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The Urgency of Child Grooming Regulation in the Legal System in Indonesia

Kinanti Alysha Putri Haryanto¹, Beniharmoni Harefa²

¹Faculty of Law, Universitas Pembangunan Nasional Veteran Jakarta, Indonesia. E-mail: kinantialyshap@upnvj.ac.id

²Faculty of Law, Universitas Pembangunan Nasional Veteran Jakarta, Indonesia. E-mail: beniharefa@upnvj.ac.id

Abstract

Child grooming is a legal issue that has negative consequences for children, especially which in a victimized position. However, there are no regulations in Indonesia that specifically regulate these legal issues. Even while there are positive laws that can be used as a basis for criminalizing groomers, it turns out that law enforcement still faces a number of obstacles. In this case, a normative juridical methodology based on a statute approach, a case approach, a literature approach, a conceptual approach, and a comparison approach was used to conduct the research. Based on research studies, data collection is carried out. This research demonstrates that there are still obstacles to Indonesian child grooming legislation enforcement, which are quite often related to the evidence process. Alternative regulations against child grooming as stated regarding the positive laws above, such as ITE Law, Child Protection Law, and Pornography Law have gaps that have been found to lead to other issues, such as disparities in punishment. The TPKS Law and the Indonesian Criminal Code Bill could be other options that may one day be considered in cases involving child grooming. It ought to be striving for special regulations against child grooming. In such cases, it would appear that it would be preferable if they were made into technical regulations in the form of government regulations with proof and criminal sanctions that were more maximized.

Keywords: *Child Grooming; Regulations; Law Enforcement*

INTRODUCTION

Various cybercrimes are impacted by the development of information and communication technologies.¹ Cybercrime encompasses all kinds of crimes with the unwise use of the internet.² Cybercrime frequently utilize the development of

¹ Beniharmoni Harefa, "Kapita Selektta Perlindungan Hukum bagi Anak," *Deepublish, Yogyakarta*, 2016.

² Idik Saeful Bahri, "Cyber Crime dalam Sorotan Hukum Pidana," *Bahasa Rakyat, Jakarta*, 2020.

information and communication technology to direct sexual desire in order to meet biological demands in the area of decency.³ At that kind of condition, children who are positioned as internet users, has the potential to become victims in those conditions.⁴ Furthermore, children are a group that is particularly vulnerable to crimes of sexual abuse because they are frequently portrayed as weak or helpless figures and depend heavily on adults.⁵ One of the many situations that endanger a child's life is child grooming, an act done through attempts to establish communication to gain the child's trust until then through persuasion to be able to be manipulated, exploited, and/or sexually abused by the perpetrator, commonly known as the groomer. It was discovered that some of the perpetrators often engage in child grooming because of a deviant attachment and a desire to connect with children, as well as because they are addicted to child pornographic content and have ties with other perpetrators.⁶

More than 300 cases of sexual crimes against children, including child grooming, were documented in 2015, according to the National Police of the Republic of Indonesia. Then, between 2019 and 2020, 236 cases were discovered. Only fifty percent of these situations were successfully resolved.⁷ Due to the groomer's usage of the Direct Messages feature in a private internet room while striving to contact victims, the Indonesian National Police is known to still face obstacles that hinder law enforcement in resolving cases that involve child grooming.⁸ The 1945 Constitution of the Republic of Indonesia states in Article 28 B Paragraph (2) that every child has the right to survival, growth, and development as well as the right to protection from violence and discrimination. According to data about child grooming entities, it is certain that the preparation violates regulations that explicitly stipulate that children should be given protection. This protection should not be violated, but rather extra consideration should be given to the

³ Puji Laksono and Riska Magfiraini Laksono, "Cyber Prostitution: Bergesernya Masalah Sosial ke dalam Ruang Virtual," *Jurnal Analisa Sosiologi* 3, no. 1 (2014): 52-69.

⁴ Alcianno G. Gano, "Pengaruh Media Sosial terhadap Perkembangan Anak Remaja," *Jurnal Mitra Manajemen* 3, no. 1 (2020): 32-42.

⁵ Yovita Arie Mangesti and I Komang Aries Dharmawan, "State Responsibility in Providing Legal Protection against Child Victims of Sexual Violence," *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* 4, no. 4 (2021): 12564-12574.

⁶ Devi Tama HardiYanti and Beniharmoni Harefa, "Perlindungan terhadap Korban Grooming yang Dilakukan oleh Narapidana Pencabulan Anak," *Humani (Hukum dan Masyarakat Madani)* 11, no. 2 (2021): 332-249.

⁷ Anjeli Holivia and Teguh Suratman, "Child Cyber Grooming sebagai Bentuk Modus Baru Cyber Space Crimes," *Bhirawa Law Journal* 2, no. 1 (2021): 1-13.

