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## Legal Protection of Children as a Preventive Effort on Children Trafficking

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### **Abstract:**

*Trafficking in children is a violation of human rights. Rights of the child who treats the victim only as a commodity purchased, sold, shipped and resold. Earlier child trafficking was associated with prostitution, but in reality, included many other forms such as forced labor and enslavement under the guise of marriage. Because the agents and syndicates of child trafficking are now becoming more organized and have international scope as well. Each country needs to update its legal system in order to punish traffickers and to provide compensation and assistance to victims. Trafficking has included many less qualified migrants that can cause social problems in the community, and for victims often lose their rights and fall into inhuman lives. Regulations governing the legal protection of children as a means of preventing child trafficking whether or not the laws or regulations that have been made are not sufficient in providing legal protection for children because the contents of the law and the regulations have not all covered the issue of children only limited to the public.*

**Keywords:** Legal protection, children, child trafficking

### **1. Introduction**

Crime is a behavior and actions that violate the penal law that can be subject to sanctions and officially determined by the community that can occur anywhere, anytime and in the form or type of crime that diverse, and backed by factors that have relevance to the place, time and the type of crime.

One of the recent crimes that often occur and disturbs the public is the crime of trafficking in persons, causing discomfort, and the concerns of the community in engaging in outdoor activities, especially for women and children. Trafficking is a very difficult crime to eradicate and is a form of modern slavery and violation of human rights.

In Indonesia the problem of human trafficking is still one of the big threats where every year almost thousands of women and children in Indonesia who have become victims of trafficking. The Crime of Trafficking in Persons is a long-standing problem that is not gaining attention so that its existence is not so visible on the surface, but in practice it is a social problem that gradually becomes a crime of society where the position of human as object as well as subject of trafficking. The trafficking of persons who began with a demeaning view of women continued until the middle ages.

In Indonesia trafficking in persons is often used for the purpose of sexual exploitation (prostitution and pedophilia) used and work in harsh places that provide low salaries such as plantation workers, domestic workers, restaurant workers, entertainers, marriage contracts, child labor, street beggars, in addition to the role of a prostitute.

Trafficking has been widespread both in the form of organized and disorganized criminal networks. Trafficking also uses different modus operandi which vary with loci at home and abroad. These people's trading activities are increasingly widespread because these activities are able to provide huge financial benefits for the perpetrators so that it becomes a dangerous threat to the community in the village or in the city. Faced with this problem, the Indonesian government has created a policy that can provide protection to victims of trafficking in persons so that their rights are protected by the provision of the Criminal Code of Trafficking in Persons.

The Criminal Code of Trafficking in Persons Manages the protection of witnesses and victims as an important aspect of law enforcement, which provides basic protection to witnesses and victims is to store identity, address and others. In addition, this law also gives great attention to the suffering of the victims as a result of the crime of trafficking in the form of restitution rights which must be given by the perpetrators of trafficking in persons in compensation for the victims, and also regulates the rights of victims or medical and social rehabilitation, repatriation and reintegration that must be done by the state especially for those who suffer physical, psychological and social suffering due to criminal trafficking in persons.

The Criminal Code of Trafficking in Persons has formulated the scope of the Crime of Trafficking in Persons as follows:

- Any action or set of actions that satisfies the elements of the offenses set forth in this law (the TPPO Law). In addition, Law Number 21 of 2007 also prohibits anyone who enters people into the territory of the Unitary State of the Republic of Indonesia (NKRI) for Exploitation (Article 1 paragraph (3) and (4)).
- Bringing Indonesian Citizens Out of NKRI for the purpose of exploitation (Article 4)
- Raise children by promising something or giving something to exploit (Article 5)
- Send the child in or out of the country in any way and any person who uses or exploits the TPPO victim by committing intercourse or fornication, employing the victim for the purpose of exploitation or profit (Article 6).
- Any person who provides or enters false information on state documents or other documents to facilitate TPPO (Article 19)
- Any person who gives false testimony, provides false evidence or false evidence, or unlawfully affects the witness (Article 20)
- Any person who physically assaults against a witness or TPPO case court officer
- Any person who prevents, impedes or foils directly or indirectly
- Any person who provides the identity of a witness or a victim when it should be kept secret (Article 24)

Under the above legislation, trafficking in persons is part of the law and human rights, although this person's trade may be related to anyone but often identifies it with trafficking of women and children. This is well-founded because in many cases, trafficking victims consist of women and children who are more prominent to the surface.

