



# Criminal Policy on Command Efforts Crime of Child Sexual Exploitation: Renewal Policy Perspective

Subaidah Ratna Juita<sup>1\*</sup>, Wafda Vivid Izziyana<sup>2</sup>  
<sup>1,2</sup> Faculty of Law, Semarang University, Semarang, Indonesia

ratna.juita@usm.ac.id

**Abstract.** *The crime of sexual exploitation of children is an act that violates the norms of both legal, religious, customary and moral norms that apply in Indonesian society. The crime of making children victims has implications for the development and growth of children, especially from psychological and physical aspects. In addition, the criminal act of sexual exploitation of children will destroy their future, cause stress, and will destroy the good name of the child and his family. The study of the problems in this paper aims to identify and analyze criminal policies through penal efforts contained in various laws and regulations that formulate efforts to overcome the crime of child sexual exploitation in the perspective of policy reform. The study in this paper is the result of thinking with conceptual, case, and futuristic approaches, so the type of research used is normative legal research. Referring to the underlying problems of this study, the specification of this research is descriptive analytical. Furthermore, to get objective data, the type of data needed is secondary data. This data is taken by means of document / literature study. The data obtained in the study was analyzed using a qualitative analysis method. The results of the problem analysis in this paper show that the crime of child sexual exploitation in the criminal policy through penal efforts to counter the crime of sexual exploitation from the perspective of criminal law reform policies can refer to various articles that have been formulated in Law No. 1 of 2023 concerning the Criminal Code (New Criminal Code) which is valid for 3 years from the date of promulgation, namely in 2026.*

**Keywords:** *Children, Criminal Policy, Reform Policy, and Sexual Exploitation*

## 1. Introduction

One of the criminal acts that is classified as a crime against morality that violates human rights is the crime of sexual exploitation. The crime of sexual exploitation is an act in which a person violates the norms of both legal norms, religion, customs and morals that apply in society. Various cases that occur in society related to the crime of sexual exploitation that occur today are not uncommon for victims to be relatively young and under the age of 18 years old (child law subjects). Based on data released by ECPAT Indonesia, within a period of three (3) years, namely from 2021-2023, ECPAT Indonesia has succeeded in photographing the situation of child sexual exploitation cases that require a special, fast and systematic response.[1] In 2023, ECPAT found a case of a 7-year-old child recording a child pornography scene played by him, and then disseminated it. Meanwhile, in 2022, it was found that an 18-month-old baby was a victim of sexual violence by a 41-year-old perpetrator in Jeneponto, still in the same year, accompanying a case of online child sexual exploitation for the purpose of prostitution carried out by the child of a member of the DPRD in Bekasi. The same case, namely a 7-year-old child recording and disseminating child pornography occurred in 2021.

A child is one of the few aspects and connections that remain unaffected by the progress of society, the nation, and individual human life. Young people have significant potential in the bangsa generation during the coming generation and represent the future of

© The Author(s) 2024

A. Sofian et al. (eds.), *Proceedings of the ASEAN Conference on Sexual Exploitation of Children (ACOSEC 2024)*, Advances in Social Science, Education and Humanities Research 876, [https://doi.org/10.2991/978-2-38476-325-2\\_37](https://doi.org/10.2991/978-2-38476-325-2_37)

the bangsa people. If the child grows up and develops well, the nation will be strong and prosperous because of this. Maintaining the survival of children is the duty of all elements, one of which is the family, society and the state. One of the efforts to maintain the survival of children is to provide protection for children. Arif Gosita stated that children must be protected so that they do not become troublesome individuals or groups (individuals, families, government agencies, etc.), either silently or silently but nonetheless.[2]

Referring to the description above, many parties are needed to be involved in preventing and overcoming it. In addition to policies from the government in the form of a legal rule, it is very necessary to prevent and protect children from sexual exploitation. The prevention and countermeasures in question must be carried out through applicable legal policies. The policy of a law is indispensable in every case, both in the policy of sanctioning as one of the efforts to combat sexual exploitation of children or the prevention of criminal acts and other policies in the form of the role of several elements as one of the prevention, protection and recovery of children victims of sexual exploitation crimes.

