

Legal Protection for Children as Victims of Trafficking in Persons

Nursariani Simatupang¹, Faisal²

^{1,2}Universitas Muhammadiyah Sumatera Utara

Email: nursarianisimatupang@umsu.ac.id (CA)

Abstract

Trafficking of children is an act that takes away the human rights of children. Trafficking in children seizes children's freedom, destroys the period of growth and development of children. Child trafficking is closely related to solicitation and persuasion from perpetrators. On the other hand, child trafficking is also accompanied by acts of coercion and violence by actors against children. As victims of trafficking in persons, children are unable to fight back, both physically and mentally. Children experience helplessness that can damage their future. For this reason, it is necessary to provide legal protection for children as victims of trafficking in persons. The legal protection provided is in the form of punishment for perpetrators of child trafficking. The legal protection provided aims to ensure that children are guaranteed security, peace and prosperity during their growth and development period, so that children are able to become the next generation of the nation and become leaders of the nation in the future.

Keywords: Protection, Children, Victims, Trafficking.

How to cite:

Simatupang, N. & Faisal. (2023). "Legal Protection for Children as Victims of Trafficking in Persons", IJRS: Internasional Journal Reglement Society 4, No.4, Pages: 98-104.

A. Introduction

Children are a gift from the Almighty, which must be cared for and protected by every party. This is done with the aim that children can grow and develop as well as possible and avoid crime. One type of crime that often threatens children is trafficking in persons.

The perpetrators of trafficking in persons make children their victims, because children are considered weak individuals and are unable to fight against this crime. Traffickers employ children forcibly without proper wages and often also employ children in places that are inappropriate for children, such as prostitution places and are employed as commercial sex workers.

Trafficking in children is part of the crime of trafficking in persons, which is a very inhumane crime and violates human rights. They trade children like a trading commodity. This is certainly very detrimental to the future growth and development of children.

Children as victims of trafficking in persons are very vulnerable to various other crimes, namely in the form of physical, psychological and sexual violence. Many modes are used by perpetrators of child trafficking. Even today they persuade their potential victims by using sophisticated technological means. As a result, apart from being separated from their families, children who are victims of trafficking can experience prolonged trauma. This prolonged trauma can make children hopeless and unable to continue their education. We know that education is very important for the future of children. For this reason, children as victims of trafficking in persons need to be given legal protection.

Legal protection for children is very important, especially so that children can have a better future. With the protection given to children as victims, it is hoped that children will become victims of trafficking in persons.

The research method used is normative legal research, namely research conducted by examining library materials¹ by formulating legal principles to formulate legal provisions, both from social data

¹ Jonaedi Efendi & Johnny Ibrahim. *Metode Penelitian Hukum Normatif dan Empiris*. Depok: Prenadamedia Grup. (2018): p.129.

and positive written facts.² The data collection tool with library research is research on legal materials in the form of written documents.³ This legal material will also serve as a literature review that draws and evaluates a variety of different sources including academic articles, and professional journals, books, and web-based resources.⁴

The procedure used to collect data in this study is in the form of documentation, namely: guidelines used in the form of notes or quotations, search for legal literature, books and other related matters for identification of problems in this study offline and online.⁵ Analysis of legal material is carried out using the content analysis method (content analysis method) which is carried out by explaining the material of legal events or legal products in detail in order to facilitate interpretation in the discussion,⁶ through a statutory approach (statute approach) carried out to review all laws and all matters related to the legal issues being faced⁷, namely formulating a legal definition based on legal principles from the results of a review of laws and regulations by looking at the various opinions of experts and writers relating to the issues discussed.⁸

B. Discussion

1. Criminal act of people-trafficking

Trafficking in persons pursuant to Article 1 point 1 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons is defined as the act of recruiting, transporting, harboring, sending, transferring, or receiving a person with threats of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or position of vulnerability, debt bondage or giving payments or benefits, so as to obtain approval from a person who has control over the other person, whether done within the country or between countries, for the purpose of exploitation or causing people to be exploited⁹.