## 2. Forms of Trafficking in Persons

Trafficking of women and children is part of the worst forms of syndicate action that must be abolished, because the effects of such trafficking, women and children are in a very bad situation. Trafficking of girls is an act of crime that moves underground or is still shrouded with a long, complicated network of links that are very closed, the links do not know each other but there is also a short path where each other know each other even still related relatives or friendship.

There are several forms of trafficking persons that are as follows:

- Migrant Workers
- Child Trafficking through Adoption (adoption).
- Wedding and Order Bride

### 2.1. Ad. a. Migrant Workers

A migrant worker is a person who immigrates from his / her birthplace to another place and then works in the new place within a certain period of time. Migration by many people is seen as a demographic phenomenon. According to Everet S. Lee dalma Muhadjir Darwin that the decision to move from one region to another is the origin and destination. The displacement occurs when there is a driving factor from the origin and the pull factor of the destination. Driving factors from origin areas such as economic pressures, where unmet needs, less employment, and withdrawal factors, i.e. successful employment successfully meet the needs of the family in the origin region, although there are also workers who fail, but the destination area remains an attractive for many people.

Migrant workers are of two types:

- Internal migrant workers
- International migrant workers

Large population growth, uneven distribution of population between regions, and low urban absorptive capacity in urban areas, led to urbanization. This phenomenon shows where urban growth is rapid but without adequate employment, especially in the industrial and service sectors. As a result, migrants who want to improve their destiny leave their villages and without adequate expertise cannot be absorbed by the urban industrial sector and services. They then work in the urban information sector generally characterized by low productivity, low wages, poor working conditions, no social security.

Government policy on domestic work placement is Kepmen kentrans RI No. Kep-204 / MEN / 1999 concerning Placement of Domestic Workers to regulate the mechanism of inter-local work and inter-regional work. Such arrangements are aimed at ensuring the protection of workers who are placed through the establishment of procedures and mechanisms of placement of labor and supervision of the implementation of the regulation, so that no trafficking occurs. According to the International Labor Organization (ILO) there are approximately eighty-one million migrant workers worldwide and of this, twenty million work in Asia. Women account for half of all migrants in the world for decades.

Based on data from the ILO above, the most victims of trafficking, 55% are exploited to become domestic servants. This happens because of the labor for the domestic sector abroad, the greatest demand falls on the choice of Indonesian women migrant workers to become domestic workers, since it does not require much skill. The profession of domestic workers is not governed by the government and is beyond the scope of the national Manpower Act because it is considered to be in the informal sector, so there is the possibility of trafficking in persons. With respect to the nature of employment as domestic workers working in private homes, they are closed off from the public eye and access to assistance. Based on coverage in the mass media, several cases of sexual violence experienced by domestic workers that sexual violence is committed by employers to workers. In addition, the space for domestic workers is limited. More abuse of domestic workers in long working hours, no rest periods, arbitrary illegal deployment, unpaid or under-promised

salaries, physical and psychological violence not provided with good bedrooms or accommodation, no food in sufficient quantities not even fed at all, are denied the opportunity to worship or are required to violate the rules of their religion, and so on.

### 2.2. Ad. b. Child Trafficking through Adoption (adoption)

Child adoption procedures are strictly enforced to protect the rights of children raised and to prevent violations and crimes such as child trafficking. Ignorance of this procedure raises the perception in the community that the adoption of the child is easy, so often the community acts outside the law it can happen a child trafficking crime. Often the adoption of children becomes a legal issue

### 2.3. Ad. c. Wedding and Order Bride

One modus operandi of trading others is the mail order bride (Mail Order Bride) which is a forced marriage where the marriage is arranged by the parents. The marriage of this order becomes the trafficking of persons in the event of exploitation both socially and economically through fraud, misery, detention of document, so as not to escape exploitation and close access to information and communication with the family. There are two forms of trafficking through marriage, that is, marriage is used as a way of fraud to take the woman and bring to another very strange territory, but once arrived in the destination the woman is included in prostitution. Secondly, it is marriage to include women into households to do domestic works that are highly exploited in their form. The phenomenon of this order bride occurred in many people of Chinese descent in West Kalimantan with husbands from Taiwan from East Java reported there have been several similar cases.

