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An Analysis of the Japanese viewpoint on regulatory policy of virtual child pornography¹

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Abstract

The Japanese law "Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children" (the Child Pornography Prohibition Act) does not regulate virtual child pornography such as comics, cartoons, animation, and games. As a result, cases in which Japan-made virtual child pornography influenced sexual crimes against children frequently occur not only domestically but also internationally. Japan has been criticized of that by the international community. This study set a research question on what the Japanese viewpoint is over regulatory policy on virtual child pornography. It analyzed the legislative process of the second revision of the Child Pornography Prohibition Act in order to reveal a part of the viewpoint in Japan. The study found that in discussing the legislative process over virtual child pornography regulation, the viewpoint of giving priority to 'freedom of expression' was more dominant than that of protecting the human rights of children.

Keywords:

Regulatory policy of child pornography, Virtuality, Human rights, Freedom of expression

Background: Regulatory policy of child pornography in Japan

¹ This paper is a part of Mayuko Watanabe's doctoral thesis: 'New Dimension of the Regulation of Child Pornography: Japan's Current Legal System of Virtual Child Pornography and Issues in International Comparison,' Keio University, 2016.

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In Japan, the situation of children suffering from sexual exploitation is getting worse. The Sexual Exploitation of Children is defined as a fundamental violation of children's rights that comprises sexual abuse by the adult in which the child is treated as a sexual object³.

The number of child pornography victims was the highest in 1313 in 2016, of which about 15% was below elementary school age⁴. The number of sexual abuse victims also increased to 251 people in 2016, nearly 50% more than the previous year⁵. The number of recognition of forced indecency to less than 13 years old has been around 1,000 cases each year in the past 10 years⁶.

As a law regulating child pornography, in 1999, "Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children" (the Child Pornography Prohibition Act⁷) was enacted as the legislation by Diet members. In 2004, under the same law, revision was made accompanying the rise in statutory penalty and expansion of punishment range.

In June 2014, the second revision bill was established with a major additional item that imposes a penalty on the possession of child pornography not accompanied by purpose such as provision of them ("simple possession")⁸.

The Child Pornography Prohibition Act has protected only actual children. On the other hand, regarding the second revision of 2014, in the amendment jointly submitted in May 2013 by Liberal Democratic Party (the LDP), the Komeito and the Japan Innovation Party they insisted that the viewpoint of protecting children's human rights is also

³ World Congress against Commercial Sexual Exploitation of Children, *Declaration and Agenda for Action: 1st World Congress against Commercial Sexual Exploitation of Children, Stockholm, Sweden, 27-31 August (1996)*, para. 5.

⁴ National police agency. 'The situation of juvenile delinquency, child abuse and sexual exploitation of children in 2016.'

⁵ Ibid.

⁶ 'The white paper on police 2016.'

⁷ In the second revision, the name of the law was changed to be "Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children." However, this paper unifies the law's abbreviations of before and after the second revision to be "the Child Pornography Prohibition Act" for convenience.

⁸ Jiji Press, June 18th, 2014.

important. These political parties established supplementary provisions to promote the research about the relevance of comics, animation, games and other expressions that sexually depict children (virtual child pornography) and the act that violates children's rights. However, since the opposite argument persisted, the supplementary provision was not included in the second revision.

Issues

<Harmful effects of Japan-made virtual child pornography>

Cases in which Japan-made virtual child pornography seems to have affected sexual offences against children are frequent not only in Japan but also abroad.

In Japan, with regard to sexual offences against children, the following cases were reported mainly since the 2000s as perpetrators had a liking for virtual child pornography.

2004	Kidnapping murder case of a 1st grade elementary school girl (Nara)
2005	Confinement and sexual abuse case of teenage girls
2011	Murder case of a three years old girl (Kumamoto)
2012	Kidnapping case by putting a 6th grade elementary school girl in a bag (Hiroshima)
2014	Confinement case of a 3rd grade elementary school girl (Hokkaido)

In overseas, the facts that Japan-made virtual child pornography is being used for sexual crimes against children in Australia and the UK were reported at the Third World Congress against Sexual Exploitation of Children and Adolescents (Rio Conference) which was held in Rio de Janeiro, Brazil in 2008.

