

# Legal Protection for Child Victims of Trafficking In Indonesia

Ifahda Pratama Hapsari, Moh. Ahyan Yusuf Sya'bani

**Abstract:** *The increasing number of cases of child trafficking shows that the level of crime or crime, especially in cases of trafficking in children, has an unstable number and can not be suppressed at all in the past 5 (five years) from 2014 to 2018). This has an impact on Victims of trafficking, especially in children who experience prolonged stress, health problems, and infectious diseases in the caused by Reviews These children per trade. Efforts to Increase protection for Victims of trafficking, especially in children, can conducted through supervision and control of the ways parents and families take care of Reviews their children through guidance and direction of religious lectures where parents and families have a big stake in protecting Reviews their own children.*

**Keywords:** *Protection, Child and Trafficking.*

## I. INTRODUCTION

Trafficking in children in Indonesia today, is not something new in the middle of the community. It is part of human rights violations, as well as child trafficking. UU no. 23 of 2002 on the Protection of children is a special regulation governing the issue of children. Indonesian government to pay attention to the efforts protection. although officials of the central government does not collect comprehensive data, they have identified 5,801 victims. child protection commission formally identify 293 children suspected of being victims of child trafficking and yet the government did not report whether they lead to the identification of an investigation or victim service providers protections. Trafficking of children (child trafficking) has long been regarded as the forcible transfer of children abroad this is done for the purpose of: child prostitution, child pornography and trafficking of children for social purposes. Number of previous conventions regarding child trafficking focuses only three of these aspects. Human Trafficking Victims suffer many things, such as bruises, cuts and may include diseases and stunted physical growth, cause traumatic. The victim important trade often lose their chance to experience the social, moral, and spiritual. Act No. 21 of 2007 on the eradication of trafficking in legislated in 2007 has set about the threat of severe penalties and contain a deterrent effect to the perpetrators of trafficking, in addition to regulating the actions which are categorized as trafficking legislation in so far turned out not succeeded overcome child trafficking. Kids trade that had occurred resulting in a negative impact on Children. The impact that occurs when the Son of

getting violent is misery or suffering physically and psychologically for himself, the impact worse is the children not get the widest possible opportunity to grow and develop optimally, both physical and spiritual.

## RESEARCH QUESTION

The formulation of the problem in this journal is How the child's efforts to improve the protection of victims of human trafficking How does application of sanctions in the law No 21 Year 2007 in effort to improve the legal protection of child victims of trafficking cases in indonesia ?

## RESEARCH OBJECTIVE

To increase knowledge about the legal protection of victims of trafficking, in particular regarding the implementation of Law No. how 21 in 2007 in Indonesia and to know how to safeguard against child victims of human trafficking

## II. LITERATURE REVIEW

Criminal law Aimed at protecting the interests of the people of a particular person or party actions, should be Able to meet the objectives of justice not only for society but also for the victims and the perpetrators. It shows the development of modern criminal law and criminal prosecution has Introduced the so-called rapprochement "victim Offender" starts on final approach sizes to find Whether there is legal certainty in the law enforcement especially from trafficking can acts determined as follows: the value of justice is not Obtained from the high value of the rule of law but on the balance of the legal protection of victims and offenders; serious crime the greater the value of justice the which must be maintained for more than the value of the rule of law. Criminal Code: "the trafficking of women adult male and c According to the law enforcement Mardjono Reksodiputro aims: to protect the rights of individuals and the public interest is to use " due Procces of law " Or in Indonesian, legal proceedings were fair and reasonable where this process, linked to the applications of the rules of criminal procedure law to the suspect or the Accused. Meaning "dueprocces of law" is more than just the application of laws or regulations formally. In addition to the legal proceedings that are fair, involving the crime of trafficking in persons, According to Law No. 21 2007 was an element of an act that Qualifies as a criminal act / acts against the law where the law already prohibited formulate and impose criminal sanctions for the perpetrators of this crime. Inhibition in the form of slavery and trafficking in persons IS ALSO criminalized in the Indonesian legal system as stated in Article 297 of the Criminal Code and Article 65 of Law No. 39 of 1999 on Human Rights. Article 297 of the

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Children trafficking yet, punishable by Imprisonment of six years ".Article 65 of Law 39 of 1999 on Human Rights: "every child is entitled to protection from exploitation and sexual abuse.

### III. RESEARCH METHODS

This type of research that is used for the writing of this paper is empirical legal research or empirical jurisdiction,namely in reviewing problems, the author guided by the provisions of law or regulations related to the title and then associated with fact or real events that occurred in the community through research in the field. and the nature of the research used in the preparation of this thesis is empirical legal research that is descriptive, aims to describe accurately the properties of an individual, the state, or a particular group or to determine whether there is a symptom with other symptoms, in the community.