⁸ Dessy Lina Oktaviani Suendra and Kade Richa Mulyawati, "Kebijakan Hukum terhadap Tindak Pidana Child Grooming," *Kertha Wicaksana* 14, no. 2 (2020): 118-123.

fact that children are future successors to the nation who will continue the growth of their country.⁹

Some positive laws, such as Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (Child Protection Law), and Law Number 44 of 2008 concerning Pornography (Pornography Law), are even known to have been used as a reference in criminalizing child grooming perpetrators. In essence, child grooming has not been specifically regulated by the three rules. However, it is well known that law enforcement officers occasionally act based on the limitations of some such regulations.¹⁰

The decisions No. 391/Pid.Sus/2021/PN JKT.SEL and No. 392/Pid.Sus/2021/PN JKT.SEL provide an example of a case involving child grooming. According to Article 27 paragraph (1) of the Jo Article 45 paragraph (1) of the ITE Law as the first indictment, the Defendant was legally and certainly found guilty of committing a criminal act in each decision. According to Mr. Henri Maulana Umbara, an investigator in the Cyber Crime Sub-Directorate of the Special Criminal Investigation Directorate at the Greater Jakarta Metropolitan Regional Police, the tendency of conviction on the first charge when compared to the provisions in the Child Protection Law as the second indictment or the provisions in the Pornography Law as the third indictment is due to child grooming the person in question uses electronic assistance and no interactions such as face-to-face meetings are found. When it comes to child grooming, it is hard to use the Child Protection Law or the Pornography Law in addition to the ITE Law because of the way people interact.¹¹

It is also known that the public prosecution did not bring forward a witness who based on the victim's statement that had seen directly the activities of one of the perpetrators on a video call when requesting the victim to undress in the 2 (two) cases of the decision above.¹² Based on the case discussed previously, it seems that the public prosecutor should be entitled to request the involvement of other experts related to the defendant's behavior, but the expert witnesses that were presented were only knowledgeable individuals in Cyber Law. Because, depending on the specific issue at

⁹ Kurniawan, "Penegakan Hukum terhadap Pelaku Tindak Pidana Penganiayaan Anak," *Al Daulah : Jurnal Hukum Pidana dan Ketatanegaraan* 10, no. 2 (2021): 54-71.

¹⁰ Dedi Martua Siregar, Talitha Aisyah Oksahaddini, and Sumiyati, "Perlindungan Hukum terhadap Anak Korban Kejahatan Grooming," *Seminar Nasional Konsorsium UNTAG Indonesia ke-2 Tahun 02*, no. 01 (2020): 99-111.

¹¹ Henri Maulana Umbara, *Interview*, 2022.

¹² Putusan Nomor 392/Pid.Sus/2021/PN JKT.SEL.

hand, situations involving cybercrime may need more than one expert witness.¹³ Furthermore, online activity requires skills and expertise.¹⁴ Considering this, at least one more obstacle to applying the ITE Law and the Child Protection Law or the Pornography Law was stated clearly, namely the issue that there was still a lack of objective evidence even if it was added to help the evidentiary process along.

Besides the obstacles affecting law enforcement related to the evidence, criminal sanctions were imposed in Decision No. 391/Pid.Sus/2021/PN JKT.SEL and Decision No. 392/Pid.Sus/2021/PN JKT.SEL still seems low. In this case, Defendant in Decision No. 391/Pid.Sus/2021/PN JKT.SEL is sentenced to imprisonment for 1 (one) year 10 (ten) months and a fine of Rp200.000.000,- (two hundred million rupiahs) subsidiary 3 (three) months imprisonment. Meanwhile, the Defendant in Decision No. 392/Pid.Sus/2021/PN JKT. SEL was sentenced to imprisonment for 2 (two) years and a fine of Rp200.000.000,- (two hundred million rupiahs) subsidiary 3 (three) months imprisonment. Following up on the criminal sanctions imposed in the two rulings, it has not been equivalent to the negative consequences felt by the victim and his family as the closest environment.¹⁵ In addition, based on the information given by Beniharmoni Harefa as an Expert in Criminal Procedure Law and Child Protection Law in an online court in 2021, it was determined that obscene acts against children are indeed the *graviora delicta*, or even most serious crime. Then with the negative physical, psychological, and social consequences caused, it is also can be seen that the crime is extremely evil and despicable, and is strongly condemned by the community (people condemnation) both nationally and internationally.¹⁶

Therefore, considering that by applying available positive laws such as the ITE Law on child grooming cases, there are still obstacles in law enforcement, so if there is still a need for a special rule related to child grooming. Based on the description of the background above, with the existence of problems that need to be investigated, namely related to law enforcement constraints related to child grooming in Indonesia and the formulation of regulations related to child grooming in Indonesia, then the authors are

¹³ Agus Setiawahyudi, "Kendala Pertanggungjawaban Pidana terhadap Pelaku Pencurian Uang di Bank Melalui Internet Berdasarkan Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik," *Mimbar Keadilan* (2015).

¹⁴ Renny Sartika, Sepuh A.I. Siregar, and Ni Putu Riyani Kartika Sari, "Kekhususan Proses Penyidikan Tindak Pidana Cyber Crime," *Jurnal Actual Justice* 5, no. 1 (2020): 38-55.

¹⁵ Imara Pramesti Normalita Andaru, "Cyber Child Grooming sebagai Bentuk Kekerasan Berbasis Gender Online di Era Pandemi," *Jurnal Wanita dan Keluarga* 2, no. 1 (2021): 41-51.

¹⁶ Muhammad Fauzi, Fitri Yani, and Muhammad Ihsan, "Peranan Lembaga Bantuan Hukum (LBH) Yayasan Potensi Utama Nusantara Keadilan Terhadap Pengungkapan Kasus Tindak Pidana Cabul Anak (Studi Di Pengadilan Negeri Binjai)," *Lex Justitia Journal* 4, no. 1 (2022): 82-103.

interested in conducting more in-depth research and discussing the "Urgency of Child Grooming in the Legal System in Indonesia".

