



Legal Protection for Child Victims of Human Trafficking

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Abstract

Human trafficking criminal act is, until now, a form of human slavery. Human trafficking is one of the worst treatments and a violation of human honor and dignity, and is automatically a violation of human rights. This paper aims at describing factors which cause child trafficking many occurring recently and the efforts to prevent child trafficking. This normative juridical research employs a statute approach and a case approach. The research finds that child victims of trafficking are trafficked for various forms of exploitation from sexual exploitation (organized prostitution), forced labor, slavery and other slavery practices. The efforts to prevent child trafficking are regulated through various laws and regulations, such as Law Number 35 of 2014 concerning the Amendment to Law Number 23 of 2002 concerning Child Protection. The factors to cause child trafficking are lack of awareness, poverty, culture, lack of education and weak law enforcement.

Keywords: *Child Protection; Human Trafficking; Trafficking Victim*

Introduction

The human (especially children) trafficking issue is not something new debated recently. However, human (especially children and women) trafficking becomes an issue which is not less interesting than any other human rights (HAM) violation issues, such as genocide, war, gender-based violence, etc., since all of these acts are within the dimension of violation of human honor and dignity occurring almost throughout the world.¹

Many countries have initiated the history of the convention as multiple countries' effort to eradicate human trafficking and human smuggling, especially women and children, across countries for prostitution purpose. As a comparison, human trafficking and human smuggling are crimes with the third (3rd) highest profit after weapon smuggling and drug trafficking.²

The human trafficking phenomena keep increasing until now, regardless of commercial or economic reason. The gap between the demand and the availability of human organs leads to illegal

¹ Indonesian Child Protection Commission, 2015, *Hasil Pengawasan Perlindungan Anak di Indonesia, Memahami Masalah Perdagangan Anak* [The Result of Control of Child Protection in Indonesia, Understanding the Child Protection Problems].

Second printing, KPAI Jakarta, p. 1

² Ibid

methods of obtaining organ needed.³ The price of one human organ for people living in developed countries is not really high, approximately only about 10,000 dollars, compared to the disease they suffer.⁴

In the context of Indonesia, human trafficking issue had occurred in the history of this nation, which may be found in the slavery practices in the past. During the kingdom era in Java, human trafficking, especially women, was part of feudal leadership's paternalistic style.⁵

At the time, king's power was described as something great and noble. King's absolute power may be observed with the number of their concubines. Some concubines were noblemen's daughters given to a king as a token of loyalty.⁶

In the globalization era, human trafficking increases in illegal and concealed form by way of inducement, threat, persuasion to be employed in other region or even overseas, to be employed as prostitute or labor or in any other forms of exploitation.

In the last decade, Indonesia has shown its high and serious commitment to eradicating human trafficking at national, regional and international levels. The evidence of its serious effort is with the enactment of Law Number 21 of 2007 concerning Eradication of Human Trafficking Criminal Act.

Human trafficking is not only a national or regional issue, but international one. It is important to highlight it since it includes severe violation of human rights and human dignity with significant impacts on human life. In India, 64% of kidney glands available at hospitals are derived from human organs obtained illegally.⁷

This human organ is taken from people with no direct relationship from patient. Meanwhile, the demands for human organ are fulfilled from convicts executed by the State. In Thailand, the demands for human organ are fulfilled from people dying in accident, that besides its low price, the deceased's family also agrees that the deceased's organ is to be bought for transplanting operation purpose.⁸

In Pakistan, there is a place specially organizing "human organ bazar". The price of one human organ is 2,500 dollars. Consequently, many Pakistan citizens are unable to work since one of their organs are sold.⁹ Various phenomena related to human trafficking in some Countries above show how human trafficking occurs not only in national or regional domain, but it has become an international issue.

The victims of such human trafficking are women and children, as the object of crime. Human trafficking cases are frequently difficult to detect, that they often act in disguise of a legal business, such as labor recruitment company, etc. This is why it is difficult to obtain valid and measured statistic number or data of the number of child trafficking cases in Indonesia.

³ Mohammed Y. Mattar, 2004, "Trafficking In Persons: An Annotated Legal Bibliography", *Law Library Journal*, 2004, p. 705; Maria N. Morelli, "Organ Trafficking: Legislative Proposals to Protect Minors", *American University Journal of International Law and Policy*, 2005, p. 925.

⁴ Silvia Scarpa, 2006, "Child Trafficking: International Instruments To Protect The Most Vulnerable Victims", *Family Court Review*, 2006, p. 433

⁵ Farhana, 2010, *Aspek Hukum Perdagangan Orang di Indonesia* [Legal Aspect of Human Trafficking in Indonesia], Issued by Sinar Grafika, Jakarta, p. 1

⁶ Ibid

⁷ Silvia Scarpa, *Op.Cit.* p. 434

⁸ Ibid.

