

Legal Review of Criminal Law on Children as Victims of Human Trafficking (Study of Decision Number: 1824/Pid.Sus/2023/PN.Mdn)

Putri Ayu Marsally¹, Sugih Ayu Pratitis², Muslim Harahap³

¹ Harapan University Medan, Indonesia; marshamput@gmail.com

² Harapan University Medan, Indonesia; sugihayu85@mail.com

³ Harapan University Medan, Indonesia; muslimharahap09@gmail.com

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ABSTRACT

Children are a vulnerable group that requires special legal protection, especially in cases of human trafficking. The research method used is normative juridical or library research, by analyzing library materials or secondary data relevant to the topic. This research is descriptive analytical, namely data obtained and processed and analyzed to provide a comprehensive picture of the legal regulations and law enforcement against children as victims of human trafficking as regulated in Article 2 and Article 3 of Law Number 21 of 2007 concerning TPPO and Article 455 - 257 of Law Number 1 of 2023 concerning the Criminal Code with data collection methods through document studies and interviews. Research Results Show that criminal law in Indonesia has strictly regulated the protection of children as victims of human trafficking, both through Law Number 35 of 2014 concerning Child Protection and Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, then in Decision Number: 1824 / Pid.Sus / 2023 / PN.Mdn Shows the role of law enforcement officers is quite significant in enforcing the law and providing justice for child victims, although there are still challenges such as evidence, protection of witnesses / victims, and psychological recovery of children after the incident.

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Corresponding Author:

Putri Ayu Marsally

Harapan University Medan, Indonesia; marshamput@gmail.com

1. INTRODUCTION

Children are an inseparable part of human survival and the sustainability of a nation and state. In order to be able to be responsible for the sustainability of the nation and state, every child needs to get the widest possible opportunity to grow and develop optimally, both physically, mentally and socially. For that, it is necessary to make protection efforts to realize child welfare by providing guarantees for the fulfillment of their rights without discriminatory treatment.

Article 28B of the 1945 Constitution contains:

“(1)Everyone has the right to form a family and continue their lineage through a legal marriage.”

“(2)Every child has the right to survive, grow and develop and have the right to protection from violence and discrimination.”

Cases of human trafficking (TPPO) of minors are increasingly rampant in Indonesia. Transactions are carried out through the Michat application which is continued to lodging or boarding houses, in some locations the building owners cooperate with prostitution parties to share the profits. Similar cases still often occur, only they are less noticed by the local government. And it is very unfortunate that the victims do it voluntarily because they are economically desperate. (Aguido Adri, 2023)

Prostitution networks are usually led by pimps who take 50% of the payment from exploited children. (Institute for Criminal Justice Reform, 2023). Victims who are lured with large payments are easily tempted and do it voluntarily. Children are vulnerable to human trafficking due to poverty, lack of awareness of child labor, low levels of education, lack of birth registration, humanitarian crises, cultural factors, ineffective laws and weak law enforcement in human trafficking crimes. Social and cultural factors, such as gender gap that exist in some cultures, making girls more vulnerable to trafficking. Scientists also say economic globalization as a factor that contributes to the growth of cross-border child trafficking. This is characterized by the ease of traveling between countries, especially from developing countries to developed countries, both legally and illegally. International criminals take advantage of this to trade humans and send money, goods, and services. (Population and Family Control Service, 2022)

Human trafficking is a form of modern slavery, occurring both nationally and internationally. With the development of information technology, communication and transformation, human trafficking operations are becoming more sophisticated. (B.Rahmanto, 2005).

Based on the processed data, the perpetrators of trafficking are: biological fathers, adoptive mothers, husbands, boyfriends, neighbors, friends, domestic worker collectors, brokers (unknown people), pimps and prostitution networks. From who the Traffickers are, it can be said that, except for brokers and prostitution networks, all of them are people who have relations or connections with the victim, either in relations as just friends, or neighbors and boyfriends, it turns out that they also include people who are trusted by the victim, including people loved by the victim. (Ririen, et al. 2016)

Human trafficking is an act that is contrary to human dignity and violates Human Rights. The state upholds human rights, including children's rights, which are marked by the guarantee of protection and fulfillment of children's rights in the 1945 Constitution of the Republic of Indonesia and several provisions of laws and regulations, both national and international. This guarantee is strengthened by the ratification of the international convention on children's rights, namely the ratification of the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child. (Yohanes Suhardin, 2008)

