article 12: Everyone is prohibited from inviting, persuading, using, letting, abusing power or forcing children to use pornographic products or services.

Violations of the aforementioned articles which contain a prohibition on involving children in criminal acts of pornography are more than 1/3 (one third) of the maximum criminal penalties. Article 37 states that: "Everyone who engages a child in an activity and / or as an object as referred to in Article 11 shall be liable to the same criminal sentence as referred to in Article 29, Article 30, Article 31, Article 32, Article 34, Article 35, and Article 36, plus 1/3 (one third) of the maximum criminal threat." Based on the sound of Article 37, it can be said that criminal sanctions are added 1/3 of criminal threats for anyone who engages children to take the following actions:

1. Produce, make, multiply, duplicate, distribute, broadcast, import, export, offer, sell, rent, or provide pornography as referred to in Article 4 paragraph (1)
2. Providing pornographic services as referred to in Article 4 paragraph (2)
3. Lend or download pornography as referred to in Article 5
4. Playing, showing, utilizing, possessing or storing pornographic products as referred to in Article 6
5. Fund or facilitate the actions referred to in Article 7
6. Deliberately or with his approval becomes an object or model that contains pornographic content as referred to in Article 8
7. Every person who makes other people as objects or models that contain pornographic content as referred to in Article 9
8. Showing themselves or other people in a performance or in public that depicts nudity, sexual exploitation, sexual intercourse, or other pornographic content as referred to in Article 10

Furthermore, Article 38 says that:

"Every person who invites, entices, uses, allows, abuses power, or forces a child to use pornographic products or services as referred to in Article 12 shall be sentenced to a maximum imprisonment of 6 (six) months and a maximum of 6 (six) years and / or a fine of at least Rp.250,000,000.00 (two hundred and fifty million rupiahs) and a maximum of Rp.3,000,000,000.00 (three billion rupiahs)."

It needs to be emphasized that between imprisonment and fines contained in these articles, the conjunctions used are "and / or", this means that the criminal threat given is alternative, where the judge can choose a criminal threat to anyone who commits a crime pornography involving children, is subject to:

1. Criminal imprisonment only
2. Criminal fines in the form of money only
3. Criminal imprisonment plus criminal fines

Related to this, criminal law in Indonesia has set about a strict prohibition for anyone to use or exploit children as a media of crime, because it violates the provisions contained in the Criminal Law Act (KUHP) precisely Article 293 paragraph (1). If you adhere to the theory of *Lex Specialis Derogate Lex Generalis* then the provisions of Article 293 paragraph (1) of the Criminal Code and Article 78 of Law Number 35 Year 2014 concerning Child Protection become invalid because the Criminal Code and Law Number 35 Year 2014 Concerning Child Protection are stipulations general about child protection which a small part in it contains rules on the protection of children from criminal acts of pornography which are specifically regulated later in Law Number 44 of 2008 concerning Pornography.

If you stick to the *Lex Posteriore Derogate Lex Priore* theory then Article 37 and Article 38 of Law Number 44 Year 2008 concerning Pornography will automatically delete or eliminate the usefulness of the provisions of Article 293 paragraph (1) of the Criminal Code and Article 78 of Law Number 35 of 2014 concerning Child Protection regarding criminal sanctions provided against child involvement in pornography. Thus, related to criminal liability for pornography involving children, it can refer to the provisions contained in Law Number 44 Year 2008 Regarding Pornography.

2. *Efforts to Be Done by the Government in its Efforts to Prevent and Eradicate Pornography*

Pornography and Pornoaction are old problems which cannot be overcome by the existing provisions contained in the Criminal Law Book (*Wet Book van Strafrecht voor Nederlandsch-Indie*) which is abbreviated with the Criminal Code. Which has been in force in Indonesia since the reign of the Dutch East Indies, namely in January 1917⁸. In his book entitled *Pornography and Porno Action in Terms of Islamic Law*, Neng Djubaedah argues that: the negative impact of the spread of pornography and pornographic performances that have spread not only in urban areas but have reached rural areas is a very alarming reality. Therefore, the government and related institutions must immediately take quick, appropriate and correct actions to prevent, eradicate and overcome the negative effects of pornography and porno-action.⁹

Conclusion

Based on the discussion and analysis that has been done, it can be concluded that:

1. Legal Protection for Children as Victims of Pornography Act according to Law Number 44 of 2008, namely to provide comfort to victims in providing special protection for children so that their trauma and mental illness are not disturbed and they are entitled to rehabilitation. And the efforts of the government and the community to prevent the occurrence of pornography involving children by conducting seminars, appeals, socialization of the community so that the protection of children from cases of pornography is not widespread and prevented earlier.
2. The form of criminal liability for pornography involving children is regulated in Article 37 of Law Number 44 Year 2008 concerning Pornography, that criminal sanctions are added 1/3 of the

⁸ Neng Djubaedah, *Pornografi dan Pornoaksi Ditinjau Dari Hukum Islam*. Kencana Prenada Media Group, 2009, hlm. 1

⁹ *Ibid*, hlm. 9-10

maximum threat of criminal. Where criminal sanctions can be given are imprisonment only, fine in the form of cash only, or imprisonment plus a fine. And the efforts that must be made by the Government including the Regional Government in their efforts to prevent, disseminate and eradicate porn crime, namely by terminating the network of making and distributing pornographic products or pornographic services, including blocking through the internet. In addition, other efforts that must be carried out by the Government and Regional Government, namely socialization and education, for example by conducting counseling to schools and other places regarding the dangers and negative effects of pornography.

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