⁹ Elizabeth Pugliese, "Organ Trafficking and the TVPA: Why One Word Makes A Difference In International Enforcement Efforts", *Journal of Contemporary Health Law and Policy*, 2007, p. 187.

Human trafficking, especially women and children, with fraud, coercion and intimidation has actually become a threat to women and children's life, since they are the groups that often become target and are deemed most vulnerable to exploitation. Human trafficking victims are commonly treated inhumanely and exploited. The forms of exploitation are sexual exploitation, slavery or modern slavery model, illegal organ transplantation, and baby trafficking mode for child trafficking actors' big benefit.

Some human trafficking cases are well organized businesses. Human (especially young women) trafficking networks have reached rural areas in Indonesia. Rural young women and children who are lacking of information and plain are easily deceived and persuaded by these business networks' agents.

Based on the description of human trafficking above, this research is conducted in response to the following questions: what is the form of legal protection for child victims of human trafficking in Indonesia? and, what factors cause human trafficking, especially children, recently?

Research Method

This research employed normative law method and took secondary data as its main source of data. The data consisted of books and journals of laws on legal protection for child victims of human trafficking. In addition, the data were also taken from Criminal Codes (KUHP), Law Number 39 of 1999 concerning Human Rights, Law Number 35 of 2014 concerning Child Protection, Law Number 21 of 2007 concerning Eradication of Human Trafficking Criminal Act.

The law materials were derived from law science books and law papers such as law, sociology, anthropology and social psychology books, law journals, legal experts' papers or opinion published in mass media, dictionaries, encyclopedias and internet. The research's data was collected with literature study, constituting secondary data. This paper employed conceptual approach and statute approach. The analysis was conducted qualitatively.

Discussion

a. Factors to Cause Child Trafficking

The reasons for child trafficking criminal are quite varied, that there is no specific cause of child trafficking criminal act, especially in Indonesia. This is caused by various, very different conditions and problems. Children and women are the vulnerable groups to become the trafficking and exploitation victims. They who are the victims are mostly from vulnerable society groups.

Some factors to cause child trafficking are: *first*, lack of awareness. Many children migrate for job in Indonesia and overseas while they are not aware of child trafficking and of the ways used to deceive them with arbitrary jobs or jobs equal to slavery.

Second, poverty. Poverty forces many families to plan a strategy to support their family, including making their children work because of debt, where they work for someone to pay for their debt. *Third*, desire to get rich quickly. Desire to have higher standard of life and wealth drives migration and makes the family of migrating children vulnerable to child trafficking.

Fourth, cultural factor. The following cultural factors contribute to child trafficking.¹⁰ *Child's role in family*, children's obedience to parents and obligation to support family make children vulnerable to

¹⁰ Valentina, 2008, *Perdagangan Perempuan dan Anak Dalam Pandangan Seorang Aktivist Perempuan*, Sulsitiowati (ed) *Perempuan dan Hukum yang Berperspektif Kesenjangan dan Keadilan* [Woman and Child Trafficking in the Perspective of a Female Activist, Sulsitiowati (ed) Women and Law with Equality and Justice Perspective]. Issued by Yayasan Obor, Jakarta.

trafficking. Child labor/worker, child migration for work and child labor because of debt are deemed family's financial strategies deemed acceptable in support of family's finance.

Child Marriage. Marriage has serious implication for female children, including health hazard, discontinued education, limited economic opportunity, personal development disorder and early divorce. Divorced female children are deemed as a legitimate adult and are vulnerable to trafficking because of their weak economy.

Debt; The practice to hire out family member's manpower to pay off a loan is an acceptable strategy of supporting family life to the society. Children employed as labors because of debt, especially, are vulnerable to arbitrary condition and condition similar to slavery.

Third, lack of birth registration. People without sufficient identity card are easily subject to trafficking since their age and citizenship are not documented. It is easier for trafficked children, for example, to be adopted by any adult who wants them. *Sixth,* lack of education. People with limited education have fewer work expertise, skills and opportunity and they are more easily trafficked since they migrate and look for job which does not require expertise.

Seventh, weak law enforcement. In terms of investigation and prosecution of trafficking cases, Indonesia's law system is still weak, slow and expensive until now. The transparency is quite low, thus only few victims entrust their interest to the system. The criminals have resources and connections to take advantage of the system. Consequently, many trafficking victims do not will to settle their cases through legal process. This causes trafficking practices to increase and difficult to eradicate.

