

## Legal Protection for Children as Perpetrators of Trafficking In Persons Is Related To Human Rights

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**ABSTRACT :** Children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, governments, and the state, including children in conflict with the law. Children as traffickers must still be given special treatment. The problems studied are the background of the occurrence of criminal acts of trafficking in persons committed by children and how the legal protection of children who become traffickers is reviewed from a human rights perspective. The research method used is by using a normative juridical approach with descriptive-analytical research specifications. The factors behind human trafficking include poverty, social structure, economy, and lack of comprehensive education, which mainly comprises science, moral education, religious education, and civic education—special protection for children in conflict with the law, especially those in conflict with the law. Furthermore, concerning children in conflict with the law, especially traffickers, in addition to being given criminal sanctions, guidance is also given to children, which is carried out continuously for the sake of survival, physical, mental and social growth, and development as well as protection from all possibilities that harm children.

**KEYWORDS:** *Children, human rights, human trafficking.*

### I. INTRODUCTION

One of the problems related to human rights in Indonesia is the crime of trafficking in persons, which is a form of recruiting, sending, transferring, harboring, or receiving a person, using the threat or use of force or other forms of coercion, kidnapping, fraud, lying, or abuse of power, or position of vulnerability or giving or receiving payments or obtaining benefits to obtain the consent of someone who has control over another person, for exploitation (Agus Takariawan and Sherly Ayuna Putri, 2008).

Women and children are the groups that are the most victims of the crime of trafficking. Victims are trafficked not only for prostitution or other forms of sexual exploitation but also include other forms of exploitation, such as forced labor or forced services, slavery, or practices similar to slavery (Dadang Abdullah, 2017).

Children are the forerunner to forming a nation's generation that will become the successor to the ideals of the nation's struggle, which has a strategic role and has unique characteristics and characteristics, which require guidance for physical and mental. Social development in a completely harmonious and balanced manner. Based on these considerations, the welfare of children needs to be improved. The realization of quality human resources begins to be prepared early, even since the child is in the womb. These little people need protection to grow and develop naturally, physically, spiritually, and socially so that they will become heirs of a quality future (Sholeh Soeady and Zulkhair, 2001). Law Number 35 of 2014 concerning Child Protection has stipulated explicitly that what a child says is someone who is not yet 18 (eighteen) years old, including a child who is still in the womb. While children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, governments, and the state.

Children are the future generation of a country, so children must be protected. Still, in reality, some children are perpetrators of trafficking crimes, as in the Bandung High Court Decision Number 54/Pid.Sus.Anak/2017/Pt.Bdg, wherein this case, the perpetrator of the crime of trafficking in persons is a child.

Based on the description above, there are several things that the writer will examine, namely: What is the background of the occurrence of criminal acts of trafficking in persons committed by children? And how is the legal protection for children who become perpetrators of trafficking in persons examined from a human rights perspective?

## II. METHOD

The research method used is by using a normative juridical approach with descriptive-analytical research specifications. The main types and data sources used are secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials accompanied by interviews. Then analyzed using the qualitative juridical method.

## III. RESULTS AND DISCUSSION

Law Number 21 of 2007 concerning Eradication of the Criminal Act of Trafficking in Persons (PTPP) Article 1 point 1. The term trafficking in persons according to Law of the Republic of Indonesia Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons Article 1 paragraph (1) that trafficking in persons is the act of recruiting, transporting, harboring, sending, transferring, or receiving a person utilizing the threat of force, use of force, abduction, confinement, fraud, deception, abuse of power or a position of vulnerability, debt bondage or payment or benefit, to obtain the consent of the person holding control over other people, whether carried out within countries or between countries, for exploitation or causing people to be exploited (Yuliana Plantika, 2019).

Forrel stated, "Traffickers are motivated by money." This means that human traffickers are motivated by money. Economic factors are one of the leading causes of human trafficking, motivated by poverty and non-existent or inadequate employment opportunities with a large population. This causes someone to look for work even though they have to leave their home area with no small risk. In addition, the elite lifestyle with a consumptive culture has colored some people, especially those who live in urban areas. Young women want to enjoy the luxury of a life without the need for more struggle. Take the fast track to extra even if they don't have a job or income that would allow them to have that luxury. And for human traffickers, this condition is an opportunity to attract victims to be trafficked (Joni Kasim, 2021).