This law itself is based on Indonesia's ratification of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which is called the Palermo Protocol. This protocol was formulated to strengthen and enhance international cooperation to prevent and combat human trafficking, as well as improve and protect victims and assist victims.⁹

Trafficking in persons is any act in the name of a human or person that is carried out with the aim of gaining profit by making that person a slave or as an object of sexuality such as prostitution which aims to get money or pay a certain price for an act.¹⁰ Trafficking in persons is a type of slavery in the modern era because humans are equated with merchandise being traded so that the freedom to live is deprived.¹¹

Trafficking in persons is a heinous crime against human rights, which ignores a person's right to live freely, not be tortured, personal freedom, thoughts and conscience, religion, the right not to be

²Amarudin & Zainal Asikin in Surya Perdana, et.al., "Advantages and Disadvantages of Electronic Mortgage Registration Based on the Perspective of Business Administration Law", IJRS: International Journal Reglement& Society 3, No. 3, (2022): p. 179.

³Rahmat Ramadhani, "Kedudukan Hukum Perjanjian Perikatan Jual Beli (PPJB) dalam Kegiatan Pendaftaran Peralihan Hak Atas Tanah", IURIS STUDIA: Jurnal Kajian Hukum 3, No. 1, (2022): p. 47.

⁴Rahmat Ramadhani, "Legalisasi Aset Tanah Dan Asupan Modal Usaha Menengah Kecil Masyarakat", Seminar Nasional Kewirausahaan, 2, No. 1, (2021): p. 280.

⁵Rahmat Ramadhani, "Peran Serta Masyarakat dalam Pemberantasan Mafia Tanah Pasca Pandemic Covid-19", Seminar Nasional Hukum, Sosial dan Ekonomi (SANKSI), 1, No. 1, (2022): p. 3.

⁶Rahmat Ramadhani & Ummi Salamah Lubis, "The Function of the Delimitation Contradictory Principle in the Settlement of Land Plot Boundary Disputes", IJRS: International Journal Reglement& Society 2, No. 3, (2021): p. 138.

⁷Ismail Koto, "Peran Badan Usaha Milik Negara Dalam Penyelenggaraan Perekonomian Nasional Guna Mewujudkan Kesejahteraan Masyarakat". Seminar Nasional Teknologi Edukasi Sosial Dan Humaniora 1, No. 1, (2021): p. 461-470.

⁸Farid Wajdi & Rahmat Ramadhani, "Legal Problems of Land Services Online", IJRS: International Journal Reglement& Society 3, No. 1, (2022): p. 20.

⁹Panjaitan, A. C. D. "Harmonisasi Undang-Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang Dengan Protokol Palermo Dalam Perlindungan Perdagangan Orang Di Indonesia". Jurnal Yustitia, 16, No. 1, (2022): p.1-13.

¹⁰Bambar, A. T. "Tindak Pidana Dan Konsep Hak Asasi Manusia Terhadap Penjualan Orang (Human Trafficking) Terutama Pada Anak Dan Perempuan". UNES Law Review 4, No. 4, (2022): p.488-501.

¹¹Farhana. *Pendekatan Hukum Positif terhadap Pembedaan Tindak Pidana Perdagangan Orang*, Jakarta Utara: CV.Assofa, (2022): p. 2.

enslaved and others.¹² Human trafficking is a serious enough problem from year to year. This crime is organized by using fraudulent modes whereby the perpetrator promises jobs to his victims to then be deceived, kidnapped, tricked, or placed in situations of forced labor such as forced prostitution or slavery in domestic work.¹³ Trafficking in persons, often referred to as "slavery without chains", is widespread and highly profitable. After the trade in narcotics and illegal drugs (narcotics), trafficking in persons is associated with the illegal arms trade as the second largest criminal industry in the world, with the fastest growth.¹⁴

Article 3 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which complements the UN Convention Against Transnational Organized Crime, contains the following definition of trafficking in persons:¹⁵

