

Analysis of Legal Protection for Child Victims of Prostitution in Justice-Based Human Trafficking Criminal Actions

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Abstract. *The purpose of this study is to analyze legal protection for child victims of prostitution in human trafficking crimes and to analyze the formulation of legal protection for child victims of prostitution in human trafficking crimes based on justice in the future. The approach method used in compiling the thesis is normative legal research. This study uses research specifications with descriptive methods. The type and source of data use secondary data. Collecting legal materials using library research is a documentation technique, then presented in a descriptive analysis. The results of this study are (1) Legal protection for children as victims of prostitution in human trafficking crimes reviewed from the theory of legal protection, Legal protection includes individual rights guaranteed by the state, including the right of children to be free from inhumane treatment and to receive physical and psychological recovery when a child becomes a victim through various forms of protection such as counseling, medical assistance, legal assistance, supervision, and prevention, the state is required to create a legal environment that protects children from exploitation and provides ongoing protection after the prostitution case is revealed. Within the framework of the theory of legal protection, rehabilitation efforts through counseling and medical services are an important part of the victim's right to be restored, both physically and mentally. (2) The formulation of legal protection for child victims of prostitution in human trafficking crimes based on justice in the future within the legal framework of a country should ideally be able to integrate the best interests of children as a cross-sectoral principle, and in laws related to human trafficking issues, this principle must be reaffirmed as a principle that is superior to all other considerations. In the future, public prosecutors can first confiscate the assets of human trafficking perpetrators, which will later make it easier to execute restitution payments to victims.*

Keywords: Child; Human; Protection; Trafficking.

1. Introduction

Since its independence, Indonesia has been committed to providing protection for children. The constitutional basis clearly guarantees protection for children, which is stated in Article 28B (2) of the 1945 Constitution of the Republic of Indonesia. Children are the baton that is the hope for the success of national goals and the nation's ideals. Children are also social beings and creatures of God Almighty who, from the time they are in the womb of a mother until they are born, have the right to life and freedom and receive protection, whether from parents, society, or the nation and state. If a child is born, the right to life and freedom is a fundamental right and freedom that cannot be abolished or eliminated, but rather needs to receive protection and their right to life and freedom be expanded.¹

Universally, children have human rights which are protected by law, even valid from the time they are in the womb. Therefore, children also have the right to receive legal protection for all activities that lead to growth and development in the future. In order for everything to run in accordance with children's universal rights, the togetherness of all parties is needed.²

Prevention efforts in dealing with Human Trafficking Crimes are based on noble values, national and international commitments to carry out early prevention efforts, take action against perpetrators, protect victims, and increase cooperation. For this reason, all the tools needed to realize these commitments are continuously being worked on, completed, and perfected, both in terms of regulations and budgeting.³

Child prostitution is currently increasingly rampant. So that maximum law enforcement and supervision are needed for children who should get their rights and obligations according to the law but in reality are sold by pimps and used as a business to gain profit, especially in the crime of child prostitution. In other words, the crime of prostitution committed against children is also included in the crime of human trafficking.

Child Victims of Prostitution in Human Trafficking Crimes are not so popular here, because the focus of punishment is only given to the perpetrators, which indicates the completion of the problem. Even though in the punishment of a criminal, the victim does not necessarily feel willing and safe. Many victims still do not feel they have received justice and the return of the

¹Moh Hatta, *The Crime of Human Trafficking in Theory and Practice*, Liberty, Yogyakarta, 2012, p. 5

²Ridho Mubarak, *Disparity in Sentencing of Perpetrators of Violence Against Women* Scientific Journal of Law Enforcement, Vol. 2, No. 1, 2015, p. 78-95

³Rahmat Hi Abdullah, *Victimological Review of Human Trafficking Crimes*, Yustika Journal, Vol. 22, No. 1, 2019, p. 55-62

victim's position in society due to the trauma they received and the sharp psychological impact that makes it difficult to change. That is how the protection of victims of crime is so important. The crime of human trafficking is increasingly organized, making it increasingly difficult for the government to provide protection for victims, because the crime becomes transnational, structured and systematic. From this incident, it is important to study more deeply about the protection of victims of human trafficking.⁴

The purpose of this study is to analyze legal protection for child victims of prostitution in human trafficking crimes and to analyze the formulation of legal protection for child victims of prostitution in human trafficking crimes based on justice in the future.

