

Manotar Tampubolon (A Human Rights-Based Critical Discourse on the Abolition of Child Sexual Abuse)

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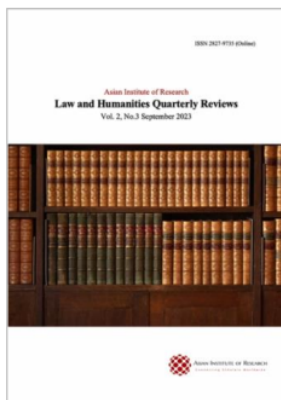
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A Human Rights-Based Critical Discourse on the Abolition of Child Sexual Abuse

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Abstract

Sexual exploitation of children is still rife in Indonesia and the perpetrators are difficult to be legally processed due to gaps in the legal framework and lack of understanding of children's rights by parents. However, legal harmonization has not emerged, and children are still neglected by their parents to earn a decent living through prostitution. To harmonize laws that seem to be useful for law enforcement on perpetrators of child prostitution and to provide an understanding of children's rights. The author employs a qualitative research approach to law and human rights by incorporating laws and documents pertaining to child sexual exploitation. Sexual exploitation of children takes place in Indonesia due to a lack of understanding by many parents about protection of children's rights, including a gap in law enforcement against perpetrators of child sex exploitation, allowing child prostitution to continue. Good Faith in Legislative is deemed necessary to harmonize the law so there is no gap in law enforcement. Insistently, perpetrators of child sex prostitution can be brought to justice, and mental education on the importance of children's rights is deemed necessary so that the children do not become victims of sexual exploitation in the future.

Keywords: Children Rights, Sex Exploitation, Prostitution

1. Introduction

Current international and national child protection laws do not provide adequate protection against child sexual exploitation. This has resulted in millions of children becoming victims of sexual exploitation, jeopardizing their prospects. According to a survey by the United Nations Office on Drugs and Crime (UNODC) (2020), a total of 148 countries are involved in human trafficking, accounting for over 95% of the world's population and 30% of child victims of sexual exploitation. Girls account for 72% of all cases of sexual exploitation. Boys account for 23% of all cases. Western and Southern Europe have the highest number of sexual exploitation cases involving children with 4,168 cases, followed by South Asia and Sub-Saharan Africa with 3,447 and 2,833 cases, respectively. With 213 and 234 cases, South America had the fewest cases, followed by Eastern Europe and Central Asia (UNODC, 2020).

Although UNODC⁶¹ report does not explicitly mention child sexual exploitation in Southeast Asia, the data suggest otherwise. The Indonesian Child Protection Commission “Komisi Perlindungan Anak Indonesia” (2021) discovered 234 cases of child sexual exploitation victims between January and April 2021. These data are nearly identical to those released by the ASEAN Post (2019), which ranks Indonesia as one of the worst ASEAN countries for children, behind Laos and the Philippines (ASEAN Post, 2019). The indicators are child health, education, childbirth, marriage, and violence (ASEAN Post, 2019). Furthermore, CEPAT (2020), a nongovernmental organization dedicated⁴² to abolishing prostitution, pornography, and child trafficking for sexual exploitation in Indonesia, discovered that the number of sexually exploited children increased even during the COVID-19 pandemic. Pimps use various techniques to entice children for sexual exploitation, even placing them on online searches, resulting in child rights protection issues in online domains (UNODC, 2020).

Save the Children (2020) places Indonesia in the category of countries where “some children miss childhood” in its report titled “The Hardest Place to Be a Child.” Many children have lost their childhoods due to exploitation in terms of health, education, labor, marriage, childbirth, and violence. Indonesia is also the least safe country for children online, according to the DQ Institute (2021). The six pillars upon which the institute based its indicators are Cyber Risks, Digital Use Discipline, Digital Competence, Guidance & Education, Social Infrastructure, and Connectivity. A zero score shows the least secure, while 100 indicates the most secure. With a score of 18, Indonesia has the lowest safety rating of the countries surveyed. According to recent research, 98% of children aged 12–17 years are sexually abused in novel ways, such as through social media platforms like Booking Out, which facilitates sexual transactions (Cindy, 2021; KPAI, 2021).

