



Human Rights And Cyber Child Grooming : Analysis Of Indonesian Criminal Law

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Abstract. Extensive research has been conducted on the subject of cyberchild exploitation; however, the hermeneutical and specific dimensions of legal and human rights protection remain inadequately explored. Concerning the victims of cyberchild exploitation, unanswered questions remain. The objective of this study is to demonstrate the critical nature of research hermeneutics in relation to cyberchild exploitation in terms of legal protection and HAM. Collection is the normative legal research procedure employed. An examination of primary and secondary legal sources pertaining to cyberchild exploitation is conducted using hermeneutical reading and deductive syllogism. The research findings regarding child complexity hygiene offer an alternative viewpoint beyond merely expressing partisanship in the provisions' static text. Consider societal developments when developing regulatory texts that adhere to the factual concept and implement dynamic steps to optimize improvements. In contrast, cyberchild exploitation as a criminal offense has not yet been explicitly addressed in the legislation that currently regulates legal protection. In order to ensure the safeguarding of human rights, we may pursue the implementation of the right to be forgotten as a guarantee for individuals who have fallen victim to cyberchild exploitation within the digital domain.

Keywords: Cyber Child Grooming, Hermeneutics, Legal Protection and Human Rights

1 Introduction

Looking at the case that happened in 2019 was done through a game application platform called HAGO, which happened in 2019. In the investigation carried out by Salamor, showing that "Child grooming is one of the forms of sexual abuse of children through the game is HAGO" and as a result of its actions, the accused is found to be in violation of Article 27 paragraph (1) Jo Article, 45 paragraph 1 ITE Act.[1] A similar case occurred on June 21, 2022 in the village of Argosari, Sedayu, Bantul district, the Polda Regional Reskrim Sus Istimewa Yogyakarta (DIY), Kombes Pol Roberto Gomgom Manorang Pasaribu, received a report from the guardian of the pupils and the parents of the victims at the school in the region where 3 (three) victims of 10 year old children received a video call by a 27-year-old FAS initialist showing his mutilation device. [2] At this point we point to the factual concept concerning child grooming that is common in Indonesia. Based on the history of the events, the discussion about child grooming has become a legal issue that is again attracting public attention, at the same time the urgency of protection and law enforcement is not optimal in the question of childgrooming in legal aspects and human rights.

It can be argued that child grooming is a person's attempt to establish a relationship, trust, and emotional bond with a minor to be manipulated, exploited, and harassed. [3] This mechanism is carried out through the Internet or social media in the operandi mode, i.e., by persuading children or adolescents to transmit photos or videos of sexual

harassment-related activities aimed at satisfying the perpetrator's appetite. After obtaining the desired photo or video recording, the perpetrator then distributes or even commercializes the photograph or video for his own benefit. [4] On a wider spectrum, when child grooming enters the world of the Internet, it leads to cyber childgrooming. In this context, cyberchild grooming occurs with different types, characteristics, and intensities. There are several ways and variations in doing childgrooming, and there are six common things that underlie cyberchild grooming, namely a). Manipulation: to create emotional manipulation in a way that is carried out by building a good relationship, which is done by giving a special compliment to the victim, b). Accessibility: easy access to interact with the victims by knowing the data and information that is done to control the child, c). Rapport Building: building relationships intensely so as to give comfort to the victim, d). Sexual Context: performing sexual relationships that begin with a gradual approach so that the victim is not suspicious, e). Risk Assessment: risk assessment performed to identify the individual victim and its surroundings, usually done before and after the child grooming, and the last f). Deception: the perpetrator disguises himself as a relative or a young person when communicating with the victim, and when meeting, usually engages in direct sexual intercourse. [5]

Based on previous exposures about the type of cyber child grooming, an advanced question arises: How is the legal protection against cyber child grooming? Can Indonesian regulations curb cyberchild grooming? Is regulation in Indonesia capable of providing legal and human rights protection? Based on the rhetorical question, the author is interested in studying in depth regarding cyberchild grooming. Therefore, when asking for deeper legal and human rights protection regarding cyber child grooming, a hermeneutic examination is needed to determine whether Indonesian law can provide legal and human rights protection to victims of cyber child grooming. Such a study is expected to be able to answer some of the previously raised questions and to provide discussion on legal protection and human rights in responding to the challenge of cyberchild grooming in Indonesia.

