

THE MODEL OF COUNTERMEASURES CRIMINAL OFFENSES COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

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ABSTRACT

Factors that cause the child to commercial sexual exploitation in Bali, caused by extrinsic motivation. Mode used by children who become perpetrators of sexual exploitation of children are now using social media tools such as Blackberry Masenger and Facebook. Social networks become the choice of the child to engage in commercial sexual exploitation, due to the ease of access to social networks. The long term goal of this research is Restructuring Penal Law Protection Policy Against Sexual Exploitation of Children. Urgency penal legal protection through the efforts of children who become perpetrators or victims of commercial sexual exploitation of children is to cope with the increasing number of cases of commercial sexual exploitation. Data analysis techniques used in this research is descriptive qualitative, ie data obtained from fieldwork and research literature systematically arranged, and then analyzed by descriptive qualitative, taking into account factors that exist in practice, and then compared with data obtained from the research literature in order to obtain answers from the conclusions of the problems studied. Based on the rule of law containing criminal sanctions for the perpetrators of the crime of sexual exploitation of children, they are very light according to nongovernmental observers and police. The rule of law is still more emphasis on actors and severely lacking in attention to victims, particularly related to psychological mental victim recovery actions. So that needs to be made regulation more attention to the psychological impact of the victim and who is responsible for the psychological recovery of victims, as well as the need for the rule of law as the law that requires each level of education provide education about reproductive health.

Keywords: Children; Criminal Offense; Commercial Sexual Exploitation

Introduction

Children are part of the younger generation as one of the human resources and potential, is the successor to the ideals of the struggle of the nation. In addition the child as part of a family is the fruit of the heart, the successor and the hope family. Children as the next generation of the nation need to get supervision and guidance so that it doesn't fall into serious delinquency or the Act of breaking the law.

The phenomenon of delinquency or juvenile delinquency in Indonesia lately showed symptoms that are very worrying. The large number of cases of children who are involved as perpetrators of sexual exploitation for commercial shows evidence of how juvenile delinquency needs to get serious attention from all circles. Children involved in commercial sexual exploitation cases, on one side of the child as an offender and also at one time been victims. Children who become victims of commercial sexual exploitation suffered physical, social psychological and emotional. Children are more vulnerable to contracting sexually transmitted diseases such as HIV/AIDS. Nowadays more and more children aged under sought for commercial sexual businesses exploited in the pointing young children certainly haven't contracted the sexually transmitted disease, but they are the most susceptible-infected because biologically, young children are more vulnerable to sexually transmitted diseases. From several case studies and testimonies of the victims, it is known that they suffered a very deep trauma so often difficult life could return to normal (ILO-IPEC; 2014).

The son of a lapsed on commercial sexual exploitation, more influenced by family and lifestyle factors. Family factors became one of the causes is because children's lives in the family's broken home, there is no communication between interwoven with family members, be the cause of a child to do things that are less well outside the home and it is exploited by someone who has no responsibility with him working as a perpetrator of the commercial sexual exploitation of children. Lifestyle factors is also one factor causes great disturbance on commercial sexual exploitation of children, due to a desire to follow the trend of young people in dress and have the latest samartphone, which can support the body with beauty and appearance of items that he wore. However there are some of them who cornered because of financial problems for the fulfillment of such desires then they take a shortcut by doing commercial sexual exploitation for the gratification of himself.

Factors that become the cause of child commercial sexual exploitation did in Bali, is caused by extrinsic motivation. The mode that is used by children who become perpetrators of child commercial sexual exploitation have been using social media like Facebook and Blackberry Masenger (Denpasar; 2015). Social networking is becoming the choice of child commercial sexual exploitation to do, due to the ease of access to the social networking.

Based on the description of the problems that have been described above, it can be stated in the following research questions:

What model or design countermeasures criminal offenses commercial sexual exploitation of children?