One of the main applications of criminal law as a means of fostering health is the prosecution of criminals. Presently, three articles about this criminal justice system are among them:[3]

- a. In short, it is the entire set of rules or procedures that serve as the foundation for legal actions that are considered unlawful:
- b. In the broad sense, this refers to all of the functions of the legal enforcement apparatus, including the work of the police and pengadilan personnel:
- c. The most important arti (which I learned from Jorgen Jospen) is the whole-hearted adherence to law, which is carried out through the use of resmi badan-badan and perundang-undangan, with the aim of upholding the general norms of society.

In addition to the definition of criminal policy described above. Sudarto, also once put forward a brief definition of criminal policy taken from Marc Ancle's definition that has been formulated, that "criminal policy is one of the rational efforts of the community in tackling crime. Criminal policies or efforts to counter crime are basically an integral part of efforts to protect the community (social defense) and provide welfare for the community.[3] Efforts to overcome criminal acts such as the crime of sexual exploitation of children in Indonesia can be understood as a policy implemented by the Indonesian government as one of the measures to prevent and protect children. As in G.P Hoefnagel's study, efforts to overcome crime or criminal policies need to be pursued with a policy approach in the sense that there is an integration (integrity) between criminal politics and social politics and there is integration (integration).[4]

## 2. Methodology

As a consequence of the selection of the topic of the problem to be studied in the research whose object is a legal problem (while law is a rule or norm that exists in society), the type of legal research used is normative legal research the scientific approach requires the implementation of sequential and systematic methods or steps, so that correct knowledge is achieved. Besides that, to obtain true (scientific) knowledge, it must be done by means of reasoning, namely by deduction and induction. The type used in this scientific research uses normative legal research, namely a process for discovering legal rules, legal principles and legal doctrine in order to answer legal issues faced in accordance with the characteristics of legal science. This normative legal research can also be called doctrinal legal research because in normative legal research it is only conceptualized as rules or norms. Normative legal research is a procedure and method of scientific research to find the truth based on the logic of legal science from a normative perspective.[5]

Starting from the topics and problems underlying this research, the research specification that will be used is analytical descriptive. The researcher analyzes and compiles the data that has been collected, to be able to draw conclusions and provide a

study on Efforts to Counter the Crime of Child Sexual Exploitation in the Perspective of Criminal Law Reform Policy.

Starting from the topics and problems underlying this research, the research specification that will be used is analytical descriptive. The researcher analyzes and compiles the data that has been collected, to be able to draw conclusions and provide a study on the criminal law reform policy for Countermeasures Child Sexual Exploitation Crime. Based on the type of research used in normative law research, to obtain objective data, the type of data needed is secondary data. This data was taken by way of document / literature study (Library Research). According to Sugiyono, literature study is the collection of data sourced from books, literature, and opinions of legal experts related to this research, or other sources in the field to support the success and effectiveness of research, namely by broadly separating primary data and secondary data.[6] The data obtained in the study are arranged logically and systematically, then analyzed using qualitative analysis methods, and then presented qualitatively.

### **3. Discussion And Findings**

One of the efforts to overcome this is by conducting a study on criminal policies related to efforts to overcome the crime of child sexual exploitation. This matter will be further studied by the author through the perspective of criminal law reform policy. Crime prevention can be carried out with a criminal policy.[7] Crime prevention policies can be carried out through two approaches, namely the penal approach (application of criminal law) and the non-penal approach (application outside criminal law). In this paper, the analysis related to sexual exploitation of children is only focused on criminal policies through penal attempts.