Although Indonesia has a relatively strict legal framework for the protection of children’s rights, many children are victims of⁴⁰ prostitution and sexual violence, which forces them to give up their virginity as young kids. The International Convention on the Rights of the Child was ratified by Indonesia 30 years ago, but the state has not fully guaranteed children’s rights. Article 28 B paragraph (2) of the 1945 Constitution explicitly³⁸ states that “every child can live, grow, and develop, and may be free from¹³ violence and discrimination.” The Child Protection Law Number 23 of 2002 guarantees children’s rights as all activities to guarantee and protect children and their rights to live, grow, develop, and take part optimally under human dignity and are protected from harm, danger, violence, and discrimination.

Protecting children against prostitution is a problem that the government is attempting to address, as it is currently a serious problem in the country (Moore, 2021). Recent studies have revealed that children aged 12–17 years are involved in prostitution for a variety of reasons, including grooming strategies, sexual commodification of children’s bodies, economic factors, and broadening communication channels to facilitate transactions, particularly in the virtual world (Wolf, Pruitt & Leet, 2021; Bang et al., 2014; Camden, 2021; KPAI, 2021). In child prostitution, grooming models, economic difficulties, and easy access to transactions seem to be the primary factors that influence victims of prostitution.

In the Indonesian context, child prostitution is defined¹⁶ as the act of obtaining sexual services from or offering sexual services to a child by¹⁶ someone or trafficking children for the sexual exploitation of others in exchange for money or other rewards (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2016; Eddyono, Hendra, & Budiman, 2017). Child prostitution can also be a family transaction in which children live with their parents and sell sex as part of the household economy¹⁶ (Montgomery, 2011). Child trafficking for sexual¹⁶ purposes and child pornography are two other means of commercial sexual exploitation of children (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2016). In this respect, adults create child prostitution through their demand for children to be sex objects, abuse of power, and desire for sex, while the children are only victims of violence (Eddyono, Hendra & Budiman, 2017). However, the term “child prostitution,” implies that a child chooses this as a job or a profession. Therefore, blaming children for child prostitution is incorrect in law and practice because it justifies children as condoning sexual exploitation and transfers legal responsibility to them.

Busuttill (2011) claims that sexual predators take advantage of children’s docility because they are less capable of defending themselves and are unable to meet their basic needs. This deviant attitude is frequently motivated by a

sense of sexual and economic power, a desire for new experiences, or a sense of impunity due to anonymity. Furthermore, myths and prejudices in certain cultures frequently justify the search for sexual relations with children. In Asia, for example, some men believe that having sexual relations with very young virgin girls both prevents them from contracting HIV/AIDS and cures it. Most men believe that having sexual relations with a virgin increases their virility and brings them longevity and business success (Busuttill, 2011).

According to UNICEF (2020), Indonesia has 80 million children, and 90% of them, particularly girls and young women, live in poverty. Besides economic hardships, children are targeted for sexual abuse due to the weak legal system and inadequate infrastructure (Ferraio, 2020; Wangamati et al., 2019). For instance, the legal systems in several tourist destination countries, including Indonesia, Thailand, Cambodia, Brazil, Colombia, The Philippines, Kenya, and the Dominican Republic, inadequately address child sexual abuse; rather they legalize prostitution and sex tourism, making children targets of sexual predators, and communities sometimes tolerate such actions (Janez & Katarina, 2015; Grouchy, 2015; Octaviana, 2019; Bah, 2020; Ferraio, 2020; Tammy et al., 2020; ECPAT, 2021). Similarly, under Indonesian law, articles of child sexual abuse are only violations of cultural norms, spiritual norms, or manners associated with a sexual wish (sexual desire), not crimes against the human body (Ilyasa, 2021). As a result, if there are actions that violate children's rights because of sexual violence, the best way forward is not through legal processes but local solutions (Grijns & Horii, 2018).

