

## LEGAL PROTECTION FOR VICTIMS OF CHILD TRAFFICKING

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### *Abstract*

Children are the next generation and determine the future of the nation as well as a mirror of the attitude of life in the future, so children need to get the opportunity to grow and develop optimally, both physically, mentally and socially. But in this case sometimes children also experience problems, namely becoming victims of child trafficking committed by their biological mothers, which has been prohibited in the provisions of Article 76f *juncto* Article 83 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The sale of children is one form of crime that violates human rights, whose perpetrators are not only from other people but also their biological mothers. Where children are vulnerable to becoming victims of the criminal act of selling children because children are easy to deceive, instigate, or lure because children's thinking is still not as mature as adults. So it needs to be taken seriously and provide special protection to children as victims of the crime of selling children.

*Keywords: Legal Protection, Children, Child Trafficking*

### INTRODUCTION

Children are the next generation and the determinants of the future of the nation as well as a mirror of the attitude of life in the future. Article 28B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "every child has the right to survival, growth and development and the right to protection from violence and discrimination". Therefore, children need to have the widest possible opportunity to grow and develop optimally, both physically, mentally and socially, with noble character, protection efforts need to be made to realise the welfare of children by providing guarantees for the fulfilment of their rights and treating them without discrimination (Reza Fahlevi, 2015).

A trafficker is defined as a person who commits or is involved in and consents to the recruitment, transportation, trafficking, sending, receiving or harbouring of a person or persons from one place to another for the purpose of profit. A trafficked person (victim of trafficking) is someone who is directed, brought, bought, sold, transferred, received or hidden, as mentioned in the definition of trafficking in humans including children (Elsa R.M. Toule and Sherl Adam, 2013). The sale of children is a form of crime that can be

committed by a person or group of people or an institution against people whose age has not reached 18 years, including fetuses still in the womb (Anis Soraya, 2015).

There was a case that occurred in South Bengkulu, where a mother sold her biological child to a masher, and the child was also trafficked as a commercial sex worker at the suspect's house for Rp 250,000.

The news above is only one of the many news reports related to trafficking in persons who make children their victims. Based on data from the Indonesian Child Protection Commission (KPAI), there were 147 victims of trafficking and child exploitation throughout 2021. This number is not much different from the previous year, which was 149 children in 2020. The highest case of trafficking or exploitation occurred in 2019, reaching 347 children. After that, the trend of child exploitation crimes showed a downward trend until last year. For information, during the January-June 2022 period, KPAI has received 1,358 complaints of child protection. Of these, there were 1,444 cases with details, 981 cases were sub-commission on the fulfilment of children's rights and 463 cases were sub-commission on special protection of children.

From this data, it can be seen that child trafficking cases are increasing, so the government must focus more on overcoming the problem of trafficking cases which are increasing every day. The government's efforts to eradicate trafficking in persons have provided legal protection for victims of child trafficking which is regulated in Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, as well as Law of the Republic of Indonesia Number 21 of 2007 concerning Eradication of Trafficking in Persons. The government also regulates Government Regulation of the Republic of Indonesia Number 9 of 2008 concerning Procedures for Integrated Service Mechanisms for Witnesses and / or Victims of Human Trafficking Crimes relating 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.

Based on the background of the problem, this legal writing focuses on the problem of legal protection of children as victims of trafficking and what legal efforts can be made against children as victims of trafficking.

## **LITERATURE REVIEW**

"Protection" and "law". The KBBI defines protection as the act or thing that protects. Then, law can be defined as rules or customs that are officially considered binding, which are confirmed by the ruler or government. Referring to this definition, legal protection can be interpreted as an effort to protect the government or ruler with a number of existing regulations. In short, legal protection is the function of the law itself; providing protection. Moving on from this simple definition, the Legal Dictionary defines legal protection as coercive rules that determine human behaviour in society. These rules are made by authorised official bodies and violation of these rules will result in action being taken.

Definition of Child based on the Law of the Republic of Indonesia Number 35 Year 2014 on the Amendment to the Law of the Republic of Indonesia Number 35 Year 2002 on Child Protection. A child is someone who is not yet 18 (eighteen) years old, including children still in the womb.