Efforts to overcome crime through the penal policy can refer to several laws and regulations to prevent and protect children from all violence, including sexual exploitation of children. Indonesia currently does not have a law that specifically regulates the issue of sexual exploitation of children. The law only includes the crime of sexual exploitation of children separately in several other criminal regulations, such as the Law on Pornography, in this law child pornography is only part of the core crime, namely the crime of pornography, as well as what is contained in the Law on the Crime of Trafficking in Persons, where child trafficking for the purpose of sexual exploitation is only included in one part of this law.

The policy of updating the criminal law on efforts to overcome the crime of sexual exploitation of children can refer to the formulation of articles contained in Law No. 1 of 2023 concerning the Criminal Code (New Criminal Code). The formation of the New Criminal Code departs from the Criminal Code which is now in force as a colonial product which, if enforced is not in accordance with the philosophy of the Indonesian nation, namely Pancasila and the 1945 Constitution. Explicitly, it is not mentioned in detail the regulation of the crime of child sexual exploitation in the New Criminal Code, so conceptually there is no meaning to this crime. Therefore, the meaning of the crime of child sexual exploitation will be returned to the doctrine. In addition to referring to doctrine, it is also important to refer to international legal instruments that have defined it first, such as the Stockholm Declaration, or the Optional Protocol on Sale of Children, Child Prostitution and Child Pornography which has been ratified by Indonesia through Law No. 10 of 2012.

Actually, the crime of sexual exploitation of children has been partially included in Book II of the New Criminal Code, such as the crime of child pornography and the crime of child trafficking for sexual purposes. However, if explored in more detail, it is still necessary to sharpen definitions related to sexual exploitation of children. Both in accordance with the existing special law, as well as from the international instruments that have been ratified by Indonesia, this is intended so that the formulation in the New Criminal Code will be better. The following will be presented as an analysis related to efforts to overcome the crime of sexual exploitation of children in Indonesia from the

perspective of criminal law reform policy (penal policy).

a. Penal Policy on Countering the Crime of Sexual Exploitation of Children in the Form of Child Pornography in the New Criminal Code:

Pornography offences in the New Criminal Code are formulated in Article 407 part two of Chapter XV concerning Moral Crimes. The formulation of Article 407 of the New Criminal Code is as follows:

- (1) Any Person who produces, makes, reproduces, duplicates, disseminates, broadcasts, imports, exports, offers, trades, rents, or provides Pornography, shall be sentenced to imprisonment for a minimum of 6 (six) months and imprisonment for a maximum of 10 (ten) years or a fine of at least category IV and a maximum fine of category VI.
- (2) Acts as referred to in paragraph (1) are not punished if they are works of art, culture, sports, health, and/or science.

In general, the provisions regarding pornography crimes regulated in the New Criminal Code are not much different from the provisions regulated in the Criminal Code. The difference in the New Criminal Code is that the elements of the criminal act are expanded, not only matters related to "writing, images or objects", but by including matters related to writing, sound or sound recordings, films or those that can be equated with films, song verses, poems, pictures, photographs, and/or paintings. The inclusion of these new things is an emphasis on the element of "writing, drawing, or object", which in fact is included in the element of "writing, drawing, or object" as contained in the old formulation.

The formulation of the new article in the New Criminal Code is also quite expansive by reaching legal subjects who can be subject to criminal sanctions for moral crimes other than as known as the Criminal Code, namely the creator or who is an intermediary subject where the public can access pornographic products. In the New Criminal Code, there are two subjects that can be subject to criminal sanctions for pornography that can trigger controversy such as: *First*, people who make themselves models of products that are considered pornographic and *Second*, people who buy pornographic goods. Furthermore, regarding the second policy, namely determining/formulating or criminalizing new offenses that did not exist in the Criminal Code from the beginning.

b. Penal Policy on Countering the Crime of Sexual Exploitation of Children in the Form of Obscene Acts / Intercourse in the New Criminal Code

Obscene Acts / Intercourse in the New Criminal Code that makes children as victims is formulated in the Fifth Part concerning Obscene Acts and is included in Chapter XV concerning Moral Crimes and is spread across several articles, namely:

**Article 415**

Sentenced to imprisonment for a maximum of 9 (nine) years, Any person who:

- c. commit an obscene act with a person who is known to be unconscious or helpless; or
- d. committing an obscene act with someone who is known or suspected of being a child.

