



Indonesian Legal Efforts in Ensuring the Protection of Victims of Child Trafficking in Indonesia

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Abstract

Child protection, as defined in Law No. 11 of 2012, cannot be divorced from the legal protection principle. Both were established in international legal documents and domestic law prior to the enactment of this law. This is a qualitative study employing a normative-descriptive method to legal analysis. Secondary data was gathered using the literature review approach by comparing current legal regulations and implementing these rules in the field to ascertain the meaning of the terminology used in the legislation. As a result of this research, it is clear that protecting victims of human trafficking might take the shape of abstract (indirect) or concrete protection (direct). Abstract Protection is a type of protection that can only be experienced or felt emotionally (psychologically), such as a sense of fulfillment (satisfaction). Meanwhile, concrete protection is a type of protection that provides tangible benefits, such as material or non-material presents.

Keywords: Law, Protection, Child Trafficking.

1. Introduction

This interactive digital communication media can connect the information community quickly, easily and without knowing regional boundaries (Afifah & Yuningsih, 2016). Countries that control the internet in the millennium era are sure to become developed countries if the internet is used wisely, especially in research, education, administration, socialization, networking and business. Thus, this social tool or application is handy for improving the quality of human life (Ambasari, Andiyansyah & Soewandi, 2016).

Criminal activity is increasing in a variety of industries, both in terms of severity and sophistication. Similarly, its dangers to global security impede the country's advancement on social, economic, and cultural levels. Given that crime evolves in lockstep with society's progress, it's inevitable that there is a saying: crime is old in history but young in the news. This means that people have always discussed crimes, from basic (common) crimes to those that are difficult to prove (Anandari, Soekarini & Widiastuti, 2018).

The government responds to the growth of crime on a national and multinational scale, including human trafficking, particularly of women and children,

which is one of the most prevalent forms of crime worldwide. The crime of human trafficking has been added to the list of transnational criminal organizations' operations (Arliman, 2016).

The developments and changes that occur both institutionally and intellectually in criminology indicate the occurrence of dialectical relationships between knowledge and thought and social reality and the stages of achieving the anticipated results in the social practice of this scientific knowledge field (Cockbain & Olver, 2019). Past criminology moved from a shallow understanding of criminal acts, even though criminal acts can be viewed from a phenomenal perspective and are inseparable from the political, economic, social context of the community (Huijsmans & Baker, 2012).

The existence of such concern is, of course, very reasonable, namely, if it is associated with the threat of the consequences it causes are very large, and it can permeate numerous aspects or fields, posing a substantial threat to national and international security and stability, as well as a significant threat to political and legislative power, as well as state authority (Juliana & Arifin, 2019). In addition, it also disrupts and disrupts social and economic institutions, causes lax enforcement of the democratic process, and undermines development and distorts the results that have been achieved—sacrificing the population, using the opportunity of human negligence as the target (Kawengian & Rares, 2015) Trapping and even enslaving community groups, especially children. Irresponsible people have even used this social media tool, and they only think about personal gain (Sari, 2005). For example, online sale of human organs illegally. Thus, there is an impact on using information technology, namely a positive result if appropriately used to be used as a positive means, and a negative impact if it is misused to fulfil harmful desires and interests (Laurensiusarliman, 2018).

According to Article 1 of Law No. 23 of 2002 on Child Protection, child protection encompasses all activities aimed at ensuring and protecting children's rights to live, grow, develop, and engage optimally in accordance with human dignity and protection. From bigotry and violence. This is supported by the provisions of Article 3 of Law No. 23 of 2002, which regulates the purpose of child protection, namely to ensure the fulfillment of children's rights in order for them to live, grow, develop, and participate optimally in accordance with human dignity, and to be protected from violence and discrimination in order to realize a quality, noble, and prosperous Indonesian child (Niko, 2017).