< Criticism from the international community to Japan >

At the Rio conference, Japan was criticized as being a major country producing virtual child pornography and not attempting to illegalize them.

< Trends in international treaties >

Regarding the impact of virtual child pornography on real sexual crime, the Council of Europe adopted the "Convention on Cybercrime" (2001) and the "Convention on the Protection of children against sexual exploitation and sexual abuse"(2007).

These International Conventions indicate concern about the violation of children's human rights by claiming that virtual pornography is playing the role of supporting, encouraging and facilitating sexual offenses to children.

The research question

This study sets a research question on what the Japanese viewpoint is over regulatory policy on virtual child pornography. It analyzes the legislative process of the second revision of the Child Pornography Prohibition Act in order to reveal a part of the viewpoint in Japan.

Methodology

This study examines in detail how human rights concerning the sexuality of children have been discussed among legislators over the minutes of the Diet on the second revision of the Child Pornography Prohibition Act. With reference to the "Japanese Decree Index" (provided by the National Diet Library), the research targets the period from June 4, 2014 when the second revision of the Child Pornography Prohibition Act was submitted to the 186th Diet, to 18th of the same month when the proposed revision passed the Diet.

In order to clarify the aforementioned research question, this study investigates the following two points:

- Why virtual child pornography has been excluded from regulation
- Why was the problems raised by the international community not reflected in the second revision

Results

The draft of the second revision of the Child Pornography Prohibition Act was discussed at the Legal Committee of the House of Representatives on June 4, 2014. This draft was submitted as legislation by Diet members with the LDP, Democratic Party / Independent Club, the Japan Innovation Party and Komeito joint proposal. About the handling of the virtuality in the second revision bill of the Child Pornography Prohibition Act was picked up by 3 out of 6 members of the lawmakers at the Legal Committee of the House of Representatives on June 4, 2014.

First of all, Mr. Masatada Tsuchiya of the LDP⁹ conducted a question. Mr. Tsuchiya asked Mr. Mineyuki Fukuda of the LDP, one of the motioners, about the reason why the supplementary provision in the amendment jointly submitted in May 2013 by the LDP, the Komeito and the Japan Innovation Party in order to promote the research about the relevance of virtual child pornography and the act that violates children's rights was deleted. Mr. Fukuda responded as follows: "There was a contrary argument mainly by related organizations that there is a possibility that the creator's atrophy may be caused by such a provision. We reviewed the content of the provision again at the Working Group Council based on this argument. Then, since the Child Pornography Prohibition Act is aimed at protecting real children, we attempt to penalize for simple possession of child pornography. However, regarding the provision of virtual child pornography, we have come to the conclusion to delete it from the revision proposal based on concerns from related organizations."¹⁰

Next, Mr. Tsuchiya took up the Yomiuri Shimbun morning edition dated May 4, 2010. The newspaper reported that at the 2008 Rio Conference, Japan was criticized for its name by the participants saying that "Japan does not regulate animation and cartoons depicting children's sexual appearance and abuse." Mr. Tsuchiya asked the government's view on Sadakazu Tanigaki, the Minister of Justice, saying that "Would it be possible for such comics to be freed for violating freedom of expression or causing creative activities to collapse?" Mr. Tanigaki explained the background at the time, stating that he was the person who designed the basis of the Child Pornography Prohibition Act. "At the time, it was strongly claimed that freedom of expression was also important. ... If a photograph of a real child appears around the world, this is libel and also harms the child's healthy growth. So, we made this legislation to protect the real child's right, that is, to protect personal legal profit, not to protect the social legal profit. "

Mr. Tsuchiya also raised a question about the case in which the possession of cartoons targeting children for sexual activity leads to crime.

As an example, he raised the incident that on March 3, 2011 in the shopping center in Kumamoto city, a university male student was charged with murder and forced indecent lethal deaths and abandonment of the corpse being suspected to have drawn a three year old girl to the toilet and acted indecently and then strangled and murdered.

