

# Legal Protection for Child Victims of Criminal Acts of Human Trafficking in Indonesia

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**Abstract.** Human trafficking has been interpreted as the effect of social disorganization and crime caused by various social factors. Social changes led women and children to leave their homes and villages to scavenge for higher income in another region or country. The research used a normative juridical approach as its method. As the specification of research is descriptive, the analysis method is juridical analytical. Secondary legal materials are presented in the form of primary and secondary. Practical actions are needed to protect and eradicate human trafficking, especially for children. It needs a comprehensive international approach from the countries of origin, transit, and destination. The Government has an obligation to respect, protect, and fulfill the rights of the child, which are contained in some regulations: the Constitution, Act No. 4 Year 1979 about Child Welfare, Act No. 3 Year 1997 Judicial of the Child, Act No. 35 Year 2014 about Child Protection, Act No. 13 Year 2006 on the Protection of Witnesses and Victims, Act No. 21 Year 2007 of PTPPO, The National Plan of Action, Presidential Decree No. 88 Year 2002.

**Keywords:** Legal Protection, Child Trafficking, Penal Policy, Child Rights

## 1. Introduction

The term crime is part of social life, of life and an integral part of daily human activities. The crime is interpreted as the result of a State of social disorganization and crime caused by the variety of material things, like industrialization, rapid social change, and modernization[1]. The 21st century is the century of globalization that is filled with threats and global challenges. Criminal acts of human trafficking have become a global phenomenon that occurs in almost all countries in the world.

Human trafficking is not only a universal social phenomenon, but it has become a phenomenon of violations of law and human rights. The human trafficking always poses severe consequences for victims, their families, communities, and country. Almost all countries in the world are experiencing problems human trafficking, albeit with varying levels of difficulty. Cho indicated that measuring the existence of laws for the prosecution of perpetrators engaged in human trafficking, the protection of victims, and the prevention of human trafficking[2]. Some countries become the origin, transit, or destination of human trafficking transactions, such as that experienced by Indonesia.

Human trafficking is a form of slavery, which occurs in the modern period, with the aim of cheaper living costs with more significant benefits [3]. The cases of human trafficking that mainly involve women and children are a phenomenon of icebergs, where more cases have not yet come to the surface. The efforts of the international community or the countries in preventing and eradicating transnational crime and international crime can be done with environmental cooperation, or by pouring its settings in the International Convention.

Today, many international treaties born with its enforcement area is not at the level of international law, but rather at the level of national law due to coming into direct contact with the legal interests of a citizen (individual), such as the United Nations Convention against Transnational Organized Crime 2000. Such agreements are often referred to as the standard/harmonized-setting treaties[4]. This agreement does not create a norm. It requires the State to create norms that are included in its national law.

The concepts that underlie that protection of children as victims were needed, namely:

- a. The human rights which recognize the equality and not act arbitrarily towards others, because children are also human.
- b. Everybody has equal rights before the law, even though the child is not yet able to litigate before the law. The child will get legal protection through the parents or the person.
- c. The existence of the concept of Justice.
- d. The victim receives both physical and psychological consequence of the perpetrator's acts.

## **2. Methodology**

The type of research was legal research. Legal research or doctrinal legal research is similar to library legal research[5]. We list international conventions, protocols, and legislations in Indonesia related to child trafficking and child protection from the 1945 Constitutions, the Acts, and the implemented regulations. This legal research holds synchronization and harmonization data. Siems & mac Sithigh stated that legal research may benefit from approaches associated with sociology and can be engaged with the practical aspects of the social sciences[2].

The approach of this research was the juridical legal approach. The specification of the research was descriptive, and the analysis method was juridical analytical. Secondary legal materials are in the form of primary and secondary.

## **3. Findings**

The progress of knowledge and technology has increased for the welfare of human life, but it also can encourage new criminals. That increase in the new criminals has no boundaries of the territory.

A criminal has boundaries of state territory for locus delicti and the effects and aims of that criminal. It also applies to the trafficker and the victim of the criminal, which are individuals from many nations. This criminal act could have differences between criminal in the term of national [6].

