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Construction of Criminal Responsibility in Social Media-Based Child Exploitation Crimes in Indonesia

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Abstract: The evolution of social media has fostered new forms of child engagement in the digital sphere including content creation, live streaming, and monetization activities which, under certain circumstances, can escalate into the exploitation of children for economic gain. This research examines the legal framework and the parameters of criminal offenses regarding social media-based child exploitation within the Indonesian criminal justice system, as well as the construction of criminal liability for perpetrators, analyzed through the lenses of culpability, digital economic motives, and the perpetrator's role. The study employs a normative-juridical method utilizing statutory, conceptual, and case-based approaches, drawing upon an analysis of legislation, legal doctrine, academic literature, and court rulings. The findings indicate that social media-based child exploitation falls within the scope of the Child Protection Law, the ITE Law, the National Criminal Code, and Government Regulation No. 17 of 2025, although an adaptive interpretation is required to address evolving digital. Criminal liability is predicated on culpability, intent, economic motives, and the perpetrator's contribution, substantiated through electronic evidence.

Keywords: Criminal Liability, Child Exploitation, Social Media, Legal Protection, Cybercrime.

INTRODUCTION

The development of information and communication technology in the era of globalization has created a major transformation in the lives of modern society. Digitalization not only changes the pattern of communication and information exchange, but also shifts the social, cultural, and economic structure of society into an internet-based virtual space (Arief, 2018). The presence of the internet and social media has given birth to a digital *public sphere* that allows every individual to carry out social interactions, economic transactions, to the production and distribution of information quickly without time and limitations (Sitompul, 2012). In Indonesia, the development of digital technology has experienced a very significant increase in line with the high use of social media such as TikTok, Instagram, Facebook, YouTube, and various *live streaming* platforms that have become part of people's daily lives.

The development of social media not only creates new communication patterns but also forms the *phenomenon of the creator economy* that makes social media an instrument of the digital economy. Every individual can earn financial benefits through content monetization, *subscribers*, *endorsements*, *affiliate marketing*, *adsense*, and *live streaming* gifts. This condition has given rise to *viral culture* and digital *engagement* that encourages content creators to compete to produce interesting content in order to gain public attention and economic benefits. In its development, social media is no longer just a means of communication but has turned into a highly competitive digital economy space. However, these developments also have a negative impact in the form of the emergence of new forms of digital-based crime, including child exploitation through social media and other digital platforms (Nugroho, 2020).

Digital-based crimes against children are one of the serious problems in the development of modern criminal law. Children as a vulnerable group have psychological, emotional, and ability to understand risks in the digital space so that they are easily influenced and manipulated by other parties (Gosita, 2009). In this case, children are often the object of digital exploitation for both sexual, economic, and social media popularity. The protection of children is essentially part of the state's responsibility as affirmed in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that every child has the right to survival, growth, and development and is entitled to protection from violence and discrimination (Prakoso, 2016). This provision shows that the state has a constitutional obligation to provide legal protection to children, including from the threat of exploitation in the digital space.

The development of digital technology has caused a shift in the form of child exploitation from conventional patterns to social media-based digital exploitation patterns. If previously child exploitation was synonymous with child trafficking, child labor, or physical sexual exploitation, then in the digital era exploitation develops in the form of the use of children as objects of digital content, *live streaming*, video monetization, exploitation of children's images and bodies, to the distribution of children's sexual content through the internet (Nugroho, 2020). Even in practice, children are often used to increase *traffic*, *engagement*, *viewers*, and digital economic profits on certain social media platforms. The shift in the form of exploitation shows that the development of digital technology has created a new dimension in the crime of child exploitation that has not been fully anticipated by Indonesian criminal law (Suhariyanto, 2014).

Digital-based child exploitation has different characteristics from conventional exploitation. In digital exploitation, crimes can be committed without direct physical contact between the perpetrator and the victim (Rahardjo, 2002). Perpetrators simply use social media, messaging applications, *live streaming*, or certain digital platforms to build relationships with children and then carry out the exploitation gradually. Forms of digital exploitation are also often disguised as entertainment, educational, *prank*, or creative activity content so that they are difficult to recognize as criminal acts. This condition causes the boundary between ordinary digital content and child exploitation to become increasingly blurred. In many cases, exploitation of children is carried out by taking advantage of the victim's ignorance and weak supervision of children's digital activities.

The development of digital technology has also given birth to the phenomenon of *child grooming* as one of the new modes of sexual crimes against children. *Child grooming* is an act of emotional approach and psychological manipulation carried out by the perpetrator against a child through social media or digital platforms with the aim of gaining the trust of the victim before sexual exploitation is carried out (Rahardjo, 2002). Perpetrators usually build intensive communication, provide emotional attention, virtual gifts, or psychological support so that the victim feels comfortable and trusts the perpetrator. After the emotional relationship is formed, the perpetrator begins to direct the victim to sexual acts, sending personal photos or videos, to

sexual exploitation directly or virtually. In this context, *child grooming* is a very important initial stage in the occurrence of digital sexual exploitation of children.