During the investigation process, it was reported that a large number of obscene

⁹ All titles in the paper are those at the time.

¹⁰ The 186th House of Representatives Legal Affairs Committee meeting No. 21, p.3. (2014.6.4).

cartoons depicting small girls were discovered from this suspects' home¹¹. Mr. Tsuchiya said, "It can be thought that he was simulating with these cartoons," and asked an opinion of the motion submitter. On the other hand, Mr. Fukuda stated that "Because this incident is an example of a specific concrete case, I would like you to withhold refraining from saying what is all about general theory. ¹²"

Subsequently, Mr. Gaku Hashimoto from the LDP on the question raised the issue of regulation of virtuality, saying, "Regarding the supplementary provision in the amendment jointly submitted by the LDP, the Komeito and the Japan Innovation Party in order to promote the research about the relevance of virtual child pornography and the act that violates children's rights, such provisions should not be provided since it is difficult to prove scientifically that correlation. On the other hand, it is unlikely that we can leave such cartoons etc. I would like to ask the opinion of the motion submitter."

Mr. Fukuda responded as follows:

'This revision proposal is only for the purpose of protecting the rights of existing children. Therefore, legislation by judgement based on hypothesis is not considered appropriate. It is not necessary to judge one individual case as a general theory but when it is scientifically verified it is necessary to treat it as a problem different from the protection of a real child which is the object of this revision proposal. We recognize virtual child pornography should be handled by voluntary efforts initially by creators and related organizations.¹³

The draft of the second revision of the Child Pornography Prohibition Act passed on June 5, at the House of Representatives Plenary. On July 17, the revision bill was deliberated at the House of Councilors Legal Committee. About the handling of the virtuality was picked up by 3 out of seven members of the lawmakers. These 3 members stood in question and raised fears such as "Is there a possibility of leading to regulations on cartoons and animation", and the motion submitter denied with answer. The amendment was approved and passed at the House of Councilors Plenary on the following 18th.

¹¹ The prosecution pointed out at the opening statement that the accused collected comics and DVD describing indecent acts and murderous acts against a young girl and then he began to think to rape and kill girls in elementary school age (Yomiuri Newspaper, October 18, 2012). In June 2013, due to the dismissal of the appeal of the Supreme Court, the life imprisonment of the accused was confirmed (Nihon Keizai Shimbun, June 26, 2013).

¹² The 186th House of Representatives Legal Affairs Committee meeting No. 21, p.4. (2014.6.4).

¹³ The 186th House of Representatives Legal Affairs Committee meeting No. 21, p.6. (2014.6.4).

Discussion

In order to clarify the research question on what the Japanese viewpoint is over regulatory policy on virtual child pornography, this research analyzed the discussion of the legislators concerned about the virtuality in the second revision bill of the Child Pornography Prohibition Act, and investigated the two points:

- Why virtual child pornography has been excluded from regulation
- Why was the problems raised by the international community not reflected in the second revision

As a result of discussion analysis, the following consideration seems possible.

< Why virtual child pornography has been excluded from regulation >

In the Legal Committee of the House of Representatives and the Legal Committee of the House of Councilors, six lawmakers questioned about the pros and cons of virtual child pornography. Five of them placed their points in "how to prevent infringement of freedom of expression", and the regulatory proponents were composed of a single member, Mr. Tsuchiya alone. It can be said that the viewpoint of "what can be done to prevent children's human rights abuses caused by virtuality" was scarce among the questioners.

The drafter explained about the reason of deleting the provision that "Promoting the research about the relevance of virtual child pornography and the act that violates children's rights" which was in the supplementary rule in the amendment jointly submitted in May 2013 by the LDP, the Komeito and the Japan Innovation Party. He clarified that he deleted it on the grounds of concern from related organizations claiming 'there is a possibility of causing atrophy of the creators.' The provision can serve as a starting point to prevent infringement of children's rights by virtuality. Nonetheless, the attitude of prioritizing consideration to related organizations is to ignore children's human rights in order to preserve the freedom of expression of virtual child pornography.