The Convention on the Rights of the Child (CRC) or better known as the UN-CRC (United Nations Convention on the Right of the Child) is a human rights agreement that guarantees children's rights in the civil, political, economic, social, health, and cultural fields which was ratified in 1989 by the UN. Indonesia ratified the CRC in 1990. After 12 years, Indonesia adapted this convention into Law No. 23 of 2002 concerning Child Protection which was later revised in 2014 in Law No. 35 of 2014 which in substance has regulated several things including the issue of Children in conflict with the law, Children from minority groups, Children from victims of economic and sexual exploitation, Children who are trafficked, Children who are victims of riots, Children who become refugees, and Children in situations of armed conflict. (Yayasan Arek, 2001)

Children as victims of economic and sexual exploitation including human trafficking. The crime of human trafficking, especially women and children, has spread in the form of criminal networks, both organized and unorganized. The crime of human trafficking even involves not only individuals but also corporations and state administrators who abuse their authority and power. The network of

perpetrators of human trafficking has a reach of operation not only between regions within the country but also between countries.

The provisions regarding the prohibition of human trafficking are basically regulated in the Criminal Code (KUHP). Article 297 of the Criminal Code stipulates the prohibition of trafficking in women and underage boys and qualifies such acts as crimes. Law No. 23 of 2002 concerning Child Protection stipulates the prohibition of trading, selling, or kidnapping children for oneself or for sale. However, the provisions of the Criminal Code and the Child Protection Law do not formulate a clear legal definition of human trafficking. Article 297 of the Criminal Code provides sanctions that are too light and not commensurate with the impact suffered by victims due to the crime of human trafficking. Therefore, a special law is needed regarding the crime of human trafficking that is able to provide both material and formal legal basis at the same time. For this purpose, this special law anticipates and ensnares all types of actions in the process, methods, or all forms of exploitation that may occur in the practice of human trafficking, whether carried out between regions within the country or between countries, and both by individual and corporate perpetrators).

The criminal threat to perpetrators of human trafficking is regulated in Article 2 of Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking (TPPO) which contains:

Article 2 reads:

"Any person who recruits, shelters, sends, transfers, or receives a person by means of threats of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt bondage or giving payment or benefits, so as to obtain the consent of a person who has control over another person, for the purpose of exploiting the person in the territory of the Republic of Indonesia, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 120,000,000,- (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000,- (six hundred million rupiah)".

Article 455 – 456 of Law Number 1 of 2023 amending Article 2 of Law Number 21 of 2007 concerning TPPO is:

Article 455 reads: "

1) *Any person who recruits, transports, shelters, sends, transfers or receives a person with the threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt trapping, or giving payment or benefits even with the consent of a person who has control over another person, for the purpose of exploiting the person in the territory of the Unitary State of the Republic of Indonesia, shall be punished for committing the crime of human trafficking, with a minimum prison sentence of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least category IV and at most category VII.*

2) *If the act as referred to in paragraph (1) results in a person being exploited, the perpetrator shall be punished with the same penalty."*

Article 456:

"Any person who commits one of the criminal acts as referred to in Article 446 and Articles 450 to 455 may be subject to additional punishment in the form of revocation of rights as referred to in Article 86 letters a, b, c, and/or d."

Article 3 of Law Number 21 of 2007 concerning TPPO states that:

"Any person who brings people into the territory of the Republic of Indonesia with the intention of exploiting them in the territory of the Republic of Indonesia or exploiting them in another country shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 120,000,000,- (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000,- (six hundred million rupiah)".

Article 457 of Law Number 1 of 2023 concerning Amendments to Article 3 of Law Number 21 of 2007 concerning TPPO as follows:

"Any person who commits an act aimed at seeking profit, either directly or indirectly, for himself or for another person by bringing a person or group of people, either in an organized or unorganized manner, or ordering another person to bring a person or group of people, either in an organized or unorganized manner, who do not have the legal right to enter the Territory of Indonesia or leave the Territory of Indonesia and/or enter the territory of another country, where the person does not have the legal right to enter the territory, either by using valid documents or false documents, or without using travel documents, whether through immigration checks or not, shall be punished for human smuggling with a minimum prison sentence of 5 (five) years and a maximum of 15 (fifteen) years or a fine of at least category V and at most category VII."

The problem of human trafficking began with the decision of the Medan District Court Number: 1824 / Pid.sus / 2023 / PN. Mdn with the modus operandi carried out by IP as the defendant in the decision by means of recruitment which then provides payment or benefits even though it obtains approval from the person who has control over another person, for the purpose of exploiting children against minors with a payment of IDR 350,000, - and then the defendant receives a share of IDR 200,000 based on this, the problem in this article is: How is the law enforcement and legal regulation of child victims of the Crime of Human Trafficking?; How is the legal protection and rights of children as victims of human trafficking?