Trafficking in persons contains aspects that are contrary to protection and also against the general welfare. Moreover, trafficking is always accompanied by various acts of threats and violence, thus causing torment for the victim in the future. Furthermore, trafficking victims, in general, are parties who are in a powerless condition both physically (women and children), psychologically, and physically. Trafficking in persons is a violation of human dignity.

Traffickers work very neatly and organized. Generally, they search for victims in various ways, such as luring potential victims with multiple efforts. From various incidents in TIP, the losses and suffering of victims were caused by the recruitment process, document falsification, confinement before leaving, transportation on the way, at work, return trips, and recovery/rehabilitation (L.M. Gandhi Lapian and Hetty A. Geru, 2006).

Several factors cause the occurrence of criminal acts of trafficking in persons, namely:

- a. **Economic Factors.** The factor that is most often used as an excuse for both the perpetrator and the victim in the criminal act of trafficking in persons is the economic factor. Economic factors are still the main factor in this trafficking case, and poverty has such a terrible impact. It can trigger people to justify all means to make a living. Economic factors are factors that play an essential role in human life. This is because a person's financial capacity is low while the urgent need to be fulfilled. This imbalance is a factor for everyone looking for alternative jobs so that they can meet their daily needs;
- b. **Low Education Factors.** As the author has explained earlier that the criminalization of trafficking victims can be related to anyone but often identifies them with women and children. These trafficking victims, on average, only received education at the elementary, junior high, high school levels, and some even did not know the school. This makes it easier for victims to be trafficked because of their low education or, in other words, their limited expertise;
- c. **Factors of Consumptive Behavior.** The trigger for trafficking occurs because of several factors, but the most frequently found is a wasteful lifestyle. People tend to justify any means to meet their needs. Especially for teenagers, a lifestyle that starts at school or home can lead to wasteful behaviors that undoubtedly lead to negative things. If a person cannot keep up with his lifestyle, it will be followed by a crime factor. In addition, parents are factors that encourage perpetrators. Consumptive lifestyle dominates society these days. The worrying is that the weak economy and high demands for lifestyle are the fundamental factors of trafficking. Teenagers and the general public should be able to control themselves to reduce their consumptive lifestyle. The rise of trafficking cases that afflict teenage children, who are used as commercial sex workers, is sometimes motivated by the victim's own desire to fulfill life's needs, such as an excellent cellphone, good clothes, even for extravagance (Rahmat Hi Abdullah, 2019).

In the case of trafficking in persons with child perpetrators, in the Bandung High Court Decision Number 54/Pid.Sus.Anak/2017/Pt.Bdg, the perpetrators were 2 (two) children, the child defendant and his friend were looking for children in their village environment, were persuaded to be sold, the child defendant also threatened the victims not to tell anyone, this action was carried out continuously until it caused many victims, the movement continued to be carried out to family members until the move was known by the victim and reported

to the police. The Child Defendant was indicted by the Public Prosecutor (JPU) under Article 2 Paragraph (1) of Law Number 21 of 2007 concerning the Crime of Trafficking in Persons Jo. Article 55 Paragraph (1) of the Criminal Code, or Article 11 of Law Number 21 of 2017 concerning the Criminal Act of Trafficking in Persons Jo. Article 55 Paragraph (1) of the Criminal Code, or Article 76 I Jo. Article 88 of Law Number 17 of 2016 concerning Stipulation of Government Regulation instead of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Jo. Article 55 Paragraph (1) of the Criminal Code. The decision of the Cianjur District Court stated that the child defendant was guilty of participating in recruitment to exploit people as the first alternative indictment, and impose a criminal sentence on the child defendant with imprisonment for 02 (two) years and conducting job training for 1 (one) year at the Special Guidance Institute. Children in Bandung.

According to Soedjono Dirdjosisworo, Human Rights are a set of rights inherent in the nature and existence of humans as creatures of God Almighty. They are His gifts that must be respected, upheld, and protected by the state, law, government, and everyone for the sake of honor and the protection of human dignity. Including the Indonesian nation, whose philosophy is Pancasila, is a legal state that adheres to free and active politics to realize a peaceful world order and free from oppression and exploitation by the state against other countries (Soedjono Dirdjosisworo, 2002).

Children's rights are human rights, plus in the sense that they must receive special attention in protecting so that a newborn child grows up and gets full human rights. Human rights include all needed for total human development, and positive law supports the social institutions necessary for the full story (Abdussalam and Adri, 2014).