The definition of Trafficking in Persons based on the Law of the Republic of Indonesia Number 21 of 2007 on the Eradication of the Crime of Trafficking in Persons is the act of recruiting, transporting, harbouring, sending, transferring, or receiving a person with the threat of violence, use of violence, abduction, confinement, forgery, fraud, abuse of power or vulnerable position, debt bondage or giving payments 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 definition of Victim based on the Law of the Republic of Indonesia No. 21/2007 on the Eradication of the Crime of Trafficking in Persons is a person who experiences psychological, mental, physical, sexual, economic, and/or social suffering, caused by the crime of trafficking in persons.

## **RESEARCH METHODS**

The research method was conducted through a normative juridical approach. Normative juridical is a legal research method conducted by examining library materials or secondary materials only (Soerdjono and Sri, 2009). This type of research is used to obtain answers to problem formulations by means of literature studies, namely examining legal materials such as primary legal materials used are Law Number 35 of 2014

concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Law of the Republic of Indonesia Number 11 of 2012 concerning the Child Criminal Justice System, Law of the Republic of Indonesia Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons, and secondary legal materials such as journals, books, papers, and Supreme Court decisions related to cases of criminal sale of children, and so on that are relevant to the issues to be discussed.

## **RESULTS AND DISCUSSION**

The definition of a child in various juridical provisions in Indonesia is very diverse, but most regulations state that a child is someone who is not yet 18 years old. Article 1 paragraph (1) of Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection as amended by Law of the Republic of Indonesia Number 35 of 2014 states that "a child is someone who is not yet 18 (eighteen) years old including children who are still in the womb" (Ni Ketut Ayu Suwandewi and Made Nurmawati, 2018).

The rights of children are based on Pancasila and the 1945 Constitution of the Republic of Indonesia as well as the basic principles of the Convention on the Rights of the Child, namely the principle of the best interests of the child and the principle of the right to life, survival and development.

The principle of the best interests of the child is a principle that emphasises that in all actions relating to children carried out by the government, society, the best interests of the child must be the main consideration. The principle of the right to life, survival, and development is that every child has the right to live safely, peacefully, happily, physically and mentally prosperous, and is entitled to the fulfilment of their basic needs to grow and develop properly, and the right to achieve a standard of living that is appropriate for the physical, mental, spiritual, moral, and social development of children which must be fulfilled by the parties mentioned by the Child Protection Law (Liza Agnesta Krisna, 2021).

The Law on Child Protection is needed to provide guarantees or legal certainty in the protection of children's rights, (Waty, Suwarty, Haryono and Bhetner, Hatta, Pritz, 2016):

1. Children are the mandate and gift of God Almighty, in whom the dignity of a human being is inherent.

2. Children are the successors of the ideals of the nation's struggle who have special characteristics and characteristics to be expected to ensure the continuity of the existence of the nation and state in the future.
3. Children need to have the widest possible opportunity to grow and develop optimally, both physically, mentally, and socially and have noble morals.

Human trafficking is a crime that violates human rights, this is because human beings who are God's creations given reason and mind certainly have dignity that must be maintained and protected, not the other way around. The crime of trafficking in persons is a prohibited act. This is because when a human being becomes the object of trafficking, there is actually an abuse of human dignity. A person who becomes a victim of human trafficking is actually deprived of their independence or freedom (Yohanes, 2008). There are many cases of human trafficking in Indonesia and the concern is that the victim of the criminal act of human trafficking is a child. Children who are supposed to be protected, cared for, given love, and guarded become victims of the criminal act of selling children who should understand about love and who should be a protector for the child. Child trafficking is a form of crime that can be committed by a person or group of people or an institution against people whose age has not reached 18 years, including fetuses still in the womb (Anis Soraya, 2015).

The sale of children can be more or less defined as all forms of acts and attempted acts involving the recruitment, transfer, purchase, sale, delivery, and receipt of persons (in this case children) by means of deception, violence, or debt bondage, for the purpose of forced domestic labour, sexual services, slavery, or any other conditions of servitude (Santi Kusumaningrum, 2007).

The sale of children involving parents, midwives, and unscrupulous child traffickers for any reason is not justified, because children include children who must be given special protection by the government, local governments, and other state institutions, from victims of abduction, sale, and/or trafficking (Alih Usman, 2021). This is regulated in Article 59 paragraph (2) letter h of Law of the Republic of Indonesia Number 35 of 2014 concerning amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection.