2. METHODS

Legal research is conducted to find solutions to legal issues arising from the topics discussed in this paper. The research method used is normative juridical. Normative juridical legal research, or library legal research, is conducted by analyzing literature or secondary data relevant to the research topic.(Mahmud, 2005)According to Soerjono Soekanto, Normative legal research consists of: legal principles; legal systematics; Research on the level of legal synchronization; on legal history; comparative law.

Of the five types of normative legal research, those that will be used in this research are research on legal principles and comparative legal research.(Sukanto, 2009)This type of research examines the legal norms and principles contained in Article 2, Article 3 of the TPPO Law,Articles 455-457Law Number 1 of 2023 concerning the Criminal Code.

3. RESULTS AND DISCUSSION

Law Enforcement and Legal Regulations for Child Victims of Human Trafficking (TPPO)

The crime of human trafficking (TPPO) is a serious violation of human rights, not only impacting the perpetrators, but also impacting the victims of human trafficking, especially the younger generation. Article 28b Paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "Children have the right to live, grow and develop and have the right to protection from violence and discrimination."

In general, the regulation of TPPO has been regulated in the Child Protection Law, namely in Article 59 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, in addition to the 1945 Constitution of the Republic of Indonesia, confirming the authority of the central government, regional governments, and other public institutions. Children who experience sexual and economic abuse, as well as children who are kidnapped or become victims of human trafficking, have special rights to receive protection from the state.

Initially, the provisions regarding the crime of human trafficking in general and simply were regulated in the Provisions regarding the prohibition of human trafficking in the Criminal Code (KUHP). Article 297 of the Criminal Code: "Anyone who intentionally causes or facilitates the trafficking of underage boys, is threatened with with a maximum imprisonment of six years". Along with the dynamics of societal development and the increasingly complex quantity of human trafficking

crimes, Indonesia finally fixed the regulation by issuing a special regulation as a legal umbrella for human trafficking crimes in Indonesia.

Enforcement Undang-Undang Nomor 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking which not only provides sanctions for perpetrators of criminal acts of human trafficking but also includes protection for witnesses and/or victims of criminal acts of human trafficking. Specifically, the law regulates the fulfillment of victims' rights within the framework of witness and/or victim protection, especially as stated in Article 51 which states that victims of human trafficking have the right to receive health rehabilitation, social rehabilitation, repatriation, and social reintegration from the government if the person concerned experiences suffering either physically or psychologically due to the crime of human trafficking. Traumatic medical and psychological conditions due to coercion and the presence of witnesses and/or victims in exploitative conditions require an approach that is oriented towards fulfilling the rights of witnesses and/or victims to health and social rehabilitation services, repatriation, legal services or assistance, and reintegration that must be carried out by the state. The principles of human rights, gender, and the best interests of children are of global concern to countries in the world.

The provisions of Article 1 paragraph (1) of Law No. 21 of 2007 concerning the Crime of Human Trafficking define human trafficking as follows: "The act of recruiting, transporting, harboring, sending, moving or receiving a person with the threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt trapping or giving payment or benefits, so as to obtain the consent of the person who has control over the other person, whether carried out within the country or between countries, for the purpose of exploitation or resulting in the person being exploited."

Based on the article, there are 3 (three) elements of the crime of human trafficking, namely: elements of process, method and exploitation. In the case above, the defendant Ika Pratiwi fulfills the elements of human trafficking. By being sentenced to 6 years in prison and a fine of Rp. 120,000,000, - (One hundred and twenty million rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence of 3 months.

Based on Article 2 paragraph 1 of Law no. 21 of 2007, it reads "Any person who recruits, transports, shelters, sends, transfers, or receives a person with the threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt trapping or giving payment or benefits even though obtaining the consent of a person who has control over another person, for the purpose of exploiting the person in the territory of the Republic of Indonesia, shall be punished with imprisonment of at least 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp600,000,000.00 (six hundred million rupiah)."

Legal Protection and Rights of Children as Victims of Human Trafficking

Legal protection for women and children as victims of TPPO is already contained in Article 351-355 of the Criminal Code. In this article, regarding abuse, perpetrators of serious or minor abuse are threatened with imprisonment, Article 356 of the Criminal Code provides one third of the threat for abuse committed against people outside their family members, several provisions for legal protection for victims of Human Trafficking of Children and Women include:

a. Protection of Witnesses and Victims of Human Trafficking Crimes.

In terms of protecting witnesses and victims of TPPO, this has been regulated in several articles, namely:

- a) Article 43: "Provisions regarding the protection of witnesses and victims in cases of criminal acts of human trafficking are implemented based on Law Number 13 of 2006 concerning the protection of Witnesses and Victims, unless specified in the Law."
- b) Article 44: Witnesses and victims have the right to maintain their identity confidentiality.
- c) Article 45: Establishment of a special service room at the police station to conduct investigations.