The forms of trafficking of persons that occur in girls are:

- Trafficking of girls with the purpose of being domestic servants
- Trafficking of girls as workers in entertainment venues or other businesses
- Trafficking of girls as sex workers
- Trafficking girls with the purpose of pornography industry on the pretext of being an advertising model, artist or singer
- Exploitation of girls to be employed as drug dealers by first making victims in drug dependence
- Migrant workers
- Women who are contracted for marriage in order to obtain offspring
- Baby trafficking is basically a form of human trafficking carried out in several forms such as kidnapping of babies, abduction, binding of parents of infants with accounts payable so that they must submit their children in a forced,
- Trafficking of children with the purpose of employment
- Child exploitation as beggar

## 3. Factors Causing Trafficking in Persons

Trafficking or trafficking in Indonesia is very alarming. It is evident that almost every day people can watch through the mass media of this person's actions and trafficking victims. There are many reasons why trafficking occurs especially in women and children.

Factor is the thing that causes a person to enter into a situation. Likewise, with the practice of human trafficking also has a thing that causes the victim into the trap of the perpetrators of trafficking practices. The factors that cause the trafficking of persons are:

- Economic factors
- The absence of gender equality
- Pene Factor "not legal"

Forrel states, Traffickers are motivated by money "meaning traffickers are motivated by money. Economic factors become one of the main causes of human trafficking in the background of poverty and employment that is absent or inadequate by the large population. This is what causes a person to look for a job even though he has to get out of his home country with a lot of risk. Such severe poverty and the scarcity of job opportunities push millions of Indonesians to migrate domestically and internationally to find ways to feed themselves and their families. In addition, the elite lifestyle with consumer culture has colored some people, especially those living in urban areas. Young women want to enjoy the luxury of life without the need for more struggles. Take the fast lane to get the luxury even if they do not have jobs or income that allows them to get that luxury, and for traffickers, this is the opportunity to capture victims for trafficking.

Thus, the influence of poverty and prosperity can be one factor of human trafficking. Therefore, poverty and the desire to improve one's economic condition are still a social factor that the government considers in order to eradicate poverty.

The factor of gender inequality has a wide enough background to be one of the trafficking factors. the absence of gender equality is one of the factors of human trafficking, as follows: the still strong patriarchal social-cultural values place men and women in different and unequal positions and roles. This is characterized by the role recognition, i.e. as wives, as mothers, household managers, and education of children at home, as well as the additional breadwinner and the type of work is similar to the duties in the household. For example, being a housekeeper and parenting. In addition to women's roles, women also have multiple burdens, subordination, marginalization, and violence against women, all of which stem from discrimination against women which causes them to have little or no access, opportunity and control over development, which is fair and equal to men. Many women and children are victims, this is because in society there is a

marriage of young age which is used as a way to get out of poverty. In the family of girls often become the economic burden of the family, so mated at a young age. Marrying young children has encouraged children to enter into commercial sexual exploitation, because the first stage of such marriage failure is so high, resulting in divorce and vulnerability to trafficking. After divorce must support themselves even though they are still children. Education is low because after marriage they quit school and low skills lead to not many options available and mentally, economically or socially not prepared for independent living, tending to enter the world of prostitution as one of the most potential ways to survive.

Early marriage often leads to unpreparedness of the child to parent, so that the born child is vulnerable to protection and often ends with the entry of children into the world of commercial sexual exploitation. There is an inequality of relations between men and women that make women cornered and trapped in the practice of trafficking. This happens to women who experience rape and usually the attitude or public response is generally not on their side. The society's treatment encourages women to enter the world of commercial sexual exploitation. In fact, the existence of women in the world of sexual exploitation is more not because of their own willingness, but the socio-cultural environment where the women come from is very strong influence them plunge into the world of social exploitation especially to be sent to big cities.

In addition, law enforcement factors also greatly affect the occurrence of people's trade. That law should act and take sides for anyone regardless of status. Law is a set of rules that have sanctions for the perpetrators of crime. Law enforcement lies in the attitude of harmonizing the values that are elaborated and the attitude to create, maintain, and maintain the peace of life. The lack of law enforcement in Indonesia, especially in prosecuting traffickers including owners, managers, employers is a legal gap that benefits traffickers.

Based on the data center cause of the whole practice of human trafficking that occurred in Indonesia is as follows:

- Poverty
- Low levels of community education
- Illiteracy
- Limited employment
- High unemployment rate
- Has no skills
- Conflict or natural disaster
- Lack of information about the city or country of destination
- Too believe in the agent / recruiter / cab
- Imbalance of power relations between men and women.

Trafficking mode people are many more types and kinds. However, the most prominent of which are caused by poverty, low education, family that is not harmonious / divorce, natural disaster, and gender bias. In addition, Indonesia's strategic geographical factors, state financial condition, legal protection and law enforcement, especially human rights law, low understanding of moral and religious values, resulting in increasing demand for work abroad.