### **3.1. The understanding of the limitations of the child**

Understanding legal system for children in Indonesia could be complicated, as there is a lack of equality regarding to application of law concept for children which could cause legislation overlaps, for example, the book of criminal law provides provisions on the things that eliminate, reduce, or aggravate criminal sentence, which is associated with the age limit[7]. Article 46 mentioned that children are not old enough (minderjarig) for committing a crime before the age of sixteen years [8]. The judge, in this case, can determine: "commanded

that the guilty be returned to her parents, guardian or his care, without any crime; or commanded that the guilty be handed over to the Government without any crime ...".

The Act. No. 8 the Year 1981 on the law of criminal procedure does not mention explicitly regarding the age limit of the child, but Article 153 paragraph 5 has given restrictions on children aged seventeen years. Meanwhile, Article 171 regulates the age limit of fifteen years or had never mated. In Act No. 1 the Year 1974 about marriage, article 7 (1) regulates the terms of marriage for a woman is to have reached the age of sixteen. The Act. No. 11 Year 2012 about the criminal justice system for children states that the child who became a victim of a criminal act hereinafter referred to as the young victims are children who are not yet 18 (eighteen) years of age who are suffering physical, mental, and/or economic loss caused by the criminal offense.

In Act No. 22 The year 2009 about traffic and transportation, Article 81 (2) explains that the age of minimum requirements is: a). 17 (seventeen) for driver license A, C, and D. The Act of No. 12 the Year 2006 about double nationality has limited 18 (eighteen) yet or single (unmarried).

The term of a child in law is different from the customary law, in which the limit of an adult is not determined from age, but from when they got married and had a new family [9]. Supomo said that someone is called an adult or child if they got married and called "*Kuwait gave*"[10]. That is different from Islamic law, in which somebody is considered an adult from when they had their first menstruation (girl) and wet dream or hair (son) when they are 15 (fifteen) years old. World Health Organization had stated in Geneva, Swiss, through the research about health quality and life expectancy in the world, prescribing new criteria for the age group in 5 (five), as follows:

- a. 0 – 17 year: a child
- b. 18 – 65 year: adult
- c. 66 – 79 year: middle-aged
- d. 80 – 99 year: oldster
- e. 100 years and up: oldster with a long life

The fact shows that there are variations as to the age limit of the child. Determine the age to define the notions of children's influence on how the law treats children as victims. Connectedness with children as crime victims cannot be defined only as children who have been victimized due to the deeds of others. Children who are dealing with the law (in the sense of children as perpetrators of crime and children as victims of crime) have yet to realize their mistakes; thus, these children need to be treated differently from adults. This is in line with Whitaker, Severy, & Morton state that treating youth in the community diversion is seen as a way to reduce further involvement with the juvenile justice system. The idea has been particularly intriguing because of its added benefit of relieving an overburdened judicial system [8]

### **3.2. The legal protection of children as a victim of trafficking in Indonesia**

A crime is an act violating the law or norms, harming yourself and others, doing something that is not common. The crime occurred in one place at the same time. There are three elements: the target of a tender (suitable targets) can be referred to potential victims; the existence of the perpetrator motivated (motivated offenders), and the absence of a guard who was able to secure the situation (capable guardians) who was called the police [12].

Human trafficking involves transactions that have several different elements and have a relation to one another as follows:

- a. Action or deed  
Actions or deeds categorized in human trafficking can be either of these actions: recruitment, transportation, shelter, delivery, transfer, or receipt of a person;
- b. Method  
Actions or deeds above done with: the threat of violence, use of violence, abduction, illegal confinement, forgery, fraud, abuse of power or a position of vulnerability, snares debt or pay or benefits; that obtain the consent of a person having control over another person;
- c. Aims  
The purpose or intention of the criminal acts is for exploitation or result in people being exploited. Exploitation includes at least the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor, slavery, servitude, and organ retrieval.

Criminal acts of human trafficking, especially women and children, have been expanded in the form of a network of crime, whether they are organized or not organized. The crime trade even involves not only the individual but also corporations and organizers of a country who abuse his power and authority. The perpetrators of the crime network of human trafficking have a range of not only inter-area operations within the country but also between countries. Women and children trafficking are also perceived to involve an extensive network, both nationally and internationally, which is a threat to the community, the nation, and the State as well as the norms of life, which is based on the respect for human rights.