Special protection for child victims of abduction, sale, and or trafficking is carried out through efforts to monitor, protect, prevent, care for, and rehabilitate Special

protection of children is not only the duty of the government, but is the obligation of all parties, and the parties who play the most role are parents, because it is parents who have a very important role, obligation and responsibility in caring for children (Alih Usman, 2021).

The prohibition of selling children is regulated in Article 76 F in conjunction with Article 83 of Law of the Republic of Indonesia Number 35 of 2014 concerning the amendment of Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection. The Article stipulates that "Every person is prohibited from placing, allowing, committing, ordering to commit, or participating in the abduction, sale, and/or trafficking of a child". Criminal sanctions, in the form of imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 60,000,000,- (sixty million rupiah) and a maximum of Rp. 300,000,000,- (three hundred million rupiah). In addition, it is also regulated in Article 2 Paragraph 1 of Law of the Republic of Indonesia Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons which reads Every person who recruits, transports, harbours, sends, transfers, or receives a person by threat of violence, use of violence, abduction, harbouring, falsification, fraud, abuse of power or a position of vulnerability, debt bondage or giving payments or benefits despite obtaining the consent of a person who has control over another person, for the purpose of exploiting that person.

In 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 Rp120,000,000.00 (one hundred twenty million rupiah) and not more than Rp600,000,000.00 (six hundred million rupiah).

Here are 3 examples of Supreme Court decisions on the criminal offence of selling children in 2023-2019:

1. Decision Number 62/Pid.Sus/2018

In this decision, the Supreme Court stated that the defendant Lentia Panjaitan alias Bunga was proven legally and convincingly guilty of committing the crime of trafficking children for sale. The defendant was sentenced to 4 years imprisonment and a fine of Rp 60 million.

2. Decision Number 27/Pid.Sus-Anak/2019

In this decision, the Supreme Court stated that the defendant Benjamin Bria was proven legally and convincingly guilty of committing the crime of selling children. The defendant was sentenced to 5 years imprisonment and a fine of IDR 120 million.

### 3. Decision Number 275/Pid.Sus/2020

In this decision, the Supreme Court stated that Arief Atmodio Pasambuma alias Dio was proven legally and convincingly guilty of committing the crime of trafficking in persons. The defendant was sentenced to 3 (three) years imprisonment and a fine of IDR 120 million.

From the example of the above decision, it can be seen that the Supreme Court imposes severe sanctions on the perpetrators of the crime of selling children. This shows that the state is serious in providing legal protection to children as victims of child trafficking offences.

Victims of trafficking are generally underage children and women who are victims of economic hardship. Child trafficking is a problem that must be addressed not just on the surface, but at the root. Public knowledge about child trafficking in Indonesia is still limited to certain circles. However, there are strong indications that it is increasingly widespread and not only involves trafficking within national borders but also trafficking between countries, making this phenomenon receive attention from the public.

Parents, families and communities are responsible for safeguarding and maintaining children's rights in accordance with the obligations set out in the law. Likewise, in the context of implementing child protection, the state is responsible for providing facilities and accessibility for children, especially in ensuring their optimal and directed growth and development, both physical, mental, spiritual and social, which is intended to realise the best life for children as the nation's successor.

Although there are laws and regulations governing the legal protection of children, there are still many out there who violate the rights of freedom and independence of a child. Which will have an impact on the growth of a child who does not know what trade or exploitation is, while they are often used for the benefit of the child adults.

Children who become victims and witnesses will receive protection from threats, harassment, terror and even violence from any party, as well as special protection from the government and the state who are responsible for physical, mental, and / or economic

losses suffered by victims and witnesses to the criminal act of child trafficking. Children have rights that must be recognised and protected by the state and government. Child protection is contained in Article 1 paragraph (2) of the Child Protection Law, which is all activities to ensure and protect children and their rights so that they can live, develop, grow, and participate optimally in accordance with the dignity of humanity, and receive protection from violence and discrimination.

Juridically, the rights of victims are listed in legislation, one of which is Law No. 31 of 2014 concerning the protection of Witnesses and Victims as a substitute for Law No. 13 of 2006 concerning the Protection of Witnesses and Victims, which is listed in Article 5 paragraph.