### IV. DISCUSSION AND ANALYSIS

Criminal law aimed at protecting the interests of the people of a particular person or party actions, should be able to meet the objectives of justice not only for society but also for the victims and the perpetrators. It shows the development of modern criminal law and criminal prosecution has introduced the so-called rapprochement "victim offender" starts on final approach sizes to find whether there is legal certainty in the law enforcement especially from trafficking can acts determined as follows: the value of justice is not obtained from the high value of the rule of law but on the balance of the legal protection of victims and offenders; serious crime greater the value of justice which must be maintained for more than the value of the rule of law.

The formula must have been influenced present reality be appointed in criminal cases *trafficking*. Deployment / implementation of the law on criminal procedure is less suitable and serious impact on the settlement of cases. the role of law enforcement started mainly in the process of examination of the court as Article 23 paragraph (1) of the Criminal Code says that "any decision of the court in addition must contain the reasons and grounds of that decision must also include also specific provisions of the regulations in question or sources of unwritten laws which serve as the basis for judgment. "this chapter puts the values of the judge's responsibility to decisions made that decision it meets the legal objectives such as fairness, certainty and expediency.

According to the law enforcement Reksodiputro Mardjono aims: to protect the rights of individuals and the public interest is to use "*due Proces of law*"Or in Indonesian, legal proceedings were fair and reasonable where this process, linked to the applications of the rules of criminal procedure law to the suspect or the accused. Meaning "*dueproces of law*" is more than just the application of laws or regulations formally. In addition to the legal proceedings that are fair, involving the crime of trafficking in persons, according to Law No. 21 2007 was an element of an act that qualifies as a criminal act / acts against the law where the law already prohibited formulate and impose criminal sanctions for the perpetrators of this crime.

Inhibition in the form of slavery and trafficking in persons is also criminalized in the Indonesian legal system as stated in

Article 297 of the Criminal Code and Article 65 of Law No. 39 of 1999 on Human Rights.Article 297 of the Criminal Code: "the trafficking of women and children trafficking male adult yet, punishable by imprisonment of six years".

Article 65 of Law No.39 of 1999 on Human Rights:

"every

child is entitled to protection from exploitation and sexual abuse, kidnapping, child trafficking, as well as from various forms of abuse of narcotics, psychotropic substances and other additives".

Harkristuti Harkrisnowo trafficking in persons, in legislation existing Indonesia, considered very inadequate associated with the breadth of understanding about human trafficking so, can not be used to capture all the actions within the limits of the current. Article 297 of the Penal Code specifically regulates human trafficking minors from the perspective of the victims, women and children under age including infants,

Only a small proportion of cases the victims are also male adult, which means not included in the victims protected by Article 297 of the Criminal Code. Seeing the conditions are today, namely the presence of an adult male victim then should be extended and does not define victims as only women and boys under age alone.

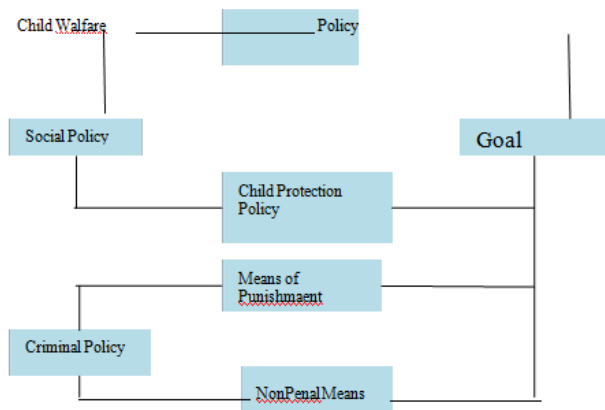
The weakness of Article 297 according to Hakristuti Hakrisnowo is simply limits its scope to sexual exploitation, artiya this article can only encompass human trafficking when the victim is used for activities that are sexual exploitation, but adabentuk-forms of exploitation that make their victims as workers, domestic workers even for illegal adoptions.

