

# *Developing Human Rights-Based Legal Protection Model on Victims of Child Trafficking in Indonesia*

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**Abstract-** Human trafficking is a crime resulted from social disorganization and social crimes, such as industrialization, social change and modernization. Social change causes women and children to choose to leave their homes and find livelihoods far from their regions and even abroad, with minimal skills and education. This phenomenon creates human, especially child trafficking. The approach method used is a normative juridical approach or a legal approach. The legal protection for children has been arranged in Indonesian laws and regulations, however the implementation is not optimal. The appropriate victim protection models to develop are: a). placing child in the family and social care institutions, or environments that provide security and monitor child's activities. b). granting restitution or compensation for the benefit of the child. c). recovery of child's physical and psychological conditions by psychiatric assistance and government officials supervision, thus needing a practical and sustainable monitoring system. d). formulating regional regulation.

**Keywords:** *Human Rights, Human Trafficking, Child Legal Protection*

## I. INTRODUCTION

Globalization era is a period of time filled with various threats and global challenges. Human trafficking crime is a global phenomenon that occurs in majority of countries in the world, with different levels of difficulty. This phenomenon is not only an ordinary social phenomenon but it has become a violation of law and human rights. Human trafficking always causes very serious consequences for the victims and their families, communities and country. Various countries condition, namely the destination countries for human trafficking, transit countries or the source countries of human trafficking, such as what Indonesia experienced. This puts the victim in a high-risk position, for example: related to health, pressure of physical and mental violence, which will threaten the quality of the successor generation of Republic of Indonesia. Human trafficking is a new case, which happens in modern days with the aim of low-cost but great benefit[1].

Child protection is any efforts made to create a condition so that every child can have their rights and do their obligations for their growth and development in a reasonable manner, physically, mentally, and socially[2]. The efforts of the international community in preventing and eradicating transnational and international crimes are carried out through physical cooperation, namely pouring out their arrangements in international conventions. Act of The Republic of Indonesia Number 21 of 2007 on The

Eradication of Human Trafficking is not regulated on the element of means for child victims, so that they are treated as adults. Article 6 of the human trafficking protocol regulates that there should be special protection for children as victims, but in Indonesian legislation this regulation has not yet been reflected. The human trafficking protocol, article 6 paragraph 4 regarding the assistance and protection of human trafficking mentions "every country/party must consider the age, gender, and special needs of human trafficking victims, especially the needs of children, including: housing, education, and care in applying the provisions of this article".

Every country, in its national legal system, should guarantee to take steps to protect human trafficking victims to obtain compensation for the losses suffered. The compensation given is often not comparable to the victim's condition, and the resitution provided does not regulate the measure of the giving so that it does not provide justice to the victim. The compensation or resitution that the child should obtain through his heirs has not proceeded properly. The protection for children as victims of trafficking as written in Act No.21 of 2007 on The Eradication of Human Trafficking, regulating witness and victim protection, article 43 arranges that protection of witnesses and victims of human trafficking is carried out based on Act No. 13 of 2006 on the protection of witness and victim, which states that children as victims of human trafficking also have the right to get protection, the special needs of children have also not been fulfilled. Article 5 paragraph (2) states that, "article 1 of this paragraph applies only to certain cases including: corruption, and other criminal acts resulting in the position of witness and victim to be exposed to life-threatening situation".

Child protection is an effort that creates a condition where every child can obtain his rights. Protecting child means protecting human, in other words protecting mankind. Article 1 paragraph 2 Act No. 35 of 2014 on child protection arranges the definition of child protection, that is all activities to guarantee and protect children and their rights so they can live, grow, develop and participate optimally in accordance with human dignity, and get protection from violence and poverty. The purpose of child protection is regulated in the Act on Child Protection and Child Convention. Article 3 Act on Child Protection mentions that protection aims to ensure the fulfillment of children's rights so that they can live, grow, develop, and participate optimally in accordance

with human dignity, and receive protection from violence and discrimination, in order to realize the quality, noble, and prosperity of Indonesian children[3] .

The child's social problem has become an international problem. Indonesia, as a country that has ratified the 1989 Convention on The Rights of The Child, with Presidential Decree No.36 of 1990 (State Gazette No.57 of 1990) on the ratification of the 1989 Convention on The Rights of The Child, has the obligation to realize a system of protection for children in a tangible and sustainable way, including for children who have problems. The weak individual deterrence in preventing trafficking makes it easy for people to become victims. Poverty, low education level, desire to get high salaries for meeting expensive living needs, and lifestyle change play a role in weakening individual deterrence power.

