

Weak Child Protection Law in Act Combating Crime of Trafficking in Person in Indonesia

Rosita* Firdaus Abu Bakar Taufik
Student of Doctoral Program of Law, Faculty of Law, Jambi University

Abstract

After nearly eight (8) years since the promulgation of Act No. 21 of 2007 on the Eradication of Trafficking in Persons (ETP), the crime of human trafficking in Indonesia, instead of being lost or minimal number decreased from year to year, but instead increased sharply. Tragically, 60 (sixty) percent of the victims of the crime of trafficking are children, especially girls. Inability Act ETP, protect children from human trafficking crime, due to the lack of regulation on child protection in the law. Weakness is covering the weak oversight mechanisms and prevention, so that children do not become victims of this crime, and lack of criminal sanctions can be imposed against the perpetrators of the crime of trafficking in persons, so that it does not pose a deterrent effect against perpetrators.

Keywords: legal protection, children, the crime of trafficking in persons.

1. Introduction

The right to obtain legal protection, are the rights of every citizen guaranteed by the Constitution of the Republic of Indonesia Year 1945 (1945). It is enshrined in Article 28D paragraph (1) of the 1945 Constitution, which states that "Everyone has the right to recognition, security, protection, and fair legal certainty and equal treatment before the law". Liabilities countries provide legal protection as stipulated in the constitution, in line with the fundamental purpose of the law or the nature of law enforcement. Associated with it, would need to be presented beforehand opinion of Roscoe Pound was quoted as saying by Mochtar Kusumaatmadja, that the purpose of the law is to order, in order to achieve justice, and the law as a tool of social engineering (Kusumaatmadja 1976).

According L.J. Van Apeldoorn, justice as an objective of the law is based on the fact that in a community or country, individual interests and the interests of the human community groups are always at odds with each other. Furthermore, he explained that: Conflict is what causes the conflict and even war. Law maintaining peace and weigh conflicting interests carefully to commercialize the occurrence of a balance between these interests, so that the law can achieve with their fair balance between the interests which are protected for everyone to gain share through regulation that includes sustainability interests in the Latin language is: "ius suum cuique tribuere" (Apeldoorn 1996).

Regarding the size of the equity itself, recognized by Mochtar Kusumaatmadja and B. Arief Sidhartha as something relative. Both argued that the definition of what is called the fair will be different for each individual. Learn declared that: It is no exaggeration when justice was something difficult to define, but it can be felt and is an element that can not be there and not be separated from the law as the principles and rules that guarantee the regularity (certainty) and order in society. Other legal purpose is Order which in this case is a human peace that is maintained by law to protect the interests of people, honor, freedom, life, property and so on are adverse (Kusumaatmadja & Sidhartha 2000).

The next legal purposes as a means of renewal of society. Related to these objectives, Mochtar Kusumaatmadja argued that the national law of a state in this function is other than as achieving justice and order, as well as a means of renewal of society, which implies that changes in society are achieved through the development process was conducted in an orderly and orderly (Kusumaatmadja 1976). To realize the goal of law enforcement such as the achievement of order, justice and the renewal of society as dikemu-ballooning above, required an effective and efficient policy. Associated with it Mardjono Reksodiputro confirms that effective law enforcement and efficient, will occur if there is a criminal policy that actually serve common goals and guidelines for each sub-system of criminal justice (Reksodiputro 2007).

Furthermore Mardjono Reksodiputro outlines that: the criminal policy or an effort to protect the public from crime or tort is an integral part of the effort to achieve the welfare of society which is the goal of development policy. Thus, the two policies affect each other and complementary. Policy development will be achieved if supported by a good criminal policy. In contrast, the crime prevention policy would not mean much if it stimulates growth development policies crimes. To achieve the required objectives of criminal policy criminal law policy (penal policy), which in essence is a crime prevention initiatives through the efforts of a good criminal. In other words, from the standpoint of criminal policy, criminal law policy is identical to the definition of "crime prevention policy with the criminal law". Opinions on the role of criminal law, proposed among others by Sudarto, that criminal law plays a role in efforts to achieve better regulation in accordance with the circumstances and the situation at a time and as a policy of the state, through the agencies authorized to

assign the desired regulation, which is expected to be used to express what is contained in the community and to achieve what is aspired (Muladi & Arief 2005).

