



Child Trafficking Offence: Case Study of Surabaya District Court Decision No. 685/PID.SUS/2022/PN SBY

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Abstract

The emergence of various forms of manipulation and exploitation has resulted in rampant trafficking in persons, in which children are also trafficked. Basically, children as the next generation of the nation have a role in ensuring the continuity of the nation. Therefore, children need to get ample opportunities to grow and develop. This study was conducted with the aim of describing how legal protection of children as victims of trafficking in persons. The research method used in this study is normative legal research which is studied using a *statutory approach (statute approach)*. The results of this study show that children are very vulnerable to becoming victims of child trafficking for the purpose of exploitation. The law relating to child trafficking has been in force and has binding legal force, but its enforcement has not been sufficient to provide a deterrent effect for perpetrators. In this case, children as victims should get legal protection which includes protection of their dignity, dignity, and fulfillment of their rights. However, in the criminal justice system, victims are often given less attention, in reality Indonesian law only focuses on punishing perpetrators and overrides the rights and protection of victims.

Keywords: Child Trafficking, Exploitation. Legal Protection

Introduction

The problem of trafficking in persons remains one of the biggest threats in Indonesia. They are bought and sold for the purpose of obtaining material gain, regardless of the rights of the victim as a human being. The rights of victims as human beings are deprived of their interests unilaterally and without consideration of humanity. (Haniyah, 2017)

Trafficking in persons, especially children, is classified as slavery and one of the worst forms of human rights violations. The rise of these cases makes child trafficking an unlawful act. Child trafficking is trafficking in persons with victims categorized as children or persons

under the age of 18 for the purpose of exploitation. The definition of trafficking in persons is stated in Article 1 of Law No. 21 of 2007: "The act of recruiting, transporting, sending, accommodating, transferring, or receiving a person by threat of violence, use of force, fraud, forgery, kidnapping, captivity, abuse of power, giving payment or benefit, to obtain the consent of the person in control of the other person both within a country and between countries, with the aim of exploitation or resulting in exploitation of people". (Nurhenny, 2010)

Traffickers can work alone or in an organized manner by having large networks to foreign countries, the perpetrators use a variety of means to gain profits and pose threats to society. With the emergence of various forms of manipulation and exploitation, especially children, this has resulted in rampant trafficking crimes involving minors. From the activities of finding and trapping victims by persuading, cheating, or taking advantage, to physical and psychological violence. They can also place an advertisement, or contact victims through mobile phones that are lured with money using technology in the modern era like now, so that victims are tempted and agree to follow this. [Click or tap here to enter text.](#)

Parents are obliged to take care of children, because parents and families are the front line for child protection. Children hope parents and families as well as generations of the nation, and future leaders who will continue the development of the country. (Haniyah, 2023) Children who should be treated well are exploited for certain purposes. The child is a creation of Almighty God who needs to be protected by his dignity and dignity and guaranteed the right to grow and develop. Therefore, all forms of treatment that damage the rights of children, in the form of various inhumane uses and exploitations must be stopped immediately. Especially in this case, the position of children is really helpless and weak, both physically and mentally, even seems resigned when treated improperly.

Child trafficking can occur within countries as well as between countries and victims regardless of background, family, gender, age and economic status. Economic problems and poverty are the triggers of this problem, low levels of education, lack of knowledge information, and low child protection efforts cause unfavorable conditions for children. (Syamsuddin S., 2020)

Legal protection efforts for children must be implemented continuously to maintain the quality of human resources. The quality of child protection should be the same as that of other adults because everyone has an equal position before the law. The perpetrators took advantage of the weakness of Indonesian law, therefore Indonesia was used as a land for the development of the child trafficking business for commercial sex needs. The phenomenon of child trafficking occurs in big cities and in rural areas, one of which is a crime that occurred in Surabaya in January 2022 in Surabaya PN Decision 685/PID. SUS/2022/PN SBY, Setyowati who is suspected of being a defendant in a 15-year-old child trafficking case through the Mi-Chat application. So Setyowati was charged with a criminal offense based on article 88 of RI Law No.35 of 2014 Jo article 76 i RI Law No.35 of 2014, so hereby the author is interested in analyzing and reviewing legal protection for children who are victims of trafficking.