2 Method

The legal research in this paper uses normative legal research. According to Peter Mahmud Marzuki in his book entitled *Law Research*, any research that has a connection with law (legal research) is always of a normative nature identical to the library law research that leads to the practical aspects of addressing a specific problem through the study of legal facts, related legal regulations, and questions that want to be solved on an existing legal issue. [6] With a conceptual approach that is backed up in solving the problem of cyber child grooming with hermeneutic expression and a legislative approach that studies and explores legislative regulations relating to cyber child grooming to know the legal protection and human rights. Primary legal material is legal material that has an authoritative nature or has authority. Primary legal materials can consist of legislative regulations or judges' judgments, while secondary legal material consists of publications related to legal records such as journals, books, research, dictionaries, and so on. With deductive silogical analysis techniques used to draw a conclusion from the problem being studied. Conclusion withdrawal taken from two problems or premises, major (general) and minor (khusus). The major premises (general) relate to the legislation regulating cyber chill grooming, while the minor premises are related to the protection of law and human rights with the establishment of criminal law in Indonesia through hermeneutic studies. The analysis was used to address issues relating to legal protection and human rights in responding to the challenge of cyber-chill grooming.

3 Result and Discussion

3.1 Hermeneutical Study of Cyber Child Grooming in Criminal Law in Indonesia

Having a legal issue with regard to child grooming is an act through an attempt to build communication to gain the trust of the child, to eventually through bullying, the child is manipulated, exploited, and/or sexually harassed by the perpetrator, commonly referred to as the term groomer. It was found that some perpetrators often do child grooming because of their distorted attachment and desire to engage with children, as well as because they are addicted to pornographic content and have links with other behaviors. [7] More than 300 cases of sexual offenses against children, including child grooming, were documented in 2015, according to the Republic of Indonesia Police. Then, between 2019 and 2020, 236 cases were found to be only 50% (fifty percent) of the successfully resolved situations. [8] Despite this, the SYMPHONI-PPA data of the Ministry of Women's Empowerment and Child Protection (KPPPA) for 2021 show that there are 14,446 cases involving 4,525 boys and 11,389 girls. In 2022, there are 16,106 cases, with 4,127 boys victims and 13,514 girls victims. In 2023 to August, there were 10,921 cases involving 3,304 boys and 8,963 girls. According to the Annual Records of the Womens' Chamber during 2022, "the number of cyber cases in the personal field is 821 cases where sexual violence is predominantly committed by exgirlfriends, that

is, a total of 549 cases and boyfriends 230 cases. Then, in the public sphere, the most carried out by “social media friends” 383 cases. Then, “the most cyber data by services agencies are NGOs and WCC, which is 103 cases. However, this data is down 67 cases compared to the previous year. “The number of cyber cases by service agencies overall has increased by 112 cases, most of the perpetrators of this cyber case are strangers, girlfriends, or ex-girlfriends. [9] As a serious legal issue, when dealing with children as the successor generation of the nation, there is an important question to be answered, namely, is the legislation capable of providing protection with regard to the child grooming that is common in Indonesia? Therefore, further review is needed to guarantee legal protection and human rights, in order to be a legal effort on the issue of child grooming. This point reveals the urgency of examining whether a problem has been resolved in accordance with the text of the legislation or is there an inconsistency of the legal concept with the factual concept? This is the legal issue that gives the researchers an incentive to read hermeneutically about the cyber child grooming.