Child protection can be done directly or indirectly. Instantly, it means that the activity is directed at the child who is the target of immediate treatment (Sastriyani, 2010). Activities like this, among others, can take the form of protecting children from various threats both from outside and from within themselves, educating, fostering, accompanying children in numerous ways, preventing hunger and seeking their health in multiple ways, as well as by providing self-development for children, This is where the government's role is tested in the context of protecting the community from trafficking crimes and violence against children.

2. Methods

This is a qualitative study employing a normative-descriptive method to legal

analysis. Secondary data were collected using the literature review method by comparing existing legal rules and their implementation in the field in order to ascertain the meaning contained in the terms used in statutes and regulations as well as international conventions textually, as well as the contextual, particularly in Its purpose is to safeguard the victim's child against the perpetrator's crime.

To address and resolve the aforementioned issues, research sources are required. These sources can be classified as primary legal documents or secondary legal materials. Primary legal resources are those that are authoritative in character, i.e., have authority, and include legislation and judicial decisions. Secondary legal materials encompass all non-official legal works, such as textbooks, legal dictionaries, legal periodicals, and opinions on court decisions. To procure legal documents A literature review is one method of obtaining these legal resources.

3. Result and Discussion

3.1 Human Trafficking Practices

There is no adequate definition of human trafficking; the most likely application is to demonstrate that human trafficking is a crime that is covered by numerous laws. For example, the Criminal Code, the Law on Child Protection, the Law on Migrant Workers, and others. Therefore, the effort to incorporate this type of crime into Indonesian legislation is a positive step (O'connel, 2011). The author believes that this crime of child trafficking is included in transnational crimes, the same as corruption and drug abuse and terrorists, which must receive special treatment and receive severe punishment.

With the promulgation of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, the formulation of trafficking in persons contained in this law becomes the primary reference. Article 1 number 1 states:

“Trafficking in persons is the act of recruiting, transporting, harboring, sending, transferring or receiving a person by means of the threat of force, use of force, abduction, confinement, fraud, deception, abuse of power or position of vulnerability, debt bondage, or the giving of payments or benefits, so as to obtain the consent of the person who has control over the other person, whether carried out within a country or between countries, to exploit or cause people to be exploited”.

Additionally, the Trafficking Victims Protection Act-TVPA defines heavy trafficking as 1) Sex trafficking, in which a commercial sex act is enforced through force, fraud, or deception, or in which a person is coerced into performing such an act, and has not reached the age of 18 years, or 2) Recruiting, harboring, transporting, providing, or obtaining someone to work or provide sex.

In addition, in some cases, the sale and purchase of children are also sometimes used to take their organs. The legislation in the Criminal Code is the leading general rule so that special laws outside the Criminal Code are bound to the general provisions contained in it as in Chapter VII of the Criminal Code concerning crimes that endanger public safety for people or goods. The Criminal Code is not directly regulated regarding trafficking in human organs but governs the trading of goods known to risk life and soul (Putri & Arifin, 2019). Criminal Code Article 204 covers criminal penalties for persons who traffic in items known to jeopardize people's lives or health. Article 206 of the Criminal Code is amended to include extra sanctions for

revoking certain rights and notifying the public of a judge's decision.

According to data from KPAI, for the period January-April 2021, there have been 2017 children who have become victims of the Crime of Trafficking in Persons (TPPO) and exploitation of children, the most victims being victims of child prostitution. The Indonesian Child Protection Commission noted that around 234 children had been victims of 35 known cases. A total of 207 children (93%) were victims of 29 points of prostitution. 14 children have become victims of 4 cases of economic exploitation until April 2021, while three children have become victims of two instances of child trafficking; the data is presented in the following diagram:

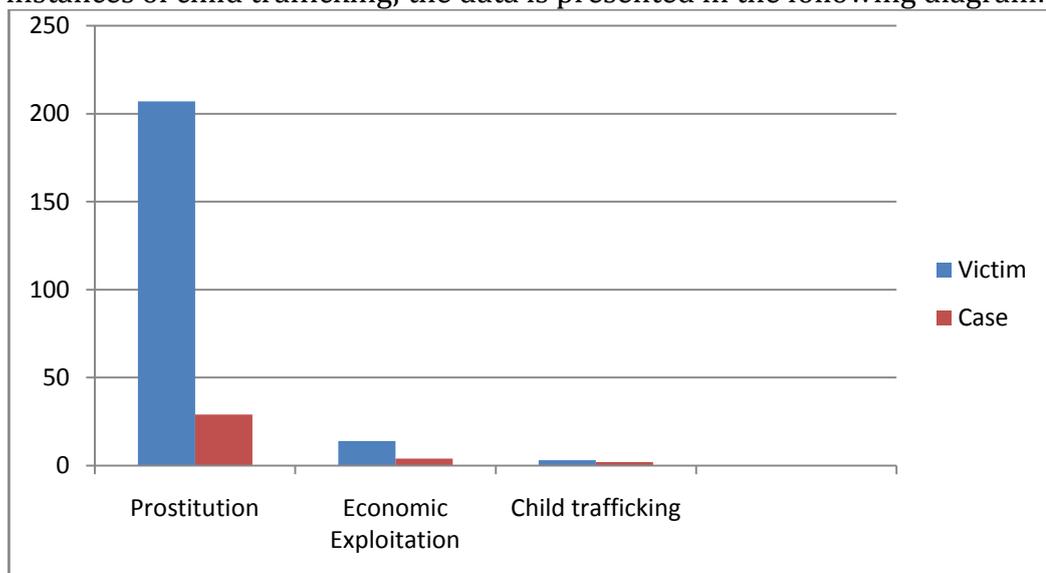


Fig 1. Number of Cases and Victims of Trafficking in Persons and Exploitation of Children (January-April 2021)

Source: Data from the Indonesian Child Protection Commission (May 2021)

Exploitation may involve the following: 1) Exploitation of others for prostitution or other types of sexual exploitation; 2) Forced labor or services; 3) Slavery or behaviors resembling slavery; 4) Slavery; and 5) Organ extraction. In 1994, the United Nations General Assembly defined trafficking as the illegal and unlawful transfer of persons across territorial, national, and international borders, primarily from developing countries and economies in transition, with the intent of forcing women and girls into situations of sexual and sexual exploitation and oppression (Rafferty, 2013). Economic operations and other unlawful crimes involving women trafficking, such as forced domestic labor, forged marriages, illegal labor, and bogus adoptions, are carried out to benefit recruiters, traffickers, and organized crime syndicates. What was debated at the United Nations General Assembly is a response to the growth of crime on a national and international scale, including human trafficking, particularly of women and children, as a category of crime worldwide (Rahmawati, 2016). The crime of human trafficking has been added to the list of transnational criminal organizations' operations.

Criminal sanctions are generally formulated in the formulation of offences, although some are developed separately in other articles (special provisions). Death or life imprisonment or certain imprisonment; 2) Threatened with life imprisonment

or certain imprisonment; 3) Threatened with imprisonment (specific); 4) Threatened with imprisonment or confinement; 5) Threatened with imprisonment or imprisonment or a fine; 6) Threatened with imprisonment or a fine; 7) Threatened with imprisonment; 8) Threatened with imprisonment or a fine, and 9) Threatened with a fine (Wulandari & Wicaksono, 2014; Poluakan, et al, 2019).

From the nine formulations above, the following can be identified: 1) The Criminal Code only adheres to two formulation systems, namely: a) a single formulation, which is subject to only one principal crime; and b) alternative formulation; 2) The main punishment that is threatened/formulated singly, is only imprisonment, confinement or a fine. No capital punishment or life imprisonment is punishable singly, and 3) The alternative formulation starts from the heaviest principal punishment to the lightest.

The punishment rules in the Criminal Code are oriented to the existing "strafsoort" or referred to in the Criminal Code, both in the form of primary and additional penalties. The type of punishment formulated/threatened in the formulation of the offence is only the principal and other liabilities. Substitute imprisonment is not developed in the formulation of violations (special rules) but is included in the general rules regarding the implementation of the crime (strafmodus).

