

PERTANGGUNGJAWABAN PIDANA PELAKU TINDAK PIDANA EKSPLOITASI SEKSUAL ANAK

ABSTRAK

Undang-undang perlindungan anak telah mengalami perubahan sebanyak dua kali, namun kasus eksploitasi seksual anak masih terjadi fluktuatif. Eksploitasi seksual mencakup, prostitusi anak, pornografi anak, perdagangan anak untuk tujuan komersial, eksploitasi seksual di destinasi wisata, dan perkawinan anak. Penegakan hukum terhadap kasus tindak pidana eksploitasi seksual anak terutama pornografi acapkali mengenyampingkan undang-undang perlindungan anak sebagai aturan hukum yang bersifat *lex specialis*. Sebagaimana terjadi pada Putusan Pengadilan Tinggi Banten Nomor: 7/PID.SUS/2022/PT.BTN yang menjatuhkan pidana dengan Pasal 296 KUHP padahal tindak pidana eksploitasi anak termasuk dalam kategori *graviora delicta* (kejahatan paling serius) sehingga undang-undang perlindungan anak harus dijadikan dasar untuk memidana seseorang. Pasal lain yang dapat dipakai guna penegakan hukum eksploitasi seksual anak adalah Pasal 2 Ayat (1) Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang, Pasal 27 Ayat (1) Jo. Pasal 45 Ayat (1) Undang-Undang Nomor 11 Tahun 2008 Jo. Undang-Undang Nomor 19 Tahun 2016 tentang Informasi Dan Transaksi Elektronik, Pasal 4 Ayat (1) Undang-Undang Nomor 44 Tahun 2008 tentang Pornografi, Pasal 12 Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual, dan Pasal 407 Ayat (1), Pasal 419 Ayat (1), dan Pasal 455 Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana. Selain itu penggunaan undangundang khusus juga ditujukan untuk memberikan efek jera atau nestapa bagi pelakunya dengan ancaman hukuman pidana yang berat. Jenis penelitian yang dilakukan adalah yuridis normatif dengan pendekatan perundang-undangan dan pendekatan kasus serta cara pengumpulan data yang penulis gunakan antara lain studi kepustakaan untuk melengkapi sumber data yang dibutuhkan.

Kata Kunci: Tindak Pidana Eksploitasi Seksual Anak, Prostitusi Anak, Pertanggungjawaban Pidana, Penyertaan Tindak Pidana

CRIMINAL LIABILITY OF CHILD SEXUAL EXPLOITATION OFFENDERS

ABSTRACT

*The child protection law has been amended twice, but cases of sexual exploitation of children still fluctuate. In the last five years, it was recorded that in 2020 there were 133 cases, then in 2021 there were 274 cases, in 2022 there were 216 cases, in 2023 there were 260 cases, and recorded until May 2024 there were 94 cases. Sexual exploitation includes child prostitution, child pornography, trafficking of children for commercial purposes, sexual exploitation in tourist destinations, and child marriage. Law enforcement against cases of criminal acts of sexual exploitation of children, especially pornography, often overrides the child protection law as a legal rule that is *lex specialis*. As happened in the Banten High Court Decision Number: 7/PID.SUS/2022/PT.BTN which imposed a sentence with Article 296 of the Criminal Code even though the criminal act of child exploitation is included in the *graviora delicta* category (the most serious crime) so that the child protection law must be used as a basis for convicting someone. Other articles that can be used to enforce the law on child sexual exploitation are Article 2 Paragraph (1) of Law Number 21 Year 2007 on the Eradication of the Crime of Trafficking in Persons, Article 27 Paragraph (1) Jo. Article 45 Paragraph (1) of Law Number 11 of 2008 Jo. Law No. 19 of 2016 on Electronic Information and Transactions, Article 4 Paragraph (1) of Law No. 44 of 2008 on Pornography, Article 12 of Law No. 12 of 2022 on the Crime of Sexual Violence, and Article 407 Paragraph (1), Article 419 Paragraph (1), and Article 455 of Law No. 1 of 2023 on the Criminal Code. In addition, the use of special laws is also intended to provide a deterrent effect or pain for the perpetrators with the threat of severe criminal penalties. The type of research conducted is normative juridical with a statutory approach and a case approach and the method of data collection that the author uses includes literature study to complete the required data sources.*

Keywords: Crime of Child Sexual Exploitation, Child Prostitution, Criminal Responsibility, Participation in Crime