Children account for about one-third of the detected victims of trafficking. Trafficking of children, however, disproportionately affects low-income countries, where it is linked to the broader phenomenon of child labor. In Sub-Saharan Africa, children have been trafficked to work on plantations, mines, quarries, farms, as vendors in markets, and the streets. In South Asia, children as young as 12 have been trafficked to work in brick kilns, hotels, the garment industry, and agriculture. Child trafficking for forced labor has also been reported on South American plantations. Broad cultural acceptance of child labor can serve as a fertile ground for traffickers. It is easier to exploit youngsters when people are accustomed to sending their children to work away from home. In such settings, child trafficking victims may be hidden in plain sight. The detection of child victims of trafficking for sexual exploitation is concentrated mainly in Central America, the Caribbean, and East Asia. In higher-income countries, child trafficking is generally less detected and typically takes the characteristics of sexual exploitation. In high-income countries in Europe or North America, children trafficked for forced labor constitute roughly 1 percent of total victims detected. Most child victims globally are trafficked for sexual exploitation (Unodc, 2020).

The United Nations (UN) in 1989 issued a Declaration on the Rights of the Child, which states: 1) It is prohibited to employ children under the age of five and for any reason children are not allowed to engage in work that can harm their health or education; 2) Children must be protected from acts that lead to racial, religious or other forms of discrimination. Children must be raised in a spirit of understanding, tolerance, and friendship between nations, peace and universal brotherhood, and with full awareness of their energy and talents, they must be immortalized to fellow human beings; 3) Under no circumstances should children take precedence in receiving protection and assistance (Abu Huraerah, 2012).

With the convention's ratification, the state must protect and fulfill children's rights, both civil, political, social, cultural, and economic rights. Indonesia is one country that has ratified this convention, so it should have children's rights for all children without exception. In this case, children need to be protected from discrimination, harassment, neglect, violence, and exploitation by their parents, family, and other people. Legal protection for children can be interpreted as an effort to protect children's freedom and rights (fundamental rights and liberties of children) and various interests related to child welfare; therefore, child protection is one of the development goals that must be considered. Due to the absence of child protection, the development process will cause various social problems that can disrupt order and security (Firmansyah Wira, 2019).

The eradication of the criminal act of trafficking in persons is carried out using a Human Rights, or HAM approach is very important. At the ICHR Cross-Sector Consultation event in 2017, the Indonesian representative has put forward the request and proposed that the eradication action be realized immediately using a human rights or HAM approach. Internationally recognized human rights have problems at the implementation level. Human rights violations often occur at the local level; breaking the chain of human rights violations is considered to be much more effective if, at the local level, the government's capacity is built-in carrying out human rights obligations (Firmansyah Wira, 2019).

Legal protection is to protect human rights that others have harmed, and that protection is given to the community so that they can enjoy all the rights granted by law. Law can be functioned to realize protection that is adaptive and flexible and predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically, and politically to obtain social justice (Satjipto Raharjo, 2000). Legal protection for children is one way to protect the nation's future generations. Legal protection for children concerns all

applicable legal rules. This legal protection is considered necessary because children are part of society who have physical and mental limitations. Therefore, children need special protection (Marlina, 2009). According to Satjito Rahardjo, legal protection is an effort to protect a person's interests by allocating Human Rights power to act in the context of his interests (Satjipto Rahardjo, 2003).

Protection of children has been recognized and guaranteed its existence both in national legal provisions and in international conditions, such as the Declaration of the Child's Rights by the United Nations General Assembly. Children have the right to obtain special protection so that children's growth and development can be adequately maintained. Attention to children in terms of fulfilling requests and providing security is an essential factor because children are young people who are vulnerable, dependent, innocent, and have special needs (M Ghufiran H, 2015).

In the National Law, child protection has obtained a juridical basis, including the 1945 Constitution as the constitutional basis and Law no. 35 of 2014 concerning Child Protection which amends Law no. 23 of 2002 concerning Child Protection (Tirsha Aprillia Sinewe, 2016). Legal protection for children is protection for all children without exception, including children who conflict with the law. According to Article 3 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, the purpose of protection is to ensure the fulfillment of children's rights so that they can live, grow, develop, and participate optimally following their dignity and human dignity, as well as receiving protection from violence and discrimination, for the realization of happy, healthy, and prosperous Indonesian children. The scope of the definition of protection and the purpose of child protection is in line with the convention on the rights and protection of human rights in the 1945 Constitution of the Republic of Indonesia. Article 22 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia affirms, "Every child has the right to survival, grow and develop and have the right to protection from violence and discrimination."