3.2 Legal Protection Arrangements for Victims of Child Trafficking

According to Hardjawidjaja, the status of children has been known as legitimate children, out-of-wedlock children and adopted children. Regarding the status of children, according to Hardjawidjaja, the problem of children, offspring or the basic relationship between parents and children can be stated that birth alone does not determine the status of the child. The status can be valid or invalid".²⁰ This means that judging from the child's status, there is a difference between legitimate children and illegitimate children.

Article 351 to 355 of the Criminal Code provide legal protection for women and children, which is incorporated into the provisions of these articles regarding persecution, as perpetrators of severe and minor abuse face imprisonment. Article 356 of the Criminal Code provides a third of the threat of persecution committed against women and children. Apart from family members, many legal protection procedures exist for victims of Human Trafficking in Children and Women. These include the following:

Protection of Witnesses and Victims of Criminal Acts of Trafficking in Persons is regulated in 1) Article 43: Provisions regarding the protection of witnesses and victims in cases of criminal acts of trafficking in persons are implemented in accordance with Law No. 13 of 2006 on Witnesses and Victims Protection, unless otherwise specified in the Act; 2) Article 44: The right of witnesses and victims to anonymity; 3) Article 45: Establishment of a particular service room at the police office to conduct investigations at the investigation level; 4) Article 46: To protect witnesses and/or victims, it is necessary to establish an integrated service center in every district/city; and 5) Article 47: In order to protect witnesses and/or victims, it is necessary to establish an integrated service center in each district/city in the event that witnesses and or organs receive threats, POLRI is obliged to provide protection both before, during and after the case examination process.

Although there have been genuine efforts to provide legal protection for victims,

what still needs to be asked is whether the victim protection is implemented in Law no. 13 of 2006 following the concept of victim protection. This question arises because if you pay attention to several provisions in Law No. 13 of 2006, it seems that the makers of Law no. 13 of 2006 is still able to understand the concept of victim protection and its relation to victim access in the criminal justice system so that what has been stated in the preamble section is not implemented consistently in its articles.

With the introduction of Law Number 21 of 2007 on the Eradication of the Crime of Trafficking in Persons, legal protection for victims of trafficking is gaining traction. Article 43 of Law Number 21 of 2007 stipulates "Provisions addressing the security of witnesses and victims in the crime of trafficking are carried out in accordance with Law Number 13 of 2006 concerning the protection of witnesses and victims." Unless specifically stated otherwise in this act. To protect victims, several kinds of rights need attention to consider the benefits regulated in regulations or laws to uphold order and legal justice.

These rights are explained as follows: 1) Victim's right to receive compensation or suffering; 2) Victim's right to refuse compensation because they do not need it; 3) The right to receive compensation for the heirs of the victim dies in the incident; 4) The right to receive guidance and rehabilitation; 5) The right to reclaim his property; 6) The right to refuse to be a witness if it endangers him; 7) The right to get protection from threats from the perpetrator if the victim reports being a witness; 8) Right to use Legal Counsel's assistance; 9) The right to use legal remedies; 10) The right to refuse to be a witness if it endangers him; 11) The right to obtain protection from threats from the perpetrator if the victim reports being a witness; 12) The right to use the assistance of Legal Counsel, and 13) The right to use legal remedies.

Protection of crime victims as part of community protection can take several forms, including restitution and compensation, medical care, and legal support. Numerous forms of victim protection exist, including the following: 1) Recompense. The Criminal Code uses the term compensation in paragraphs (1) and (2) of Article 99, stressing reimbursement of costs spent by the aggrieved person or victim. According to the victim's interests, compensation has two purposes: first, to compensate for monetary losses and any associated costs; and second, to provide emotional satisfaction to victims. Meanwhile, from the perpetrator's perspective, the need to recompense is viewed as a sort of enforced punishment and is experienced as something tangible and immediately tied to the errors committed; 2) Repatriation. Restitution is more focused on the perpetrator's culpability for the consequences of the crime, with the primary goal of compensating the victim for all losses sustained; and 3) Compensation. Compensation is a type of recompense viewed through the lens of humanity and human rights.