The phenomenon *of child grooming* shows that sexual crimes against children in the digital era are no longer carried out openly and repressively, but through psychological manipulation and covert emotional relationships. This makes *child grooming* very dangerous because victims often do not realize that they are being manipulated and exploited. However, Indonesia's positive law has not yet explicitly regulated *child grooming* as a separate criminal act. Existing regulations are still scattered in various laws and regulations such as the Child Protection Law, the Electronic Information and Transaction Law, and the Pornography Law which have not specifically regulated the mode of digital psychological approach to children (Suhariyanto, 2014). This condition shows that there is a gap in the Indonesian criminal law system related to the protection of children from the practice of *child grooming* in the digital space.

Regarding sexual exploitation, digital-based child exploitation is also closely related to digital economic motives. Social media in the modern era has developed into a digital business space that generates enormous economic benefits through content monetization and other digital activities. In practice, some parties use children as content objects to obtain *subscribers*, *adsense*, endorsements, *live* gifts, sponsorships, and other economic benefits. Children are used as a means to attract public attention because they are considered able to increase the popularity and *engagement of* social media (Nugroho, 2020). This condition causes children not only to become victims of sexual exploitation, but also to become objects of digital commercialization that are used for economic interests and popularity of certain parties.

The phenomenon of child exploitation in social media is often difficult to distinguish from ordinary creative content activities. Many content involving children is created for entertainment, education, or creative needs, even though it contains elements of exploitation of children. This causes the boundary between entertainment and exploitation to become increasingly blurred. From a criminal law perspective, an act can be categorized as exploitation if there is exploitation of children for economic, sexual, social, or certain interests that are detrimental to children's rights (Prakoso, 2016). Therefore, clear juridical limits are needed regarding digital-based forms of child exploitation in order for law enforcement to be carried out effectively.

Another problem that arises in digital-based child exploitation crimes is the complexity of criminal liability. In the digital space, perpetrators of criminal acts do not always act alone, but involve various parties such as content creators, account admins, video editors, social media managers, content redistributors, and digital platforms (Arief, 2018). This condition poses difficulties in determining who can be held criminally responsible as the main perpetrator, the perpetrator participates, or the party who benefits from the crime (Chazawi, 2008). In criminal law, criminal liability can only be imposed on a person if there is an element of guilt in the form of intentionality (*dolus*) or negligence (*culpa*) (Moeljatno, 2008). However, in the practice of digital exploitation, *proof of mens rea* becomes very complex because perpetrators often argue that the content is created for entertainment, creative content needs, or educational interests.

The concept *of mens rea* and participation (*deelneming*) is very important in building the construction of criminal responsibility for digital-based child exploitation perpetrators (Chazawi, 2008: 60). The perpetrator may know that the content created has the potential to exploit children but still continue the action in order to gain digital economic benefits. Such a condition can be categorized as *dolus eventualis*, which is intentionality in the form of a possibility, when the perpetrator is aware of the possibility of criminal consequences but still commits the act (Moeljatno, 2008). Therefore, the construction of criminal liability in digital-based child exploitation needs to be analyzed in more depth by considering the development of digital technology and the characteristics of modern social media (Arief, 2018).

Normatively, regulations regarding digital-based child exploitation in Indonesia still do not provide clear and comprehensive juridical limits. Law Number 35 of 2014 concerning Child Protection does prohibit economic and sexual exploitation of children, but the regulation still focuses more on conventional exploitation. Meanwhile, Law Number 1 of 2024 concerning Information and Electronic Transactions focuses more on the distribution of electronic information and has not specifically regulated child exploitation in the social media ecosystem. Likewise, Law Number 44 of 2008 concerning Pornography has not explicitly regulated the monetization of digital content involving children. On the other hand, the Criminal Code through Law Number 1 of 2023 has also not been fully adaptive to the development of digital crimes against children (Arief, 2018). This condition has led to a blurring of norms regarding the limits of digital-based child exploitation in Indonesian criminal law.

This problem is reflected in a case that occurred in Tasikmalaya Regency, West Java, when the Tasikmalaya Resort Police confiscated a social media account belonging to a content creator who was suspected of exploiting children and allegedly sexually abusing children. In this case, social media was used as a means of exploitation through the creation of digital content involving minors. In addition to the alleged sexual exploitation and harassment, the case also shows the existence of a digital relationship between the perpetrator and the victim which leads to the practice *of child grooming* and the use of social media to gain popularity and digital economic benefits. The case shows that digital-based child exploitation has more complex dimensions than conventional crimes because it involves virtual spaces, emotional relationships, digital economic motives, and the difficulty of proving crimes.

The problem of social media-based child exploitation is not only hypothetical or still in the investigation stage but has been found in cases that have reached the stage of examination and termination by the court. One of the relevant cases is the Medan District Court Decision Number 148/Pid.Sus/2024/PN Mdn which examines the crime of economic exploitation of children through TikTok social media. In the case, the defendant as the manager of the Tunas Kasih Olayama Raya Foundation Orphanage used foster children in live broadcast activities through the TikTok Live feature to attract the sympathy of the audience. Children were asked to carry out various activities in the live broadcast, while the audience gave digital gifts which could then be converted into money. These acts were carried out repeatedly and generated economic benefits for the defendant. This case shows that social media has undergone a shift in function from just a means of communication to a commercialization instrument that can be used to exploit children economically.