In general, the causes of criminal acts of trafficking in persons are economic problems (poverty) with debt bonding mode and low level of education, so prevention efforts should also be in line with poverty reduction efforts and the increase and expansion of employment and employment opportunities.

#### **4. Efforts to Criminalize Trafficking in Persons**

Trafficking or trafficking as a complex form of crime requires, of course, a comprehensive and integrated mitigation effort and professional know-how and expertise as well as the exchange of information, adequate co-operation between law enforcement agencies such as police, prosecutors, judges as well as other related parties i.e. government agencies (related ministries) and non-government organizations (NGOs) both locally and internationally.

Efforts to overcome the crime of trafficking in persons can be done through several ways, namely the first criminal mapping of trafficking in Indonesia both for domestic purposes, and abroad. Both the improvement of community education, especially alternative education for girls, including by means of educational infrastructure. Third, the improvement of public knowledge through the provision of information as much as possible about the crime of trafficking in persons and all aspects related to it. Fourth, efforts should be made to ensure accessibility for families, especially women and children, to obtain education, training, income-generating and social services, as women and children are perceived as weak and often victimized by trafficking.

Law No. 35 of 2014 on Child Protection in an effort to prevent children from being subjected to child trafficking, determines strict legal measures for the adoption process and the process of supervision of the child to be raptured. Appointment of children and the process of supervision of the child to be raptured. The adoption of children shall be in accordance with Article 39 of the Child Protection Law as follows:

- The appointment of a child may only be made in the best interest of the child and shall be conducted on the basis of local customs and applicable laws and regulations
- The appointment of a child referred to in paragraph (1) shall not terminate the blood relationship between his or her birth parents
- Prospective foster parents must be religious in accordance with the religion adopted by prospective adopted child
- The appointment of a child by a foreign national can only be done as a last resort
- In the case of the origin of the child is unknown, then the child's religion is adapted to the religion of the local majority population.

The prevention of criminal trafficking in persons can work if all components (community, government and law enforcement agencies) can perform their functions and duties in accordance with the mandate of legislation. According to Article 56 of the Criminal Act of Trafficking in Persons, the Prevention of Trafficking in Persons basically prevents the commencement of the Crime of Trafficking in persons as early as possible. Governments, local governments, communities and families shall prevent the occurrence of Trafficking in Persons (Article 57 paragraph (1) of TPPO Law). Governments and local governments are required to create policies, programs, and activities and allocate budgets to implement prevention and handling of trafficking issues (Article 57 paragraph (2) of TPPO Law).

In addition to eliminating the practice of trafficking in persons trafficking and deterring traffickers there are steps to take:

- Economic empowerment of rural communities, especially in areas that have been the source of migrant workers abroad. The economic empowerment of this village can be in the form of providing capital from the government for people who want entrepreneurship to sew handicrafts, weave and so on.
- The government continues to campaign on the importance of society, especially women, to not marry at a young age, at least, married women at least 24 years and men at least 27 years. And most importantly, law enforcement officials must punish parents who allow their daughters to be married off to rich men. Such parents must be charged under the Child Protection Act.
- Firm law enforcement. The Police must strictly apply the People's Criminal Act and Law Number 39 Year 2004 regarding the Placement and Protection of Overseas Workers or the Act on Replacement of this Act
- Cooperation between Indonesia and other countries. human trafficking is a regional and global phenomenon that cannot always be handled effectively at the national level. A national response can result in traffickers switching operations elsewhere. international cooperation both multilaterally and bilaterally play a very important role in combating trafficking in persons. Cooperation like this can be critically peeled between the countries involved in different stages in the trading environment of people.