Increased unemployment in rural areas due to land exploitation for industrial developments that pay less attention to environmental aspects, causes people to lose their livelihoods. The exploitation causes women and children to leave their homes and villages in search of fortune far from their regions even abroad, with minimal skills and education. From the background research, this article will discuss how to develop human rights-based legal protection model on victims of child trafficking in Indonesia.

## II. RESEARCH METHOD

This article examines normative law, which is carried out by examining legal rules and principles[4]. The author conducted an inventory of international conventions, protocols, and legislations that apply in Indonesia, which relate to child trafficking and child protection starting from the 1945 Constitution of the Republic of Indonesia, acts, up to the implementation regulations. The approach used is a normative juridical approach or legal approach. The writing specifications are descriptive juridical analytics, with data sources in the form of primary, secondary, and tertiary legal materials, as well as those supported by primary data, and analyzed qualitatively and juridically.

## III. FINDINGS AND DISCUSSION

Child protection is the obligation and responsibility of the state, government, society, family and parents which includes protection in the fields of religion, education, health and social. The efforts to protect children are carried out through prevention and eradication of human trafficking. The quality of child protection should have the same degree or level as protection of adult women or men, because everyone has the same position before the law. The problem is that the legal protection that should be given is not merely a juridical approach, but needs a broader approach, namely: economic, social and cultural as well as psychological.

Human trafficking and sexual exploitation are very serious social problems. Children are routinely traded as commodities that make billions of dollars which are controlled by neglecting the consequences [5]. Child legal protection is one of the approach to protect Indonesian children. The convention of transnational crime is enforced not at the level of international law, but at the level of national law because it applies within the territory of a country and has direct contact with the legal interests of citizens. This kind of agreement is often referred to as standard / harmonized treaties[6]. Such agreement does not create norms, but only require the state to create norms in its national law.

Effective actions to prevent and combat trafficking in persons, especially women and children, require a comprehensive international approach in countries of origin, transit and destination, which cover actions to prevent the circulation of human trafficking, punish the traffickers and protect the victims, including by protecting people whose rights are recognized internationally. Human trafficking is influenced by the high demand of women labor. The demand of women for prostitution is very high, thus raising the issue of human rights violation, or the economy caused by economic discrepancy between countries in the world[7].

The Convention details the children rights that they have the rights to: survive; develop their full potential; get protections from bad influence, abuse, and exploitation; and conduct a full participation in family, society, and social life. The convention of the rights of the child arranges the following rights: First, the right for survival[8]. The right for survival, in the form of the child's right to preserve and sustain life and the right to get the highest standard of health care and the best medical care. The consequence according to the convention of the rights of the child is that the state must guarantee the continuity of the right to a decent life, the survival and development of children. The state is also obliged to guarantee the right to the highest level of welfare and health that can be reached, and to provide health services and treatment, especially for primary health care.

Second, the right for protection. The right for protection is the protection of children from discrimination, such as the protection of children with disabilities to get special education, care, training, and the rights of children from minority groups and indigenous people in a country. The protection from exploitation, such as: protection from personal life disturbances; protection from involvement in work that threatens children's health, education and development; protection from narcotics abuse; protection from sexual abuse, prostitution and pornography; protection from child trading, smuggling and kidnapping; protection from legal proceedings for children who have been indicted or sentenced for violating the law. Third, the right to grow and develop. The growth and development of a child includes education and achieving a decent life for the child's physical, mental, spiritual, moral, and social

development. Fourth, the right to participate. Participating is the right to express an opinion in all aspects affecting the child, for example the right to propose opinions and obtain consideration for his opinion; the right to obtain and know information and to express it; the right to associate in a relationship; and the right to obtain appropriate information and to be protected from unhealthy information. The child's right to freedom of associating is only subject to the restrictions needed in a democratic society for the sake of national security, public or moral safety or protecting the rights and freedom of others [9].

Basically, preventing and combating child trafficking is the national and international commitment based on the noble values of the nation. The efforts such as to carry out prevention from early age, prosecute the criminals, and protect victims and increase cooperation. The basis of child protection is, First, the philosophical basis. Pancasila is the basis of activities in various fields of family, community, state, and nation, as well as the philosophical basis for the implementation of child protection. Second, the ethical basis; the implementation of child protection should be in accordance with the relevant professional ethics, to prevent deviant behavior in the enforcement of authority, power and strength in the implementation of child protection. Third, the juridical basis; the implementation of child protection is based on the 1945 Constitution of the Republic of Indonesia and the applied legislations[10].