The case is important because it clearly shows the relationship between children as objects of exploitation, the use of digital technology as a means of criminal acts, and the motive for obtaining economic benefits. Legally, the defendant's actions are associated with the provisions of Article 76I in conjunction with Article 88 of Law Number 35 of 2014 concerning Child Protection. Thus, the case shows that the economic exploitation of children can be carried out through digital mechanisms that are not known in conventional exploitation patterns, especially through the monetization of digital content and gifts. The verdict also shows that there are challenges in determining the boundary between social media content that reasonably involves children and content that has turned into a means of economic exploitation.

Similar phenomena have also occurred in various regions in Indonesia, such as the revelation of the Facebook group "Fantasi Sedarah" which contains child sexual exploitation and child pornography, child exploitation through *live streaming* in Bogor, as well as organized online sexual exploitation practices through Telegram and other social media. This phenomenon shows that social media has developed into a new medium of child exploitation that presents serious challenges to the Indonesian criminal law system. Crimes against children are no longer carried out conventionally but are developing in the form of cybercrimes that utilize digital technology and weaknesses in the supervision of virtual spaces (Sitompul, 2012: 102).

These problems show that child exploitation through social media has developed forms and modes that are not entirely identical to conventional forms of child exploitation. Law Number 1 of 2023 concerning the Criminal Code has provided regulations for a number of acts related to child exploitation, one of which is through Article 425 which regulates the giving or delivery of children under lawful power to other parties to be used in begging activities or work that is dangerous or can endanger health. However, these provisions have not specifically formulated the characteristics of child exploitation that have developed in the social media ecosystem, such as monetization of content involving children, the use of children's digital identities and activities to obtain profits, *kidfluencer exploitation*, and exploitation through *live streaming* features. This condition shows the need to further examine the construction of criminal liability for social media-based child exploitation perpetrators, especially in determining whether existing criminal provisions have been able to reach the ever-evolving mode of digital exploitation. Based on this description, it is necessary to discuss the problem of how to regulate the law and the limits of child exploitation crimes and how to construct criminal penalties against the parties involved.

METHODS

This research is normative legal *research* or doctrinal law research also known as literature research. It is called doctrinal law research, because this research is carried out or aimed only at written regulations. While referred to as literature research, this research is mostly carried out on secondary data in libraries. The approaches used in this study include the statute *approach*, the conceptual *approach* and *the case approach*

RESULTS AND DISCUSSION

Legal Regulations and Limitations on Child Exploitation Crimes

The massive transformation of information technology in recent decades has fundamentally changed the paradigm of child exploitation. Exploitation, which was originally dominated by direct physical acts (conventional), has now shifted to utilizing digital space as the main medium (Suhariyanto, 2014). This shift is not just about changing the instruments or means of committing crimes but also changing the characteristics of the legal relationship between the perpetrator, the victim, and the media used. In conventional exploitation, the act generally occurs through direct physical interaction that is bound by time and space, so that proving the elements of the act, the consequences, and the identification of the perpetrator and victim is relatively easier to do. In contrast, exploitation based on social media and cyberspace takes place virtually through account networks, encrypted conversation applications, video-sharing platforms, and *live streaming* services (Raharjo, 2002). The characteristics of digital that are anonymous, borderless, spread in seconds, and are oriented towards digital commercialization cause national criminal law to face complex challenges. The biggest challenge lies in formulating clear juridical boundaries on when a digital activity involving children is still categorized as a legitimate creative activity and when the activity has crossed the line into a criminal act of child exploitation.

The issue of juridical boundaries is essentially a problem of legal protection for vulnerable groups. In the Legal Protection Theory put forward by Philipus M. Hadjon, the state bears a constitutional obligation to provide protection for the basic rights of its citizens (Hadjon, 1987). Legal protection should not only be understood narrowly as a repressive effort—that is, the provision of criminal sanctions after a crime has occurred and a victim has occurred—but must also be realized preventively through the establishment of legal norms that are able to prevent violations from an early stage (Hadjon, 1987). In the social media ecosystem, preventive protection requires the presence of regulations that explicitly prohibit the use of children as objects of digital monetization, impose risk mitigation obligations on digital platforms, and mandate active supervision from the state. If the existing positive legal

norms fail to anticipate technological dynamics, then the law will lose its main function as an instrument of social *defense* and regulation of order (Suhariyanto, 2014).

The philosophical and juridical basis of the state's obligation to protect children from all forms of commercialization has been expressly guaranteed in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that every child has the right to survive, grow, and develop and has the right to be protected from violence and discrimination. This constitutional mandate places child protection as an inseparable part of Human Rights (HAM) (Waluyadi, 2009). Therefore, when the mode of child exploitation evolves following the trend of digital media, the approach to criminal law enforcement can no longer be forced to rely only on the logic of conventional crimes. The state is required to adjust and reconstruct legal norms in order to be able to reach the anonymous, fast, networked nature of digital crime, and generate economic benefits based on public attention (*attention economy*).