Research methods

Legal research is a species of research in general. The study of law is applied or applied research specifically on the science of law. Legal research is research that helps the development of legal science in the revealed truth of the law (Istanto, 2007). Based on the distribution of this type of research, this research is descriptive research that is intended to provide a clear picture of the model or design countermeasures criminal offenses commercial sexual exploitation of children. In terms of its objectives, the type of research is an empirical law. Empirical legal research is based on data obtained through observation (Nasution, 2006).

In this research, collecting data or information is done through three (3) phases, namely the phase of entering the field, the stage is in the location of the research and data collection and analysis stage. In order to explore the field data used interview, observation and literature. Interview technique is done by direct interviews and structured to the informant and the respondents related to the problem under study as the interview guide was prepared by the researcher.

Observations carried out directly on prostitutes who are children who become perpetrators or victims of commercial sexual exploitation. Data obtained from direct observation in the form of descriptive data about the problems studied.

Library research conducted by reviewing various legal materials in the form of primary legal materials, secondary law or tertiary legal materials relating to the cases in this study.

The data analysis technique be used in this research is descriptive qualitative, are data obtained from fieldwork and research literature systematically arranged, and then analyzed by descriptive qualitative, taking into account factors that exist in practice, and then compared with data obtained from the research literature in order to obtain answers from the conclusions of the problems studied.

Discussion

Commercial Sexual Exploitation

Exploitation is the act with or without the consent of the victim which include but are not limited to prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, use of physical, sexual, reproductive organs, or in contravention of law removing or transplanting organs and/ or body tissues or harness or ability of a person by another party to benefit both material and immaterial (Article 1 point 7 Law of the Republic of Indonesia Number 21 of 2007).

Sexual exploitation is the use of any form of sexual organs or other organs of the victim to profit, including but not limited to all activities of prostitution and sexual immorality (Article 1 point 8). The commercial sexual exploitation of children is a violation of children's rights and covers criminal practices that demean and threaten the physical and psychosocial integrity of children. Stockholm Agenda for Action the commercial sexual exploitation of children is defined as (Ramlan, 2010) :

"A fundamental violation of the rights of the child. It comprises sexual abuse by the adult and remuneration in cash or kind to the child or a third person, or others. The child is treated as a sexual object and as a commercial object. The commercial sexual exploitation of children is a form of coercion and violence against children, and lead to the forms of forced labor and modern slavery. "

Commercial sexual exploitation of children is the use of a child for sexual purposes in exchange for cash, goods or services for the good of the exploiter, intermediary or agent and others who profit from the sexual exploitation of children. ECPAT International (End Child Prostitution Child Pornography and Trafficking of Children for Sexual Purposes), divides the commercial sexual exploitation of children within five (5) types, namely (PUSDATIN ESKA) :

1. Child prostitution, occurs when a person takes advantage of a commercial transaction in which a child is offered for sexual purposes.
2. Child pornography means any show in any way that involves the child in sexual activities or real or simulated explicit showing part of the body of a child for sexual purposes.
3. Trade or trafficking of children for placing children in situations of abuse or exploitation such as prostitution by coercion.
4. Child sex tourism is the commercial sexual exploitation of children by people who travel from one place to another and in the place they have sex with children.
5. The marriage of children, marriages involving children and adolescents aged under 18 years. Early marriages can be considered a form of commercial sexual exploitation if a child is accepted and exploited for sexual purposes in order to get goods or paid in the form of money or services. In such cases usually the parents or a family marry off a child to gain benefit or to support the family.

Factors Affecting Children Become Actors Commercial Sexual Exploitation

To find out the causes of the commercial sexual exploitation of children or the factors that encourage children to do the commercial sexual exploitation of children or the background can also be said the act does it need to know the motivation. The shape of the motivation that there are two kinds, namely intrinsic and extrinsic motivation. Intrinsic motivation is the urge or desire a person who does not need to be accompanied by stimulus from the outside, whereas extrinsic motivation is the impulse that comes from outside oneself.

To know the motivation of a child to sexual exploitation of children, should be made to advance personally know the child himself or, more broadly should try to understand the world itself. By getting to know the world will be ease to reveal the factors that encourage someone to do the deed. Enterprises will further recognize the child's own actions, so that we understand his actions and the consequences of that action.