Child prostitution began thousands of years ago and still persists, with the key factors and causes being poverty, low education, ignorance, maltreatment, and structural inequalities (Olofinbiyi, & Singh, 2020; Duger, 2015; Letourneau et al., 2018; Hampton & Lieggi, 2018; Mathews & Collin, 2019; Hurst, 2019; Pellai & Myriam, 2015; Rudolph, et al., 2018; UNICEF, 2020; Mitchell, Blease & Soicher, 2021; Sutinah & Kinuthia, 2019; Coy, 2016; Reid, 2011). This study addresses some factors that are rarely mentioned in previous studies.

The problem of child prostitution is incredibly complicated. It is not only related to economic factors and violations of cultural and spiritual norms but also indicates a lack of understanding of children's rights and weaknesses of current legal systems. Therefore, in addition to the previous study's objectives, this study offers a unique perspective on the causes of rising child prostitution due to the inadequacy of current legal structures. An inadequate law is open to potentially lethal consequences. It uses open-ended, ambiguous language, resulting in the improper delineation of its boundaries (Pistor & Xu, 2003). To fill in the gaps, a proper understanding of the existential nature of humanity is essential (Bowers, 2002). Harmonizing the Child Protection Law becomes an exclusive legal feature that will provide justice for victims of child sexual exploitation while also allowing perpetrators to face criminal charges.

2. Method

This qualitative study attempts to bridge the gap between academic knowledge and solving societal problems (Wolk et al., 2017; van den Akker & Spaapen, 2017; Fam, Neuhauser, & Gibbs, 2018). To solve the identified problems, it employs legal studies and social science approaches. This study investigates various theories concerning recognizing children's rights as victims of sexual abuse in Indonesia. In examining the implementation of children's rights in Indonesia, the conceptual approach is used to examine various viewpoints and legal doctrines.

The author employs pertinent national and international legal and social science literature in its entirety, including international legal norms about protecting children's rights. To analyze the problems, primary sources such as the Child Protection Act, the International Convention on the Rights of the Child, and secondary data sources such as legal instruments, both national and international, books, reports of organization databases are also considered. Such a combination of approaches is desirable because it serves as the basic framework for examining existing problems and finding more innovative and liberating answers.

This study begins with a discussion on the prevalence of sexual abuse in children. It goes on to identify the underlying causes and methods used by child sexual abusers and examines the existing laws on the issue, highlighting the difficulties in their implementation. The selection of socio-legal studies is important to

understand these facts. They include detecting legal loopholes, filling gaps between the legal instruments and their actual implementation, identifying the channels through which the law may have an impact, and resolving weaknesses. (Katz, 2010; Gould & Barclay, 2012; Nalle, 2015; Meadow, 2019; Irianto, 2021). Thematic analysis helps achieve the goals of research papers by using themes developed based on the research objectives. The thematic analysis seeks to answer the following research questions: First, why is it difficult for the law to combat child sexual abuse in Indonesia? Second, how can victims of child sexual abuse be rehabilitated?

The author employs Katz's theory of Loophole to dissect the problem of inadequate protection against child prostitution under Criminal Law (Kitab Undang-Undang Hukum Pidana or KUHP). Some scholars define loopholes as inadequacy in a set of rules or even in the law (Katz, 2010; Murphy, 2018). Loopholes begin with the way laws are written, with poorly thought-out laws, and the use of almost inapplicable laws to justify actions (Meggit, n.d). This occurs because it is impossible to anticipate every circumstance or course of action that will arise due to or in response to the law (Free Dictionary, n.d.). According to Larcom's Legal Limited (2018), Loopholes are technicalities, unforeseen circumstances, dangers, and failure to do the right thing. Merriam-Webster (n.d.) defines a loophole as an error in how a law, a rule, or a contract is written that allows some people to avoid obeying it legally. Black's Law Dictionary (n.d) defines loophole as an authorized legal interpretation or practice that is unintentionally ambiguous due to textual exception, omission, or technical defect, which evades or frustrates the intent of a contract, law, or rule without violating its literal interpretation. To avoid dangerous legal loopholes, law enforcement mechanisms must be implemented in a way that accurately reflects new legal situations (Raxter, 2021). However, it must be ethically permissible to pursue it, and the regulations must not prohibit it (Kvalnes, 2019).