Observing child trafficking motives, it is clear that the criminals do not only take children while they are toddler, in school age or adolescence, but also before they are born. In the border of Indonesia-Malaysia, for example, in 2003, for unborn children, the criminals targeted women with unwed pregnancy or rape victims. They were lured with an offer of job or marriage if they were willing to go overseas. Abroad, they were evidently put into a special camp for pregnant women, and after birth, the mother was kicked out while the baby was taken. The mother certainly did not receive the money since it had been taken by the criminals who brought her to the camp.¹¹

The other motive is to employ children. Employing children does not require the employer to pay high wage, or even they are not paid at all except with inappropriate place for sleeping and food. Employing children, they will gain benefit multiple times. This is called slavery. Employment motive also occurs in entertainment world, that employing female children gives them very great benefit.

Sexual exploitation motif. This motif takes victims the most, that women and children are made prostitute or exploited in any other ways. Women and children are made prostitute, with children as the priority, since the younger, the higher the economic value is. The other most dominant motif is for organ transplantation, such as kidney, liver, eye, and so on. Forced or threatened, victims will submit their organ, as explained above.

b. Child Trafficking Prevention Effort

Some laws and regulations regulate child trafficking issue. Law Number 35 of 2014 concerning the Amendment to Law Number 23 Number 2002 concerning Child Protection, article 59 paragraph 2 item h states that special protection is given to child victims of kidnapping, selling and or trafficking. Article 68 adds that special protection for child victims of kidnapping, selling and or trafficking is performed through supervision, protection, prevention, nursing and rehabilitation efforts.

¹¹ <https://pedulihakanak.com/2009/02/27/melawan-trafficking/> accessed January 26, 2020

Besides Child Protection Law, regulation related to child trafficking is also available in Criminal Codes (KUHP) and Human Rights Law (HAM). In KUHP and Law Number 39 of 1999 concerning Human Rights where trafficking is explicitly stated, article 297 KUHP states that male underage child trafficking and women trafficking are subject to criminal imprisonment for maximum six years. Meanwhile, article 65 Law Number 39 of 1999 states that every child has the right to protection from exploitation and sexual abuse, kidnapping, child trafficking and any forms of narcotic, psychotropic and other addictive substance abuse.

Considering the serious trafficking issue, the government has performed various efforts, for example, in 2002 issuing Presidential Decree No. 87 concerning the National Action Plan for Eradication of Child and Woman Trafficking and forming the National Special Unit in prevention of transnational trafficking crimes. 3 strategies were used, namely; trafficking victims must be protected, criminals must be severely punished, and we all develop institutional network with global alliance in eradication of trafficking. In 2002, a historical momentum was born, when Indonesia enacted Law Number 23 concerning Child Protection, clearly stipulating in article 83 that every person who traffics, sells, or kidnaps child for him/herself or to be sold is subject to criminal imprisonment for maximum 15 years and minimum 3 years and fine for maximum Rp300,000,000.00 and minimum Rp60,000,000.00. Article 84 and article 85 also impose severe punishment for child organ transplantation and trafficking.

Trafficking prevention reached its peak, when in the mid-2007, the government introduced Law No. 21 or 2007 concerning Eradication of Human Trafficking Criminal Act. This means that, from the Law provision aspect, the effort to eradicate trafficking has been performed, including the provisions in KUHP. However, there is no regulation specially regulating eradication of child trafficking criminal act. The problem is whether the Law has been followed up with Law enforcement. For trafficking cases and the like, law enforcers prefer KUHP with very light punishment, instead of Law which is *lex specialis*.

From the explanation above, it is clear that the existing rules of law do not maximally protect the victims and punish the trafficking criminals. The prevention which may be performed regarding child trafficking includes preventive and repressive measures. This may be performed by giving explanation of the danger of child trafficking including preventive measures with socialization, consultancy, both psychologically and physically, legal counseling. One effort to protect the victims is to help them obtain their rights or physical and psychological rehabilitation. It is necessary to provide legal service to trafficking victims and those vulnerable to becoming trafficking victims. Legal service is an effective entry point to examine the form of violation of trafficking victims' rights, especially women and children.

Some things may be performed regarding the handling of human trafficking, especially children, including: building a protection system at community level, such as giving correct and appropriate information, giving legal service to advocate any indication of child trafficking, campaigning and socializing various existing rules and information regarding child trafficking.

Conclusion

Based on the description above, we may conclude that the factors which cause child trafficking are, among other, lack of awareness, poverty, culture, lack of education and weak law enforcement. Child victims of trafficking are trafficked for various forms of exploitation, from sexual exploitation (organized prostitution) to forced labor and slavery. The efforts to prevent child trafficking have been regulated in some laws and regulations, such as Law Number 35 of 2014 concerning the Amendment to Law Number 23 of 2002 concerning Child Protection.

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