Delinquency when linked with the theory of social control, it will refer to the perspective of controlling the behavior of children because of social control theory trying to find answers as to why people commit crimes (Mulyadi, 2007). Reis argued that there are three components of social control in explaining delinquency of children / adolescents. The three components are: (1) lack of internal control were reasonable during childhood, (2) the loss of control, and (3) the absence of social norms or conflict between the norms in question (in the school, parents, or near the neighborhood) (Romli Atmasasmita, 2007).

Reiss distinguish two kinds of control, namely: personal control and social control. Personal control (internal control) is the ability to resist the temptation to achieve their needs in a way violating the norms prevailing in society. Meanwhile, what is meant by social control or external control is the ability of social groups or institutions in the community to carry out the norms or regulations becoming effective. Delinquency albeit by those from lower social strata remain bound to the dominant system of values in society. In the social ties (social bond) there are elements as a deterrent element that can counteract the occurrence of the delinquency behavior in society.

Hirschi then explained that the social bond includes four elements, namely the attachment, involvement, commitment, and belief. Attachment is defined as a person's attachment to others (parents) or institution (school) can prevent or inhibit concerned to commit a crime. Involvement means that the frequency of one's activities will reduce the tendency concerned to engage in crime. Commitment means that as an investment for someone in the community, among others in the form of education, a good reputation, and progress in the field of self-employed. Belief is an element that embodies the recognition of one's norms were good and fair society. The fourth element is causing a person to appreciate the norms and rules and feel a moral obligation to obey it. These elements will be very influential on a child social ties with their communities.

Factors that cause the child fell in the case of commercial sexual exploitation of children, based on data obtained from studies conducted in several districts / cities in Bali, the data obtained as follows:

Table 1.

No.	Causes	Amount
1.	Intercommunication	5
2.	Education	4
3.	Family	8
4.	Economy	2
5.	Lifestyle	8
6.	Sexual Violence	3
	The Total	28

Source: the results if the data interviews with children involved in commercial sexual exploitation of children in Badung, Singaraja, Tabanan, Negara, Gianyar, Bangli, Klungkung, Karangasem and Denpasar, April to June 2015.

Based on the data in the table above have shown that children who fall on the commercial sexual exploitation of children is more influenced by family factors and lifestyle. Family factors is one reason because the lives of children in families broken home, no communication is well established among family members, causes a child to do hala that are less well outdoors and it is used by someone who is not responsible replied by asking her to work as a principal commercial sexual exploitation of children. Lifestyle factors also one of the contributing factors fall on the commercial sexual exploitation of children, for their willingness to follow the trend of young people in dress and in having the latest samartphone, which can support the appearance with the beauty of the body and belongings were wearing. But there from some of them were cornered because of financial problems for the fulfillment of these desires then they take a shortcut by doing commercial sexual exploitation for the gratification of himself.

Factors that cause the child to commercial sexual exploitation in Bali, caused by extrinsic motivation. Mode used by children who become perpetrators of sexual exploitation of children are now using social media tools such as Blackberry Masenger and Facebook (The results of interviews with children who become perpetrators of sexual exploitation of children in the city of Denpasar, May 12, 2015). Social networks become the choice of the child to engage in commercial sexual exploitation, due to the ease of access to social networks.

Model or Design Criminal Acts Countermeasures Sexual Exploitation of Children

Model countermeasures criminal offense sexual exploitation of children can be done through:

1. Criminalization of perpetrators who use children as objects of commercial sexual exploitation.
2. Provide counseling to children who do commercial sexual exploitation.
3. Provide psychological counseling psychologist in the recovery as a result of commercial sexual exploitation of children.
4. Incorporate early childhood sex education materials in the educational curriculum junior and senior high schools.

Criminalization need to be carried out on the purchase or use of child sex, so that everyone who uses children as objects of prostitution may be subject to criminal sanctions. So the criminal sanctions are no longer just for children who do commercial sexual exploitation but also criminal sanctions given to the party or the people who buy the sexual services of a child, while for children who commit acts of sexual exploitation is given in the form of counseling and mentoring psychologists.