Concerning children in conflict with the law, the Child Protection Law contains several articles, including Article 16, which states that: (1) Every child has the right to receive protection from targets of persecution, torture, or inhumane punishment. (2) Every child has the right to obtain freedom following the law. (3) Arrest, detention, or imprisonment for a child is only carried out if it follows applicable law and can only be carried out as a last resort. Based on Article 64 of the Child Protection Law, it is regulated in more detail on special protection for children who conflict with the law, especially those in conflict with the law. Child development is carried out continuously for survival, physical, mental, and social growth and development and protection from all possibilities that endanger children (Hadi Supeno, 2010).

#### IV. CONCLUSION

Trafficking in persons contains aspects that are contrary to protection and also against the general welfare. The factors behind human trafficking include poverty, the attractiveness of living standards in other places that are felt to be higher, weak social and economic structures, lack of job opportunities. In addition, there is a lack of comprehensive education, which mainly includes education in science, moral education, religious education, and civic education—special protection for children who conflict with the law, especially those in conflict with the law. Furthermore, concerning children in conflict with the law, especially traffickers, in addition to being given criminal sanctions, guidance is also given to children, which is carried out continuously for the sake of survival, physical, mental and social growth, and development as well as protection from all possibilities that harm the child.

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**ABSTRACT :** Children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, governments, and the state, including children in conflict with the law. Children as traffickers must still be given special treatment. The problems studied are the background of the occurrence of criminal acts of trafficking in persons committed by children and how the legal protection of children who become traffickers is reviewed from a human rights perspective. The research method used is by using a normative juridical approach with descriptive-analytical research specifications. The factors behind human trafficking include poverty, social structure, economy, and lack of comprehensive education, which mainly comprises science, moral education, religious education, and civic education—special protection for children in conflict with the law, especially those in conflict with the law. Furthermore, concerning children in conflict with the law, especially traffickers, in addition to being given criminal sanctions, guidance is also given to children, which is carried out continuously for the sake of survival, physical, mental and social growth, and development as well as protection from all possibilities that harm children.

**KEYWORDS:** Children, human rights, human trafficking.

### I. INTRODUCTION

One of the problems related to human rights in Indonesia is the crime of trafficking in persons, which is a form of recruiting, sending, transferring, harboring, or receiving a person, using the threat or use of force or other forms of coercion, kidnapping, fraud, lying, or abuse of power, or position of vulnerability or giving or receiving payments or obtaining benefits to obtain the consent of someone who has control over another person, for exploitation (Agus Takariawan and Sherly Ayu Putri, 2008).

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Children are the future generation of a country, so children must be protected. Still, in reality, some children are perpetrators of trafficking crimes, as in the Bandung High Court Decision Number 54/Pid.Sus.Anak/2017/Pt.Bdg, wherein this case, the perpetrator of the crime of trafficking in persons is a child.

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## II. 15 METHOD

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- b. Low Education Factors. As the author has explained earlier that the criminalization of trafficking victims can be related to anyone but often identifies them with women and children. These trafficking victims, on average, only received education at the elementary, junior high, high school levels, and some even did not know the school. This makes it easier for victims to be trafficked because of their low education or, in other words, their limited expertise;
- c. Factors of Consumptive Behavior. The trigger for trafficking occurs because of several factors, but the most frequently found is a wasteful lifestyle. People tend to justify any means to meet their needs. Especially for teenagers, a lifestyle that starts at school or home can lead to wasteful behaviors that undoubtedly lead to negative things. If a person cannot keep up with his lifestyle, it will be followed by a crime factor. In addition, parents are factors that encourage perpetrators. Consumptive lifestyle dominates society these days. The worrying is that the weak economy and high demands for lifestyle are the fundamental factors of trafficking. Teenagers and the general public should be able to control themselves to reduce their consumptive lifestyle. The rise of trafficking cases that afflict teenage children, who are used as commercial sex workers, is sometimes motivated by the victim's own desire to fulfill life's needs, such as an excellent cellphone, good clothes, even for extravagance (Rahmat Hi Abdullah, 2019).