2. Research Methods

In the research carried out, the writer uses a sociological juridical approach, namely research that uses an approach method to problems by looking at the norms or laws that apply as positive provisions.⁵

3. Results and Discussion

3.1 Legal Protection for Children as Victims of Prostitution in Human Trafficking Crimes

Indonesia as a Pancasila country, which upholds national and humanitarian values, has many regulations that explicitly provide protection efforts for children. The Indonesian Constitution, the 1945 Constitution as the highest legal norm has outlined that "Every child has the right to survival, growth and development and the right to protection from violence and discrimination". With the inclusion of children's rights in the body of the constitution, it can be interpreted that the position and protection of children's rights are important things that must be further elaborated and implemented in everyday reality.⁶

Legal protection efforts for women and children, one of which is through the prevention and eradication of human trafficking, need to be carried out continuously in order to maintain quality human resources. The quality of protection for women and children should have the same

⁴Alfan Alfian, Legal Protection Efforts for Victims of Human Trafficking Crimes, *Fiat Justisia Journal of Legal Studies*, Volume 9, No. 3, 2015, p. 331-340

⁵Soerjono Soekanto and Sri Mahmudji, *Normative Legal Research, A Brief Review*, Raja Grafindo Persada, Jakarta, 2003, p. 13

⁶Ayu Amalia Kusuma, Effectiveness of Child Protection Law in Relation to Legal Protection for Child Victims of Human Trafficking in Indonesia, *Lex et Societatis*, Vol. III, No. 1, 2015, p. 64-71

degree/level as protection for adults and men, because everyone has the same position before the law (equality before the law).⁷

The involvement of minors in the commercial sex industry, although according to the law it is a violation and is threatened with severe sanctions for those who take advantage of it, but in reality the presence of girls who become new victims of the modus operandi of pimps or brokers remains unavoidable. In fact, indications from year to year continue to increase. Although looking for underage girls directly in localization complexes may not be as easy as five to ten years ago. But it is suspected that people or male customers who already have networks and are familiar with the ins and outs of the world of prostitution can still easily get the girls they order, as long as they provide enough money.

The state guarantees protection of children's rights which are human rights. Children are the shoots, potential and young generation who continue the ideals of the nation's struggle, have a strategic role and have special characteristics and traits that guarantee the continued existence of the nation and state in the future. Based on Article 69A, special protection for child victims of sexual crimes as referred to in Article 59 paragraph (2) letter j is carried out through efforts:

1. Education about reproductive health, religious values, moral values;
2. Social rehabilitation;
3. Psychosocial support during treatment until recovery;
4. Provision of protection and assistance at every level of examination, starting from investigation, prosecution to examination in court.

The forms of legal protection for children who are victims of prostitution include:⁸

1. Counseling

Legal protection for child victims of prostitution through counseling is part of a very important rehabilitation effort to help restore their psychological condition. Children involved in prostitution often experience deep trauma due to sexual exploitation, violence, and

⁷Satria, Unggul, International Trade and Human Rights: Its Relation to Sustainable Development. Novelty Journal, Vol. 8, No. 1. 2017, p. 36-53

⁸Fitriani Rini, The Role of Child Protection Organizers in Protecting and Fulfilling Children's Rights, Samudra Keadilan Law Journal, Vol. 11, No. 2, 2016, p. 250-358

inhumane treatment. This disturbed psychological condition requires intervention in the form of counseling and psychotherapy to restore emotional stability and rebuild the child's self-confidence. The legal protection provided is not only in the form of legal action against the perpetrator, but also in the form of a recovery program for victims through a psychological approach.

Counseling for child victims of prostitution is a form of protection that must be provided by the state in accordance with Law Number 35 of 2014 concerning Child Protection. Through this regulation, the state is responsible for providing physical and psychological protection to children who are victims of violence or exploitation, including prostitution. Counseling services can be carried out by professionals, such as psychologists or psychiatrists, who are competent in handling trauma in children. This step is very important to ensure that these children not only receive legal justice, but also the psychological recovery needed to face their future.

2. Medical Services/Assistance

Medical services also include the provision of *visum et repertum* or medical certificates required as evidence in the legal process. This document is important evidence that strengthens the existence of physical or sexual violence experienced by the victim, and is an essential component in the judicial process. Doctors or medical personnel treating victims must ensure that the examination is carried out carefully and professionally, so that the resulting medical report can be strong evidence in court. This medical service ensures that the victim's rights to obtain justice are fulfilled, not only from a health aspect but also from a legal aspect.

In addition to medical examinations related to physical injuries, victims of prostitution also need access to reproductive health services. Child prostitution often results in serious impacts on reproductive health, including unwanted pregnancies, the risk of sexually transmitted infections, and other health complications. Therefore, reproductive health services must be provided to address these issues, which include treatment, reproductive health counseling, and post-traumatic recovery. These reproductive health services aim to restore the health functions of child victims and prevent further complications in the future.