Based on the expert opinion of the above criminal law, efforts drafting criminal legislation is good, in accordance with the development of people's lives, both in terms of aspects of policy and socio-political aspects as well as the establishment of an effective legal system, have an important role in the constellation political development. Thus, the effectiveness of the criminal law will determine the quality of the achievement of the protection of society, from a variety of criminal acts which continue to grow and develop, according to the development dynamics of community life. In the midst of an increasingly globalized world today, emerged various forms of crime in the form of a new mode of crime that had been there, and crimes that is completely new in the community. Criminal offense which was originally perceived as a simple and conventional crime involving only individuals, has now developed into a corporate crime involving the company, the mode is much more complex and organized, with the support of advanced technology and professional management (Sudarto 1981).

New crimes and new modes on old crime in question, can be found among others in narcotics, money laundering, customs and excise, forestry and natural resources, and human trafficking (human trafficking). To anticipate the emergence of various forms and modes of the new offense, it gives birth to a variety of devices criminal law outside the draft Criminal Law (Criminal Code). Act referred to regulate among other criminal acts in the field of banking, customs and excise, money laundering, nakotika, and the eradication of trafficking in persons.

Among these crimes, there is one crime that directly impact human rights violations, namely the crime of trafficking in persons. Trafficking in persons is a modern form of human slavery. Trafficking in persons is also one of the worst forms of violation of human dignity. Increase rampant problem of human trafficking in many countries, including Indonesia and the countries that are developing, it has become a concern of Indonesia as a nation, the international community, and members of international organizations, particularly the United Nations (UN).

Based on empirical evidence, women and children are the most likely group to be victims of crime of trafficking in persons. Victims trafficked not only for the purpose of prostitution or other forms of sexual exploitation, but also includes other forms of exploitation, such as forced labor or services, slavery or practices similar to slavery. Perpetrators of the crime of trafficking in persons do recruitment, transportation, transfer, harboring, or receipt of persons for the purpose of trapping, misleading, or take advantage of the person in the practice of exploitation in all its forms with the threat of violence, use of force, abduction, fraud, deception, abuse of power or position vulnerability, or giving payments or benefits to achieve the consent of a person having control over the victim.

Forms of exploitation include forced labor or services, slavery and practices similar to slavery, forced labor or forced services are working conditions that arise through the way, plan, or pattern intended to be a person convinced that if he did not do a particular job, then he or dependents will suffer both physically and psychologically.

Given the impact that such a serious against humanity, the legal issue concerning trafficking in persons, specifically regulated or loaded in the enactment separate legislation, namely the Law of the Republic of Indonesia Number 21 Year 2007 on Combating Trafficking in Persons (hereinafter referred to as Act Eradication of Trafficking in Persons). Laws enacted in Jakarta on April 19, 2007, and placed in the State Gazette of the Republic of Indonesia Year 2007 Number 58 is, born under consideration, among others, that human trafficking, especially women and children, is an action that is contrary to human dignity and violate human rights, and should be eradicated.

Consider also that trafficking has expanded in the form of an organized crime network and disorganized, is both between countries and within the country, thus becoming a threat to society, nation, and state, and against the norms of life which is based on respect for human rights. The desire to prevent and combat the crime of trafficking in persons based on noble values, commitment to national, and international levels to take steps to prevent early, taking action against the perpetrators, protection of victims, and increased cooperation.

To prevent and combat the crime of human trafficking, the need to establish the Law on the Eradication of Trafficking in Persons, because legislation relating to the trafficking yang current, yet provide a legal basis for a comprehensive and integrated efforts to combat criminal acts trafficking in Indonesia.

Referring to these considerations, it was concluded that the existence of Act Combating Trafficking in Persons, is to protect the citizens, especially women and children, from the evil of human trafficking. In other words, with the Law Combating Trafficking in Persons, it should be a crime of trafficking in persons, especially trafficking of children and women, can be eradicated or minimized existence.

But in fact, the Law Combating Trafficking in Persons, has not been able to be an effective legal means to eliminate or reduce the occurrence of the crime of trafficking in persons. After nearly eight (8) years since its enactment, the crime of human trafficking in Indonesia, instead of being lost or minimal number decreased from

year to year, but precisely increased dramatically. Tragically, 60 (sixty) percent of victims of crime gangan regulations that person is a child, especially girls. Thus, the Law Combating Trafficking in Persons, has not been able to protect children from human trafficking crime. It is thought to occur because of weak or unclear and specifically on child protection arrangements in the Law Combating Trafficking in Persons. Weakness arrangement referred to, includes weak oversight mechanisms and prevention, so that children do not become victims of this crime, and lack of criminal sanctions can be imposed against the perpetrators of the crime of trafficking in persons, so that it does not pose a deterrent effect against perpetrators.