Using loopholes theory and empirical evidence, the author did not discover any existing literature on child prostitution due to the lack of inclusiveness of legal instruments in literature reviews. Legislation is not all-inclusive, and loopholes arise through the passage of law, enactment of regulations, drafting of contracts, or court decisions (Katz, 2010). Prostitution, for example, is punishable under Article 284 of the Indonesian Criminal Code if marriage still binds the male/female. The Indonesian Criminal Code, however, omits child prostitution.

This study is limited to discussing whether the law on child protection is comprehensive enough to protect children from sexual abuse in Indonesia. Focus will also be placed on the regulations for child protection that have legal loopholes about interpreting child prostitution. Furthermore, the researcher uses qualitative research methods to analyze the research problems, implying that quantitative research conducted outside of this study may provide a more comprehensive view of the research topic.

3. Literature Review

There have been previous studies on child sexual exploitation (Finkelhor, 1994; Jones & Loggie, 2020; Lalor & McElvaney, 2010; Suyanto, Hidayat & Wadipalapa, 2020; Franchino-Olsen et al., 2020; Benavente et al., 2021; MacIntosh & Ménard, 2021). Several scholars focused on the factors, recruitment process, and strategies that contribute to children becoming prostitutes, such as poverty, low education, ignorance, maltreatment, and structural inequalities (Olofinbiyi, & Singh, 2020; Duger, 2015; Baird & Connolly, 2021; Letourneau et al., 2018; Hampton & Lieggi, 2018; Mathews & Collin, 2019; Hurst, 2019; Pellai & Myriam, 2015; Rudolph, et al. 2018; UNICEF, 2020; Mitchell, Blease & Soicher, 2021; Sutinah & Kinuthia, 2019; Coy, 2016; Reid, 2011; ECPAT, 2019). Some authors concentrate solely on the negative consequences of child prostitution, such as social marginality, low school attainment, a bleak future and negative stigma on children, childhood trauma, and the need for rehabilitation (Brown, 2019; Jazlyn et al., 2021; Leclerc et al., 2016; Levin, 2019; Susilowati & Dewi, 2019; Barrios et al., 2015; Lev-Wiesel et al., 2018).

Child prostitution refers to the control of sex rather than sex itself (ECPAT, 2019). Threats, force, coercion, and deception are used, as is transactional sex, which sells sexual services but not the individual, and it manifests gender oppression and exploitation. Furthermore, poverty, maltreatment, and threats are said to be the primary

motivators for child prostitution (ECPAT, 2021). However, the author argues that instead of poverty and maltreatment, the primary reasons for child prostitution are legal flaws, loopholes, or evasion of the law.

Current literature does not adequately address the voluntary sexual exploitation of children for monetary gain, and national legislation does not clearly define child prostitution. There is no comparable research that combines the two to justify combating child sexual exploitation. Due to a lack of research in this area, the author addresses the issues of child sexual exploitation based on the incompleteness of the law. This study provides viable ways of identifying the root cause of the problem, determining why child sexual exploitation is on the rise even though Indonesia has a plethora of laws protecting children's rights. As Grant (2015:2) points out, understanding "the more root causes of crime" is crucial for addressing societal crime.

4. Discussion

As a state guarantee, the protection of children's rights should produce significant outcomes that adequately protect children from exploitation. For example, the state is obliged to provide proper safeguards against child trafficking for sexual exploitation, protect children's best interests, and protect children from violence and discrimination. Failure to do so violates many regulations on children's rights protection.