The implementation of these constitutional norms is sectorally realized through Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. This law places children as legal subjects who must be protected from violence, neglect, economic exploitation, and sexual exploitation (Gultom, 2008). The criminalization framework is regulated in Article 76I, which emphasizes the prohibition for everyone to place, allow, do, order to do, or participate in economic and/or sexual exploitation of children. This provision is then threatened with criminal sanctions through Article 88, namely imprisonment for a maximum of 10 (ten) years and/or a maximum fine of Rp200,000,000.00 (two hundred million rupiah). Dogmatically speaking, lawmakers have equated the seriousness between economic exploitation and sexual exploitation because both deprive children of their basic rights to grow and develop optimally (Gultom, 2008).

Although Article 76I juncto Article 88 of the Child Protection Law seems to cover all acts of exploitation, normative analysis shows that the formulation still experiences a *legal lag* in the face of modern technological realities. The Child Protection Law was formulated by imagining a pattern of conventional economic exploitation—such as physically employing children on the streets, factories, or rough labor. This law does not provide an explicit normative definition of forms of digital economy exploitation, such as the commercialization of digital content, the use of social media algorithms, the commodification of children's digital identities, to *kidfluencer* and *sharenting* practices that exploit privacy for income (Gultom, 2008; Sitompul, 2012). In the modern social media ecosystem, economic value is no longer obtained from formal employment relationships or direct physical handovers, but is converted from *viewers*, *subscribers*, *engagement rate*, *advertising revenue*, *endorsements*, *affiliate marketing*, to *digital gifts*. This lack of definition creates a *vague norm*, which makes it difficult for law enforcement officials to distinguish between the actions of parents who merely document the growth and development of children and the acts of commercialization that are classified as economic exploitation.

The confusion of law enforcement due to the limitations of this norm is clearly seen in the handling of content creator cases in Tasikmalaya Regency. In this case, the police not only investigated alleged crimes of sexual violence against children but also confiscated social media accounts used as the main means of production and distribution of content. The confiscation of the account proves that social media platforms have shifted from just a means of communication to the main instrument of child commercialization. However, because the Child Protection Law has not explicitly stated that digital monetization that sacrifices children's rights is part of economic exploitation, proving the element of "utilizing children" is highly dependent on the subjective interpretation of investigators and judges. This condition has the potential to trigger disparities in law enforcement in various regions (Suhariyanto, 2014).

From the point of view of Philipus M. Hadjon's Legal Protection Theory, the uncertainty of these norms indicates that legal protection of children has not been carried out preventively (Hadjon, 1987). The state has indeed provided repressive sanctions in Article 88 of the Child

Protection Law, but it has failed to provide precise juridical limits to prevent the emergence of new modes of exploitation based on the digital economy. The law always acts reactively—only acting in a casuistic manner after the fall of victims and the spread of content in society. In fact, ideal legal protection is required to have an anticipatory reach to the modus operandi of cybercrime that continues to grow rapidly (Raharjo, 2002).

The same weakness is also found in the framework of Indonesian cyber law, namely Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE). The promulgation of Law No. 1 of 2024 did bring a bright spot with the introduction of Article 16A, which requires Electronic System Operators (PSE) to provide special protection to children using electronic systems, including the provision of age verification features and a mechanism for reporting misuse of services. This provision is further clarified through Government Regulation Number 17 of 2025 concerning the Governance of the Implementation of Electronic Systems in Child Protection (PP TUNAS). PP TUNAS requires digital platforms to apply the principles of child-friendly governance, supervisory audits, and risk mitigation for digital products and features that have the potential to harm children.

However, juridical evaluation shows that the orientation of the ITE Law and PP TUNAS focuses more on the governance and administrative compliance aspects of the platform, rather than the construction of criminalization against individual perpetrators of exploitation (Sitompul, 2012). This cyber regulation regulates the technical obligations of service providers (platform *providers*) but does not expand or clarify the elements of child exploitation crimes committed by content creators, parents, and digital agencies. As a result, there is a real fragmentation of the law: on the one hand, the Child Protection Law has criminal norms but stutters in the face of technology; on the other hand, the ITE Law and PP TUNAS control the technical aspects of the digital space but do not contain a comprehensive construction of criminal liability for digital exploiters. This overlapping gap between child protection law and cyber law results in law enforcement being highly dependent on the expertise of law enforcement officials in interpreting electronic evidence and the material actions of perpetrators (Sitompul, 2012).

To overcome the ambiguity of these norms, the author argues that the parameters for determining the limits of child exploitation crimes on social media should not be limited to the technological means used, but must be analyzed from the purpose, means, intensity, and consequences of child involvement. Not all content featuring children can be immediately categorized as a crime of exploitation. Family documentation activities, educational content, art activities, and creative activities involving children are basically legitimate actions that should be protected. However, when children's involvement is intentional to harvest financial gains, boost *massive engagement*, or pursue popularity for commercial income at the expense of the best *interests of the child*, then these activities have crossed the line into a crime of economic exploitation.

