

Criminal Law Enforcement as an Effort to Protect Children from the Crime of Human Trafficking Medan

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Abstract: *With the increasing number of child trafficking cases, the government needs to focus on serious efforts to eradicate this criminal offence. These efforts are not only in the form of law enforcement in a preventive, repressive, and responsive manner, but also efforts related to the recovery or protection of children who are victims of child trafficking after the completion of the criminal justice process which aims to restore the child's future. The research used in this journal is normative legal research. Normative legal research is research that examines the laws and regulations that apply to a legal problem. Normative research with the object of study of legislative documents by studying and examining library legal materials or can be called a study of legal science. Normative legal research tends to place law as a perspective discipline that is only seen in a normative perspective whose research themes include several things such as legal principles, legal systematics, vertical and horizontal synchronisation, legal comparisons and legal history. Efforts that can be made in providing legal protection to children as victims of human trafficking offences in the principle of legality have been regulated in the 1945 Constitution of the Republic of Indonesia and national legal rules in the form of laws and Presidential Regulations and also regulated in international legal provisions that have been adapted into Indonesian positive law. Efforts that can be made to ensure the legal protection of children as victims of trafficking offences.*

Keywords: *Law Enforcement, Protection, Children, Human Trafficking*

INTRODUCTION

Considering the increasing number of child trafficking cases, the government needs to focus on serious efforts to eradicate this criminal offence. These efforts are not only in the form of law enforcement in a preventive, repressive, and responsive manner, but also efforts related to the recovery or protection of children who are victims of child trafficking after the completion of the criminal justice process which aims to restore the child's future.

Child protection is all efforts made to create conditions so that every child can exercise their rights and obligations for the proper development and growth of children physically, mentally and socially. Child protection activities carry legal consequences, both in relation to written and unwritten law. This is in line with the mandate of the Constitution of the Republic of Indonesia contained in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The protection of child victims of child trafficking based on the mandate of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states that child victims of trafficking receive special protection that must be provided by the Government, Regional Governments, and other State Institutions (Article 59).

In relation to the protection of child victims of trafficking, in the study of the Crime of Trafficking in Persons, it is mentioned in 7 (seven) Articles of Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons. The law only instructs the protection of child victims of trafficking in the context of the criminal justice system and within the scope of prevention. However, the fate of the child after the completion of the criminal justice system has not been addressed. Is then the fulfilment of children's rights mandated in Article 28b paragraph (2) of the 1945 Constitution of the Republic of Indonesia and Article 59 of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

Problem Formulation

1. What are the forms of exploitation of child victims of trafficking offences?
2. What are the legal protection efforts against children as victims of trafficking offences?

RESEARCH METHODS

The research used in this study is normative legal research. Normative legal research is research that examines the laws and regulations that apply to a legal problem. Normative research with the object of study of legislative documents by studying and examining library legal materials or can be called a study of legal science. Normative legal research tends to place law as a perspective discipline that is only seen in a normative perspective whose research themes include several things such as legal principles, legal systematics, vertical and horizontal synchronisation, legal comparisons and legal history. It is called normative legal research because it contains the object of study in the form of research on legal principles and horizontal synchronisation, namely there is a study of several articles in the Law regarding licensing authority in post-Law space utilisation. The author conducts qualitative research using the library research method, which is one type of research approach, namely normative / juridical normative.

In conducting research, the author uses a method by researching the principles of written law, and then the author conducts research on legal systematics on a legal understanding both subjectively law, obligations, and legal events in the law. Related to the research conducted by the author in the type of normative research, the research approach carried out by the author is with a statute approach, and a conceptual approach, as according to Peter Marzuki, approaches in normative legal research include the following:

- a. Case Approach, The statutory approach must certainly be carried out in normative legal research, because the object of study is to use the rule of law as the main theme in a study. The Statute Approach is an approach that is carried out by examining laws or regulations related to the problem being resolved.

- b. Statute Approach
- c. Historical Approach
- d. Comparative Approach
- e. Conceptual Approach

It is a type of approach in legal research that provides an analytical point of view of solving problems related to the regulation of the relationship of authority between the central and regional governments in spatial planning after the changes that have been stipulated in the Law on Human Trafficking. In this research, the law is seen from the views and doctrines that have developed in legal science. By exploring aspects of the legal concepts behind it, or it can even be seen from the values contained in a regulation in relation to the concepts used whether it is in accordance with the spirit contained in the underlying legal concepts.