The child legal protection is one of the approach used to protect Indonesian children. It does not only bring the problem juridically but also to a broader prospective such as economy, social, and cultural[11]. Therefore the approach from the victim's side is needed as an effort to social, economical and cultural approach. The majority of people think that evil should have victims, for the perpetrators and victims are like the two sides of a coin.

There are two protection models according to Muladi and Barda Nawawi Arief, namely: procedural rights model and service model. The service model emphasizes the provision of compensation in the form of resitution and efforts to restore the condition of victims who experience trauma, fear, and pressure due to crime, so that he / she needs guidance. There should be standard guidelines in protection models, for example in terms of considering the losses suffered by the victims. Service model is more suitable to be used for child protection by providing compensation, resitution, and efforts to restore the condition of victims who experience trauma. Restoring the condition of the child victim will be more difficult to do and it will take a long time.

Article 43 act of the Republic of Indonesia Number 21 of 2007 on The Eradication of Human Trafficking mentions that protection of children as victims of trafficking is carried out based on Act No. 13 of 2006 on the protection of witness and victim. The protection model in Act No. 21 of 2007 does not differ between children and adults. For example, the victim is given the

right to explain that he/she is provided the right to the confidentiality of identity of the victim, witness, as well as their family to the second degree. The act assigns the National Police of the Republic of Indonesia to provide protection before, during, and after the proceedings. Child trafficking takes away the rights such as: freedom of movement, freedom of assembly, freedom of ownership, and freedom of having fun[12].

The appropriate victim protection model to be developed are as follows: first, placing children in the family and social care institutions where they can be monitored by local government so that they are protected from trafficking. Placing children in the family will provide security for children who have become victims of trafficking. If the family or parents are suspected of being the perpetrators of child trafficking, coordination can be done with the police to protect the victim. It can be followed up by giving or making an agreement that the parents will not repeat their actions witnessed by police officers, escorts, or local authorities. Second, giving resitution to the family or the child's representative for the sake of the child.

Resitution aims to develop justice and welfare of victims as members of the community with the implementation parameter, victims are given the right and obligation to be developed as citizens. Here, strict, simple, and easily-understood rules are needed to avoid discrimination in the application by law enforcers and intimidation from certain parties which worsen the condition of the victims. Act Number 21 of 2007 on The Eradication of Human Trafficking states that resitution is a payment of compensation imposed on the perpetrator based on a court decision that has permanent legal force to the victims or their representatives regarding the victims suffering. The amount of compensation is determined based on the social status of the perpetrators and victims [12].

There is no certain legislation that regulates explicitly the indicator of the size of compensation payment for victims, since psychological care is difficult to calculate with money, and it is included in the court ruling. Third, the recovery of physical and psychological conditions of child victims are done by psychiatric assistance and government officials supervision until the child victims can socialize with the community [13]. Basically, the victims are the ones who suffer the most in a trafficking crime, where they do not get as much protection as they can, compared to the protection provided by the law to the crime perpetrators [14].

The government should cooperate with agencies, non-governmental organizations, hospitals, academics or researchers, psychiatrists and doctors, police, local authorities, and community leaders. The source of fund should come from the Indonesian National Budget, Regional Government Budget, Regional Work Unit, or respective agencies. The monitoring officers are appointed from employees at the Integrated Service

Center both at the Central and Regional levels, in collaboration with the Social Regional Work Unit.

In order to prevent and protect the victims of trafficking, the provincial, district, or state government can issue regional regulations to form regional task forces, implement regional action plans and allocate budgets for service provision. Regional regulation is one form of regulation-implementing laws. The making of policies should refer to Act Number 21 of 2007 on The Eradication of Human Trafficking and its implementing law is the Government Regulation No. 9 of 2008 on National Action Plan as the reference for the activity.

The child's interests should be a major concern in every action concerning the victims of child trafficking. They must get full and appropriate protection. The model that should now be developed to protect victims of child trafficking is to place them in the family and social care institutions that can provide security with the monitoring of officers, who have been appointed by the local government to protect the children; and to make regional regulations to prevent human trafficking and protect the victims.

#### IV. CONCLUSION

The proper model of child protection victims of child trafficking is: First, placing the children in the family and social care institutions that can provide security with the monitoring of officers, who have been appointed by the local government to protect the children. Second, giving resitution to the family or the child's representative for the sake of the child. Third, the recovery of physical and psychological conditions of child victims are done by psychiatric assistance and government officials supervision until the child victims can socialize with the community, therefor a sustainable monitoring system is needed. Fourth, making regulations to prevent and protect human trafficking victims.

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