METHOD

This research is using a normative-juridical methodology to gather qualitative data from primary and secondary legal sources According to Soerjono Soekanto's points of view, the normative juridical approach which is research that is based on literature studies that can be carried out by tracing specific legal instruments or even some literature with related contexts in an effort to solve problems and study research. Also, it is an approach that aims to provide legal standards. The primary legal source used in this research is positive law, whereas secondary legal sources generally focus on literary studies that when thoroughly examined reveal a number of expert doctrines.

The problem approach used in this study is to use several approaches including the statutory approach, the case approach, the literature approach, the conceptual approach, and the comparison approach. These approaches are studies that relate to the formulation of child grooming arrangements in the legal system in Indonesia. In this regard, it could be argued that analyzing Indonesia's legal system to provide an overview of potential future legal constructions is a futuristic interpretation of the matter. The comparative approach itself will often analyze the differences across German and Indonesian legislation that at least still concern child grooming.¹⁷

Data collection is carried out based on extensive or intensive literature studies to study, research, and trace secondary data.¹⁸ The data collection method consists of library materials, problem observation, and interviews of relevant subjects that can be used to achieve the best possible research findings.¹⁹ In this case, related data collection will be carried out through library research on secondary data and interviews with a law enforcement officer at the Cyber Crime Sub-Directorate of the Metro Jaya Police Department to achieve research objectives by obtaining adequate data. Then, the data analysis technique used in this study is a descriptive analysis writing technique, namely by deciphering the problem in detail and systematically.²⁰

RESULT AND DISCUSSION

1. Law Enforcement Constraints related to Child Grooming in Indonesia

Child grooming is categorized as worrisome because it uses numerous manipulative tactics to attract children into becoming victims of sexual assault committed through

¹⁷ Muhaimin, "Metode Penelitian Hukum," *Mataram University Press, Mataram*, 2020.

¹⁸ Bambang Waluyo, "Penelitian Hukum Dalam Praktik," *Sinar Grafika, Jakarta*, 2001.

¹⁹ Bambang Sunggono, "Metodologi Penelitian Hukum, Cet. 3," *UI Press, Jakarta*, 2007.

²⁰ Roni Hanitijo, "Metodologi Penelitian Hukum dan Jurimetri," *Ghalia Indonesia, Jakarta*, 1990.

technology.²¹ Furthermore, introducing sexually explicit conversations, pornographic pictures or video content, and occasionally even attaching naked pictures or videos of the groomer itself might weaken the victim's sensitivity to sexual material. In this case, child grooming also leads to a disparity of power between the perpetrator and the victim which causes the children to feel confused, ashamed, and guilty for the things that happened.²² Realizing that child grooming has the potential to seriously threaten children's rights, Indonesia as a country that was founded on the rule of law is required to seek out law enforcement.²³

Although the complete embodiment of law enforcement is essential in eradicating all legal problems, it is not uncommon to know that there are still certain cases where the law does not work properly. The circumstances that indicate the non-operation of law enforcement as expected by all elements of society are often motivated by certain constraints. This can even be seen in cases related to child grooming.

According to Mr. Henri Maulana Umbara, an investigator in the Cyber Crime Sub-Directorate of the Special Criminal Investigation Directorate at the Greater Jakarta Metropolitan Regional Police, it was known that there were law enforcement obstacles in cases related to child grooming where then the existence of these obstacles resulted in the handling of it becoming less likely to be. The handling that tends to be a little bit rough is related to the existence of child grooming which is in a closed area and provides difficulties in the disclosure process. That kind of closed area provides its own difficulties in identifying the presence of child grooming because the perpetrators seem quite proficient in adjusting the sophistication of technology to allow crimes to be committed while also avoiding any potential related to detection.²⁴ Furthermore, it is known that there are obstacles to complaints related to child grooming at the Indonesian Child Protection Commission, which regarding the process until complaints for criminal follow-up are still quite small.

Considering Decision No. 392/Pid.Sus/2021/PN JKT.SEL reveals that child grooming has actually occurred. It was determined that other children had taken part in the video call with the Defendant based on one of the statements made by the victim in the verdict. The Defendant requested that the child completely undress during the video call session. Realizing this inappropriate thing, another child who had participated in joining decided to leave the video call. In this case, other children are in the position of

²¹ Steven J Collings, "Defining and Delimiting Grooming in Child Sexual Exploitation," *Child Abuse Research: A South African Journal* 21, no. 1 (2020): 1-9.

²² Emily Chiang and Tim Grant, "Online Grooming: Moves and Strategies," *Language and Law / Linguagem e Direito* 4, no. 1 (2017): 103-141.

²³ Juliane A. Kloess, Anthony R. Beech, and Leigh Harkins, "Online Child Sexual Exploitation: Prevalence, Process, Offender Characteristics," *Trauma, Violence and Abuse* 15, no. 2 (2014): 126-139.