Literatur Review

Human trafficking is a crime that is seen as modern slavery or can be interpreted as the

possession of a person by another person that violates human rights. In trafficking crimes, the victims are often minors. Because children are considered not to understand the law and children will not protest much if the payment received is relatively small. According to Article 1 paragraph 1 of Law No. 35 of 2014, the definition of a child is someone under the age of 18 years, including children who are still in the womb. Children are the next generation of the nation's struggle. For that, children need to get ample opportunities to grow and develop. According to Article 2 paragraph 1 of Law No. 21 of 2007 concerning the Crime of Trafficking in Persons is "The act of recruiting, accommodating, transporting, sending, transferring or receiving a person by threat, kidnapping, captivity, forgery, use of force, fraud, abuse of vulnerable position, debt bondage or giving payment or benefits so as to obtain the consent of the person in control of the other person, whether carried out within the country or outside the state for the purpose of prostitution or prostitution, legal and illegal migrant labor, child adoption, domestic servitude, beggars, organ sales and other exploitation". (Kansil, 2009)

The definition of exploitation in Article 1 paragraph 7 of Law No. 21 of 2007, is activities with or without the consent of the victim such as prostitution, forced service, slavery or practices similar to slavery, oppression, physical, sexual, or reproductive organ extortion to obtain material or immaterial benefits. This article emphasizes "Acts with or without the consent of the victim", the reason for the perpetrator with the consent of the victim is no longer meaningful. Because often these reasons can undermine the intent to punish traffickers. Then it was further strengthened by the existence of Law No. 21 of 2007 article 26 which reads "The consent of trafficking victims does not affect the prosecution of trafficking crimes". The article affirms that consent from victims does not preclude prosecution for trafficking offenses. Because it often happens that the perpetrator always reasons that the victim has agreed or the victim is willing and agreed to participate. From this understanding, the authors conclude that trafficking in persons has the following elements:

- a. Doer element: individual or group
- b. Action element: the act of recruiting, transporting, accommodating, sending, transferring, or receiving someone.
- c. Elements of means or modes: carried out by means of threats or the use of force or other forms of coercion, kidnapping, captivity, forgery, fraud, abuse of power, payment to obtain consent.
- d. Element of purpose: the existence of goals and intentions that are for the purpose of exploitation with the intention of benefiting from the person

Research Method

This research is a normative research then studied using a *statutory approach (statute approach)*, in this case researchers collect primary legal material and secondary legal material. Primary legal materials include official documents containing legal provisions and laws and regulations. While secondary legal material is legal material that supports primary legal material in research that will strengthen the explanation in it. The collection of legal materials used in this study is by searching for laws and regulations related to child trafficking, seeking district court decisions related to child trafficking after reviewing cases, reviewing articles,

scientific papers (research results), news, scientific journals, documentation from various agencies related to this research. This is intended to get references from the results of expert thinking. Data processing in normative research is carried out by selecting primary and secondary data, then classifying according to the classification of legal materials and compiling data from the research systematically. Furthermore, the data obtained from both stages of literature study are processed deductively.

Result and Discussion

Factors Causing Child Trafficking

Child trafficking is still an issue that is often heard in various media, both print and electronic. Child trafficking is illegal trafficking of children for the purpose of sexual exploitation. In a criminal act, the perpetrator must have a reason or cause so that someone commits a crime. Both causes that come from the perpetrator and causes that come from others. Similarly, in child trafficking, the perpetrator has a reason for the perpetrator to commit child trafficking. The following factors contribute to child trafficking: (Bambar, 2022)

a. Economic Factors

Poverty is a limitation in meeting the needs of life such as clothing, food, shelter, education, and health. This factor results in the child will try in every way without considering anything. In order to change the economy, a child will be desperate to do any job, children who should still get protection and love from parents and have the obligation to go to school actually think about how to overcome the economic difficulties that parents face (Sulistyo, 2012) .

b. Environmental Factors

The surrounding environment will have a great influence on the development and formation of a child's personality. Child trafficking can occur because the environment where they live does it. Because of the lack of attention, it causes children to do wrong things and is used by child traffickers (Idris, 1987) .

c. Education Factors

The educational role of victims and perpetrators is very influential in the development of one's behavior. So that in general, a person can become a perpetrator and victim in trafficking crimes because his education is very lacking, both formal and informal education (Farhana, 2010) .

d. Lack of Employment

Children with education graduated from elementary school (SD), junior high school (SMP), or high school (SMA), they have difficulty getting a decent job especially with low knowledge. Due to the difficulty of finding a job, on the other hand the price of necessities of life increases, causing children to turn a blind eye to any work and justify all means. One of them is through child trafficking.

e. Lack of Knowledge About Risks of Work

Many people do not know about the dangers of the work undertaken, because the main thing is the nominal income only. The risk of child trafficking is not only health problems, but will face legal risks.