The lawmakers also asked the drafters about cases where virtual child pornography seemed to have influenced sexual crime in reality or asked about the pros and cons of leaving such virtuality. However, the drafter dismissed that "Influential cases can not be said to be general thesis", and insisted "When the influence is scientifically verified, it is necessary to deal with the cases as a problem separate from the protection of the actual child which is the object of this revision proposal. From this answer, the drafters' recognition is perceived that "We can secure the interests (rights protection) of real

children even if we do not intentionally regulate the virtual child pornography." Even if they regulate virtuality, it is conditional on "scientific verification" about the causal relation with actual human rights abuses to children. There is no point of view to take heavily on the fact that the contents of the virtual object that makes the child subject to sex are the human rights violations themselves and that the virtuality are also causing human rights violations of existing children.

In the first place, as for the survey research on the relevance of virtual child pornography and the act that violates children's rights, the paper summarizing relevant research has already been published¹⁴. Drafters lacked the attitude of positively collecting the reference material or even possibly ignored it intentionally.

Regarding the government's answer, Tanigaki Minister of Justice stated that virtual items were excluded from regulation subjects at the time of legislation of the 1999 Child Pornography Prohibition Act since priority was given to consideration for freedom of expression, but the legislators still thought the rights of existing children can be protected. After all, the legislators' recognition was insufficient at the time that the contents of the virtual object that made the child subject to sex are human rights violations themselves, and that even the virtuality threatens human rights violations.

< Why was the problems raised by the international community not reflected in the second revision >

In questioning, it became clear that almost no point of view of international trends about virtual child pornography, especially the view of international treaties "virtual child pornography is also a human rights violation" was not taken up. Although only Mr. Tsuchiya introduced the fact that Japan was criticized at the Rio Conference that the virtual child pornography is not regulated, Mr. Tanigaki who responded the question did not touch on this point.

In addition, at the budget committee of the 171th House of Representatives held on February 18, 2009, a Diet member asked the government about Japan's response to the Council of Europe Convention on the Protection of children against sexual exploitation and sexual abuse, which regulate virtual child pornography. The government answered they would consider signing the treaty, stating "Since there is also a need to further amend the domestic law, we will continue to make sufficient adjustments within the government, and we would like to consider future measures for the treaty. ¹⁵"

¹⁴ Watababe, 2012

¹⁵ The 171st House of Representatives Budget Committee meeting No. 15, p.11. (2009.2.18).

However, there has been no discussion on the treaty in the Diet since then. Among Japan's legislative officials, as in the case of responding to scientific data on the influence of virtuality, they lacked the attitude of actively collecting references on international trends and international treaties, or even possibly ignored intentionally. As a result of discussions on virtuality like this, the issue was biased toward "freedom of expression" rather than "human rights of children". For this reason, the discussion of the legislators could not deepen consideration for the infringement of human rights of the virtual objects targeting children to sex, which are flooded in the real world, and the suffering of children from sexual abuse.

Conclusion

The viewpoint of Japan over the regulation policy of virtual child pornography, at least in legislators, can be said to be negative to regulation. Their argument that supports that viewpoint is "Virtual child pornography is not related to violations of human rights to existing children." On the other hand, however, they do not refer in the Diet to scientific data on the influence of virtuality, international treaties, and cases concerning human rights abuses of virtuality. It can not be denied that the legislators do not positively take up the information which is incompatible with their own principles assertion. Regarding scientific data, in particular, the supplementary provision of the 'promotion of the research about the relevance of virtual child pornography and the act that violates children's rights' in the second revision proposal is exactly the one that intends to clarify the scientific data on the relevance of sexual virtuality and sexual abuse. Nonetheless, it is a contradiction that legislators concerned about the presence or absence of scientific data attempt to inhibit even this trial research.

In other words, the viewpoint of regulating virtual child pornography among legislators in Japan seems to be based on the concept of "opposing regulation." Legislators have prioritized consideration for creative affiliates rather than child's rights protection, and have had a biased discussion at the Diet for the prevention of regulations. As a result, it can be said, the second amendment of the Child Pornography Prohibition Act, which does not regulate virtual objects, has been concluded.

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