Criminalization is derived from the word criminal, which means "pertaining to crimes (violations of the law) is punishable under criminal laws (Pusat Bahasa Departemen Pendidikan Nasional, 2008). To define an act as a criminal offense, common criteria need to pay attention to criminalize an act, namely (Nawawi Arief, 2005) :

1. Does the act is disliked or hated by society as detrimental, or harmful, bring the victim or the victim can bring;
2. What are the costs of criminalizing balanced with the results to be achieved, meaning that the costs used in the making of laws or legal regulations, oversight and enforcement, as well as the burden borne by the victim, the offender and the offender itself must be balanced with the situation of law and order to be achieved;
3. What will increase the burden of law enforcement officers are not balanced or obviously can not be carried by the capabilities of law enforcement officers;
4. Are acts that impede or prevent the ideals of the nation, so it is a danger to the whole society.

According to Bassiouni, the decision to criminalize should be based on factors specific policies that take into account a variety of factors, including:

1. The balance of the means used in conjunction with the results to be achieved;
2. The cost analysis of the results obtained in relation to the objectives to be achieved;
3. assessment or interpretation of the objectives to be achieved it in relation to other priorities in the allocation of human resources;
4. Social influence of criminalization relating to or in the light of their effects are secondary.

Based on the indicators in criminalize mentioned above, can researchers conclude that the criminalization of the service users of the commercial sexual exploitation of children have the right to do, because the existence of criminal sanctions against users of these services can provide a deterrent effect and reduce the amount of commercial sexual exploitation of children. Counseling and psychological assistance provided to children who are victims of commercial sexual exploitation of children, because a child who fall into commercial sexual exploitation of children is a victim who needs to get psychological treatment to eliminate the trauma of the acts that happen to him. Counseling and psychological assistance can be provided by government institutions in this unit Integrated Service Center for Protection of Women and Children, and the Society of Social Institutions concern about the problems of children.

The rule of law on the criminalization, counseling and mentoring psychologists can be done through local regulations regarding the eradication of prostitution and protection of children, so that children can realize a decent area. Early childhood sex education be included in the educational curriculum in junior high school and high school with the aim that the students know about reproductive health and understand the dangers of free sex. The education curriculum as additional materials that must be given to the students by the teachers and the Commission on HIV / AIDS area.

The law, which regulates the commercial sexual exploitation of children, as stipulated in Law No. 35 of 2014 on the Amendment of Act No. 23 of 2002 on Child Protection, Law No. 21 of 2007 on the Eradication of Trafficking in Persons, Law Number 44 Year 2008 on Pornography, one is not found sufficient provision of criminal sanctions for offenders who use the services of commercial sex of children (child prostitution). Under the provisions of Law No. 35 of 2014 on the Amendment of Act No. 23 of 2002 on Child Protection, only impose sanctions on any person who places, let, do, telling perform or participate in the exploitation of economically and / or sexually child, shall be punished with imprisonment of ten (10) years and / or a fine of Rp 200,000,000.00 (two hundred million rupiah) (Article 76I Law of the Republic of Indonesia Number 35 Year 2014). The provision does not provide sanctions for users of commercial sexual services of a child.