f. Debt Entangled

The condition of parents who are in debt, many parents are willing to give their children to work, marry, or others with the aim of paying off their debts. (Waluyo, 2022)

Legal protection of children who are victims of trafficking in persons pursuant to Law No. 21/2007 on the Eradication of Trafficking in Persons

Legal protection is an effort to protect the government through existing laws and regulations, as well as enforcing equality for all people who must be given legal supervision of victims of crime. Legal protection describes the function of law itself, because it has the concept that law guarantees justice, order, and peace. Legal protection efforts can be divided into 2, namely:

a. Preventive Legal Protection

Protection is provided with the aim of preventing violence and crime and increasing public insight. Efforts that can be made are to socialize to the community about trafficking in persons and provide understanding to women, especially children, so that they are not easily fallen into and become victims of trafficking crimes.

b. Repressive legal protection.

Repressive legal protection is an action to overcome crime by imposing punishment as law enforcement. Repressive legal protection is the last protection for victims through sanctions such as fines, imprisonment and additional penalties imposed when there is a dispute or the perpetrator commits a criminal act. In the event of violations, repressive legal protections can be implemented. (Hadjon , 1987)

In every criminal activity, it always involves witnesses and victims. According to Law No. 21 of 2007 Article 1 paragraph 3, victims are persons who experience psychological, physical, mental, sexual, economic, and social losses as a result of trafficking. Witnesses and victims in trafficking offenses are entitled to the protection contained in Law No. 21 of 2007 under Law No. 13 of 2006 concerning the Protection of Witnesses and Victims. In legal protection for victims of trafficking crimes, in addition to being able to be realized by the form of punishment of perpetrators, it can also be realized in the form of fulfillment of rights, including the right to confidentiality of identity, the right to obtain restitution or compensation, and the right to obtain health rehabilitation, social rehabilitation, repatriation and social reintegration from the government.

Article 45 of Law No. 21 of 2007 on Trafficking in Persons explains that to protect witnesses and victims, each province, district, and city must establish a special service room at the local police station to interview witnesses and victims of trafficking crimes as material for investigations. Protection of trafficking victims can be either indirect or direct protection. Indirect protection can only be felt emotionally like a sense of satisfaction. Meanwhile, indirect

protection is a form of protection that can be felt tangibly, such as material (compensation or restitution) or immaterial (liberation from threats, liberation from news that violates human dignity and dignity). (Abdullah, 2017)

Legal protection for child trafficking victims should be provided in a variety of ways that are proportional to the psychological or mental harm suffered by the victim. The forms of protection provided by the state to children who are victims of trafficking offenses are:

- a. **Psychosocial Counseling Services**
Trafficking in persons involving minors is a problem that can interfere with the lives of children who experience it both psychologically and socially, children tend to experience trauma that can affect their lives. Psychological suffering experienced by children results in mental or emotional disorders ranging from mild to severe. Efforts to heal the trauma are by holding counseling services.
- b. **Medical Assistance**
Medical assistance provided to victims of trafficking crimes in the form of health rehabilitation. Health rehabilitation has been regulated in Article 51 of Law No. 21 of 2007. The definition of health rehabilitation is the restoration of the condition of victims, both physical and psychological, as a result of trafficking crimes.
- c. **Legal Aid**
Legal aid is an activity carried out by a legal aid provider in order to solve legal problems. This legal aid aims to fulfill the rights of witnesses or victims of trafficking crimes in the legal field to obtain the right to truth and justice in their cases.
- d. **Restitution and Compensation**
Restitution in trafficking in persons is regulated under Articles 48-50 of Law No. 21 of 2007. Restitution is compensation imposed on the perpetrator on the basis of a court decision with permanent legal force for material or immaterial losses suffered by the victim or his heirs.
- e. **Provision of Information**
The provision of information to victims or victims' families is regulated in Article 36 of Law No. 21 of 2007 concerning the Eradication of Trafficking in Persons, which reads "Victims who are witnesses in criminal justice proceedings have the right to obtain information in the form of copies of examination minutes or resumes of examination results at the level of investigation, charges and charges, and court decisions".
- f. **Repatriation or social reintegration**
Social repatriation or reintegration is the reunification of trafficking victims to their families in order to provide protection and meet the needs of victims. Social repatriation or reintegration efforts are legal protection efforts listed in Article 51 paragraph 1 of Law No. 21 of 2007.