In the opinion of Ruben Ahmad, Article 297 of the Criminal Code of the Code of Criminal Law does not mention clearly the understanding of the trade itself. They are also not prohibit trade in young women, girls and boys adult therefore, no explanation by the state regarding the definition / meaning of trafficking in Article 297 of the Criminal Code, then Indonesia has no official definition of what constitutes human trafficking,

In Article 10 human rights report of 1999 reported by the Special Rapporteur on violence against children stated as follows "the current definition of Trading internationally agreed terminology used by some actors to portray sharing activities that range from voluntary, migration Facilitated to the exploitation of prostitution, transferred man by threat of force, violence and exploitative nature as its goal. "

Given the problems of trafficking as a serious problem, then in 1994 the UN General Assembly approved a resolution against trafficking in women and children, namely: Displacement of people across national boundaries and international illicit dam against the law, especially from developing countries and countries from the economic transition, with force women and girls into situations of oppression and sexual and economic exploitation, as well as other illegal actions related to human trafficking such as forced domestic labor, false mating, illegal workers and false adoption in the interest of recruiters, traders and crime syndicates.

Related to the above, in accordance with the provisions of Article 48 paragraph (1) which reads "Every crime of trafficking in persons or their heirs are entitled to restitution." Restitution as referred to in paragraph (1) for damages on: loss of wealth or income, suffering, costs for medical care action and / or psychological and / or nother disadvantage suffered by the victim as a result of trafficking.(integrity) between political crime and social politics, there is cohesion (integrity) between the efforts of combating crime with the "Penal" and "non-penal". The table can be seen this following below :But in reality, many corporations and individual state officials themselves, performing a recruitment activity by invit in people, collect and separate a person from his family. Violations committed by individuals, corporations, and the state apparatus itself can be punishable by a minimum of three(3) years and a maximum of 15 years and fined at least Rp 120,000,000.00s (one hundred and twenty million rupiah) and at most Rp 600,000,000.00 (six hundred million) in accordance with the provisions of Article 2 of Law No.21 of 2007. Although there have been sanctions explicitly prescribed in the legislation, there is a lot of child traffickers sanctioned as such provisions in above resulting in human trafficking crime victims suffer



agonizing

Penal policy in the response to the eradication of child trafficking can be defined as the term "policy" and taken from the term "Policy" (English) or "Politiek" departed from both foreign terms, then the term of criminal law policy can also be referred to as "Politics of Criminal Law. "In politics, criminal law is often known by various terms including" penal Policy ", " criminal law Policy ", or " Strafrechtspolitiek ". The terminology can be used as general principles that serve to direct the government (in the broad sense), manage, organize, or complete public affairs and community problems or areas of legal drafting. According to Prof. Political Sudarto Law is: efforts to bring the regulations according to the condition and situation at any time, policies of a country through the competent bodies to adopt legislation that could be used to express his desired what is contained in the community in order to achieve what is aspired. Meanwhile, according to the Strafrechts politiek A.Mulder determined policy lines: how far the provisions of the applicable criminal law needs to be fixed, what can be done to prevent crime, the way in which the investigation, prosecution, judiciary and penal execution should be carried out. Policy or combating crime is basically integral of safeguard society (social defense) and efforts to achieve public welfare

(social welfare). Therefore it can be said that the ultimate goal of "Criminal Politics" is "the protection of society to achieve the welfare of the community".

According to Marc Accl, Penal Policy is a "science and an art that aims to allow the positive legal regulations formulated either". In other words, from the standpoint of criminal politics, political, criminal law is identical with the notion of a "policy of combating crime by the criminal law". This aspect is oriented to the fact that the criminal law policy implemented through the stages of concretization / operational / fictionalization of criminal law consisting of: formulation stages, namely: law enforcement stages in abstracto by the makers of the body is called a phase legislative policy, phase Applications, namely: the stage of the application of criminal law by law enforcement officers from the police to the court this stage is called the stage of judicial policy, execution Phase, namely: the stage of concrete implementation of penal law by the officers for criminal implementing this stage is called the stage of the administrative execution policy.

From the description above that combating crime efforts taken by the policy approach in the sense of: the integration Two central issues in the criminal policy by means of penal (criminal law) is the problem of determining: what conduct should be a criminal offense and witness what should be used or charged to the offender.

Analyzing to 2 (two) this central issue, can not be separated from the conception integral between criminal policy with social policy or national development policy. This means, solving the problems of the above should also be directed to achieve certain goals of social and political policies are set. Action on matters that are categorized as "crime of" trafficking in children, based on Law No. 21 of 2007 on the eradication of trafficking in persons, it contains several elements as follows: crossing their actions against the people, namely: the recruitment, transportation, storage, transfer, harboring or receipt. Performed by actors in the region of Indonesia but also made between countries. Where acts of the person crossing, performed by actors, recruiting potential victims, to the shelter, where they will be employed.

Their purpose or effect of the act, namely: human exploitation

The purpose of trafficking, especially in children who are victims are exploited victims. About the notion of exploiting seen in Article 1, paragraph 7 of Law eradication of trafficking in persons. namely:

Exploitation is the action with or without the consent of the victim which include but are not limited to prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, use of physical, sexual, reproductive organs, or unlawfully removing or transplanting organs and / or body tissues or harness or ability of a person by another party to benefit both material and immaterial.