This violation will have a significant effect on children, such as presenting them with a bleak future and attaching harmful stereotypes to their lives (Williams, Wilson & Bergeson, 2019). Such factors can make it more challenging to live a better life. This means that when parents and law enforcement cannot protect children's rights, children "drown," suffering actual losses throughout their lives. Despite many laws protecting children's rights against sexual exploitation, a lack of understanding of children's rights and poor law enforcement will result in various stigmas and a loss of the opportunity to have a better life. This reflects in current statistics which show that, with a few exceptions, women have significantly lower levels of education and hourly earnings than men (Noerdin, et al., 2006). Former sex workers seem to be particularly vulnerable in this group (Murdiyanto, 2019).

Many children are manipulated and forced into child prostitution, making them vulnerable to sexual violence and economic exploitation (Yuniantoro, 2018). According to an online study on child prostitution by pimps (Mucikari) in Solo, Central Java, the average age of child prostitutes was between 15 and 16 years (Kurniati, 2021). Another study estimates that the number of children involved in prostitution in Indonesia is 30% (approximately 40,000–70,000 children) of the total percentage of prostitution in the country (Utami & Wadjo, 2021).

Based on these statistics, it is clear that child prostitution is widespread, necessitating preventive measures such as strict law enforcement and harsh penalties for perpetrators (pimps) and parental education on children's rights. Prostitution is a complicated problem because it involves immoral human behavior that is illegal and has the potential to destroy the social values that exist in the Indonesian society (Utami & Wadjo, 2021).

4.1 Child Prostitution Under the Indonesian Children Protection Law

Indonesia is currently facing the dangers of adult prostitution and child prostitution. However, the practice of child prostitution has become very concerning, especially given the many child exploitation cases, both voluntarily and involuntarily. Over time, the most common reasons adduced for child prostitution are poverty and a lifestyle demand influenced by the social environment (Utami & Wadjo, 2021).

Whether a child's prostitution is forced or voluntary, children in prostitution cases must be considered victims, and such exploitative behavior must be considered a crime. Child prostitution is a type of commercial sexual exploitation of children (Eksplorasi Sex Komersial Anak or ESKA), which involves the sexual exploitation of children for monetary gain or other forms of remuneration. Children in ESKA cases are primarily unable to decide about continuing to pursue prostitution as professional life.

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The Criminal Code (KUHP), which serves as the foundation of Indonesian criminal law and regulates criminal law, essentially prohibits prostitution activities, even though it does not explicitly include “prostitution” in its articles. It uses the word “obscene act,” which, according to the Sexual Rights Initiative (2020), is defined as “prohibited sexual intercourse outside of marriage that is punishable by law.” The Criminal Code also defines obscenity as “any act done to get sexual pleasure while endangering the honor of decency.”

Prostitution is considered an obscene act because it fulfills several criteria, including sexual intercourse outside of marriage and for sexual pleasure. The Criminal Code makes provisions for prostitution in two articles, 296 and 506:

- Article 296 states that “anyone whose occupation or habit intentionally commits or facilitates obscene acts with other people shall be punished with imprisonment for a maximum of one year and four months or a maximum fine of IDR. 15.000.00 (fifteen thousand rupiahs).”
- Article 506 states that “Whoever, as a pimp, seeks to profit from a woman’s obscene acts shall be imprisoned for a maximum of one year.”

The Criminal Code prescribed other penalties for child sex offenders in Article 88 of Law No. 35 of 2014, which states the following:

“Anyone who violates the provisions referred to in Article 76I shall face imprisonment for a maximum of 10 (ten) years and a maximum fine of IDR 200,000,000.00 (two hundred million rupiahs).”

Then, according to Article 5 of Law No. 21 of 2007, “everyone who adopts a child by promising or giving something to be exploited shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least IDR 120,000,000.00 (one hundred and twenty million rupiahs) and IDR maximum 600,000,000.00 (six billion rupiah).”