- a. Trafficking in persons means the recruitment, transportation, transfer, harboring or receipt of persons, by threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or the receipt or receipt of payments or benefits to achieve an agreement of someone who has power over another person, for the purpose of exploitation. Exploitation includes, at a minimum, exploitation of prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or other practices similar to slavery, servitude or the harvesting of human organs."
- b. The consent of the victim of trafficking in persons for the exploitation stated in subparagraph (a) of this article becomes irrelevant where any means stated in subparagraph (a) have been used."
- c. The recruitment, transfer, transfer, harboring or receipt of a child for the purpose of exploitation must be considered as 'trafficking in persons' even if this does not involve any of the methods stated in subparagraph (a) of this article.
- d. Child means anyone under the age of eighteen.

Trafficking of children is a crime that often occurs both at the national and international levels. Trafficking in children with their syndicate networks takes various forms and purposes, such as patterns for sexual purposes or prostitution, for domestic workers, for female workers, drug dealers, plantations, buskers and so on. What is clear is that in child trafficking there is always an element of economic and sexual exploitation, depriving freedom and demeaning human dignity.¹⁶

There are four basic characteristics of trafficking, namely:¹⁷

1. Manipulative or abuse in nature, namely deviation from the original plan or things that are informed to the victim. At the time of persuasion it is said that they will be given a decent job but in reality they are used as slaves, exploited, employed in bad jobs, made objects of transplantation, and so on.
2. There are transactions in trafficking where money transactions occur between brokers, sellers and buyers or users.
3. Do not understand, that is, victims generally do not understand that they will become victims of criminal acts, because when they migrate, their intention is to look for work or other purposes that have nothing to do with crime syndicates.
4. There is migration, namely the movement of victims beyond national borders or provincial boundaries. Due to the distance factor and beyond administrative boundaries, trafficking is usually carried out by a syndicate.

¹² Andri Yoga Utami & Pandji Putranto. *Ketika Anak Tak Bisa Lagi Memilih: Fenomena Anak yang Dilacurkan di Indonesia*. Jakarta: Kantor Perburuhan Indonesia. (2002): p. 67.

¹³ Susanti, H., et.al. "Perlindungan Hukum Terhadap Perempuan Korban Perdagangan Orang Yang Mengalami Kekerasan Dan pelecehan Seksual", KODIFIKASI 2, No. 1, (2020): p. 41-60.

¹⁴ Cantrell, R. D. *Modern Slavery: Investigating Human Trafficking*, CreateSpace: Independent Publishing. (2013).

¹⁵ Panjaitan, A. C. D. (2022). *Loc.cit*.

¹⁶ Ardianto, S. Y. "Perlindungan Hukum Terhadap Anak Sebagai Korban Dari Tindak Pidana Perdagangan Orang Di Kota Pekanbaru", Jurnal Ilmu Hukum 4, No. 1.(2013).

¹⁷ Beniharmoni Harefa. *Kapita Selekta Perlindungan Hukum Bagi Anak Ed. I. Cet. I*. Yogyakarta: Deepublish. (2016): p.76.

2. Legal Protection for Children as Victims of Trafficking in Persons

Legal protection is an act of protecting the rights of individuals or a number of individuals who are less or less able or powerless physically and mentally, socially, economically and politically both in a preventive and repressive manner based on applicable law.¹⁸ Legal protection is to provide protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law or in other words legal protection is various efforts that must be given by law enforcement officials to provide a sense of safe, both mentally and physically from disturbances and various threats from any party.¹⁹

According to R. La Porta in the Journal of Financial Economics, the form of legal protection provided by a country has two characteristics, namely prevention (prohibited) and punishment (sanction). The most tangible form of legal protection is the existence of law enforcement institutions such as courts, prosecutors, police, and other non-litigation dispute resolution institutions. The protection referred to as preventive is to make regulations, while the protection referred to is punitive in nature, namely enforcing regulations.²⁰

According to Philipus M. Hadjon, legal protection is protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions of arbitrariness. In this case legal protection is all actions or efforts made by every citizen or government in protecting and prospering their rights without having to interfere with and damage the human rights of other people or citizens, for the sake of the survival of a nation that is safe, peaceful and prosperous, without must distinguish between race, religion and without knowing the difference in skin color, because basically human rights received by humans from the Almighty are the same.²¹