3. Legal Aid

The legal assistance provided can be in the form of advocacy and assistance to victims of criminal acts of prostitution, legal

development, the essence of which is the renewal of existing legal provisions that are considered very damaging to the nation's generation and the creation of new legal provisions that are needed to meet the demands of societal development, and the affirmation of the function of law enforcement or implementing institutions.⁹

Protection in the form of advocacy given to child victims of crime is carried out through socialization efforts so that child victims of prostitution are willing to report the incident that happened to them to law enforcement officers for further processing. These legal aid efforts are provided with the aim of fighting for the rights of child victims of crime to obtain protection. Assistance for victims of crime must be given whether or not requested by the victim. This is considering the still low level of legal awareness of some victims of prostitution crimes with child victims. If victims of crime are left alone and not given proper legal assistance, it can result in the victim's condition getting worse.

4. Supervision

This protection effort can be done by monitoring and supervising areas that are prone to prostitution crimes. Those tasked with carrying out this supervision are the government, state institutions, non-governmental institutions, families and also the wider community. Areas that are prone to prostitution crimes are big cities because the economic needs are not enough to meet their living needs, so that both adult women and children will become victims of prostitution through social media, one of which is the MiChat application which is very easy to access.¹⁰

Supervision of child victims of prostitution also includes monitoring the implementation of laws that protect children. Law enforcement agencies, such as the police and prosecutors, must be supervised in carrying out their duties so that cases of child prostitution are not ignored or handled slowly. In addition, child protection agencies have an important role in monitoring the rehabilitation and reintegration process of child victims into society, ensuring that programs designed for victims are running well and achieving the desired results. This supervision ensures that the rights of children as victims are not neglected in the legal and rehabilitation process.

⁹Mulyana W Kusumah, 1986, *Perspectives on Legal Theory and Policy*, Rajawali Press, Jakarta, p. 43.

¹⁰Abdurahman, 1978, *Various Legal Problems in Development in Indonesia*, Alumni, Bandung, p. 11

5. Prevention

Efforts to prevent criminal acts of prostitution can be done by providing counseling and socialization to the community about the dangers of criminal acts of prostitution to the future of the nation, especially children. So that the community is more careful and immediately reports to law enforcement officers if there is a criminal act of prostitution against children. In addition, prevention efforts can also be done by disseminating and socializing the provisions of laws and regulations that protect child victims of crime such as Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

In addition to law enforcement, prevention also requires education and outreach to the wider community, especially children and their families, about the dangers of prostitution and how they can protect themselves from exploitation. Children who come from economically or socially vulnerable families are often the targets of child trafficking and prostitution. Therefore, it is important to provide education to the community, especially in areas prone to exploitation, about children's rights and the dangers of prostitution. This public awareness campaign can also be carried out by schools, religious institutions, and Non-Governmental Organizations (NGOs) that focus on child protection.

3.2 Formulation Legal Protection for Child Victims of Prostitution in Criminal Acts of Human Trafficking Based on Justice in the Future

The reflection of the state's obligations to citizens is manifested, among others, by the presence of a criminal justice system in Indonesia which has recently undergone many changes that lead to a balance in the orientation of fulfilling rights for both the rights of the accused and the rights of victims of criminal acts. This shift towards the better is a positive signal for the protection of citizens' rights which is not like before where the Criminal Procedure Code (KUHAP) was generally more oriented towards protecting the rights and interests of suspects or defendants, thus having an impact on the criminal justice system which better reflects justice.

The rights of victims of human trafficking crimes as stated in the above law are in line with the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power which states that the rights of victims are the right to receive compensation, restitution, rehabilitation and reintegration for victims of criminal acts.

Child trafficking constitutes a violation of the child's right to life, survival and development, as children forced into exploitation perform tasks that endanger their health and harmonious development. The implementation of the principle of the right to life, survival and development also implies the obligation of States to ensure that children who are victims of trafficking have access to appropriate social services, in particular physical and mental health services and education.

The principles of the rule of law require that the state can only punish someone based on or in line with the level of depravity of the perpetrator's actions and mistakes. Indonesia, as a state of law, views human trafficking, especially women and children, as an act that is very contrary to human dignity and violates human rights and is a threat to society, the nation, and the state, as well as to the norms of life that are based on respect for human rights. Based on the rationality of the depravity of the practice of human trafficking, Law No. 21 of 2007 was then enacted. In addition, as explained, this law also pays attention to the suffering of victims due to the crime of human trafficking in the form of restitution rights that must be given by the perpetrator as compensation for the victim. Law also regulates the rights of victims to medical and social rehabilitation, repatriation and reintegration which must be carried out by the state, especially for those who experience physical, psychological and social suffering due to human trafficking.¹¹

Children who have been victims of human trafficking need to return to a sense of normalcy in their lives. In addition, trafficked children are likely to lack access to education. The right to education of child victims needs to be fulfilled by the state, regardless of the citizenship of the trafficking victim. Fulfillment of this right may require adaptation of education laws to ensure that education is accessible to all children within the jurisdiction of the state. For example, Russian state law stipulates that the Federal Commission, regional, asylum and central commissions must immediately notify the executive authorities responsible for foster care and guardianship issues, if they receive information about child victims of trafficking, in order to ensure and protect the rights of children. Draft law also states that children who are victims of trafficking must be given the opportunity to attend school in accordance with federal education law.¹²

¹¹Afrizal, TY Dispensation of Underage Marriage in the Perspective of Islamic Law and Legislation in the Field of Marriage at the Lhokseumawe Syariah Court. *Journal of Civil Procedure Law*, Vol. 5, No. 1, 2019. p. 96-114

¹²Sedletzki, V. 2008. Legislative Reform for the Protection of the Rights of Child Victims of Trafficking. UNICEF.