The formulation of this parameter is urgent because digital exploitation works through *attention commodification* (Raharjo, 2002). The perpetrator's profit no longer relies on the child's sweat or physical strength, but rather capitalizes on the visual appeal, cuteness, innocence, or even concern for the child to attract audiences, digital *gifts*, advertisements, and sponsorships. Therefore, the element of "utilizing children" in criminal law must be interpreted dynamically following the digital economy ecosystem. Based on this analysis, 5 (five) main indicators can be formulated to identify the existence of child exploitation on social media:

1. The use of children as the main instrument to achieve profits: Children are placed as objects of public attention to generate *revenue*, advertising, and digital prizes.
2. Exclusive direction and control of other parties: The child's digital activities are fully regulated, scenario, and controlled by an adult or account manager.

3. Power *imbalance*: There is a dominance relationship between the beneficiary (parents, guardians, caregivers) and the child, which takes away the child's freedom to refuse.
4. Intensity and repetition of actions (*repetitive action*): Children's involvement is carried out repeatedly, scheduled, and continuously in order to maintain the performance of the content algorithm.
5. Harm*/adverse impact*: Violations of children's privacy rights, disruption of education time, safety threats, and physical fatigue and psychological trauma.

The more these indicators are met in an event, the stronger the legal basis for qualifying the act as a criminal act of child exploitation, not just a creative family activity. This approach is in line with the obligation to protect children in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia and Article 76I of the Child Protection Law. Although Article 76I does not include the phrase "digital", the use of the broad formulation of delicacy ("place, permit, do, order to do, or participate in doing") proves that the choice of digital media should not eliminate the unlawful nature of the act of exploiting children.

The concrete application of this limitation can be seen in the Medan District Court Decision Number 148/Pid.Sus/2024/PN Mdn. This case involves the defendant Zamanueli Zebua, a manager of the Tunas Kasih Olayama Raya Orphanage, who was proven to have exploited his foster children through *TikTok Live live* broadcasts. The defendant repeatedly exploited the concerns and grief of the foster children in front of the camera to attract the sympathy of the audience to send digital gifts (gifts) which were then disbursed into cash. From the repeated digital exposure activities, the defendant reaped personal profits of up to IDR 60,000,000.00 (sixty million rupiah) (PN Medan, 2024).

Juridically, the Medan District Court Decision Number 148/Pid.Sus/2024/PN Mdn provides an important precedent in Indonesian criminal law. This decision emphasizes that the economic exploitation of children does not require formal employment relationships or extortion of physical labor. Commercial value is obtained directly from the capitalization of public *attention* which is converted into digital financial instruments. In this case, children are exploited not as subjects of social protection but used as profit-making instruments through digital platform features.

From these legal facts, 3 (three) layers of acts (structural *layers*) that form the crime of digital exploitation can be described:

1. Material actions against children: Coercion or directing children to expose themselves and follow live broadcast scenarios.
2. Utilization of technological instruments: Use of *TikTok Live* means to expand the reach of viewers in *real-time*.
3. Economic purpose and accumulation: The receipt *of digital gifts* and monetization of accounts that provide direct financial benefits to the perpetrator.

If these three layers are met cumulatively, then the act is legally constructed as economic exploitation. In addition, this decision highlights the importance of considering power relations. The defendant's position as the head of the orphanage gives him absolute authority over foster children who have no bargaining power. The consent or obedience of the child in the live broadcast cannot be considered as *free and informed consent*, but rather a form of submission due to an unequal power relationship.

Although the Medan District Court's Decision Number 148/Pid.Sus/2024/PN Mdn proves that Article 76I jo. Article 88 of the Child Protection Law is able to reach *the TikTok Live* mode, this case also reveals the limitations of existing regulations. The judge was forced to withdraw the general economic exploitation article to prosecute very specific cybercrime modes. This reinforces the urgency of criminal law reform (*penal reform*): the update is needed not because of the absence of criminal norms at all, but to provide explicit, definite, and measurable parameters in facing the digital economy ecosystem in the future (Suhariyanto, 2014).

The establishment of Article 16A of Law No. 1 of 2024 and Government Regulation No. 17 of 2025 actually shows the starting point of the shift in *Indonesia's criminal policy* towards digital governance. This regulation imposes responsibility on platform providers to provide mechanisms for age verification, content restrictions, and reporting of misuse of digital features. However, it is important to clearly separate the administrative responsibility of the Electronic System Operator (PSE) and the criminal *liability* of the perpetrators of exploitation. The framework of the ITE Law and the TUNAS PP operates in the legal realm of administration and governance of digital platforms, while Article 76I jo. Article 88 of the Child Protection Law operates in the realm of criminal law against legal subjects who carry out exploitation. These two legal regimes are *complementary*: the Child Protection Law determines the qualifications of criminal acts, while the ITE Law and PP TUNAS provide a safe digital ecosystem. When a content creator is proven to exploit children through social media applications, his criminal liability remains personally attached to the perpetrator and is not necessarily transferred to the platform provider company.