Child protection is all efforts made to create conditions so that every child can exercise his rights and obligations for the proper development and growth of children physically, mentally and socially. Child protection activities have legal consequences, both in terms of written law and unwritten law.²² In the child inherent dignity and whole human dignity so that a child has the right to get the opportunity to grow and develop both physically, mentally and socially, and has the right to protection and efforts to realize the child's welfare and get the fulfillment of his rights.²³

Basically, children in the Indonesian legal system must be protected as well as possible.²⁴ Every child has dignity that should be upheld. Protection of children must be given from the womb to birth, every child born must get their rights without the child asking.²⁵

At the opening of the Convention on the Rights of the Child it is stated that children due to reasons of physical and mental immaturity, need special protection and care including proper legal protection both before and after their birth.²⁶ Every Indonesian citizen, including having the same rights before the law. Children as victims of trafficking in persons, children also have the right to obtain legal protection. This is based on several things, namely the philosophical basis, ethical basis, and juridical basis.

Legal protection for children as victims of trafficking in persons aims to enable children to carry out all their rights and obligations in every condition. In all respects, the rights of children must be protected for the sake of their development and growth. Moreover, we know that usually child trafficking is closely related to acts of persuasion, seduction, coercion, and violence experienced by children as victims. The result is very fatal for the child and his future, because physically and mentally the child has the powerlessness to avoid and fight. Child trafficking has been going on for a

¹⁸ Abintoro Prakoso. *Hukum Perlindungan Anak*. Yogyakarta: Laksbang Pressindo. (2016): p.6.

¹⁹ Lewoleba, K. K., et.al. "Analisis Sosio-Legal Perdagangan Orang Di Kabupaten Indramayu, Provinsi Jawa Barat", *Media Bina Ilmiah* 17, No.5, (2022): p. 847-856.

²⁰ *Ibid.*

²¹ Bambar, A. T. *Loc.cit.*

²² Maidin Gultom. *Perlindungan Hukum terhadap Anak dalam Sistem Peradilan Anak di Indonesia*. Bandung: Refika Utama. (2010): p.33.

²³ I Dewa Made Suartha. *Laporan Akhir Pengkajian Hukum Lembaga Penempatan Anak Sementara*, Jakarta: Kementerian Hukum dan HAM Republik Indonesia. (2013): p.1.

²⁴ Riza, F., & Sibarani, F. A. *Prinsip The Best Interest of The Child dalam Proses Peradilan Anak*, Medan: Umsu Press. (2021): p.5.

²⁵ Rizal, F. "Penerapan Sistem Peradilan Pidana Anak Dalam Kaitan Dengan Hak-Hak Asasi Anak (Studi Di Pengadilan Negeri Kisaran)", *Journal Of Science And Social Research* 5, No. 3, (2022): p.466-473.

²⁶ I Dewa Made Suartha, *Loc.cit.*

long time on this earth and is an act that is contrary to human dignity.²⁷ The perpetrators of child trafficking have damaged human rights and the dignity of children.

Children are the future of the nation. They are entitled to humane treatment.²⁸ Children who are victims of trafficking are often exploited for sexual purposes, including prostitution, pornography and sex tourism. They are also exploited for forced labour, including being used as domestic servants, working in factories with low wages and poor conditions, and farming psychotropic crops. In fact, the United Nations Security Council Counter-Terrorism Committee Executive Directorate (CTED) has released a report exploring the relationship between trafficking in persons (including children) and terrorism. It said in the report that trafficking in persons was a tool to raise funds for terrorist purposes.²⁹

Children belong to a vulnerable group. For this reason, it is easy for children to become victims of trafficking, especially those who come from economically disadvantaged people, those with limited education and knowledge, who are involved in serious economic, political and social problems, family members who are facing an economic crisis such as loss of parental income, parent is seriously ill, or dies.³⁰