**Article 416**

- (1) If one of the Criminal Acts as intended in Article 414 and Article 415 results in Serious Injury, the offender shall be sentenced to imprisonment for a maximum of 12 (twelve) years.
- (2) If one of the Criminal Acts as intended in Article 414 and Article 415 results in the death of a person, the offender shall be sentenced to imprisonment for a maximum of 15 (fifteen) years.

**Article 417**

Any person who gives or gives a gift of authority arising from the relationship of circumstances or by misleading a person who is known or suspected of being a child, to commit an obscene act or to allow himself to commit an obscene act, shall be sentenced

to imprisonment for a maximum of 9 (nine) years.

**Article 418**

- (1) Any person who commits fornication with his biological child, stepchild, adopted child, or child under his supervision entrusted to him or her to be cared for or educated, shall be sentenced to imprisonment for a maximum of 12 (twelve) years.]
  - (2) Sentenced to imprisonment for a maximum of 12 (twelve) years:
    - a. An official who commits fornication with his subordinates or with a person entrusted or entrusted to him or placed in custody; or
    - b. doctors, teachers, employees, administrators, or officers in correctional institutions, state institutions, training centers, educational homes, orphanages and/or orphanages, psychiatric hospitals, or social institutions who commit obscene acts with persons admitted to such institutions, homes, or orphanages.
- c. Penal Policy to Counteract the Crime of Sexual Exploitation of Children in the Form of Child Prostitution in the New Criminal Code

**Article 419**

- (1) Any person who connects or facilitates another person to commit obscenity or have sexual intercourse with a person who is known or suspected to be a child, shall be sentenced to imprisonment for a maximum of 7 (seven) years.
- (2) If the Criminal Offense as intended in paragraph (1) is committed against a biological child, stepchild, adopted child, or child under his or her supervision entrusted to be cared for, shall be sentenced to imprisonment for a maximum of 9 (nine) years.

**Article 422**

- (1) Any person who moves, brings, places, or hands over a child to another person to commit fornication, prostitution, or other acts that violate morality, shall be sentenced to imprisonment for a maximum of 9 (nine) years.
- (2) If the Criminal Offense as intended in paragraph (1) is committed by promising the Child to obtain a job or other promises, the offender shall be sentenced to imprisonment for a maximum of 10 (ten) years.

The explanation related to the formulation of Article 422 of the New Criminal Code states that this criminal act is sending the immature man or woman to another region or abroad to commit prostitution or other acts that violate morality.

- d. Penal Policy on Countering the Crime of Sexual Exploitation of Children in the Form of Forced Marriage (Child) for Commercial Purposes in the New Criminal Code

Previously, it should be understood that marriage is a human right guaranteed in Article 28B paragraph (1) of the 1945 Constitution, "Everyone has the right to form a family and continue descendants through legal marriage". Similar provisions are also regulated in Article 10 of Law No. 39 of 1999 concerning Human Rights, namely:

1. Everyone has the right to form a family and continue the offspring through legal marriage.
2. A valid marriage can only take place on the free will of the prospective husband and the prospective wife concerned, in accordance with the provisions of laws and regulations.