Based on Law Number 21 year 2007 on the Eradication of Trafficking in Persons, in the case of commercial sexual exploitation of children, just set everyone who use or exploit victims of human trafficking crime by means of sexual intercourse or obscene acts more, employ victims of human trafficking crime to continue to practice exploitation, or take advantage of the proceeds of crime of trafficking in persons shall be punished with imprisonment of minimum 3 (three) years and a maximum of 15 (fifteen) years of imprisonment and a minimum fine of Rp. 120,000,000.00 (one hundred and twenty million rupiah) and Rp. 600,000,000.00 (six hundred million rupiah), and if the victims of sexual exploitation are still kids, then the criminal sanctions imposed by $\frac{1}{3}$ (one third) (Article 2, 12 and 17 of Law of the Republic of Indonesia Number 21 Year 2007). The provisions of this law, also did not set penalties for offenders who use the services of commercial sex of children. Similarly, in Law Number 44 Year 2008 on Pornography, also does not set penalties for offenders who use the services of commercial sex of children. Law Number 44 Year 2008 on Pornography, just regulate, prohibit the manufacture, produce, reproduce, copy, distribute, broadcast, importing, exporting, offering, reselling, renting or making available child pornography that explicitly includes: mating, including aberrant mating; sexual violence; masturbation; impressive display nudity or nudity; genitals; or child pornography, and provide explicit pornography serving an impressive display of nudity or nudity, genitalia, exploit or display of sexual activity, or offer or advertise, either direct or indirect sexual services. Prohibit any person exposing themselves or the child in the show or in public that depicts nudity, sexual exploitation, mating, or other pornographic contents (Article 4, 10 and 11 of Law of the Republic of Indonesia Number 44 Year 2008).

Criminal provisions stipulated in Law No. 44 Year 2008 on Pornography, especially those related to commercial sexual exploitation of children, first, under Article 29, "any person who produces, makes, reproduce, copy, distribute, transmit, import, export, offers, reselling, renting or providing pornography shall be punished with imprisonment of 6 (six) months and a maximum of twelve (12) years and / or fined at least Rp. 250,000,000.00 (two hundred and fifty million rupiah) and Rp. 6,000,000,000.00 (six billion rupiah)". Second, under Article 30, "everyone who provides services pornography shall be punished with imprisonment of 6 (six) months and not later than 6 (six) years and / or fined at least Rp. 250,000,000.00 (two hundred and fifty million rupiah) and Rp. 3,000,000,000.00 (three billion rupiah)". Thirdly, under Article 33, "everyone who fund or facilitate acts of pornography, shall be imprisoned for a minimum of 2 (two) years and a maximum of 15 (fifteen) years and / or fined at least Rp1,000,000,000, 00 (one billion rupiah) and at most Rp7.500.000.000,00 (seven billion five hundred

million rupiah) ". And fourth, under Article 37, any person who involve children in activities and / or as an object of criminal sanctions plus $\frac{1}{3}$ (one third) of the maximum criminal threat.

Referring to the three laws above there is no criminal sanction expressly states that the offender who buy or use the services of commercial sexual exploitation of children, so that adjustments should be made law criminalizing people who use or buy a child as an object of sexual gratification.

Design countermeasures criminal offense sexual exploitation of children is analyzed using SWOT analysis. SWOT Analysis is a strategic planning method used to evaluate the internal factors and external factors. Internal factors such as strengths and weaknesses, while the external factors such as opportunities and threats.

1. Strength, the availability of law enforcement officials and child observer organizations in order to conduct criminal offense countermeasures of commercial sexual exploitation of children.
2. Weakness, for the rules of criminal law are positive there is no detailed regulates criminal sanctions for child prostitution service users.
3. Opportunity, the existence of some legislation concerning criminal sanctions for child prostitution service users.
4. Threat, the lightness of the rules of criminal law provides criminal sanctions for child prostitution service users provided in rules the area.

Law enforcement officials and observer organizations existing children are now scattered in areas in conducting criminal offenses prevention of commercial sexual exploitation of children. This is evident from the results of the survey to all law enforcement agencies in this case the police and child observer organizations both governmental and non-governmental organizations, have been very concerned with children who are victims or perpetrators of the crime of commercial sexual exploitation of children.

Based on the rule of law containing criminal sanctions for the perpetrators of the crime of sexual exploitation of children, they are very light according to nongovernmental observers and police. The rule of law is still more emphasis on actors and severely lacking in attention to victims, particularly related to psychological mental victim recovery actions. So that needs to be made regulation more attention to the psychological impact of the victim and who is responsible for the psychological recovery of victims, as well as the need for the rule of law as the law that requires each level of education provide education about reproductive health. Based on the data obtained in the study site, 88% (eighty eight per cent) secondary school education providers and secondary schools agree to the necessity of adding sexual education curriculum that emphasizes the early age of knowledge about reproductive health and the dangers of promiscuity.