The legal concept of child grooming is formulated in various forms of legal products. (perundang-undangan). Therefore, when examined conservative hermeneutically, it can be seen that the arrangement of child grooming in Indonesia is regulated in various laws, ranging from the Law No. 1 of 2023 on the Criminal Law Book amendments to the Law Number 1 of 1946 on the Penal Code, the Act No. 35 of 2014 on the amendment to Law Number 23 of 2002 on the Protection of Children (Child Protection Act), the Act Number 19 2016 on Electronic Information and Transactions (ITE Act), The Law Number 12 of 2022 on the Implementation of Crimes of Sexual Violence (TPKS Act), Presidential Instruction No. 5 of 2014 about the National Movement against Sexual Crimes against Children (GN-AKSA), Government Regulations Replacing the Law (Perpu) No.1 of 2016 on the Second Amendment of the Law number 23 of 2002, on Child Protection”. It gives a picture that the legal concept of cyber child grooming already provides a broad set of regulations. This means that the substance of the text provides a conservative explanation has answered the issue of cyber child grooming as a conceptual text in realizing legal protection.

However, in the factual concept, there is a case of child grooming that uses the ITE Act in Decision 391/Pid.Sus/2021/PN JKT. SEL and Decision No. 392/Pid./Sus/2021/PN JKT/SEL as well as the use of the Child Protection Act in Resolution No. 332/PID. B/2021 /PN Bdg, as one of the judgments that has obstacles that has obstacles to law enforcement in the aspects of proofing child Grooming cases. This is because it is difficult to identify the case of child grooming that took place in the closed space which caused its obstruction in the disclosure and proofing, the other side is also still not fully pursued rules which might be regulated specifically, it is proven from the judgment that uses the ITE Act in other contexts also uses the Child Protection Act and the Ponographic Act, thus affecting the law enforcement apparatus in the conduct of legal conflict. The Children's Protection Act provides the prospect that child grooming is included in the element of adultery committed by violence or threat of violence, coercion, deceit, commit a series of lies, persuade children and connect children directly with information containing pornographic elements. Other factual concepts, there is disparity of funding in cases related to child grooming which uses alternative legislative regulations such as the use of the ITE Act in Decision No. 391/Pid.Sus/2021/PN JKT. SEL and Decision Number 392/PID. SUS/2021 / PN JKT-SEL as well as the application of the Child Protection Act in the Resolution No. 332/Ped.B/2021 (PN Bdg). All three of these decisions have

the same legal problems, namely related to sexual immorality against children. However, there are far-reaching differences regarding the sentences imposed on the perpetrators in Decree No. 391/Pid.Sus/2021/PN JKT SEL was sentenced to imprisonment for 1 (one) year 10 (ten) months and a fine of Rs. 200.000.000,- (two hundred million rupees). Meanwhile, “the perpetrators of Decision No. 332/Pid B/2021/PN Bdg are sentenced to imprisonment for 14 (fourteen) years and a fine of Rs. 250,000,000.00 (two hundred fifty million rupees), provided that when the fine is not paid, it is replaced by a penalty of jail for 5 (five) months. Of course, this means that there is a need to speed up the rules that specifically regulate the legal issues related to child grooming because the alternative regulations related to the legislation that already exists in Indonesia still have gaps and even impressed the problem of disparity of punishment.

In the context of such factual concepts, the regulation that limits can bridge the case of child grooming, should be based on the findings of various complexities regarding cyber child Grooming, need dialogical reading that gives a different way of view and not just side to the text of static provisions. Dynamic step to optimize the improvement and creation of regulatory text that conforms to the factual concept by paying attention to the dynamic factors that occur in society, become a form of dialogue reading by focusing on the reader prescription (reader) of the text cyber children grooming. At this point, the text of cyber child grooming is respected in its context to dialogue its contextualization in the fulfilment of legal protection and human rights.