This separation is vital to prevent misdirection and disproportionate expansion of criminal liability. Digital platform providers cannot be automatically punished just because their systems are used by criminals, unless the platform provider is proven to allow, cooperate, or violate legal obligations mandated by cyber law (Sitompul, 2012). Thus, the legal liability of each party must be assessed in detail based on its functions, authority, knowledge, and real contribution to the criminal act that occurred.

Criminal Construction Against the Parties Involved

Criminal liability (*strafrechtelijke aansprakelijkheid*) is the main pillar in criminal law to determine whether a person who has committed a prohibited act can be sentenced to a criminal offence (Moeljatno, 2008). Proving that an act has fulfilled the elements of the crime prohibited by law (*daad*) is not enough to punish the perpetrator; the judge is obliged to prove the existence of an element of guilt (*schuld*) in the perpetrator (dader) (Hamzah, 2017). This fundamental principle is contained in the dogmatic of criminal law through the principle *of geen straf zonder schuld* or *actus non facit reum nisi mens sit rea*—there is no crime without fault (Moeljatno, 2008; Huda, 2015). In the development of modern criminal law, criminal liability is no longer intuitively understood as limited to the physical relationship between the perpetrator and his actions but includes an in-depth analysis of the perpetrator's psychological relationship, the use of technological means, the calculation of financial benefits, and the impact of losses suffered by the victim. In social media-based child exploitation crimes, the construction of criminal liability becomes much more complex than conventional crime because it involves many actors operating in a digital ecosystem (Raharjo, 2002).

According to Chairul Huda, criminal liability is a legal mechanism to determine whether a person who commits a criminal act can be legally reproached (*remprak*) (Huda, 2015). The assessment of legal reproach is based on three main conditions: the existence of the ability to be responsible (*toerekeningsvatbaarheid*), the existence of a form of mistake in the form of intentionality (*dolus*) or forgetfulness (*culpa*), and the absence of a justification or a forgiving reason that abolishes the crime (Huda, 2015). This doctrinal view has been judicially confirmed in Article 36 of Law Number 1 of 2023 concerning the National Criminal Code (National Criminal Code), which explicitly states that everyone can only be held accountable for criminal acts committed intentionally or due to forgetfulness. This provision emphasizes the position of *the principle of geen straf zonder schuld* as the foundation of national criminal responsibility (Moeljatno, 2008; Huda, 2015). Proving the existence of child exploitation acts on social media does not automatically result in criminalization but must also be proven the existence of an evil inner attitude (*mens rea*) that can be accounted for to the perpetrator.

Meanwhile, Article 37 of Law No. 1 of 2023 has a different dogmatic position and function. Article 37 stipulates that in the event of being expressly determined by law, a person

can be convicted solely because of the fulfillment of the elements of a criminal act without paying attention to the fault (*strict liability*) or be held accountable for acts committed by others (*vicarious liability*). Thus, Article 37 is a form of special exception (*exception*), and is not a general basis for proving the existence of intentionality or omission (Huda, 2015).

In the context of child exploitation on social media, Article 36 of the National Criminal Code is the main reference in testing *the perpetrator's mens rea*. The intentionality of the perpetrator should not be judged only from the last physical act but must be traced from the unity of the series of acts (*geheel van gedragingen*). If a perpetrator consciously designs the concept of content involving children, directs children to expose certain actions, uploads videos to digital platforms, manages account monetization, and enjoys incoming income streams while ignoring the risk of physical and psychological harm to children, then this series of systematic acts is tangible evidence of the existence of intentional inner attitudes (*intent/dolus*). Therefore, proving wrongdoing in cybercrime requires the use of a comprehensive approach to the entire digital *footprint*. Proof no longer depends on the perpetrator's oral confession at trial. Electronic evidence in the form of conversation history (*chat logs*), content planning documents, division of roles in the production team, account access logs, banking/e-wallet transaction data, platform monetization analytics, and communication with commercial agencies can be used as legitimate clues to prove *the perpetrator's knowledge* and will against the exploitation carried out (Sitompul, 2012).

If this doctrine of error is applied to the social media ecosystem, proof of intentionality is not only measured from the technical action *of uploading* children's videos or photos, but must be analyzed from the motives, goals, and economic benefits obtained by the perpetrators (Lamintang & Lamintang, 2014). A content creator who consciously makes children the main object of content to attract *views*, collect digital *gifts*, secure *endorsement* contracts, and increase the selling price of the account (*valuation*), is basically fully aware that children's involvement is a determining factor that generates commercial profits. This knowledge and will indicate the presence of *dolus directus* (intentionality as a goal) (Lamintang & Lamintang, 2014). The perpetrator consciously wants the exploitation of the child as a means to achieve the ultimate goal, namely the accumulation of digital wealth. The element of error is thus evident from the psychological *causation relationship* between the awareness of the commercialization of the child and the financial benefits enjoyed by the perpetrator.

This *construction of mens rea* is reflected in the analysis of the case of content creators in Tasikmalaya Regency. The perpetrator is suspected of committing acts that violate morality/sexual violence against children while using social media as a means of exposure and publication. The use of digital platforms shows that the perpetrator understands the logical consequences of the act of publication: an increase in the number of viewers, an expansion of *engagement reach*, and the opening of digital monetization opportunities. The perpetrator's intentionality does not stop at physical acts against the victim but includes the use of social media as an instrument of commercialization for the victim's suffering. The series of acts from the stage of planning, content creation, uploading, dissemination, to monetization must be seen as a single *intent* that aggravates the criminal responsibility of the perpetrator.