Legal protection of children who are victims of trafficking in persons based on Law No. 35 of 2014 on Child Protection

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In law enforcement, there is a law regulating trafficking in persons, namely Law No. 21 of 2007. Then followed by Law No. 35 of 2014 on Amendments to Law No. 23 of 2002 concerning Child Protection. In the child protection law, children have special treatment by providing special protection to victims of abduction, sale, trafficking of children and the fulfilment of victims' rights to restitution.

In Law No. 35 of 2014 Article 1 concerning Amendments to Law No. 23 of 2002 explains child protection, which means all activities that guarantee and protect children's rights in order to live, grow, develop and participate as well as possible, with dignity, and protected from violence and discrimination. A child is expected to be free from threats, such as coercive acts, or unlawful deprivation of liberty. According to Article 20 of the Child Protection Law, child protection is closely related to five pillars, namely parents, family, community, government, local government and state by striving so that every child's rights are not harmed.

Article 59 of Law No. 35 of 2014 on Child Protection states that the government, and state institutions are obliged and responsible to provide special protection to children who are exploited economically or sexually, children who are victims of trafficking, children who are victims of kidnapping, children who experience physical or mental violence. The protection provided by Law No. 35 of 2014 concerning Child Protection is regulated in Article 68 paragraph 1 which reads "Special protection for children who are victims of abduction, sale and trafficking of children as referred to in article 59 is carried out by the state and society through efforts to protect, supervise, care, prevent, and rehabilitate".

Efforts to protect children who are victims of trafficking are not only directed against children, but also as an effort to prevent trafficking crimes involving children. Law No. 35 of 2014 on Child Protection does not explain in detail how the description of protection for children who are victims of abduction and trafficking in persons. However, Article 78 says that anyone who knows and knowingly allows a trafficked child, a child to be exploited economically or sexually as referred to in Article 59, who in reality is in dire need of help and must be helped will be criminally charged (Lestari, 2018).

Article 71D paragraph 1 states "Every child who is a victim as referred to in article 59 paragraph 2, namely children who are exploited economically or sexually, children who are victims of kidnapping, sale or trafficking, children victims of physical or psychological violence, children victims of sexual crimes have the right to apply to the court in the form of the right to restitution, which is the responsibility of the perpetrator of the crime. Article 71D regulates the rights obtained by children as victims after court proceedings.

Child trafficking for the purpose of exploitation violates Article 76 i of Law No. 35 of 2014, which contains a prohibition on placing, allowing, committing, ordering to commit, or participating in economic or sexual exploitation of children, namely by employing or trafficking children in the sexual field, which has the aim of benefiting themselves or others. Special protection for children who are exploited economically or sexually as referred to in Article 59 paragraph 2 letter d is regulated in article 66 of Law No. 35 of 2014, carried out through:

- a. Establish or disseminate the provisions of laws and regulations relating to the Protection of Children who are exploited economically or sexually.
- b. Monitoring, reporting, and sanctioning
- c. Involvement of various companies, trade unions, non-governmental organizations and communities in the eradication of economic exploitation and sexual exploitation of children.

Legal Analysis of the Surabaya District Court Decision 685/PID. SUS/2022/PN SBY

In decision No. 685/PID. SUS/2022/PN SBY, before the Panel of Judges decided on the charges, the Public Prosecutor gave an alternative form of charges. The definition of an alternative charge is an indictment filed in a criminal case where only one act and one rule are violated. However, the Public Prosecutor still could not ascertain which articles would actually be proven to be violated by the defendant based on the examination at trial, so two alternative articles were made. The first alternative charge, the defendant's actions are regulated and threatened criminally in Article 2 paragraph 1 of Law No. 21 of 2007 Jo Article 17 of Law No. 21 of 2007 concerning the Eradication of Trafficking in Persons, Article 2 paragraph 1 of Law No. 21 of 2007. The second alternative charge, the defendant is regulated and threatened criminally in Article 88 of Law No. 35 of 2014 Jo Article 76I of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection. (Agustina, 2015)

Of the alternative charges given by the Public Prosecution, which means the Judge must examine one of the articles indicted to determine the charges proven to have been committed by the accused. By looking at the legal facts in the trial process, the panel of judges ruled that the defendant legally committed child trafficking for the purpose of exploitation, as stipulated in Article 88 of Law No. 35 of 2014 Jo Article 76I of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection and sentenced the defendant Setyowati als Wati Binti Mukarom to imprisonment for 5 years and a fine of Rp. 30,000,000, 00 with the decision that if the fine is not paid, it will be replaced by confinement for three months.