Children are the potential for human destiny in the future, it is he who plays a role in determining the nation's history as well as a reflection of the nation's attitude to life in the future. In fact, the practice of trafficking in children violates children's rights to protection, education and exposes children to physical threats such as HIV infection, chronic illness and disability. For the global context, child trafficking that occurs in various parts of the world has threatened the existence and dignity of humanity which endangers the future of children.³¹

Children are a mandate and a gift from God Almighty. Children must always be looked after and protected, because children are the younger generation. Children as the younger generation will continue the ideals of the nation's struggle and will lead this nation in the future. For the necessary guidance and protection for children. This is useful for ensuring the growth and development of children, both physically, mentally and socially as a whole.

Legal protection for children as victims of trafficking in persons is contained in Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons, Child Protection Law Number 23 of 2002 concerning Child Protection, and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

Article 6 of Law 21 of 2007 stipulates that any perpetrator who sends a child into or out of the country in any way which results in the child being exploited shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 120,000,000.00 (one hundred twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).

For the perpetrators of the crime of trafficking in persons committed against children (the crimes referred to in Article 2, Article 3, and Article 4), Law Number 21 of 2007 Article 17 provides a threat in the form of a criminal charge, namely an additional 1/3 (one third). This shows that the punishment for the perpetrators of child trafficking is more severe.

Law 35 Number 35 of 2014 (Article 76F) prohibits everyone from placing, letting, doing, ordering to do, or participating in kidnapping, selling, and/or trafficking of children. Based on Article 83 of Law Number 35 of 2014, perpetrators who violate the provisions referred to in Article 76F are subject to imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 60,000,000.00 (sixty million rupiah) and a maximum of Rp. 300,000,000.00 (three hundred million rupiah).

²⁷ Misrannudin, M. "Kajian Yuridis Tentang Tindak Pidana Perdagangan Anak", Doctoral dissertation, Universitas Islam Kalimantan MAB, (2021).

²⁸ Faisal, & Simatupang, N. "Kebijakan Nonpenal Dalam Rangka Upaya Preventif Anak Sebagai Korban Kekerasan Fisik Dan Psikis Di Sekolah", Jurnal Ilmiah Kebijakan Hukum 15, No. 2, . (2021): p.287-304.

²⁹ Ardin, A. J., & Harefa, B. "Pemenuhan Hak Anak Korban Tindak Pidana Perdagangan Orang" Jurnal Suara Hukum 3, No. 1, (2021): p.174-196.

³⁰ *Ibid.*

³¹ Fahmi, "T. Perdagangan Anak (Child Trafficking) sebagai Kejahatan Transnasional dan Kaitannya dengan Globalisasi". Jurnal Sosiologi 15, No. 2, (2013): p.122-130.

Children who are victims of kidnapping, selling and/or trafficking in persons are given special protection. Parties that have the obligation and responsibility to provide special protection to children are the government, regional governments and other state institutions.

Special protection given to children as victims of abduction, sale and/or trafficking in persons is carried out through various efforts, namely:

1. Prompt treatment, including treatment and/or physical, psychological and social rehabilitation, as well as prevention of diseases and other health problems.
2. Psychosocial assistance from treatment to recovery.
3. Provision of social assistance for children from underprivileged families.
4. Provision of protection and assistance in every judicial process.

Special protection for child victims of abduction, sale and/or trafficking is carried out through supervision, protection, prevention, care and rehabilitation. The special protection given to children as victims of trafficking in persons aims for children to obtain security and peace, especially in living their lives in order to achieve a better future.

C. Conclusion

Trafficking in persons with child victims has a lasting effect on children and damages their future growth and development. Concern for children as the next generation of the nation must be increased. One way is to provide legal protection for children as victims of trafficking in persons. Legal protection is provided in the form of punishment for every child trafficker and special protection for children as victims of trafficking in persons. Legal protection can provide security guarantees for children. In addition, legal protection can provide guarantees that children can achieve prosperity, peace, avoid fear, especially from things that threaten the safety of children. so that children are able to carry out all activities to achieve their goals properly.

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