Their mode of action that is prohibited, namely: Threats, violence, abduction, confinement, forgery, fraud, abuse, or a position of vulnerability, debt bondage or giving payments or benefits, with the consent of a person having control over another person, that caused fear, pose a danger to the life or body, which puts people the danger in the circumstances.

Act No. 21 Year 2007 concerning the eradication of trafficking in persons, have a witness who explicitly regulate the traffickers. Based on this law, it is said that, those who committed a recruitment activities of people, by inviting, collect and separate a person from his family as well, violations committed by individuals, corporations, and the state apparatus itself can be punishable by a minimum of 3 ( three) years and a maximum of 15 years and fined at least Rp 120,000,000.00 (one hundred and twenty million rupiah) and at most Rp 600,000,000.00 (six hundred million) in accordance with the provisions of Article 2 of Act 21 2007. In addition to criminal penalties referred to, the corporation may be imposed additional punishment in the form of: revocation of business license, wealth confiscation of proceeds of crime, revocation of legal status, dismissal of management and / or the ban on the board to set up a corporation in the same business. Although there are already sanctions explicitly prescribed in the legislation, there is a lot of child traffickers sanctioned as above provisions lead to human trafficking crime victims suffer agonizing. In Indonesia itself increasing number of cases of trafficking cases that exist and processed based on the data:

Child Trafficking Case Data Total Logged in Indonesia

N0	Year	The number of cases
1	2014	2208
2	2015	1667
3	2016	602
4	2017	304
5	2018	32

Source: id.usembassy.gov

From the above table, the development of trafficking cases within the last 5 years in 2014 as many as 2208 cases in Indonesia, then in 2015 the number of trafficking cases in 1667 decreased by 541 cases in Indonesia. 2016 Trafficking cases numbered 602, in 2017 amounted to 304 and in 2018 the number of cases of trafficking had a significant reduction from the amount of data a total of 32 criminal cases, especially in terms of trafficking children, who entered at the Surabaya State Attorney of the year 2014-2018 by the table above, shows the development of child trafficking cases that occurred in Indonesia has begun to decline thing This proves that, Case handling trafficking in Indonesia after holding of severe sanctions in Act No. 21 of 2007 is highly effective in ensnare the perpetrators of trafficking. therefore the number of cases of trafficking in Indonesia are very much within the last 5 years, would be a very bad impact for children

The high level of trafficking of children has an impact on the child victim, which resulted in victims, particularly in children experiencing the onset of infectious diseases eg HIV/ AIDS, scabies, and other infectious diseases. "In addition to illness suffered by the victim, the impact of the other is the emergence of a sense shame among the community and ostracized by people around . therefore , he also said "Victims of trafficking of children experienced many terrible things, including physical and psychological injuries, including disease and stunted growth, so often leaves permanent effectalienate the victims of the family "victims of child trafficking is also often lose their important opportunity to experience the social, moral, and spiritual

than that of children who are victims of trafficking will be affected: children who are victims of trafficking crimes, would have been affected by loss of self-confidence, self-identity, as a result of regulations and procedures for as long as he was at the place he was traded, children who are victims of crimes of trafficking, always under the supervision of the offender, causing the child to experience the impact of unsafe, feel under suspicion, and can not do something and act, for fear that the actions taken the child is wrong, the child will be abused by the perpetrators, other impacts to victims of trafficking, concerning freedom of speech, reading books that children love, freedom to communicate with the people he loved, and doing hobby into a daily routine of children, can not be done. That children become distressed and frightened.Basically, the impact on the victim trafficking child, making misery to child .therefore it requires an effort of action so that children do not suffer that would interfere mentality. Effort action against child after a trafficking impact, By Philip M. Hadjon said:

Action against trafficking victims, particularly in children, can be done by giving the children and families of victims of the human trafficking crimes, regardless of who they are, either in the form of restitution, compensation, rehabilitation, and protection free of the threat of any party.

This is to show justice and the rule of law itself, and given that society is that individuals have the rights inherent in every human being and should not be violated by anyone.

Under the provisions of Article 51 ayat1,2 and 3 of Law No. 21 Year 2007 on Combating Trafficking in Persons, acts against children affected by trafficking can be done:

Article 51 paragraph (1) Victims are entitled to medical rehabilitation, social rehabilitation, repatriation and social reintegration of the government if the person concerned to suffer both physically and psychologically as a result of the crime of trafficking in persons. (2) The rights referred to in paragraph (1) shall be filed by the victims or their families, friends of victims, police, volunteer, or a social worker after the victim reported his case or any other party report to the Indonesian National Police. (3) The application referred to in paragraph (2) shall be submitted to the government through the minister or agencies that deal with health and social problems in the area.