#### 5. Legal Protection against Children for Prevention of Child Trafficking Is:

- Law Number 7 Year 1984 regarding Ratification of Convention on the Elimination of All Forms of Discrimination Against Women
- Law Number 39 Year 1999 on Human Rights
- Law Number 11 Year 2012 on Child Criminal Justice System
- Law Number 1 Year 2000 on the Ratification of ILO Convention No. 182 on the Elimination and Elimination of the Worst Forms of Child Labor
- Law No. 35 of 2014 on Amendment to Law No. RI. 23 of 2002 on Child Protection
- Law Number 13 Year 2003 regarding Manpower
- Law Number 20 Year 2003 regarding National Education System
- Law Number 23 Year 2004 on the Elimination of Domestic Violence
- Law Number 39 Year 2004 concerning Placement and Protection of Overseas Workers
- Law Number 21 Year 2007 concerning the Eradication of Crime of Trafficking in Persons
- Government Regulation No. 25/2000 on the Authority of the Government and the Authority of Provinces as Autonomous Regions
- Presidential Decree No. 59/2002 on the National Plan of Action for the Elimination of the Worst Forms of Child Labor
- Presidential Decree No. 87/2002 on the National Plan of Action for the Elimination of Commercial Exploitation Against Children
- Presidential Decree No. 88/2002 on the National Action Plan for the Combating Trafficking of Women and Children (RANP3A)
- Joint Agreement between the Minister of Women's Empowerment of Indonesia, Minister of Social Affairs, Minister of Health and the Chief of Police of the Republic of Indonesia No.14 / Men PP / Dep.V / X / 2002, Number 1329 / MENKES / SKB / X / 2002, Number 73 / Huk / 2002 Number Pol.B / 3048 / X / 2002 on Integrated Services of Victims of Violence Against Women and Children

Regarding the application and legal arrangement of the trafficked child can be seen in:

- Article 6 of Law Number 7 Year 1984 regarding the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women but this Act does not contain criminal sanctions because only an international commitment
- Article 83 of Law Number 23 Year 2002 regarding Child Protection
- Article 297 and Article 324 of the Criminal Code
- UU no. 21 of 1997 on the Eradication of the Crime of Trafficking in Persons

For the implementation carried out so far using Law Number 21 Year 2007 on the eradication of criminal acts of Trafficking in Persons and Law Number 23 Year 2004 on Child Protection.

In Law Number 21 Year 2007 only regulates on matters:

- Perpetrators of trafficking and criminal sanctions
- Investigation, prosecution and examination in court
- Protection of sanctions and casualties

- Prevention and treatment
- International Cooperation and Community Participation.

## 6. Barriers in Providing Legal Protection to Children as a Prevention of Trafficking in Children

Efforts to eliminate trafficking in persons include prevention measures, prosecute and punish strictly traffickers and protect victims through repatriation, rehabilitation, counseling, education and skills training, including guaranteeing matters which relates to its human rights so that they can be independent and reintegrate into society. Given that trafficking in persons is related to transnational organized crime, inter-state cooperation both bilaterally and regionally and in cooperation with international agencies and NGOs will continue to be fostered and developed

Law enforcement to traffickers, in accordance with their authorities, is carried out by the authorities (police, prosecutors and courts), but since trafficking in persons is a silent criminal act, to the general public, social institutions and NGOs, socialized to participate actively in expose this crime by providing information to the authorities when viewing, witnessing or indicating the existence of trafficking in persons or matters which may be allegedly leading to the commission of the offense. Police throughout the region have opened up a hot line accessible to people who want to report a crime, and the police will respond immediately and follow up on the information provided

In addition, efforts are made to protect victims of trafficking in persons, including shelter activities in a safe place, repatriation (to their home or country) including legal aid and assistance, rehabilitation (recovery of physical health, psychological), reintegration to his family or to his community) and empowerment efforts (economic, educational) so that victims are not trapped back into trafficking. Victim protection efforts are implemented by the GoI together with its partners, local, national, and international NGOs, community organizations, community service agencies and individuals concerned with this issue.

## 7. Conclusion

- Factors that cause the crime of trafficking in persons, namely economic factors, educational factors, consumptive behavior factors, family factors, lack of records / documentation, including birth certificates or birth certificates and environmental factors
- Efforts to overcome the crime of trafficking in persons is a preemptive effort, namely the initial attempt to prevent the occurrence of criminal acts of trafficking in persons by inculcating moral values such as religious values and norms to the public through counseling or special seminars to are not affected to be trapped in criminal networks, especially in the criminal acts of trafficking in persons, preventive efforts, i.e. prevention efforts before the crime takes place, carried out through operations known as raids / patrols and can also be done with the establishment of Community Police, in addition to closer police officers with the public also aims to seek information from the community about the crime that occurred in the neighborhood, repressive efforts, namely efforts to overcome the crime of trafficking in persons by conducting investigations and investigations for crimes and violations of the menu rules of law.
- Regulation of legal protection for children as an effort to prevent child trafficking in Indonesia is too much, but there is no clear and firm about the implementation of legal sanction, where there are still weaknesses so that violators are still free to do their activities in terms of child trafficking. Furthermore, the central government and local governments are still halfhearted in preventing child trafficking, so there are still many cases that arise.

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