From the above provisions, it can be concluded that marriage is the right of every person and a valid marriage can only take place on the free will of the prospective husband and wife, so that marriage cannot be held on the basis of coercion. In the national criminal law reform policy, related to the penal policy to counter the crime of sexual exploitation of children in the form of forced marriage (children), there is one article that has the potential to ensnare the perpetrator in the event that the act meets the elements of Article 335

paragraph (1) 1 of the Criminal Code jo. Constitutional Court Decision No. 1/PUU-XI/2013 or Article 448 paragraph (1) letter a of Law 1/2023 concerning the new Criminal Code which takes effect for 3 years from the date of promulgation, namely 2026 which regulates the article of coercion and threats with the following sounds:

Article 335 paragraph (1) 1st of the Criminal Code jo. Constitutional Court Decision No. 1/PUU-XI/2013	Article 448 paragraph (1) letter a of Law No. 1 of 2023 concerning the Criminal Code
1. Whoever unlawfully compels another person to do, not do or allow something, by force, or by using the threat of violence, either against himself or others.	a. Unlawfully forcing another person to do, not to do, or allow something, with Violence or Threat of Violence, either against the person himself or others.

The norm for the crime of sexual exploitation of children in the form of forced marriage has also been regulated in Law No. 12 of 2022 concerning the Crime of Sexual Violence as formulated in Article 4 number (1) letter e, where forced marriage is an act of abuse of power by violence, threats of violence, deception, or other psychological pressure that result in a person not being able to give true consent to marry. So that the elements that must be met to be said to have forced marriage are: there is an abuse of power; or the presence of violence, threats of violence, deception, or other psychological distress; and result in a person not being able to give consent properly in carrying out marriage.[8] However, of course, it is also necessary to consider the element of forced marriage, which results in a person not being able to give consent properly in carrying out marriage. Later in the future, if with the passage of time the party who feels forced to marry actually accepts the marriage, of course this cannot be a criminal act of forced marriage because there has been consent in it.

#### 4. Conclusion

Criminal law reform policies can refer to various articles that have been formulated in Law No. 1 of 2023 concerning the Criminal Code (New Criminal Code) which is valid for 3 years from the date of promulgation, namely in 2026. In an effort to implement the prevention of child sexual exploitation in Indonesia, the Indonesian government needs to involve many parties to help achieve this goal. Indonesian Ministry of Institutions also collaborate in this matter, such as the Ministry of Child Empowerment and Protection (KPPPA) which collaborates with several other Indonesian institutions such as KPAI, the Ministry of Communication and Information, Ministry of Health, Ministry of Tourism, Ministry of Social Affairs, Ministry of Religion. The government also needs to cooperate with institutions and foundations related to child sexual exploitation to facilitate countermeasures through various means such as information dissemination, socialization, and others.

#### References

- [1] ECPAT Indonesia, "Sustainability of Child Protection from Sexual Exploitation," 2024. <https://ecpatindonesia.org/press-release-detail/catatan-akhir-tahun-ecpat-indonesia-2023-keberlanjutan-perlindungan-anak-dari-eksploitasi-seksual>
- [2] Maidin Gultom, *Legal Protection for Children in The Indonesian Criminal Justice System*. Bandung: Rafika Aditama, 2014.
- [3] B. N. Arief, *Bunga Rampai, Criminal law customs and drafting of the concept of the new Criminal Code*. Jakarta: Kencana Prenada Media Group, 2011.

- [4] Dey Ravena, *Criminal Policy*. Jakarta: Kencana, 2017.
- [5] Peter Mahmud Marzuki, *Legal Research*. Jakarta: Kencana Prenada Media Group, 2004.
- [6] Sugiyono, *Qualitative Research Methods and R&D*. Bandung: Alfabeta, 2010.
- [7] D. Megayati, "Criminal Policies for Countering Sexual Crimes Against Children," *Jatiswara J.*, vol. 36, no. 2, p. 236, 2021.
- [8] and R. M. Sabrina Hidayat, Handrawan, Herman, Oheo Kaimuddin Haris, Guasman Tatawu, "Criminal Legal Policies for Forced Marriage That Are Only Known After Marriage Occurs," *J. Halu Oleo Leg. Res.*, vol. 5, no. 2, p. 566, 2023.

**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