²⁴ Samsul Arifin and Kholilur Rahman, "Dinamika Kejahatan Dunia Maya Mengenai Online Child Sexual Exploitation di Tengah Pandemi Covid-19," *Al Daulah : Jurnal Hukum Pidana dan Ketatanegaraan* 10, no. 2 (2021): 89-99.

witnesses because they heard, saw, and experienced the act of child grooming by the Defendant. However, in the end, the public prosecutor seemed to face obstacles in seeking his presence. In fact, if it is attempted to provide information from other children who witnessed the child grooming, it does not conflict with the concept of proof which includes relevant, admissible, exclusionary rules, and the weight of the evidence which are actually capable of supporting the evidentiary process.²⁵

As in the case of child grooming in Decision Number 392/Pid.Sus/2021/PN JKT, which is related to child witnesses, both physical and mental distinctions between child and adult witnesses highlight the fact that they cannot be compared. Therefore, this should not be taken into consideration solely while deciding whether to let children appear as witnesses.²⁶ Even the regulations that have been established in Article 1 Number 29 of the Criminal Procedure Code in connection with such issues specify that a child's knowledge of certain things is required to defuse a criminal case for examination.²⁷ Additionally, M. Yahya Harahap was also known to have conveyed his opinion, which essentially explained that children do not relish lying, especially in the context of sexual abuse, and are unable to manipulate information so that it turns into something that is untrue because in essence children are incapable of experience and/or knowledge of sex. Lies from supposedly, can be more harmful adults than children.²⁸

The obstacles in cases involving child grooming that were previously mentioned reveal the existence of obstacles that limit law enforcement from disclosing and proving crimes. The implications of the principle of functional differentiation in the criminal process, which assigns the functions of investigation, prosecution, and court to the competent institutions, namely the police, prosecutors, courts, and correctional institutions seem contrary to the obstacles to disclosure and evidence.²⁹ In cases involving child grooming, the prosecutor's office is limited to establishing something related to the substance of the indictment because law enforcement officials, such as the police are still constrained by the need to prove something while conducting investigations at the preliminary stage.

The use of the ITE Law in Decision Numbers 391/Pid.Sus/2021/PN JKT.SEL and Decision Number 392/Pid.Sus/2021/PN JKT.SEL and the use of the Child Protection Law in Decision Number 332/Pid.B/2021/PN Bdg provide examples of the obstacles that prevent law enforcement in the evidentiary aspect of cases involving child grooming. Because it was believed that it was difficult to identify cases of child grooming that occurred in a closed sphere, law enforcement officers previously provided information

²⁵ Eddy O.S. Hiariej, "Teori & Hukum Pembuktian," *Penerbit Erlangga, Jakarta*, 2012.

²⁶ Dhea Hafifa Nanda, "Eksistensi Kedudukan Anak sebagai Korban dalam Perkara Perlindungan Anak (Studi Putusan Nomor 38/Pid.Sus/2019/PN Trg)," *Jurnal Verstek* 9, no. 3 (2021): 633-641.

²⁷ Undang-Undang Nomor 8 Tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana..

²⁸ Yahya Harahap, "Pembahasan Permasalahan dan Penerapan KUHAP," *Sinar Grafika, Jakarta*, 2010.

²⁹ Michael Cavadino and James Dignan, "The Penal System: An Introduction, Edisi Ke-2," *Sage, London*, 1998.

that the option to use the ITE Law seemed to have the potential to be prioritized while particularly in comparison to the Child Protection Law and the Pornography Law. Although, in fact, there are cases of child grooming where several law tools including the Child Protection Law may be used. Furthermore, even with the option of the Child Protection Law it might be determined that the punishment meted out to the perpetrator is far more proportional to the negative effects endured by the child.

When regarded from a broad perspective, the fact that law enforcement exists in Indonesia and is considered a part of the rule of law makes it an essential and substantial thing to genuinely carry out the functions of legal norms.³⁰ Soerjono Soekanto states that there are at least a number of factors that can affect whether law enforcement is carried out, including the legislation itself, law enforcement, facilities that support law enforcement, community, and cultural factors.³¹ However, in cases involving child grooming, the mentioned factors have not yet been fully achieved because a number of factors have not been completely pursued, including the legal factor itself which does not yet have rules that if able to regulate specifically, law enforcement factor which is still constrained in disclosure and proof, and community factor which is unfamiliar with child grooming and even perspectives it as a disgrace.

2. Regulatory Formulations related to Child Grooming in Indonesia

The existence of minors who require affection and care, suffer depression, and/or even trauma from an early age is vulnerable in cases involving child grooming, so they reflect a fact throughout the form of legal issues that should be taken into consideration as much as possible.³² Behind the incidents are some unfortunate circumstances, such as the absence of regulations in Indonesia that specifically address the legal issues of child grooming.³³ The ITE Law, Child Protection Law, and Pornography Law are a few examples of alternative rules and regulations that have been actively used for child grooming cases that have already been through the judicial process.

In the ITE Law, the rules that are typically used as a guide when criminalizing those who groom children are Article 27 paragraph (1) in conjunction with Article 45 paragraph (1) of the ITE Law.³⁴ If closely analyzed, it becomes clear that the employment of the legal regulations is restricted to cases involving child grooming which contains interactions

³⁰ Muhar Junef, "Penegakan Hukum dalam Rangka Penataan Ruang Guna Mewujudkan Pembangunan Berkelanjutan," *Jurnal Penelitian Hukum DE JURE* 17, no. 4 (2017): 373-390.

³¹ Soerjono Soekanto, "Faktor-Faktor yang Mempengaruhi Penegakan Hukum," *PT RajaGrafindo Persada, Jakarta*, 2002.

³² Patricia de Santisteban et al., "Progression, Maintenance, and Feedback of Online Child Sexual Grooming: A Qualitative Analysis of Online Predators," *Child Abuse & Neglect* 80 (2018): 203-215.