The law outlines some of the rights of victims and witnesses, as follows:

- 1) To obtain protection for the security of his/her person, family, and property, and to be free from threats related to the testimony that he/she will, is, or has given.
- 2) Participate in the process of selecting, and determining the form of protection and security support
- 3) Giving testimony without any pressure
- 4) Get a translator
- 5) Free from tricky questions
- 6) Obtain information on case progress
- 7) Obtain information on court judgements
- 8) Knowing in the case of convicted persons
- 9) Identity withheld
- 10) Obtain temporary residence
- 11) Getting a new place to live
- 12) Obtaining compensation in accordance with the needs
- 13) Receive legal advice; and/or
- 14) Receive a temporary living allowance
- 15) Get assistance

Efforts to implement, prevent, and overcome as a whole, law enforcement can apply other sanctions, including criminal law policies (penal) and non-penal policies: The word policy comes from the English language is policy, while in Dutch it is Politiek, which can be interpreted as a guideline that has the task of directing the government (in other words,



law enforcement officials who regulate, manage, or resolve public affairs, community problems, as well as the fields of making laws and regulations and implementing regulations, with (general) goals that lead to efforts to realise the welfare or prosperity of society.

Law No. 21 of 2007 explicitly defines the criminal offence of human trafficking, with parameters as victims of human trafficking practices, children, perpetrators, corporations, in the form of sexual exploitation, violence, or threats of violence, debt bondage, recruitment, shipping, victims, and protection of victims in the form of rehabilitation, and restitution.

The right to restitution is part of a form of restoring the rights of victims or what is commonly referred to as reparations. The right of restitution is a compensation that should be paid by the perpetrator of human trafficking to the victim or the victim's family who has suffered during the victim's mistreatment. However, for the crime of child trafficking, the countermeasure cannot be done in the form of compensation, it is necessary to hold the perpetrator responsible for his actions, because this crime concerns the life, life or honour of a person that cannot be replaced or valued with material and money.

However, from all the efforts made by law enforcement officials, they have tried their best and worked hard in tackling the crime of child trafficking. However, along with the times the crime of child trafficking continues to grow and increase. This is because the crime of trafficking in persons, especially children, has expanded in the form of both organised and unorganised crime networks. Trafficking offences even involve not only individuals but also corporations. The network of trafficking offenders has a range of operations not only between regions within the country but also between countries so that it is difficult to tackle and completely eradicate the crime of child trafficking.

The Indonesian government provides protection to children as victims of child trafficking through several measures, including:

- Convention on the Rights of the Child (KHA)

In the KHA, it is explained that children have the right to protection from abduction, trafficking, and sale of children for any purpose or form. This convention provides a legal basis for the government to provide protection to children who are victims of child trafficking.

- Child Protection Law

This law provides a legal basis for the government to provide protection to child victims of child trafficking. This law regulates the rights of children who are victims of child trafficking, such as the right to recovery, the right to rehabilitation, and the right to compensation.

- **Child Protection Programme**

This programme is carried out by the government and the community to provide protection to children as victims of child trafficking. The programme includes various activities, such as physical and psychological recovery, rehabilitation, and compensation.

- **Temporary Child Protection Centre (RPSA)**

RPSA is a facility provided by the government to provide temporary protection for children as victims of child trafficking offences. In RPSA, children will receive health, education, rehabilitation, and social reintegration services.

- **Criminal Sanctions for Perpetrators of the Crime of Sale of Children**

The government provides severe criminal sanctions for perpetrators of child trafficking offences. Perpetrators of child trafficking offences may be subject to severe criminal sanctions, such as life imprisonment or the death penalty.

With the protection efforts made by the government, it is expected that children as victims of child trafficking can get serious and continuous protection. In addition, it is also necessary to increase public awareness about the dangers of child trafficking and the importance of providing special protection for children as victims of child trafficking.

## **CONCLUSION**

The prohibition on the sale of children has been regulated in 2 (two) laws, namely Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection and Law of the Republic of Indonesia Number 27 of 2007 concerning Eradication of the Crime of Trafficking in Persons. Legal protection of children as victims of child trafficking is carried out through supervision, protection, prevention, care and rehabilitation efforts.

The Indonesian government has taken several measures to protect children as victims of child trafficking, including through the Convention on the Rights of the Child, the Child Protection Law, child protection programs, temporary shelters, and punishment for traffickers of children.

In addition, legal channels can also be carried out 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 be able 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 government should continue to develop support services, such as counseling, psychological services, education, and skills training, for victims of child trafficking. And the government, LSM (CDO) and educational institutions should work together to raise public awareness about the danger of child trafficking. Intensive educational campaigns can help communities identify and report cases of child trafficking.

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