According to I.S. Susanto, the function of law in the country of Indonesia law is reflected in the Preamble of the 1945 Constitution as follows:

1. Protection: the law functions to protect the public from the threat of danger and adverse actions, coming from their neighbors and community groups. This includes crimes committed by holders of power (Government/state) and that which come from the outside, which is directed against the physical, soul, health, values and human rights;
2. Justice: Safeguard legal system and protect and deliver justice for all the people. Negatively it can be said that law is unjust when it is seen breaking the values and rights which must be preserved and protected for all people;
3. Development: It is done in order to realize the welfare of all the people of Indonesia. This contains the notion that development in Indonesia functions to improve the people's welfare in real aspects of life, namely: economic aspects, social aspects, political aspects, cultural aspects, and spiritual aspects.

The problem of the legal protection and rights for children is its one-sided approach to protect children in Indonesia. Indonesian children, in order to get protection regularly, need laws or rules that are in harmony with the development community that animates Indonesia entirely by Pancasila and the 1945 Constitution. This children protection problem must receive close attention and response from the Government.

State responsibility can be touched or closely related to the problem of the sovereignty of the State, but the existence of sovereignty of these countries does not mean that the country is free of responsibility. Therefore, a State may be requested of responsibility for actions that abuse its sovereignty. The State must implement the responsibilities of the State.

Obligations related to the protection of the country divided into three ways, namely:

- a. The obligation to respect

The 1945 Constitution regulates the right of citizens in Chapter X and XA. The children are included as citizens who must be protected and given their rights, so that the protection of children is included in the 1945 Constitution, in the setting of Chapter 26 up to the article 28J.

- b. The obligation to protect  
The child protection against human trafficking is regulated in the following legislation, e.g. The Act No. 4 year 1997 concerning Child Welfare, The Act No. 11 year 2012 on Child Justice System, The Act No. 35 year 2014 about Child Protection, The Act No. 13 year 2006 on the Protection of Witnesses and Victims, and The Act No. 21 year 2007 on PTPPO and others.
- c. The obligation to fulfill  
The implementation of the obligations regarding child protection has been outlined in the National action plans, Presidential Decree No. 88 the year 2002.

The essential obligations which are emphasized, among others: the obligation not to resort to violence, the obligation to carry out the treaty obligations in good faith, and the obligation not to interfere with the affairs of other countries. The State also has the right to commit yourself in an international agreement, file the claims in the event of a violation of international treaties, act as plaintiffs and defendants at the International Court of Justice as well as enjoy exclusive rights. According to Friedman, it is only through the power of State we can assign rights and prerogatives, jurisdiction, and limitations of liability against the deeds of the officials.

Practical actions to prevent and eradicate human trafficking, especially women and children, require a comprehensive international approach in the countries of origin, transit, and destination, including steps to prevent the circulation, to punish perpetrators, and to protect victims of trafficking, including protecting the human rights of those recognized internationally.

Article 48 states that victims deserve to get protection, restitution, and rehabilitation. The Act. No. 13 the Year 2006 does not show unequivocally that children as victims of human trafficking also deserve protection. Article 5 paragraph 2 states that "paragraph 1 of this article applies only to certain cases of criminal acts of corruption, the crime of narcotics/psychotropic drugs, crime, terrorism and other criminal acts which resulted in the position of witnesses and victims faced with a situation which is life-threatening."

Some things in the article 6 of the Protocol have been implemented by Indonesia, such as: protecting the privacy and confidentiality of the victims' identity (subsection 1) and physical safety (subsection 5); whereas things that have yet to materialize: maximum protection guarantee (sub 2), protection by providing psychological assistance, jobs, individual rights of the child (subsection 4), and the guarantee of the victims to obtain compensation (sub 6). Especially when the law of child protection is not optimally applied. Child protection is a matter that creates conditions where every child can get his rights. Protecting children is also protecting humankind. In other words, protecting children means building a whole community.

#### **4. Conclusion**

The Government has committed to international conventions. The Government must respect, protect, and fulfill the rights of children which are contained in some regulations, for example, the 1945 Constitution, Act No. 4 the Year 1979 of Child Welfare, Law No. 3 The

year 1997 of Judicial Rights for Children, Act No. 35 the Year 2014 about Child Protection, Law No. 13 the Year 2006 on the protection of witnesses and victims, Act No. 21 of the year 2007 of PTPPO, the national plan of action, and Presidential Decree No. 88 the Year 2002.

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