³³ Devi Ratnasari and M. Solehuddin, "Bimbingan dan Konseling Bermain Pendekatan Client Centered sebagai Upaya Preventif Tindakan Kejahatan Seksual Child Grooming Pada Anak," *Jurnal Mahasiswa BK An-Nur: Berbeda, Bermakna, Mulia* 8, no. 1 (2022): 18-32.

³⁴ Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.

that violate decency and are carried out with the aid of electronic media. According to Mr. Henri Maulana Umbara, an investigator in the Cyber Crime Sub-Directorate of the Special Criminal Investigation Directorate at the Greater Jakarta Metropolitan Regional Police, the rules in the ITE Law were used in addition to those in the Child Protection Law and the Pornography Law because child grooming is related to Cyber Law, so the ITE Law was the primary area of focus.

In the Child Protection Law, the rules that are generally chosen to be used as references in criminalizing child grooming perpetrators are Article 76 E Jo Article 67 A of the Child Protection Law and Article 82 paragraph (1) of Law Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Jo Article 64 (1) of the Criminal Code.³⁵ When closely examined, the use of the provisions regulated by law has elements related to cases of child grooming, specifically obscene acts based on violence or threats of violence, coercion, trickery, trying to tell a bunch of lies, convincing children, and directly connecting children to information with pornographic elements. Despite the fact that there are instances of child grooming, the Child Protection Law is sometimes disregarded in this situation because some law enforcement officers believe that obscene acts as they have been referred to are only limited to acts committed directly against children or can also be interpreted not through electronic media.

In the Pornography Law, the rules that are generally chosen to be used as references in criminalizing child grooming perpetrators are Article 29 in conjunction with Article 4 paragraph (1) of the Pornography Law.³⁶ If observed carefully, it becomes clear that the use of the provisions stipulated in the legislation emphasizes the prohibited actions in sending, distributing, and/or making accessible information and/or electronic documents that violate decency.³⁷ Due to the lack of emphasis on decency, as in cases involving child grooming, the use of the Pornography Law remains frequently ruled out in these cases.

According to the description above, each of Indonesia's 3 (three) laws and regulations that have evolved into substitutes for being used as a foundation for criminalizing those who engage in child grooming still has a weakness. In order to prevent other issues like inequity in sentencing, criminal justice related to child grooming must take specific steps to close these disparities. On the one hand, the discrepancy in punishment is a normal occurrence because no fully comparable criminal case exists. In addition, it will become a problem if it is discovered that there is an injustice when it comes to the punishments given out.³⁸

³⁵ Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak.

³⁶ Undang-Undang Nomor 44 Tahun 2008 tentang Pornografi.

³⁷ Trijaka, "Pendidikan Karakter Pancasila untuk Mengatasi Kenakalan Pada Anak Usia Sekolah," *Jurnal Pancasila* 2, no. 1 (2021): 21-44.

³⁸ Tama S. Langkun et al., "Studi Atas Disparitas Putusan Pemidanaan Perkara Tindak Pidana Korupsi," *Indonesia Corruption Watch, Jakarta*, 2014.

For example, there is a disparity in punishment in cases related to child grooming that have used alternative laws and regulations such as the use of the ITE Law in Decision Number 391/Pid.Sus/2021/PN JKT.SEL and Decision Number 392/Pid.Sus/2021/ PN JKT.SEL and the use of the Child Protection Law in Decision Number 332/Pid.B/2021/PN Bdg. The 3 (three) decisions have the same legal problem, which is related to child grooming. However, there is a wide range of differences regarding the sentences imposed where the perpetrator in Decision Number 391/Pid.Sus/2021/PN JKT.SEL was sentenced to imprisonment for 1 (one) year 10 (ten) months and a fine of Rp200.000.000,- (two hundred million rupiahs) subsidiary of 3 (three) months in prison and the perpetrator in Decision Number 392/Pid.Sus/2021/PN JKT.SEL was sentenced to prison for 2 (two) years and a fine of Rp2.000.000.00,- (two hundred million rupiahs) subsidiary 3 (three) months in prison. Meanwhile, the perpetrator in Decision Number 332/Pid.B/2021/PN Bdg is sentenced to imprisonment for 14 (fourteen) years and a fine of Rp250.000.000,00 (two hundred and fifty million rupiahs), provided that if the fine is not paid then replaced by imprisonment for 5 (five) months.

It is desirable to accelerate rules that specifically regulate legal issues related to child grooming because alternative laws and regulations related to child grooming that are already existing in Indonesia still have their gaps and even appear to cause problems with the disparity of punishment. As time passes, new rules and regulations that are currently drafted and approved have the potential to be used as alternatives in cases involving child grooming. The relevant laws are the Criminal Code Bill and Law No. 12 of 2022 on the Crime of Sexual Violence (TPKS Law) and the Criminal Code Bill. Article 12 and Article 14 paragraph (1) letter b of the TPKS Law contain provisions that could be used as precedents for future criminal prosecutions of those who groom children. Then, Article 419 letter c of the Criminal Code Bill could also have the potential to be used as a source in the future to prosecute those who engage in child grooming.