3.2 Legal Protection and Human Rights in Responding to Cyber Child Grooming Challenges

Looking at the conceptual analysis related to the regulation of child grooming aimed at providing legal protection and human rights, it turns out that it still leaves questions related to regulations that regulate based on criminal law in Indonesia. When examined with a dialogical hermeneutic reading, it turns out that there are still various problems in the form of incompatibility between the legal concept and the factual concept. Textually, the legality of cyber child grooming regulation is contained in various laws and regulations that represent legal protection. Textually, the legality of cyber child grooming is explicitly regulated in the Criminal Code, which includes sexual harassment. If it is associated with crimes of decency, it refers to Articles 281-303 of the Criminal Code. While the offense of decency is regulated in Articles 532-547 of the Criminal Code. [10] In criminal law, sexual harassment is referred to as obscene acts in Articles 289-295 of the Criminal Code. In order to protect children, the government then issued Law Number 35 Year 2014 amending Law Number 23 Year 2002 on Child Protection. Protection in the law against sexual crimes against children is regulated in Articles 14, 15, 17, 54, 59, 66, and 69 A. In the law, there are policies regarding the protection of children who are exploited both sexually and economically. Sexual violence, especially cyber child grooming, refers to Article 76E of Law Number 35 of 2014 concerning Child Protection. Cyber child grooming fulfills the elements in the article, the perpetrator persuades the child to do the desired action. However, the article does not explicitly regulate cyber child grooming because there is no clear limitation on the obscene act itself.

Then through Presidential Instruction No. 5 of 2014 concerning the National Movement Against Sexual Crimes Against Children (GN-AKSA), the Ministry of Women's and Children's Empowerment cooperates with related ministries or institutions and the office in charge of affairs at the provincial and district/city levels and involves the entire community to make various efforts, such as counseling, social rehabilitation, and social assistance. [11] Government Regulation in Lieu of Law (Perpu) No.1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection, however, was also released by the government. Article 81 of the regulation governs the sanctions against offenders. The primary penalties include life imprisonment, a minimum of five years in prison, a maximum of twenty years in prison, and the death penalty. Additional penalties include disclosing the identity of the offender, chemical castration, and the installation of electronic detectors. However, chemical castration is not a distinct supplementary punishment that can be applied to minor offenders. The problem that arises in the implementation of this perpu is the lack of facilities both human resources themselves and the infrastructure owned.

In this context, the government also issued Presidential Regulation No. 101 of 2022 on the National Strategy for the Elimination of Violence Against Children S(STRANAS PKTA) which is a policy in the 2020-2024 National Medium-Term Development Plan (RPJMN). STRANAS PKTA began in 2016. Then, in 2022 STRANAS PKTA implemented 7 strategies following the INSPIRE global guidelines, namely in the form of policy provision, creating a safe environment from violence, strengthening anti-violence norms and values, improving the quality of parenting and the availability of support for parents or caregivers, life skills education for children's self-resilience, and economic empowerment of vulnerable families, availability and access to integrated services." [12] A more in-depth explanation, in the Criminal Code Articles 282 and 283 are found with the terms broadcasting, showing, making, offering, and others. Article 532 to Article 535 of the Criminal Code, namely revealing or showing something that violates decency. [13] When viewed from how the perpetrator shows the genitals, the perpetrator has the right to show the genitals. Looking at how the perpetrator showed his genitals to a minor victim using a video call, of course it is included in the elements contained in the Criminal Code. Then, in the provisions of Article 27 paragraph (1), Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law) does not provide an explanation of the limits of decency itself because it is still widespread and the object is electronic. It can be said to be a criminal offense if it is related to Article 45 of Article 27 paragraph (1) of the ITE Law. However, there is a bias in meaning related to decency; is it included in civilization or modesty? Meanwhile, decency itself is synonymous with obscenity or terrorism, so this needs to be reviewed."