There are certain legal provisions relating to child prostitution, including the role and function of the government in providing education or guidance to perpetrators of prostitution to prevent them from falling back into their life of crime:

- Law No. 1 of 2000 Concerning Ratification of the ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor);
- Child Protection Law No. 23 of 2002 and its amendments;
- Law No. 10 of 2012 on Ratification of the Optional Protocol to the Convention on the Rights of the Child Concerning the Sale of Children, Child Prostitution, and Child Pornography;
- Law No. 11 of 2012 on Juvenile Criminal Justice System.

According to Part IV, number 3 of Law 1/2000 and Article 3 letter (a) of Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor in the Annex to Law 1/2000, one of the worst forms of child labor is the use, provision, or offering of children for prostitution. According to Article 76I and Article 88 of Law Number 35 of 2014 Concerning Amendments to Law Number 23 of 2002 Concerning Child Protection, anyone places, allows, commits, orders to do, or participates in economic or sexual exploitation of a child faces up to 10 years in prison or a fine of IDR 200 million.

4.2 Gaps in Domestic Legislation

In response to the growing practice of prostitution, the state has enacted a slew of regulations, including those found in the Criminal Code (KUHP) and local laws and regulations, to stop or sanction perpetrators or those involved in prostitution. Two articles in the Criminal Code (KUHP) specifically relate the crime of prostitution to adult prostitution (rather than child prostitution). Anyone who intentionally connects or facilitates obscene acts committed by others, or is suspected of doing so, faces a four-year prison sentence under paragraph (2) of

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Article 295 of the Criminal Code. Moreover, Article 296 of the Criminal Code stipulates, “whoever intentionally causes or facilitates obscene acts by others and makes it a livelihood or habit faces a maximum imprisonment of one year and four months or a maximum fine of fifteen thousand rupiahs.”

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Children who are victims of commercial sexual exploitation (ESKA) are afforded special protection under Article 59 of Law No. 23/2002, a governmental and societal obligation and responsibility. Examples of special protection captured under Law No. 23/2002 are as follows:

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- Dissemination and/or socialization of laws and regulations concerning the protection of economically and/or sexually exploited children.
- Monitoring, reporting, and sanctioning.
- Involvement of various government agencies, businesses, trade unions, nongovernmental organizations, and society in abolishing child economic and/or sexual exploitation.

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Furthermore, according to Article 64 paragraph (3) of Law Number 23 of 2002 Concerning the Protection of Children, special protection is provided for children as victims of criminal acts through:

1. Rehabilitation efforts, both within and outside the institution;
2. Efforts to protect against identity reporting, the media and to avoid labeling;
3. Providing physical, mental, and social safety guarantees for victim witnesses and expert witnesses; and
4. Providing accessibility to obtain information about case development.

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However, this law does not define child prostitution. The Child Protection Act of 2002, as amended by Law No. 35 of 2014, contains some special provisions concerning sexual exploitation. Sexually exploiting children for personal gain or the benefit of third parties, including pimps, is prohibited under Article 88, and offenders may face up to a year in prison. In contrast, the law protecting children has no specific provisions that define or criminalize child prostitution. This void must be filled in light of Article 2 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which provides that “child prostitution means the use of a child in sexual activity” for wages or other forms of consideration.

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The Child Protection Act also makes it a crime to “knowingly and intentionally” allow a child to be exploited commercially or sexually once the child requires and deserves help and support. Violations of this provision can result in up to 10 years imprisonment and a fine of up to IDR 200 million. This provision punishes those who facilitate child sexual exploitation and those who are aware of such exploitation but do nothing to prevent it. Using or threatening to use violence to force a child to engage in sexual acts is punishable by 5 to 15 years in prison and a maximum fine of IDR 5 billion.

Regarding child prostitution, law enforcement officers frequently face challenges in prosecuting perpetrators (Naibaho, 2011). This is because, due to the law’s imperfect drafting (Katz, 2010), the definition of child prostitution is not sufficiently comprehensive.