According to the definition above, child protection encompasses all efforts made to ensure that each child can exercise his or her rights and responsibilities for good physical, mental, and social development and growth. This is an exemplar of a society's justice. Child protection should not be overdone (Sapaedjaja, 2003; Achmad W, 2021). It must consider the influence on the environment and on the child himself to ensure that the protection efforts are not detrimental. Child protection must be conducted sensibly, responsibly, and effectively, demonstrating an effective and

efficient effort toward the child's personal development. Child protection initiatives must not suffocate initiative, inventiveness, and other characteristics that foster dependence on others and uncontrollable behavior. Children lack the capacity and inclination to exercise their rights and fulfill their responsibilities.

According to Article 1 of Law No. 23 of 2002 on Child Protection, child protection encompasses all activities aimed at ensuring and protecting children and their rights to live, grow, develop, and engage optimally in accordance with human dignity and protection. Defend yourself against violence and bigotry. This is reinforced by the requirements of Article 3 of Law No. 23 of 2002, which controls the goal of child protection, which is to ensure that children's rights to live, grow, develop, and participate optimally in accordance with their dignity are fulfilled. And human dignity, as well as protection from violence and prejudice, in order to raise Indonesian children who are capable, noble, and prosperous.

Child protection can be done directly or indirectly. Presently, it means that the activity is directed at the child who is the target of immediate treatment. Activities like this, among others, can take the form of protecting children from various threats both from outside and from within themselves, educating, fostering, accompanying children in numerous ways, preventing hunger and seeking their health in multiple ways, as well as by providing self-development for children.

Meanwhile, what is meant by indirect child protection are activities that are not directly aimed at the child, but other people involved or carried out actions to protect the child. Child protection concerns various aspects of life to grow and develop appropriately, following their human rights. In society, the provisions governing child protection are outlined in a regulation called the Child Protection Law. Child Protection Law is a legal framework that protects children's rights and obligations through customary law, civil law, criminal law, civil procedural law, criminal procedural law, and other rules addressing children's issues. Special protection for children in emergencies, such as children in dispute with the law and children from minority and isolated groups, is detailed in Chapter VIII Part Five of the Child Protection Law No. 23 of 2002.

The article makes reference to youngsters who have run afoul of the law in one of its arguments. Everyone assumes that when they hear the term "children who are in confrontation with the law," they are being coerced into thinking of children who commit crimes. Despite the fact that Article 64 of Law No. 23 of 2002 concerning Child Protection states that "Special protection for children in conflict with the law as defined in Article 59 includes children in conflict with the law and children who are victims of criminal acts, special protection for children in conflict with the law is implemented through the following: 1) Humane treatment of children in conflict with the law.

In addition, psychosocial rehabilitation assistance is assistance provided by psychologists to victims suffering from trauma or other mental problems to restore the victim's mental condition. The objectives of the obligation to compensate losses, namely: 1) Relieve the victim's suffering; 2) As an element that reduces the sentence to be imposed; 3) As a way to rehabilitate convicts, 4) Facilitate the judicial process. Providing guarantees to maintain relationships with parents or family; and 5) Protection from giving identity through mass media to avoid labelling.

4. Conclusion

Protection of victims of human trafficking might take the shape of abstract (indirect) or actual measures (direct). Abstract Protection is a type of protection that can only be experienced or felt emotionally (psychologically), such as a sense of fulfillment (satisfaction). Meanwhile, concrete protection is a type of protection that provides tangible benefits, such as material or non-material presents. Material donations can be in the form of compensation or restitution, exemption from living expenses or education.

Concerning the criminal act of organ trafficking (as a result of human trafficking), it has not been as expected because there is not a single article in the Criminal Code, Law No. 36 of 2009 concerning Health, or the RKUHP of 2004 that contains characteristics regarding any actions classified as the practice of buying and selling organs. The Electronic Information and Transactions Law (UUITE), not only governs typical cyberspace activities, but also criminalizes some cybercrime offenses.

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