A country's legal framework should ideally integrate the best interests of the child as a cross-cutting principle, and in legislation related to trafficking issues, this principle should be reaffirmed as being superior to all other considerations. In comparison, in Bulgaria, the law establishes a national commission and local/regional commissions to combat trafficking. The national commission is composed of high-level representatives from the ministries of labor, interior, justice, health, and education, as well as the child protection agency and the commission for combating anti-social behavior of adolescents and minors. The national commission also includes members of the Supreme Court, the Prosecutor's Office and the National Investigative Agency, as well as representatives from NGOs and international organizations represented in the country working in the field of preventing and combating trafficking. The local/regional commissions are composed of three to seven members appointed by the Mayor and include representatives of local governments involved in education, health and social policy issues, child protection departments, police representatives, NGOs, teachers, psychologists, lawyers, doctors, etc. A representative from the Prosecutor's Office must attend the Local Commission sessions. In contrast to Indonesia, the handling of criminal acts against individuals still relies heavily on central government policies and places greater emphasis on the legal aspect, namely the role of law enforcement officers.

Referring to the current positive law in Indonesia regarding human trafficking, including children, Law No. 21 of 2007 provides more fulfillment of children's rights compared to Law No. 35 of 2014, at least for now. As for the issue of implementing restitution, law enforcers can maximize restitution payments by perpetrators by implementing Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering (Law No. 8 of 2010), because in Article 2 paragraph (1) letter l it has been stated that the proceeds of crime are assets obtained from the crime of human trafficking. The law can also ensnare if human trafficking is carried out by a corporation.

In general, perpetrators of criminal acts try to hide or disguise the origin of the assets that are the result of criminal acts in various ways so that the assets resulting from their criminal acts are difficult to trace by law enforcement officers so that they can freely use the assets for both legitimate and illegitimate activities, including human trafficking perpetrators. Therefore, investigators or Public Prosecutors provide instructions to investigators, they should start implementing the provisions of Article 3 to Article 10 of Law No. 8 of 2010, to then carry out the confiscation of the perpetrator's assets as regulated in Article 39 paragraph (1) of the Criminal Procedure Code (KUHP). By confiscating

the assets of human trafficking perpetrators first, it will later be easier to execute restitution payments to victims. In addition, Article 69 of Law No. 8 of 2010 regulates that in order to be able to conduct investigations, prosecutions, and examinations in court against the crime of Money Laundering, it is not mandatory to first prove the original crime.

4. Conclusion

Legal protection for children as victims of prostitution in human trafficking crimes reviewed from the theory of legal protection, Legal protection includes individual rights guaranteed by the state, including the child's right to be free from inhumane treatment and to receive physical and psychological recovery when a child becomes a victim through various forms of protection such as counseling, medical assistance, legal assistance, supervision, and prevention, the state is required to create a legal environment that protects children from exploitation and provides ongoing protection after the prostitution case is revealed. Within the framework of the theory of legal protection, rehabilitation efforts through counseling and medical services are an important part of the victim's right to be restored, both physically and mentally. This protection is not only reactive after a crime occurs, but must also be preventive, through strict supervision in vulnerable areas and providing education to the public about the dangers of child prostitution. In the context of law enforcement, legal assistance provided through advocacy and regulatory updates is also a manifestation of the state's efforts to provide fair protection for victims and ensure that perpetrators receive punishments appropriate to their actions. Formulation of legal protection for child victims of prostitution in human trafficking crimes based on justice in the future within the legal framework of a country should ideally be able to integrate the best interests of children as a cross-sectoral principle, and in laws related to human trafficking issues, this principle must be reaffirmed as a principle that is superior to all other considerations. In general, perpetrators of criminal acts try to hide or disguise the origin of the Wealth which is the result of a crime in various ways so that the Wealth resulting from their criminal acts is difficult to trace by law enforcement officers so that they can freely use the Wealth for both legitimate and illegitimate activities, including human traffickers. In the future, public prosecutors can confiscate the assets of human traffickers first, which will later make it easier to execute restitution payments to victims. By confiscating the assets of human traffickers first, it will later make it easier to execute restitution payments to victims.

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