To support Katz’s point that the Criminal Code (KUHP) is not perfect because several articles regulate the crime of prostitution but do not address child prostitution, the omissions of child prostitution in some articles of the Criminal Code that govern prostitution are presented below:

1. According to Article 296 of the Criminal Code, “Whoever intentionally connects or facilitates obscene acts by others with other people, and makes it a livelihood or habit, is threatened with a maximum imprisonment of one year and four months or a maximum fine of one thousand rupiahs.”
2. Article 297 of the Criminal Code states that “Whoever intentionally causes or facilitates the trafficking of a male child who is not yet an adult shall be punished by a maximum imprisonment of six years.”
3. Finally, Article 506 of the Criminal Code states that “Whoever takes advantage of someone else’s

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obscene acts on women to make a living is punishable by up to a year in prison.” Articles 296, 297, and 506 of the Criminal Code only prescribes sanctions for those who facilitate obscene acts, including providing a one-year prison sentence upon conviction. It does not prescribe criminal sanctions for perpetrators and their consumers, except for pimps who profit from the practice of prostitution and people who commit acts to connect or earn a living or habit. Hence, prostitution is not a crime because the Criminal Code does not regulate these issues.

According to the legality principle, commercial sex workers (Pekerja Seks Komersial or PSK) cannot be held criminally liable because no provision explicitly states that acts committed by sex workers violate criminal law provisions. The Criminal Code only refers to commercial sex workers (PSK). First, women sex workers present themselves as workers, which is an official designation. Second, their names appear in state documents (local government) as commercial sex workers, which means that sexual relations or commercial sexual relations have been legalized.

Law enforcement’s most frequently used laws are Law No. 23 of 2002 concerning Child Protection and Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002. Children of sex buyers are free to roam in Indonesia because of a lack of rules governing child prostitution. Buyers of child sex appear to avoid Indonesia’s lax legal regulations and sexually exploit Indonesian children, including the purchase of sexual services for children (CEPAT International, 2011).

With their financial capabilities, sexual predators quickly get children to satisfy them without facing legal constraints. There is no legal instrument in Indonesia that regulates the criminalization of people who buy sexual services from children. As a result, few foreign visitors come to Indonesia solely to purchase sex with children, either directly or through their network of fellow child sex predators looking for children to satisfy their sexual desires (CEPAT International, 2011).

Katz (2010) characterizes an inadequate law system as one where legislation does not include behavior that should be reflected in articles of the law where the action has the potential for harm. The state’s role as a legislator includes the establishment of a legal system that can prevent human rights violations. In appraising the substance of criminal law, which is disadvantageous to children’s rights, actual damage to children remains as long as the law is in effect, and it is much more helpful to harmonize or adjust it.

When the Indonesian Criminal Code (KUHP) was enacted, “legal loopholes” already existed. Those who sexually exploited children even used some existing legal provisions as a cover for their actions. Sex offenders realized the weaknesses of the law and kept committing such acts—particularly as prostitution was not considered illegal and no legal liability attached to anybody who engaged in sex work. The same is true for those who engage in child prostitution. If perpetrators only buy sex from child prostitutes, they cannot be prosecuted. This differs from the perpetrator providing a place or becoming a pimp, precluding legal responsibility under Article 560 of the Criminal Code (KUHP). The legal position of sex buyers of child prostitution appears to differ from that of those who provide places for child prostitution. Only those who profit from providing facilities that harm children in connection with child prostitution face legal consequences.

Thus, according to Katz, the inadequacy of existing laws in placing criminal liability on sex buyers of child prostitution encourages consumers to continue buying sex from child prostitution. If the state can provide effective legislation on this issue, children will be better protected. This could be because legislators overlooked or did not consider only adult prostitutes. This must be kept in mind when developing legal provisions to protect children against child sex buyers. The ability to protect children against child prostitution depends on the content of the law. Those who patronize child sex prostitution, for example, can be discouraged through the provision of adequate sanctions (Hamzah, Narang & Yusari, 2021).