According to Peter Mahmud Marzuki "legal research does not recognise the existence of data, to solve legal issues and at the same time perceptions of what should be, research sources are needed". Legal research sources can be divided into research sources in the form of primary legal materials and secondary legal materials. The source of legal material carried out by the author is to use secondary data, secondary data obtained based on literature studies or literature studies consisting of legal materials concerning the problem.

In analysing the collected legal materials, it is determined by qualifying by determining the facts of a law based on the formulation of the problem and then carried out by analysis through one of the methods, namely the method of interpretation of legal rules related to the principles of written law with legal facts to determine the formulation of the problem, and accompanied by a critical description based on legal theories arranged systematically and regularly, and describing the events of legal sanctions.

All data collected will be processed through the process of analysis, reduction (selection of relevant data and elimination of unnecessary data), classification, interpretation (development of correlation between laws and regulations), and closed with conclusions. Data analysis activities are carried out using descriptive qualitative methods through a statutory approach, analytical approach, and normative-comparative approach.

LANGUAGE AND ANALYSIS

1. Forms of Exploitation Protection for Child Victims of Human Trafficking Crime

Legal protection for victims of human trafficking is to protect the rights of every person who is a victim of a criminal offence to obtain the same services and protection by laws and regulations. Therefore, in every legal error that occurs against the victim and the consequences suffered by the victim, the victim has the right to obtain the necessary

assistance and protection in accordance with the principle of law, namely the existence of equality before the law or what is often referred to as the principle of equality before the law. Meanwhile, what is meant by help and security for victims relates to the human rights of victims, for example, the right to receive physical assistance, the right to receive help in solving problems, the right to regain their rights, the right to receive guidance and recovery, the right to protection from threats, and the right to receive compensation from both the perpetrator and the state and government.

The Criminal Code only provides legal protection in the form of compensation through problem-solving and does not address other types of legal protection. Because legal protection for victims of crime, in this case victims of human trafficking, is not specifically addressed, it leads to injustice because often the Public Prosecutor (JPU) who substitutes the victim submits a mere charge or the judge only gives a relatively light sanction against the perpetrator. The nature of the formulation (determination) of trafficking in persons as a criminal offence with criminal sanctions in legislation is to provide indirect protection to victims of criminal acts.

Because if the perpetrators of criminal offences are sentenced to severe sanctions, it is hoped that there will be no more similar acts or the potential perpetrators will think twice before committing such acts. Although this is legal protection for victims of human trafficking offences, the provision of this punishment is not really able to provide a perfect sense of justice. Especially for victims who experience both physical and psychological suffering. The protection that can be provided to victims is in the form of medical services and psychological counselling. In addition, there is also the provision of shelter (safe house). The role of the state in creating social welfare, which is not limited to fulfilling the material needs of the community, but also the most important thing is to fulfil a sense of security and comfort in their activities. With the existence of Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons, the legal protection of victims of trafficking in persons is increasingly gaining its position.

Human trafficking based on Article 1 point 1 of Law Number 21 of 2007 on the Eradication of the Crime of Trafficking in Persons is defined as "The act of recruiting, transporting, harbouring, sending, transferring, or receiving a person by threat of violence, use of violence, abduction, harbouring, falsification, deception, abuse of power or vulnerable position, debt bondage or giving payment or benefits, so as to obtain the consent of the person who has control over the other person, both within the country and between countries, for the purpose of exploitation or resulting in exploitation". The Bloomsbury reference refers to Human Trafficking as Trafficking in Person which is defined as "The

illegal practice of finding and using human beings for unpaid often unpleasant work in situations their circumstances prevent them from living in".

The legal instruments of the criminal offence of trafficking in persons can be seen in the Constitution of the Republic of Indonesia, which generally states that Indonesian citizens have the right to the things stated in Article 20, Article 21, and Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which is also the basis for the establishment of Law Number 21 Year 2007 on the Eradication of the Criminal Offence of Trafficking in Persons. Prior to the enactment of Law No. 1 Year 2007, the Criminal Code had already regulated trafficking in persons, which is contained in Article 297 and Article 324, which reads:

Article 297 of the Penal Code "Trafficking in women and trafficking in minor boys shall be punished by a maximum imprisonment of six years."

Article 324 of the Penal Code "Any person who at his own expense or at the expense of another carries on the slave trade or commits acts of slave trade or knowingly participates directly or indirectly in any of the aforesaid acts, shall be punished by a maximum imprisonment of twelve years."