If carefully considered, the implementation of the TPKS Law's rules in Article 12 and Article 14 paragraph (1) letter b has elements related to cases of child grooming, specifically in the form of sexual exploitation and electronic-based sexual assault. On the basis of Article 15 paragraph (1) letters g and l of the TPKS Law, it is also known that the punishment referred to in Article 12 may get an additional 1/3 (one-third) of the maximum penalty if it is applied to a child and is carried out by using electronic media.³⁹ In terms of other laws and regulations, the use of the clauses stated in Article 419 letter c of the Criminal Code Bill has elements relating to cases involving child grooming, specifically in the form of things regarding persuasion or deceit that causes a child to commit or allow an act to be committed against him/her as victims.⁴⁰ Future-focused analysis indicates that the TPKS Law and the Criminal Code Bill have a stronger chance of being adopted as a model for criminalizing child grooming perpetrators in the future when compared to the ITE Law, Child Protection Law, and Pornography Law.

³⁹ Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual.

⁴⁰ Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana.

The current state of the ITE Law, Child Protection Law, Pornography Law, TPKS Law, and Criminal Code Bill as legislation and regulations pertaining to child grooming is not necessarily ideal. Not without reason, based on the research that has been done, some facts cannot be avoided, namely that some of them still have gaps. With these kinds of gaps, it's indeed evident that there are flaws in the formulation of criminal law regulations that present obstacles to the practical application of criminal acts, both as an effort to prevent and solve crimes, such as cases involving child grooming.⁴¹ As a result, regulation still has to be passed in Indonesia with the explicit intention of addressing the legal problems related to child grooming.

It is different with several positive laws such as the ITE Law, the Child Protection Law, the Pornography Law, and the TPKS Law or aspired laws such as the Criminal Code Bill, each of which has the potential to be an alternative in criminalizing perpetrators related to child grooming in Indonesia, it is known that Regarding child grooming in Germany, the statutory regulations that can be selected to be used as a reference are Strafgesetzbuch (StGB) or German criminal law.⁴² The concern of child grooming is highlighted based on 176 (4) (3) StGB, specifically the act of writing to influence children to encourage them to engage in sexual acts that involve or are carried out in front of the perpetrator or a third party or are carried out by the perpetrator or a third party must leave. Additionally, it is well known that children under the age of 14 (fourteen) are covered by the requirements of the rules and regulations outlined in the StGB.⁴³

The laws and regulations that can be linked to cases related to child grooming in Indonesia and Germany certainly have differences. Moreover, the two countries have different legal systems, namely Indonesia with a legal system in the form of Civil Law and Germany with a legal system in the form of Common Law. In this case, referring to data regarding the Global Legislative Review managed by The International Center for Missing & Exploited Children (ICMEC), it is known that there are the following:⁴⁴

⁴¹ Barda Nawawi Arief, "Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan," *Citra Aditya Bakti, Bandung*, 2001.

⁴² Strafgesetzbuch.

⁴³ Sophie Weingraber et al., "Online Victimization -an Explorative Study of Sexual Violence and Cyber Grooming in the Context of Social Media Use by Young Adults in Germany," *Social Work & Society* 18, no. 3 (2020): 1-13.

⁴⁴ International Centre for Missing & Exploited Children, Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review, 2017, URL: https://www.icmec.org/wp-content/uploads/2017/09/Online-Grooming-of-Children_FINAL_9-18-17.pdf

Table 1. Comparison of Laws and Regulations Regarding Child Grooming in Indonesia and Germany

Comparison of Laws and Regulations regarding Child Grooming	
Indonesia	Germany
Legislation Specific to Online Grooming (X)	Legislation Specific to Online Grooming (✓)
Online Grooming Defined (X)	Online Grooming Defined (✓)
Online Grooming with the Intent to Meet the Child (X)	Online Grooming with the Intent to Meet the Child (✓)
Online Grooming Regardless of Inten to Meet the Child (X)	Online Grooming Regardless of Inten to Meet the Child (✓)
Showing Pornography to a Child (✓)	Showing Pornography to a Children (✓)

Source: ICMEC Data, 2017

Based on a comparison of child grooming laws and regulations in Indonesia and Germany, it is sufficient to describe the unequal availability of regulations that have great potential in assisting the process of enforcing the law on child grooming cases in Indonesia.

The unpleasant reality demonstrates to the world that child grooming is an act that leaves many victims feeling guilty and ashamed of their actions both before and after becoming a victim.⁴⁵ Even if the consequences are what they were meant to be, the child's future can be affected.⁴⁶ This situation can be linked to the politics of criminal law, which means holding elections to obtain the best results of criminal legislation in fulfilling the requirements in the form of justice and the use of value.⁴⁷ For this reason, it is essential to consider the rules that specifically regulate child grooming to realize criminal laws and regulations that are under the circumstances and situations at a time and for the future.⁴⁸ In this case, among the ITE Law, Child Protection Law, Pornography Law, TPKS Law, and the Criminal Code Bill, it seems that the best legislation is the TPKS Law because the

⁴⁵ Lucy Berliner, "The Concept of Grooming and How It Can Help Victims," *Journal of Interpersonal Violence* 33, no. 1 (2018): 24-27.

⁴⁶ Suharsil, "Perlindungan Hukum terhadap Anak dan Perempuan," *Rajawali Pers, Depok*, 2016.

⁴⁷ Soedarto, "Hukum dan Hukum Pidana," *Alumni, Bandung*, 1981.

⁴⁸ John Kenedi, "Kebijakan Hukum Pidana (Penal Policy) dalam Sistem Penegakan Hukum di Indonesia," *Pustaka Pelajar, Yogyakarta*, 2017.

provisions in it have a direction that can be said to be closest to the essence of the meaning behind child grooming.