The author's analysis in the Judge's decision is quite correct, but the Judge did not give the maximum sanction because he was only sentenced to 5 years in prison and a criminal fine of Rp. 30,000,000.00 only, while in article 88 it is stipulated that anyone who violates the provisions as in Article 76I, shall be punished with a maximum imprisonment of 10 years and or a maximum fine of Rp. 200,000,000, 00. And Article 17 of Law No. 21 of 2007 states that "If a criminal act is committed against a child, then the criminal threat is increased by 1/3 (one-third)". Therefore, it would be nice for the judge to give more severe sanctions because child trafficking is also a violation of human rights because it damages the child's future.

In the case of child trafficking in Surabaya District Court Decision 685/PID. SUS/2022/PN SBY who employs minors for exploitation purposes through the Mi-chat application, this activity can be referred to as online prostitution. In this case, there is a link between the Child Protection Law regarding child trafficking and the Electronic Information and Transaction Law, because the means used as promotion and customer search is social

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media. So that the actions of the accused can also be qualified as violations of the Electronic Information and Transactions Law.

Therefore, the Public Prosecutor should also drop charges regarding misuse of Electronic Information and Transactions. The Electronic Information and Transactions Law places regulations related to online prostitution in the provisions of Article 27 paragraph 1 of the Electronic Information and Transactions Law which states the prohibition for anyone to share, or provide electronic information that violates decency, can be in the form of images, videos, conversations, animations, sketches containing obscene content, copulation, sexual violence, genitals, and the information is disseminated publicly. Based on these laws and regulations, perpetrators of online prostitution who post, provide links, or upload electronic information for the promotion of prostitution in the form of writing, images, audio, or video can be subject to criminal penalties based on Article 45 paragraph 1 Jo Article 27 paragraph 1 of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions.

Based on the description above, the Public Prosecutor should have charged the defendant using the cumulative charge with the first charge Article 88 of Law No. 35 of 2014 Jo Article 76I of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection and the second charge Article 45 paragraph 1 Jo Article 27 paragraph 1 of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions. So it should not be an alternative indictment but a cumulative indictment because there is a series of further crimes committed by the Defendant. The defendants should be charged with combining crimes against decency through social media and trafficking in persons involving a child using cumulative charges.

The purpose of imposing severe penalties is to provide a deterrent effect to perpetrators and to let the public know that trafficking in persons involving minors through social media has committed two offenses simultaneously, namely child trafficking offenses with a maximum penalty of 10 years in prison and a maximum fine of Rp. 200,000,000.00 and misuse of Electronic Information and Transactions offenses with a maximum penalty of 6 years in prison and a fine of Rp. 1,000. 000.000,00.

In decision No. 685/PID. SUS/2022/PN SBY, the author finds that in the application of formal law there are legal defects. Law enforcement officials in criminal justice often assume that the best way to help victims is to convict the perpetrator. Legal proceedings tend to focus only on the perpetrator's actions through the formulation of criminal law articles. Human rights protection has not been fully achieved, especially on the rights of victims. This can be seen in decision No. 685/PID. SUS/2022/PN SBY, Surabaya District Court Judge or even other juvenile criminal case verdicts where law enforcement conditions victims only as witnesses in the trial process, without assessing the suffering and the victim's right to get justice. In that case, the Judge did not list the sanction of restitution as liability for the child's actions. However, the Judge only gave a sanction in the form of a fine of Rp. 30,000,000.00 with substitute confinement for 3 months in lieu if the defendant was unable to pay the fine imposed by the Judge. This is contrary to Article 48 of Law Number 21 of 2007.

While the sanction in the form of a fine imposed by the Judge on the defendants, does not guarantee that the defendants have the will to pay the fine. Most defendants prefer 3 months confinement rather than paying the fine. This still requires clear and concrete regulations in the implementation of the decision and as an implementation of the legislation. In its implementation, the law was not implemented by its own law enforcement, so the government needed to carry out new regulations on trafficking laws, especially regarding the replacement of confinement for restitution sanctions imposed by judges on defendants.

Conclusion

Child trafficking is an act committed by certain individuals that will bring great benefits to the perpetrator and will bring harm to the victim both physically and psychologically. As technology develops and the use of social media today, perpetrators easily trafficked children for the purpose of exploitation on social media. Such is the case with decision No. 685/PID. SUS/2022/PN SBY, who trafficked children for the purpose of exploitation through Mi-chat, the protection of trafficking victims is still not optimal. But only limited to providing criminal sanctions to the perpetrators. Legal protection of victims must include preventive and repressive measures that can be implemented or provided by the community or government. By providing protection against various threats that can threaten the lives of victims such as counseling services, providing medical assistance, adequate legal assistance, and providing restitution and compensation.

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