On a broader spectrum, the regulation of cyber child grooming is also regulated in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS Law). Article 12 and Article 14 paragraph (1) letter b contain provisions relating to child grooming. Article 12 of the TPKS Law contains provisions regarding the conditions when someone has committed acts of sexual exploitation or acts of child grooming by physical contact and can be prosecuted for their actions. Meanwhile, Article 14 paragraph (1) letter b has elements that lead to cyber child grooming, especially in the form of sexual harassment based on electronic devices and the internet. In addition, according to Article 15 paragraph (1) letter g and l of the TPKS Law, the criminal penalty given can be added

to $\frac{1}{3}$ (one third) of the maximum criminal penalty if it is committed against a child and carried out through electronic means. Referring to these articles, the TPKS Law is considered more likely to be used as a reference as a basis for criminalizing cyber child grooming perpetrators compared to the ITE Law. However, the regulation of cyber child grooming in the TPKS Law is not fully ideal, because the TPKS Law has not accommodated specific arrangements regarding cyber child grooming such as not defining the meaning of cyber child grooming and the mechanism or modus operandi of cyber child grooming. [14]

In this context, while legal protection is thoroughly regulated, human rights protection is still neglected. Thus, providing notes for law enforcement officials, to provide human rights protection for victims of cyber child grooming. When discussing human rights in the context of victims, the concept of right to be forgotten is present as one of the efforts to protect human rights of victims. The concept of right to be forgotten is essentially a concept related to the existence or existence of a self located in cyberspace against information or data related to him, such as photos, images, and videos that are possible to be deleted from the internet so that they can no longer be found by other people who are in cyberspace or cyberspace, this right arises from the desire of individuals to be free to determine their lives after information or data related to him stigmatizes him or the individual. [15] The existence of the concept of right to be forgotten is intended so that victims can be free or unencumbered by the negative stigma of information about their data that spreads but does not want to be known by the public. The regulation of the right to be forgotten in Indonesia has been implemented through Article 26 of the ITE Law related to the removal of irrelevant data about a person circulating in cyberspace through a court order. The regulation of the right to be forgotten is also regulated in Chapter 5 of the second section on victims' rights Article 68 letter g of the TPKS Law which explains that the right to the removal of sexually charged content for cases of sexual violence with electronic media. This concept can be implemented by improving coordination with relevant ministries/agencies and local governments. The institutions related to the removal of sexual violence content are the Ministry of Women's Empowerment and Child Protection (Kemenpppa) and the Ministry of Communication and Information Technology (Kominfo). Kemenpppa acts as an institution that provides psychological assistance to victims by properly deploying the Integrated Service Center for Women and Children Empowerment (P2TP2A) both at the Provincial and District/City levels. Kemenpppa can coordinate with Kominfo to provide data related to the removal of data on the content of victims of sexual violence with electronic media.

Kominfo can carry out a mechanism for removing sexually charged content for victims of sexual violence cases with electronic media after the determination of the court. Kominfo can also make preventive efforts by blocking various sites that contain pornography and various sites that contain violence against children and women. The cooperation between the two ministries aims to facilitate coordination in removing sexually charged content for victims, assisting victims, and preventing the spread of content containing violence against children and women.

4 Conclusion

The conclusions drawn by the author in the study based on the results of the discussion are as follows:

1. Hermeneutic analysis in the substance of the text (legislation) provides a conservative explanation has answered a conceptual text in realizing the protection of Law and Human Rights in the issue of cyber child grooming. The truth of the cyber child grooming text lies with the author, which becomes a legal issue that is a problem for the guarantee of child protection. The many events that occur against violence and sexual harassment that occur in Indonesia, thus providing a factual concept that cyber child grooming is a problem of complexity. Therefore, a diological reading is needed that provides a different perspective and does not only favor static text provisions. Dynamic steps are needed to optimize the making of regulatory texts in accordance with the factual concepts that occur in society, of course this provides a diological reading based on the prescriptions of the reader.
2. Legal protection becomes the main focus when legal issues related to cyber child grooming become an increasingly frequent problem. But so far, the regulation of cyber child grooming has not provided a specific regulation, but when interpreting cyber child grooming itself, the text of the law is more specific. grooming itself, then the text of legislation in Indonesia already regulates a lot. When legal protection becomes the rule of the game, it does not escape the protection of human rights which is often neglected when there are many problems of violence and sexual harassment against children. One of the efforts to provide human rights protection to victims, there is the concept of right to be forgotten, which is intended so that victims can be free or unencumbered by the negative stigma of information about their data that spreads but does not want to be known by the public, of course this concept is expected to be an effort to protect the human rights of victims.