CONCLUSION

It is well recognized that there are still obstacles facing Indonesian law enforcement when it comes to child grooming, including obstacles with aspects of disclosure and proof. There have already been reports of child grooming in this case, but they are only available to the Indonesian Child Protection Commission. In other words, it also means that it cannot be revealed through criminal process because it is known that the victim or the parents collectively as a community are unaware of child grooming, including all the detrimental effects. Some people are even hesitant to move through with the criminal justice process because they view child grooming as a shameful disgrace. Law enforcement officers who do not recognize information from parties that are directly involved in a legal issue and even have the potential to make the process of proof towards material truth clearer are another obstacle to law enforcement efforts to tackle child grooming in Indonesia.

When looking at various examples of child grooming cases that were pursued in court, it was discovered that using a variety of laws and regulations such as the ITE Law, the Child Protection Law, and the Pornography Law. In Indonesia, there are no specific laws that prohibit child grooming. Eventually, it was found that the Criminal Code Bill that was currently in the draft process had the potential to be another option for handling cases related to child grooming in the future. The laws of child grooming that are regulated by the ITE Law, the Child Protection Law, and the Pornography Law need to be evaluated and reformulated because they still have certain gaps. The TPKS Law is thus the one that has a closer connection to child grooming when compared to the Criminal Code Bill. Also, the TPKS Law that has been approved requires the development of technical regulations that tackle more deeply related issues concerning child grooming.

Considering the author's view that among the ITE Law, the Child Protection Law, the Pornography Law, and the Criminal Code Bill, the provisions that tend to be closely related to child grooming are the TPKS Law. Therefore, the author suggests that if the government can consider making special rules related to child grooming, it would be better to formulate it into the technical rules of the TPKS Law in the form of a Government Regulation. Following up on these suggestions, it can also be considered a substance that accommodates matters of evidence such as evidence covering electronic-based sexual violence accompanied by threats, coercion, deception, and/or persuasion against children. Then, criminal punishments should be made as harsh as possible while still taking into account the negative physical, mental, and social effects they have on the children who are victims.

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REFERENCES

Book:

- Bahri, Idik Saeful. *Cyber Crime dalam Sorotan Hukum Pidana*. Bahasa Rakyat. Jakarta, 2020.
- Cavadino, Michael and James Dignan. *The Penal System: An Introduction, Edisi Ke-2*. Sage. London, 1998.
- Hanitijo, Roni. *Metodologi Penelitian Hukum dan Jurimetri*. Ghalia Indonesia. Jakarta, 1990.
- Harahap, Yahya. *Pembahasan Permasalahan Dan Penerapan KUHAP*. Sinar Grafika. Jakarta, 2010.
- Harefa, Beniharmoni. *Kapita Selekta Perlindungan Hukum Bagi Anak*. Deepublish. Yogyakarta, 2016.
- Hiariej, Eddy O.S. *Teori & Hukum Pembuktian*. Penerbit Erlangga. Jakarta, 2012.
- Kenedi, John. *Kebijakan Hukum Pidana (Penal Policy) dalam Sistem Penegakan Hukum di Indonesia*. Pustaka Pelajar. Yogyakarta, 2017.
- Langkun, Tama S. et al. *Studi Atas Disparitas Putusan Pidanaan Perkara Tindak Pidana Korupsi. Indonesia Corruption Watch, Jakarta, 2014*.
- Muhaimin, Muhaimin. *Metode Penelitian Hukum*. Mataram University Press. Mataram, 2020.
- Nawawi Arief, Barda. *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*. Citra Aditya Bakti. Bandung, 2001.
- Sunggono, Bambang. *Metodologi Penelitian Hukum, Cet. 3*. UI Press. Jakarta, 2007.
- Suharsil, Suharsil. *Perlindungan Hukum terhadap Anak dan Perempuan*. Rajawali Pers. Depok, 2016.
- Soekanto, Soerjono. *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. PT RajaGrafindo Persada. Jakarta, 2002.
- Soedarto, Soedarto. *Hukum dan Hukum Pidana*. Alumni. Bandung, 1981.

Waluyo, Bambang. *Penelitian Hukum dalam Praktik*. Sinar Grafika. Jakarta, 2001.

Journal Article:

- Andaru, Imara Pramesti Normalita. "Cyber Child Grooming Sebagai Bentuk Kekerasan Berbasis Gender Online di Era Pandemi," *Jurnal Wanita dan Keluarga* 2, no. 1 (2021): 41-51.
- Arifin, Samsul and Kholilur Rahman, "Dinamika Kejahatan Dunia Maya Mengenai Online Child Sexual Exploitation di Tengah Pandemi Covid-19," *Al Daulah : Jurnal Hukum Pidana dan Ketatanegaraan* 10, no. 2 (2021): 89-99.
- Berliner, Lucy. "The Concept of Grooming and How It Can Help Victims," *Journal of Interpersonal Violence* 33, no. 1 (2018): 24-27.
- Chiang, Emily and Tim Grant. "Online Grooming: Moves and Strategies," *Language and Law / Linguagem e Direito* 4, no. 1 (2017): 103-141.
- Collings, Steven J. "Defining and Delimiting Grooming in Child Sexual Exploitation," *Child Abuse Research: A South African Journal* 21, no. 1 (2020): 1-9.
- Fauzi, Muhammad, Fitri Yani and Muhammad Ihsan, "Peranan Lembaga Bantuan Hukum (LBH) Yayasan Potensi Utama Nusantara Keadilan Terhadap Pengungkapan Kasus Tindak Pidana Cabul Anak (Studi Di Pengadilan Negeri Binjai)," *Lex Justitia Journal* 4, no. 1 (2022): 82-103.
- Gano, Alcianno G. "Pengaruh Media Sosial terhadap Perkembangan Anak Remaja," *Jurnal Mitra Manajemen* 3, no. 1 (2020): 32-42.
- HardiYanti, Devi Tama and Beniharmoni Harefa. "Perlindungan terhadap Korban Grooming yang Dilakukan oleh Narapidana Pencabulan Anak," *Humani (Hukum dan Masyarakat Madani)* 11, no. 2 (2021): 332-249.
- Holivia, Anjeli and Teguh Suratman. "Child Cyber Grooming Ssebagai Bentuk Modus Baru Cyber Space Crimes," *Bhirawa Law Journal* 2, no. 1 (2021): 1-13.
- Junef, Muhar. "Penegakan Hukum dalam Rangka Penataan Ruang Guna Mewujudkan Pembangunan Berkelanjutan," *Jurnal Penelitian Hukum DE JURE* 17, no. 4 (2017): 373-390.
- Kloess, Juliane A., Anthony R. Beech and Leigh Harkins. "Online Child Sexual Exploitation: Prevalence, Process, Offender Characteristics," *Trauma, Violence and Abuse* 15, no. 2 (2014): 126-139.
- Kurniawan, Kurniawan. "Penegakan Hukum terhadap Pelaku Tindak Pidana Penganiayaan Anak," *Al Daulah : Jurnal Hukum Pidana dan Ketatanegaraan* 10, no. 2 (2021): 54-71.
- Laksono, Puji and Riska Magfiraini Laksono. "Cyber Prostitution: Bergesernya Masalah Sosial ke dalam Ruang Virtual," *Jurnal Analisa Sosiologi* 3, no. 1 (2014): 52-69.
- Mangesti, Yovita Arie and I Komang Aries Dharmawan. "State Responsibility in Providing Legal Protection against Child Victims of Sexual Violence," *Budapest*

- International Research and Critics Institute-Journal (BIRCI-Journal)* 4, no. 4 (2021): 12564-12574.
- Nanda, Dhea Hafifa. "Eksistensi Kedudukan Anak sebagai Korban dalam Perkara Perlindungan Anak (Studi Putusan Nomor 38/Pid.Sus/2019/PN Trg)," *Jurnal Verstek* 9, no. 3 (2021): 633-641.
- Ratnasari, Devi and M. Solehuddin, "Bimbingan dan Konseling Bermain Pendekatan Client Centered sebagai Upaya Preventif Tindakan Kejahatan Seksual Child Grooming Pada Anak," *Jurnal Mahasiswa BK An-Nur : Berbeda, Bermakna, Mulia* 8, no. 1 (2022): 18-32.
- Santisteban, Patricia de et al. "Progression, Maintenance, and Feedback of Online Child Sexual Grooming: A Qualitative Analysis of Online Predators," *Child Abuse & Neglect* 80 (2018): 203-215.
- Sartika, Renny, Sepuh A.I. Siregar and Ni Putu Riyani Kartika Sari. "Kekhususan Proses Penyidikan Tindak Pidana Cyber Crime," *Jurnal Actual Justice* 5, no. 1 (2020): 38-55.
- Setiawahyudi, Agus. "Kendala Pertanggungjawaban Pidana terhadap Pelaku Pencurian Uang di Bank Melalui Internet Berdasarkan Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik," *Mimbar Keadilan* (2015).
- Siregar, Dedi Martua, Talitha Aisyah Oksahaddini and Sumiyati. "Perlindungan Hukum terhadap Anak Korban Kejahatan Grooming," *Seminar Nasional Konsorsium UNTAG Indonesia ke-2 Tahun 02*, no. 01 (2020): 99-111.
- Suendra, Dessy Lina Oktaviani and Kade Richa Mulyawati. "Kebijakan Hukum terhadap Tindak Pidana Child Grooming," *Kertha Wicaksana* 14, no. 2 (2020): 118-123.
- Trijaka. "Pendidikan Karakter Pancasila untuk Mengatasi Kenakalan Pada Anak Usia Sekolah," *Jurnal Pancasila* 2, no. 1 (2021): 21-44.
- Weingraber, Sophie et al. "Online Victimization –an Explorative Study of Sexual Violence and Cyber Grooming in the Context of Social Media Use by Young Adults in Germany," *Social Work & Society* 18, no. 3 (2020): 1-13.

Internet/Website:

International Centre for Missing & Exploited Children, Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review, 2017, URL: https://www.icmec.org/wp-content/uploads/2017/09/Online-Grooming-of-Children_FINAL_9-18-17.pdf

Regulation/International Convention:

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual.
Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik.
Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak.

Undang-Undang Nomor 44 Tahun 2008 tentang Pornografi.

Undang-Undang Nomor 8 Tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana.

Undang-Undang Nomor 1 Tahun 1946 tentang Kitab Undang-Undang Hukum Pidana.

Putusan Nomor 392/Pid.Sus/2021/PN JKT.SEL.

Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana.

Strafgesetzbuch.

Interview:

Henri Maulana Umbara, *Interview*, 2022.