Law No. 21/2007 on the Crime of Trafficking in Persons, apart from being formed based on Article 20, Article 21, and Article 28B paragraph (2), is also inspired by Law No. 7/1984 on the Ratification of the Convention on the Elimination of all Forms of Discrimination Against Women and the 2000 UN Protocol on Preventing, Combating and Punishing the Crime of Trafficking in Persons, especially Women and Children (Palermo Protocol) which has been signed by the Government of Indonesia. The definition of a child in Law No. 21/2007 is defined as a person who is not yet eighteen years old, including children in the womb. Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons regulates the modus operandi or method of operation of individuals or groups of criminals in carrying out their criminal plans in the crime of trafficking in persons, especially those who make children as victims.

The forms of exploitation regulated in Article 1 paragraph 7 are prostitution, forced labour or service, slavery or practices similar to slavery, oppression, extortion, physical exploitation, sexual exploitation, reproductive organs, or unlawfully transferring or transplanting organs and/or body tissues, or exploiting a person's power or ability by other parties for material or immaterial gain. It is important to note that Article 1.7 does not limit itself to only 10 (ten) types of exploitation, Law No. 21/2007 regulates exploitation without limitation. Thus, it is still possible to find other types of exploitation carried out by perpetrators of trafficking in persons, especially those who make children their victims.

B. Legal protection efforts for children as victims of trafficking offences

Legal protection efforts against child victims of trafficking are not only aimed at children but also aimed at "Human rights are the basic rights of all human beings without any difference. Given that basic rights are a gift from God Almighty, the definition of Human Rights is a right as a gift from God Almighty that is inherent in human beings, is natural, universal and eternal, related to human dignity.

The crime of trafficking in persons (TPPO) is certainly a criminal offence that violates human rights, which is not only evident from the form of the act but also the consequences for victims of trafficking in persons, especially children. The guarantee for the protection of child trafficking victims is generally mandated in the 1945 Constitution of the Republic of Indonesia Article 28 b paragraph (2), namely "The right of the child to survival, growth and development and the right to protection from violence and discrimination". In addition to the 1945 Constitution of the Republic of Indonesia, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in Article 59 confirms that the Government, Regional Governments and other state institutions are obliged and responsible for providing special protection to children who are economically and/or sexually exploited, child victims of abduction, sale and/or trade.

The form of protection provided by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is regulated in Article 68 which reads "Special protection¹⁴ for child victims of abduction, sale and/or trade is carried out through efforts of supervision, protection, prevention, care and rehabilitation". Due to the massiveness of this crime, the United Nations passed a protocol to counteract, handle, and sanction the crime of trafficking in persons, especially women and children, called the Palermo Protocol "United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children". With this protocol, international cooperation to counteract and follow up on human trafficking has become stronger and more advanced. Apart from that, this protocol is also a promotional medium to reconstruct security and provide assistance for those who are targeted by Trafficking in Persons (TPPO).

The existence of human trafficking has been a problem in various countries in the world from the past until now has been the background of several International Conventions, namely:

- a. "International Convention for the Suppression of White Slave Traffic in 1921,"
"International Convention for the Suppression of Traffic in Women and Children in 1933."
- b. "International Convention for the Suppression of Traffic in women of Full Age of 1933"

c. "Convention on Elimination of All Forms of Discrimination Against Women, CEDAW, 1979

Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons (UU PTPPO) since 19 April 2009 centred on the offence. However, with the confirmation of this Law, in fact, it has not been able to crack down on the public's uneasiness and testimony, so that the problems and criminal acts of human trafficking have not been maximally resolved through this regulation. Apart from that, this special offence has also been controlled in article 297 of the Criminal Code (KUHP) which reads "Whoever intentionally causes or facilitates the trafficking of a minor, shall be punished by a maximum imprisonment of six years". And article 298 of the Criminal Code paragraph (1) which reads "In the event of conviction on account of one of the crimes in articles 281, 284, 290 and 297, the deprivation of the rights under article 35 No 1-5 may be pronounced." and paragraph (2) which reads "If the offender commits one of the crimes in articles 261, 297, in the exercise of his profession, the right to exercise said profession may be deprived."

According to the Law on the Eradication of the Crime of Trafficking in Persons Number 21 of 2007, the injustice model of commercial sexual exploitation of children in the form of selling children for sexual purposes is regulated in Article 2, namely:

1. "Any person who recruits, transports, harbours, sends, transfers or receives a person by threat of violence, use of force, abduction, harbouring, falsification, deception, abuse of power or a position of vulnerability, debt bondage or the provision of payments or benefits despite obtaining the consent of a person who has control over another person, for the purpose of exploiting that person within the territory of the Republic of Indonesia, shall be punished with imprisonment of not less than 3 (three) years and not more than 15 (fifteen) years and a fine of not less than Rp. 120,000,000.00 (one hundred twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah)."
2. "If the act as referred to in paragraph (1) results in an exploited person, the perpetrator shall be punished with the same punishment as referred to in paragraph (1)."