The rule of law that is currently contained in some of the regulatory environment remains very light, due to the sanctions stipulated in local regulations may not include imprisonment but imprisonment. Local regulations contained in some counties and cities in Bali also does not explicitly regulate the psychological recovery of victims. Based on the weaknesses contained in legal regulations governing the crime of sexual exploitation of children, it is necessary to set the weighting of punishment for the prostitution services of commercial sexual education of children and the obligations of the organizers of the first secondary education up to high school.

Conclusion

Model or design tackling the crime of sexual exploitation of children, in terms of the law, which regulates the commercial sexual exploitation of children, as stipulated in Law Number 35 year 2014 on the Amendment of Act Number 23 year 2002 on the Protection of Children Act Number 21 year 2007 on the Eradication of Trafficking in Persons, Law Number 44 Year 2008 on Pornography, one is not found sufficient provision of criminal sanctions for offenders who use the services of commercial sex of children (child prostitution). Referring to the three laws above there is no criminal sanction expressly states that the offender who buy or use the services of commercial sexual exploitation of children, so that adjustments should be made law criminalizing people who use or buy a child as an object of sexual gratification. Based on the rule of law containing criminal sanctions for the perpetrators of the crime of sexual exploitation of children, they are very light according to nongovernmental observers and police. The rule of law is still more emphasis on actors and severely lacking in attention to victims, particularly related to psychological mental victim recovery actions. So that needs to be made regulation more attention to the psychological impact of the victim and who is responsible for the psychological recovery of victims, as well as the need for the rule of law as the law that requires each level of education provide education about reproductive health. Based on the data obtained in the study site, 88% (eighty eight per cent) secondary school education providers and secondary schools agree to the necessity of adding sexual education curriculum that emphasizes the early age of knowledge about reproductive health and the dangers of promiscuity. Based on the criterion of validity, testing the validity of the response to the crime of Sexual Exploitation of Children is a very valid with a score of 93% (Ninety-three per cent) and the model of overcoming the crime of Sexual Exploitation of Children can be used.

References

- Arief, Barda Nawawi, 2005, *Bunga Rampai Kebijakan Hukum Pidana*, Citra Aditya Bakti, Bandung.
- Atmasasmita, Romli, 2007, *Teori dan Kapita Selekta Kriminologi*, Refika Aditama, Bandung.
- Istanto, F. Sugeng, 2007, *Penelitian Hukum*, CV. Ganda, Yogyakarta.
- Mulyadi, Lilik, 2007, *Kapita Selekta Hukum Pidana Kriminologi dan Viktimologi*, Penerbit Djambatan, Jakarta.

- Pusat Bahasa Departemen Pendidikan Nasional, 2008, *Kamus Bahasa Indonesia*, Departemen Pendidikan Nasional, Jakarta.
- Ramlan, 2010, *Memperkuat Hukum Penanganan Eksploitasi Seksual Anak Panduan Praktis*, Sumatera, KONAS PESKA.
- S. Nasution, 2006, *Metode Research (Penelitian Ilmiah)*, Bumi Aksara, Jakarta.
- ILO-IPEC, *Eksploitasi Anak Dalam Pelacuran dan Pornografi*, <http://fisipku.tripod.com/ipec/prostitusi.htm>, accessed March 2, 2014.
- Pusat Data Dan Informasi Eksploitasi Seksual Komersial Anak (PUSDATIN ESKA), <http://www.gugustugastrafficking.org>, accessed on March 9, 2014.
- Law of the Republic of Indonesia Number 35 Year 2014 on the Amendment to Act No. 23 of 2002 on Protection of Children
- Law of the Republic of Indonesia Number 44 Year 2008 on Pornography.
- Law of the Republic of Indonesia Number 21 Year 2007 on Eradication of Trafficking in Persons

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