2. ISSUES

Referring to these considerations, it was concluded that the existence of Act Combating Trafficking in Persons, is to protect the citizens, especially women and children, from the evil of human trafficking. In other words, with the Law Combating Trafficking in Persons, then should the crime of trafficking in persons, especially trafficking of children and women, can be eradicated or minimized existence. But in fact, the Law Combating Trafficking in Persons, has not been able to be an effective legal means to eliminate or reduce the occurrence of the crime of trafficking in persons. It is thought to occur because of weak or unclear and specifically on child protection arrangements in the Law Combating Trafficking in Persons. Weakness arrangement referred to, includes weak oversight mechanisms and prevention, so that children do not become victims of this crime, and lack of criminal sanctions can be imposed against the perpetrators of the crime of trafficking in persons, so that it does not pose a deterrent effect against perpetrators.

3. DISCUSSION

3.1. The phenomenon of Trafficking in Persons in Indonesia

Slavery is a dark history of mankind, which has also been recorded even in our holy books. History has also recorded several wars caused by the issue of slavery, for example, which occurred between North and South America in the past century. Even countries that are now considered as a big country, in the beginning a lot of debt to residents 'poor and weak countries', which was brought forcibly to work in plantations or factories. Trade or slavery has existed and evolved since hundreds or even thousands of years ago that began with the conquest of one group by another group, the group of the most powerful and has powers will dominate the weak group. Ownership economic and political power make sources and opportunities to the development of slavery, as a result of the conquest that is paid by an absolute devotion, in the form of slavery.

In the history of Indonesia, the trade never was through slavery and servitude. Period kingdoms in Java, trafficking in persons, namely women at that time was part of the complement system of feudal rule. At that time the concept of suzerainty described as powers that are grand and noble. The king's power is not limited, it is reflected in the many concubines he had. Some of the princess consort is submitted to the king as a sign of loyalty. Others are offerings from other kingdoms, and there is also a concubine who comes from the bottom of society were sold or handed over by their families, with the intention that the families have an affinity with the royal family, so as to improve their status. Women who were concubines came from specific regions. Until now these areas is still a legend (Farhana 2012).

The question is whether the world is more civilized society is the slavery to disappear? Formal judicial rightly so, because none of the countries more to recognize and tolerate slavery. That does not mean that this phenomenon had disappeared entirely from the face of the earth. The international community still suggests the existence of similar activities in the form of a more 'modern' which was later renamed as contemporary forms of slavery (contemporary forms of slavery). Similarly, the seriousness of this problem, so that the United Nations through the Office of the High Commissioner of Human Rights issued a Fact Sheet No. 14 with the same title, Contemporary Forms of Slavery. Behaviors that are included in this category are: 1) Trade children; 2) child prostitution; 3) child pornography; 4) exploitation of child labour; 5) the sexual mutilation of girls; 6) the involvement of children in armed conflict; 7) Thrall; 8) Trafficking in persons; 9) Trafficking in human organs; 10) Exploitation for prostitution and 11) A number of activities under the regime of apartheid and colonialism (United Nations 1996).

Global Survivors Network, after holding a two-year in-depth study, published Crime & Servitude: An Expose in the Traffic in Women for Prostitution from the Newly Independent States, specifically reveal the practice of trafficking in women in the former Russia. The agency also produced two documentaries: the first documentation that lasted 28 minutes, entitled Sex Trade "Investigative Documentary AN, which is then submitted to the UN Human Rights Committee, the documentation was entitled Bought and Sold, which contains material that is contained in the publication Crime & Servitude , Some significant findings include: criminal syndicate gain of about seven billion dollars every year from the trafficking of women around four million women in the world; The most profitable trading business is aimed at the sex trade; Every day thousands of women and girls from the transition region snared with sweet promises and grandiose to earn a living and interesting job abroad; Through various means of transportation, most of them were sent to Germany,

Switzerland, Japan, Macau and the United States, either legally or not; Trafficking in women continues to grow as the government, officials and citizens are reluctant to disclose, giving rise to impunity; Although the official data says that every year only 50,000 people left Russia and all of them were women women, it turns out this figure actually reached hundreds of thousands (Harkrisnowo 2003).