In general, it is difficult to prosecute the perpetrators/buyers of sex from child prostitutes during the investigation stage by the police because prostitution is not a crime, so arresting perpetrators may be a challenge. Thus, the fact that prostitution is not criminalized under the Criminal Code remains an impediment (KUHP) as sex buyers

hide behind the ineffective laws. The law is no longer capable of protecting certain victim groups. Thus, they will continue to suffer as long as the law does not provide them with a sense of security. For example, in the case of Vanessa Angel, which recently received widespread coverage in the Indonesian media, only the pimp and artist, Vanessa Angel, provided online prostitution services were criminally charged. Meanwhile, prostitution service users or customers were not charged with a crime (Putra & Suardana, 2019).

Finally, when discussing prostitution following the provisions of the Criminal Code (KUHP), with nonspecific reference to child prostitution, the rights of child victims of sexual exploitation are affected. The prostitution clauses harm the child while benefiting the buyer. Litigation for child victims of prostitution must be instituted based on a wide interpretation of the provisions of the Criminal Code to cover child prostitution. This will provide potential supplementation of laws that do not specifically mention child prostitution.

4.3 Recovery of Commercial Sex Victims

Recovery and reintegration of child victims of exploitation in the commercial sex industry is a strategic step that must be taken. Prioritizing a non-punitive approach toward child prostitutes in all legal proceedings and providing psychological medical services to victims of commercial sexual exploitation are among the steps forward. Handling child prostitution cannot be done arbitrarily and must take more than just moral considerations into account. Prostitution is a complex problem with social, cultural, economic, political, moral, and religious implications. Thus, the government and the entire community should find a solution through legal enforcement as well as sociocultural, economic, and political means other than morals and religion.

Policy options for preventing and combating child prostitution in Indonesia include consistently enforcing laws and regulations. The entire society should carry out these efforts systematically in collaboration with law enforcement. The concrete actions that must be taken include the following:

- 312 Protection of the rights and best interests of children who engage in prostitution, including recognizing their particular needs, seriously considering their opinions, and providing the necessary support during the legal process; and
- 313 Possible steps to ensure the availability of appropriate assistance for child prostitutes, such as social reintegration and complete physical and psychological rehabilitation.

More importantly, rehabilitation needs to be carried out to reintegrate child perpetrators into society after they have been educated and trained in various skills and counseled over a certain period, to place them on a righteous path under applicable norms. The rehabilitation process for children who engage in prostitution must be consistent and must not be a mere governmental formality. There must be an effective method for carrying out developmental efforts in various areas, including physical, spiritual, moral, and behavioral efforts toward children involved in prostitution. Finally, the entire community's role and concern are critical in actively participating in and supporting the government's efforts to enact comprehensive laws and provide supervision to keep children out of prostitution.

5. Conclusion

From the foregoing discussion, it is reasonable to argue that Indonesian children are at risk of sexual exploitation due to the gaps in national laws that do not recognize child prostitution. As a result, children involved in prostitution remain in environments where they are subjected to sexual exploitation due to poverty, maltreatment, coercion, and their social environments. Furthermore, it appears that the gaps in national legislation resulting from not perceiving children as victims of sexual exploitation sometimes invalidates their legal position as sexually abused children.

Law as a form of social control, which does not allow for the proper regulation of sexual exploitation of children, renders them powerless and prevents the effective prosecution of perpetrators. This study's findings are significant as children are increasingly becoming victims of sexual abuse due to economic reasons, coercion, and

maltreatment and because of sluggish legislation that does not protect children's rights as survivors of sexual exploitation.

However, there are several limitations of this study. First, the prostitutes in this study were sexually abused children, not adult prostitutes. As a result, the findings cannot be applied to other sexual exploitation victims. The second limitation is that this study only considers laws governing child prostitution. Thus, further research investigating adult prostitution in a legal context is critical. Third, because this study employs law as a social control theory in qualitative research, future research is required to test the loopholes and gaps in national legislation.

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