- d) Article 46: To protect witnesses and/or victims, it is necessary to establish an integrated service center in each district/city.
- e) Article 47: To protect witnesses and/or victims, an integrated service center needs to be established in each district/city. In the event that witnesses and/or organs receive threats, the National Police are required to provide protection before, during and after the case examination process.
- f) Article 48: Every victim of the crime of human trafficking or their heirs has the right to receive restitution, in the form of compensation for loss of wealth/income, suffering, medical/psychological care, and other losses suffered by the victim due to human trafficking.
- g) Article 49: The implementation of restitution is reported to the chairman of the court and announced on the notice board.
- h) Article 50: If restitution is not fulfilled within the specified time limit, the victim and/or his/her heirs must notify the court and if the perpetrator is unable to pay compensation, the perpetrator will be subject to a maximum imprisonment of 1 year.
- i) Article 51: In the event that the victim experiences trauma or illness that endangers him/herself due to the crime of human trafficking so that he/she requires immediate assistance. The minister or agency that handles health and social issues in the region is required to provide first aid no later than 7 (seven) days after the application is submitted. In the event that the victim is abroad and requires legal protection due to the crime of human trafficking, the Government of the Republic of Indonesia through its representatives abroad is required to protect the person and interests of the victim, and endeavor to repatriate the victim to Indonesia at the expense of the State.
- j) Article 52: In the event that the victim experiences trauma or illness that endangers him/herself due to the crime of human trafficking and requires immediate assistance. The minister or agency that handles health and social issues in the region is required to provide first aid no later than 7 (seven) days after the application is submitted.

Related to the protection of witnesses and victims according to Arif Gosita as quoted by Anita Hadayani Nursamsi, in order to provide protection for victims there are several kinds of rights that need attention to be considered for their benefits which are regulated in regulations or laws in order to uphold legal order and justice. These rights are explained as follows: (Anita Handayani Nursamsi, 2007)

- a) The victim's right to receive compensation for his/her suffering;
- b) The victim's right to refuse compensation because they do not need it;
- c) The right to receive compensation for heirs if the victim dies in the incident;
- d) The right to receive guidance and rehabilitation;
- e) The right to regain one's property;
- f) The right to refuse to be a witness if it would endanger him/herself;
- g) The right to receive protection from threats from the perpetrator if the victim reports being a witness;
- h) The right to use the assistance of a legal advisor;
- i) The right to use legal remedies;
- j) The right to refuse to be a witness if it would endanger him/herself;
- k) The right to receive protection from threats from the perpetrator if the victim reports being a witness;
- l) The right to use the assistance of a Legal Advisor; and
- m) The right to use legal remedies.

Protection of crime victims as part of protection to the community, can be realized in various forms, such as through the provision of restitution and compensation, medical services and legal aid. Some forms of protection for victims, namely: (Rena Yulia, 2014)

- a. Compensation The term compensation is used by the Criminal Code in Article 99 paragraph (1) and (2) with an emphasis on the reimbursement of costs incurred by the injured party or victim. Viewed from the interests of the victim, the concept of compensation contains two benefits, namely, first, to cover material losses and all costs incurred, and second is the emotional satisfaction of the victim. Meanwhile, viewed from the perpetrator's side, the obligation to compensate for losses is seen as a

form of punishment imposed and is felt as something concrete and directly related to the mistake made.

- b. Restitution Restitution is more directed at the perpetrator's responsibility for the consequences caused by the crime so that the main target is to overcome all losses suffered by the victim.
- c. Compensation Compensation is a form of assistance that can be seen from the aspect of humanity and human rights.

Legal protection for victims of trafficking crimes is increasingly gaining ground with the enactment of Law Number 21 of 2007 concerning the Eradication of Human Trafficking Crimes. Provisions regarding victim protection are specifically regulated in Articles 43 to 53, Article 43 of Law Number 21 of 2007 regulates "Provisions regarding the protection of witnesses and victims in trafficking crimes are implemented based on Law Number 13 of 2006 concerning the protection of witnesses and victims unless otherwise specified in this Law. Victim services are activities carried out in response to victimization with the intention of reducing suffering and facilitating recovery for victims, including victim service activities, providing information, conducting examinations, and conducting individual interventions.

4. CONCLUSION

Legal regulations regarding victims of the crime of human trafficking are regulated in Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking (TPPO) as stated in Article 2 and Article 3 which basically states that the perpetrator can be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 120,000,000,- (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000,- (six hundred million rupiah)". And for legal protection for witnesses and victims it has been clearly regulated in Articles 455-457 in Law Number 1 of 2023 concerning the Criminal Code (KUHP).

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