From the perspective of Cybercrime Theory, crime in the digital space has very different characteristics from conventional crimes. Cybercrime operates borderless, relies on anonymity, manipulates electronic networks, and involves the division *of labor* among many parties in an ecosystem (Sitompul, 2012). Perpetrators who execute actions against children in front of the camera rarely operate alone. In the digital content industry, there is often a helper network consisting of account managers, monetization managers, video editors, marketing agencies, and social media group administrators (Suhariyanto, 2014). Each party makes a causal contribution to the continuation of child exploitation. The phenomenon of organized *digital crime* requires the application of the doctrine of participation (*deelneming*) in a dynamic and

progressive manner so that the law does not only reach the perpetrators in front of the screen, but all actors who support the occurrence of crime (Hamzah, 2017).

The reform of the criminal law in the National Criminal Code (Law No. 1 of 2023) provides a much more precise normative basis to reach out to crimes involving many parties. Article 20 of Law No. 1 of 2023 stipulates the qualifications of Criminal Offenders (*Dader*) which include:

1. Those who commit their own criminal acts (*manus ministra/rechtstreekse dader*);
2. Those who commit criminal acts through the intermediary of tools or instruct others who cannot be held accountable (*doen plegen/manus domina*);
3. Those who participate in committing criminal acts (*medeplegen*); and
4. Those who mobilize others to commit criminal acts through provoking, threats, abuse of power, or providing means (*uitlokker*).

The provisions of Article 20 of the National Criminal Code emphasize that the status of criminal offenders is not limited to individuals who physically execute material acts, but includes everyone who makes an essential contribution to the realization of the offense (Lamintang & Lamintang, 2014; Hamzah, 2017). In the creation of child exploitation content, creators who design concepts and force children can be qualified as perpetrators (*dader*); A party who instructs or directs a parent to exploit their child for the sake of content is qualified as *a Doen Plegen* or *Uitlokker*; while a producer or creative team who jointly manages such exploitative broadcasts is qualified as *a Medeplegen* (participating in doing).

Furthermore, Article 21 of Law No. 1 of 2023 regulates Criminal Assistance (*Medeplichtigheid*). This article threatens criminal penalties for anyone who deliberately provides assistance, opportunities, means, or information at the time or before a criminal act is committed. In the context of the social media industry, this provision is particularly relevant to ensnare technical drivers such as video editors who polish exploitative content to make it viral, account administrators who optimize content algorithms, and parties who manage the disbursement of *digital gifts* or hidden transactions.

However, the application of the doctrine of inclusion and assistance in the digital space must be limited by an individualized approach to criminal liability (Moeljatno, 2008; Huda, 2015). A person should not be convicted just because of a formal employment relationship or subordinate contract with the main perpetrator. The absolute condition that must be proven by the public prosecutor is the existence of awareness and intent on the part of the participant regarding the exploitative nature of the act. A video editor cannot be convicted if he honestly does not know that the video material he edited is the result of child exploitation or coercion. Criminal liability for assistance can only be placed if it is proven that the editor knows the exploitative nature of the content but still provides his technical expertise to facilitate the distribution and commercialization of the content (Sitompul, 2012). Each legal subject must be assessed individually based on their real role, level of knowledge, form of will, and causal contribution to the occurrence of criminal consequences.

This individualized approach is very appropriate to respond to the characteristics of child exploitation in the form of *organized digital crime*. This pattern of crime is evident in the disclosure of various social media groups and closed communities, such as the case of the Facebook group "Fantasy Sedarah". In such a digital community, the act of exploitation does not stand alone: exploitation is carried out by content creators, amplified by group administrators who provide the container, disseminated by members who *re-upload*, and encouraged by users who provide orders or financial rewards. This digital commodification involves a chain of actors who systematically support each other. Without the progressive application of the doctrine of inclusion (Article 20 and Article 21 of the National Criminal Code), law enforcement will be isolated only to actors in the field, while intellectual actors and connoisseurs of the flow of profits behind the scenes will be free from the snares of the law (Suhariyanto, 2014).

In the Theory of Criminal Liability, the determination of legal reproach requires an evaluation of the inner relationship between the perpetrator and the consequences of his actions (Moeljatno, 2008; Huda, 2015). The inner relationship in social media-based child exploitation is manifested in the form of the perpetrator's full awareness that exposing children will increase the economic value and marketability of their digital accounts. The higher the perpetrator's technical understanding of algorithms, monetization features, and monetization mechanisms of digital platforms, the stronger the legal pillar to declare the presence of perfect intentionality (*volkomen opzet*) (Lamintang & Lamintang, 2014). Therefore, *proof of mens rea* in modern cybercrime must no longer rely on verbal confessions, but must be proven through the consistency of digital *evidence*:

1. Analytical history and statistics of digital platform monetization;
2. Commercial cooperation contract documents, *endorsements*, or *sponsorships*;
3. Trace the flow of digital financial transactions (*e-wallets*, bank transfers, digital gift disbursement);
4. Electronic communication logs that indicate the planning for the commercialization of children's content.