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With the convention's ratification, the state must protect and fulfill children's rights, both civil, political, social, cultural, and economic rights. Indonesia is one country that has ratified this convention, so it should have children's rights for all children without exception. In this case, children need to be protected from discrimination, harassment, neglect, violence, and exploitation by their parents, family, and other people. Legal protection for children can be interpreted as an effort to protect children's freedom and rights (fundamental rights and liberties of children) and various interests related to child welfare; therefore, child protection is one of the development goals that must be considered. Due to the absence of child protection, the development process will cause various social problems that can disrupt order and security (Firmansyah Wira, 2019).

The eradication of the criminal act of trafficking in persons is carried out using a Human Rights, or HAM approach is very important. At the ICHR Cross-Sector Consultation event in 2017, the Indonesian representative has put forward the request and proposed that the eradication action be realized immediately using a human rights or HAM approach. Internationally recognized human rights have problems at the implementation level. Human rights violations often occur at the local level; breaking the chain of human rights violations is considered to be much more effective if, at the local level, the government's capacity is built-in carrying out human rights obligations (Firmansyah Wira, 2019).

Legal protection is to protect human rights that others have harmed, and that protection is given to the community so that they can enjoy all the rights granted by law. Law can be functioned to realize protection that is adaptive and flexible and predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically, and politically to obtain social justice (Satjipto Raharjo, 2000). Legal protection for children is one way to protect the nation's future generations. Legal protection for children concerns all

applicable legal rules. This legal protection is considered necessary because children are part of society who have physical and mental limitations. Therefore, children need special protection (Marlina, 2009). According to Satjipto Rahardjo, legal protection is an effort to protect a person's interests by allocating Human Rights power to act in the context of his interests (Satjipto Rahardjo, 2003).

Protection of children has been recognized and guaranteed its existence in national legal provisions and in international conditions, such as the Declaration of the Child's Rights by the United Nations General Assembly. Children have the right to obtain special protection so that children's growth and development can be adequately maintained. Attention to children in terms of fulfilling requests and providing security is an essential factor because children are young people who are vulnerable, dependent, innocent, and have special needs (M Ghufiran H, 2015).

In the National Law child protection has obtained a juridical basis, including the Constitution as the constitutional basis and Law no. 35 of 2014 concerning Child Protection which amends Law no. 23 of 2002 concerning Child Protection (Tirsha Aprillia Sinewe, 2016). Legal protection for children is protection for all children without exception, including children who conflict with the law. According to Article 3 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, the purpose of protection is to ensure the fulfillment of children's rights so that they can live, grow, develop, and participate optimally following their dignity and human dignity, as well as receiving protection from violence and discrimination, for the realization of happy, healthy, and prosperous Indonesian children. The scope of the definition of protection and purpose of child protection is in line with the convention on the rights and protection of human rights in the 1945 Constitution of the Republic of Indonesia. Article 22 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia affirms, "Every child has the right to survival, grow and develop and have the right to protection from violence and discrimination."

Concerning children in conflict with the law, the Child Protection Law contains several articles, including Article 16, which states that: (1) Every child has the right to receive protection from targets of persecution, torture, or inhumane punishment. (2) Every child has the right to obtain freedom following the law. (3) Arrest, detention, or imprisonment for a child is only carried out if it follows applicable law and can only be carried out as a last resort. Based on Article 64 of the Child Protection Law, it is regulated in more detail on special protection for children who conflict with the law, especially those in conflict with the law. Child development is carried out continuously for survival, physical, mental, and social growth and development and protection from all possibilities that endanger children (Hadi Supeno, 2010).

## 6

## IV. CONCLUSION

Trafficking in persons contains aspects that are contrary to protection and also against the general welfare. The factors behind human trafficking include poverty, the attractiveness of living standards in other places that are felt to be higher, weak social and economic structures, lack of job opportunities. In addition, there is a lack of comprehensive education, which mainly includes education in science, moral education, religious education, and civic education—special protection for children who conflict with the law, especially those in conflict with the law. Furthermore, concerning children in conflict with the law, especially traffickers, in addition to being given criminal sanctions, guidance is also given to children, which is carried out continuously for the sake of survival, physical, mental and social growth, and development as well as protection from all possibilities that harm the child.

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