Also mentioned in Article 52 paragraph 1, 2 and 3 of Law No. 21 of 2007 on the action that the child is not experiencing more severe impact as a result of child trafficking syndicate, are as follows:

Article 52 (1) The Minister or agency dealing with rehabilitation as referred to in Article 51 paragraph 1 shall provide medical rehabilitation, social rehabilitation, repatriation and social reintegration of at least 7 (seven) days after submission of the petition. (2) For the implementation of medical rehabilitation services, social rehabilitation, repatriation and social reintegration as referred to in paragraph 1, the Government and the Local Government shall establish a social protection homeor a trauma center. (3) For the provision of services referred to in paragraph 2, communities or institutions other social services can also establish social protection home or a trauma center.

Act No. 21 of 2007 Provisions of Article 53 also mentions "Whereas, In the case of victims of trauma or diseases that endanger themselves as a result of the crime of trafficking in persons, thus requiring urgent assistance, the minister or agencies that deal with health and social problems in the area are required to provide first aid at least 7 (seven) days after the petition is filed. "Related to the above, in an effort to cope with the impact of child victims of trafficking, According Maidin Gultom to do with action: the child, Returned to Parents, Guardians, or Foster Parents: To restore confidence in the child, through counseling, so that experienced by post-trade TRUMA the child, do not drag on remembered imprint sustained. Submitted to the State: In the case of child who became a victim of trafficking, did not have a place to stay, government along with agencies associated didalamnya including the Department of Social, atupun Social Organizations Kemasyarakatan (schools, social institutions) are required to provide a decent place for the life of the child, providing the means to support rehabilitative, corrective and educative according to Protection pancasila, and the state is not entitled to make children victims of trafficking are becoming worse.

## V. CONCLUSION

Based on the descriptions that have been stated previously in relation to the main problems that exist, Legal Protection is any effort made consciously by every person or government and private institutions that aim to strive for security, mastery, fulfillment of the physical, mental, and social welfare of children and youth in accordance with their interests and rights. related to trafficking cases in Indonesia then some conclusions can be drawn as follows: The development of cases of child trafficking, which has been declining in Indonesia, shows that the level of crime or crime in Indonesia, in particular, in the case of child trafficking, experiences a stable and pressureable number. This is proven by the issuance of Law No. 21/2007 which contains quite severe sanctions in punishing perpetrators. in general, children who are victims of trafficking will experience things that cause impacts on victims of trafficking, especially in children experiencing prolonged stress, health problems, and infectious diseases caused by the child during trafficking. and for that, efforts to improve protection for victims of trafficking, especially in children, can be done through the supervision and means of control of the parents and family in looking after their children through coaching and directing religious lectures where parents and families have a share great to protect each other's children.

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## AUTHORS PROFILE



**Ifahda Pratama Hapsari** was born in Purworejo, October 20, 1987. He was a lecturer in law at Muhammadiyah University Gresik and took a concentration in criminal law. received education throughout his career S1 at the university udayana Bali majoring in justice, S2 at the Master of Law, Airlangga University in Indonesia and currently pursuing a Doctor of Law program at Brawijaya University Malang, Indonesia, the Criminal Law Program.



**Mohammad Ahyan Yusuf Sya'bani** was born in Gresik precisely on March 16, 1989, starting his education history starting from the Dharma Wanita Kindergarten in Kebomas Sub-District, Gresik, continuing his elementary level education at Muhammadiyah 1 Elementary School Giri Kebomas graduating in 2001. After completing his basic education, he migrated to the City of Gudeg (Yogyakarta) in the Mu'allimin Muhammadiyah Yogyakarta Islamic boarding school for six years. He completed his education in Madrasah Tsanawiyah Muhammadiyah Yogyakarta in 2004 and the Muhammadiyah Muhammadiyah Aliyah Islamic Senior High School graduated in 2007. He obtained a Bachelor's Degree from the Tarbiyah Faculty of Islamic Education and Teacher Training Program Sunan Kalijaga UIN in 2012. Before taking the PAI Study Program he also had time to attend lectures at the Study Program al-Ahwal al-Syakhsyiyah at the Faculty of Shari'ah and Law. In 2014, he achieved his Master's Degree in Strata-2 by graduating on time at the Postgraduate Program of UIN Sunan Kalijaga taking the Concentration of Islamic Education in the Islamic Education Study Program.