The existence of digital economic motives plays a crucial role in constructing *mens rea*, because motives function to provide an explanation of the purpose and direction of the perpetrator's will (Lamintang & Lamintang, 2014). Although in conventional criminal law dogmatics, motives are generally not an absolute element *of delictsbestanddelen*, in the crime of digital commercialization, economic motives are evidence of clues that explain *why* the perpetrator chooses children as the main object of his content. If the flow of the perpetrator's financial income is consistently directly proportional to the frequency of the child's participation in the content, then the relationship between the perpetrator's knowledge, actions, and commercial goals becomes undeniable.

It should also be emphasized that economic benefits in the digital ecosystem do not always manifest in the form of direct cash handovers. The benefits of the digital economy can be manifested in various forms of commercial value accumulation:

a. Exponential increase in the number of *followers/subscribers*;
b. Increase the level of interaction (*engagement rate*);
c. Accumulation of *digital gifts*, *stickers*, or *tokens* that can be converted into currency;
d. Receiving commission from *affiliate marketing* or advertising *revenue*;
e. The bargaining value of commercial contracts and promotions (*endorsements*); and
f. Increase in account *valuation*.

Therefore, the proof of economic motives should not be narrowed down to only proof of money transfer receipts. All forms of accumulated commercial value triggered by child participation must be assessed as tangible forms of economic benefits.

This analysis of motives and economic benefits is also an effective legal instrument to break the *defense arguments* of the perpetrators. Perpetrators often flinch behind the defense that the content created is only a form of family entertainment, *parenting documentation*, art activities, charitable activities, or simply spontaneous creation. In criminal law doctrine, the claim or narrative of the content creator does not determine the legal qualification of an act. The judge is obliged to examine the material substance of the act: how the real relationship between the perpetrator and the child is directed, what is the main purpose of content creation, who enjoys the monetization of the results, and what is the impact of the suffering experienced by the child. If it is materially proven that the content packaged as a "social activity" or "family entertainment" takes advantage of the child's inability to reap financial benefits and injures the child's basic rights, then the external packaging must be set aside and the act is legally declared as a criminal act of child exploitation (Gultom, 2008; Huda, 2015).

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

Based on all the above legal descriptions and analysis, two main conclusions can be drawn according to the formulation of the research problem:

1. The regulation of child exploitation crimes in Indonesia is currently scattered in a fragmented manner in the Child Protection Law (Law No. 35 of 2014) and the ITE Law (Law No. 1 of 2024) jo. PP TUNAS (PP No. 17 of 2025). The Child Protection Law provides repressive criminal sanctions in Article 76I jo. Article 88 but contains normative weaknesses because it has not defined the form of economic exploitation based on digital monetization. Meanwhile, the ITE Law and PP TUNAS focus on administrative governance and compliance of digital platform providers. The juridical limits of child exploitation crimes on social media are not measured by the technology used, but by the purpose, method, intensity, and consequences of the acts. Digital activities shift into a criminal act of exploitation if they meet the indicators: the use of children as the main instrument to achieve economic gain, the presence of direction/control of other parties, an imbalance in power relations, the intensity of repeated acts, and the occurrence of adverse impacts on children's privacy, education, and growth and development. As evidenced in the Medan District Court Decision Number 148/Pid.Sus/2024/PN Mdn, the commercialization of children through live broadcasting in order to collect *digital gifts* is legally qualified as economic exploitation.
2. The construction of criminal liability in social media-based child exploitation crimes is based on the principle *of geen straf zonder schuld* which is affirmed in Article 36 of the National Criminal Code (Law No. 1 of 2023). The intentionality of the perpetrator (*dolus directus*) is proven through the unity of a series of acts and motives of the digital economy, including the accumulation of *advertising revenue*, endorsements, and *digital gifts* as evidenced through digital evidence (*digital footprint*). Given that digital exploitation is an *organized digital crime*, criminal accountability reaches the entire chain of actors through the doctrine of participation (*deelneming*): Article 20 of the National Criminal Code for the main perpetrator (*dader*), the person who orders the perpetrator (*doen plegen*), and the participant (*medeplegen*); and Article 21 of the National Criminal Code for criminal assistants (*medeplichtige*) such as editors, admins, or account managers. The application of criminal liability must use an individualized approach based on the form of error, real role, and knowledge of each party to ensure legal justice.

Recommendations

1. The government and lawmakers need to harmonize and update the provisions in the Child Protection Law by explicitly including the definition of social media-based child exploitation, including regulating forms of exploitation through digital content monetization, the use of children's digital identities, child grooming, live streaming, and child commercialization activities through digital platforms.
2. Law enforcement officials need to optimize the use of electronic evidence, platform analytics data, account monetization history, digital transactions, and digital forensic evidence to prove the element of intent (*mens rea*) and the causal relationship between child exploitation and economic benefits obtained by perpetrator.

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