With the existence of this PTPPO regulation, it turns out that it still has weaknesses, which are not fully referring to the convention. For example, the material on children's rights. By not stipulating the definition of child trafficking as in the Palermo Protocol, it essentially causes the absence of more detailed regulations regarding child trafficking based on children's human rights¹⁷. Another weakness of the PTPPO Law is the definition of children contained in Law Number 21 of 2007. The definition of a child contained in Law No. 21/2007 is "A person who is not yet 18 (eighteen) years old, including children still in

the womb". This provision is not in line with the definition of a child in the Palermo Protocol which defines that "A child is any person under the age of 18 (eighteen) years."

Legal protection efforts against child victims of trafficking are not only aimed at the child but also aimed at preventing the occurrence of trafficking crimes that make children victims. Law No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection does not specifically mention how the detailed description of the protection of children who are victims of kidnapping, trafficking. Only in Article 78 it is mentioned that anyone who knows and deliberately allows children to be economically and/or sexually exploited, trafficked children will be subject to punishment.

Article 71 D states that children who are economically and/or sexually exploited, trafficked children have the right to apply to the court for the right to restitution which is the responsibility of the perpetrator of the crime. Article 71 D relates to the rights obtained by children as victims after the trial process. Law No. 21/2007 on the Eradication of Trafficking in Persons only focuses on the prevention and handling of trafficking in persons. For children as victims of human trafficking, this law only regulates what is regulated in 9 articles, namely Article 1 number 5, Article 5, Article 6, Article 17, Article 38, Article 39 and Article 40.

Legal efforts to protect children who are victims of trafficking in persons both in Law Number 21 of 2007 concerning Eradication of Trafficking in Persons and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection are divided into 3 stages, namely protection at the time of the crime, the stage of trial of the perpetrator of the crime and the stage after the court decision. The description of the 3 stages are:

1. The protection stage at the time of the criminal offence of trafficking in persons includes the threat of punishment for anyone who knows and deliberately allows children to be economically and/or sexually exploited, trafficked children (Article 78 of Law No. 35 of 2014).
2. The stage of protection during the trial of the perpetrators of the crime of trafficking in persons includes: (Law of the Republic of Indonesia No. 21 of 2007)
 - a. Investigation, prosecution, and examination in court of child witnesses and/or victims shall be conducted with due regard to the best interests of the child by not wearing a toga or official clothes.
 - b. The trial of human trafficking offences to examine child witnesses and/or victims shall be conducted in a closed session.

- c. The examination of child witnesses and/or victims shall be accompanied by parents, guardians, foster parents, advocates, or other companions.
- d. Examination of witnesses and/or child victims as referred to in paragraph (1) shall be conducted without the presence of the defendant
- e. Examination of witnesses and/or child victims, with the approval of the judge, may be conducted outside the court session by recording in the presence of an authorised official.

CONCLUSIONS AND SUGGESTIONS

Efforts that can be made to provide legal protection to children as victims of human trafficking crimes have been regulated in the 1945 Constitution of the Republic of Indonesia and national legal regulations in the form of laws and Presidential Regulations and also regulated in international legal provisions that have been adapted into Indonesian positive law. Efforts that can be made to ensure the legal protection of children as victims of human trafficking are reflected in 3 stages, namely at the time of the crime of human trafficking, the stage of trial of the perpetrators of human trafficking and the stage after the court decision on the perpetrators of human trafficking, which is concluded from the provisions of Law No. 21/2007 on the Eradication of the Crime of Human Trafficking, 21 of 2007 on the Eradication of the Criminal Offence of Trafficking in Persons and Law No. 35 of 2014 on the amendment of Law No. 23 of 2002 on Child Protection.

Therefore, efforts through legal channels should also be made to provide protection to children as victims of trafficking in persons, not only limited to the provision of compensation/restitution but also to the restoration of children's rights to grow and develop and obtain their rights in the fields of education, social and culture as mandated in Article 28 b paragraph (2) of the 1945 Constitution of the Republic of Indonesia because the future of children is not only limited to the provision of compensation/restitution. The PTPPO Law is difficult to enforce in Indonesia considering that the existence of this regulation holds such broad juridical risks and is related to other laws such as the Child Protection Law, Immigration Law, Criminal Code, Law on the Protection and Placement of Indonesian Workers Abroad, Labour Law, Population Administration Law, Citizenship Law, and Witness and Victim Protection Law.

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