References

- [1] Y Gustaman, "Muncul Kasus Child Grooming, HAGO Berlakukan Langkah-langkah Berikut," 2019. [Daring]. Tersedia pada: <https://jakarta.tribunnews.com/2019/08/04/muncul-kasus-child-grooming-hago-berlakukan-langkah-langkah-berikut?page=2>.
- [2] E. F. Santika, "Hampir Separuh Anak Usia Dini Sudah Gunakan HP dan Mengakses Internet pada 2022," 2023.
- [3] I. P. N. Andaru, "Cyber Child Grooming sebagai Bentuk Kekerasan Berbasis Gender Online di Era Pandemi," *J. Wan. dan Kel.*, vol. 2, no. 1, hal. 41–51, 2021, doi: 10.22146/jwk.2242.
- [4] D. Lina, O. Suendra, dan R. Mulyawati, "Kebijakan Hukum Terhadap Tindak Pidana Child Grooming," vol. 14, hal. 118–123, 2020.
- [5] Setiono, *Supremasi Hukum*. Surakarta: Universitas Sebelas Maret, 2004.
- [6] Peter Mahmud Marzuki, *Penelitian Hukum*. Jakarta: Kencana, 2022.

- [7] Devi Tama HardiYanti and Beniharmoni Harefa, “Perlindungan terhadap Korban Grooming yang Dilakukan oleh Narapidana Pencabulan Anak,” *Humani (Hukum dan Masy. Madani*, vol. 11, no. 2, 2021.
- [8] Anjeli Holivia and Teguh Suratman, “Child Cyber Grooming sebagai Bentuk Modus Baru Cyber Space Crimes,” *Bhirawa Law J.*, vol. 2, no. 1, hal. 1–13, 2013.
- [9] KOMNAS-HAM Perempuan, “Lembar Fakta Catatan Tahunan Komnas Perempuan Tahun 2023 Kekerasan terhadap Perempuan di Ranah Publik dan Negara: Minimnya Pelindungan dan Pemulihan,” 2023. [Daring]. Tersedia pada: <https://komnasperempuan.go.id/download-file/949>
- [10] Z. A. Fattah, B. Pembinaan, H. Nasional, dan K. Pengantar, “TINDAK PIDANA KESUSILAAN Disusun Oleh : KEMENTERIAN HUKUM DAN HAM RI TAHUN 2010,” 2010.
- [11] K. PEMBERDAYAAN, P. D. P. ANAK, dan R. INDONESIA, “KEMENPPPA IMBAU MASYARAKAT TIDAK MELAKUKAN STIGMATISASI TERHADAP ANAK DARI PELABELAN TERKAIT KONDISI ORANG TUANYA,” 2022.
- [12] A. Usman, “STRANAS PKTA,” 2022. [Daring]. Tersedia pada: <https://bpsdm-dev.kemenkumham.go.id/informasi-publik/publikasi/pojok-penyuluhanhukum/stranas-pkta>.
- [13] P. Hukum, P. Di, O. Winston, dan C. Paseki, “KAJIAN YURIDIS TERHADAP PENANGGULANGAN CYBERPORN DALAM PERSPEKTIF HUKUM PIDANA DI INDONESIA 1 Oleh: Winston Ceasar Paseki 2,” vol. VII, no. 8, hal. 69–78, 2018.
- [14] P. H. Kinanti Alysha dan B. Harefa, “The Urgency of Child Grooming Regulation in the Legal System in Indonesia,” *Al-Daulah*, vol. 11, no. 2, hal. 75–91, 2022, doi: 10.24252/ad.vi.32250.
- [15] A. F. Putri, “Tinjauan Yuridis Tindak Pidana Pornografi dan Penerapan Prinsip Right to be Forgotten di Indonesia,” hal. 168–187.

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