This issue was also raised in the international community meetings organized by the United Nations, and is generally associated with organized crime activities. Deep concern issues of human trafficking have made the countries in the world two years ago agreed to establish the UN Convention against Transnational Organized Crime's Protocol, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, A / 55/383, which was established by the General Assembly on 2 November 2000.

According to information published by the US Department of Justice and the publications issued by the United Nations, the raw data were found with regard to human trafficking, among others: 700 thousand up to four million people each year traded (sold, purchased, delivered, and were forced to work outside volition) worldwide; the majority of trafficked persons come from developing countries that lower economic level, to be brought to the developed countries; Most of the victims were women and children; The victims generally were promised a better life, a job with an attractive remuneration, by the trader; Generally, they are forced to work as prostitutes, forced labor, domestic servants, even beggar; They are typically used to control violent attempt or threat of violence; More than 2.3 million women working in the sex industry against their will, and an estimated 40% are minors.

As part of developing countries, it is difficult for Indonesia to be excluded from this phenomenon, namely as 'sending country' or 'source country'. Especially for Indonesia. US Department of Justice put him as Tier 3. Data presented in the report of the institution, among others, are as follows: Indonesia is a source country for trafficked persons, especially women and children; The victims are generally trafficked for sexual exploitation and labor; Destination countries including Hong Kong, Singapore, Taiwan, Malaysia, Brunei, the Persian Gulf countries, Australia, South Korea and Japan; The Government has not fully perform earnest efforts to prevent human trafficking, even though this problem has been more attention than ever before.

As well as the condition of human trafficking is happening in the world, to Indonesia itself, the information submitted by both the mass media and studies conducted in educational institutions and NGOs show that the majority of victims of human trafficking are also women and children. Various studies show that the unfair behavior towards women and children is a constant threat for those women anywhere in the world, especially in developing countries. It concerns the economic condition in Indonesia as part of the developing countries. The majority of the population with low education levels, limiting the forms of employment which produces a decent wage. In rural areas, agricultural land is increasingly thinning create jobs as farmers are also much reduced, as well as fishermen due to the high competition by large fishing boats and also trawls which controls the seas, be marginalized. In a weak economy, the construction of the existing society eventually also puts women in a more unfavorable position compared with men. Low labor market caused by low levels of the economy in rural areas, has led to the high levels of urbanization, partly because the city is perceived as a place where jobs are easily searchable.

As a result, efforts were made to recruit women (especially young women and girls) from rural areas to work in urban areas. Although initially it truly is these activities are intended to provide legal employment for them, but the proliferation of the sex industry in urban areas and other places improving the supply of young women, especially to houses of prostitution. These conditions not only occur between rural and urban areas (urbanization), but also occur in cross country (trans-national). In the field of employment, bitter experience suffered by many women workers who work abroad as domestic workers, as disclosed in the media lately, only a portion their suffering because they are women.

Events that more concern is when they are sent abroad to become commercial sex workers, without their knowledge when it will depart. This latter case is one part of the activities of the so-called human trafficking. Unfortunately comprehensive and accurate data on trafficking that occurred in Indonesia have not been recorded carefully, especially because of the difficulty of detecting a phenomenon which is of course done this secretly.

3.2. `Early Prevention of Child Trafficking

It is realized that the crime of child trafficking, starting from documents about child abandonment, and brought the child or of the village / neighborhood where the child lived or settled. Thus, the processing of documents and or removal of children from the village / neighborhood associations such, should be known by the village head or the head of the local neighborhood. The logical consequence is, the protection of children should be made early by involving the village chief or head of the local neighborhood. This means that in case of crime of trafficking in children, the village head or the head of the local neighborhood association, should be used as the subject of a criminal, which resulted in trafficking of persons.

In the criminal provisions in the Law on Combating Trafficking in Persons, which can be used as the

subject of criminal merely state officials. As for the question as state officials, are described in the explanation of Article 8, which states that: The term "state officials" in this provision is government officials, members of the Indonesian Armed Forces, members of the Indonesian National Police, security personnel, law enforcement agencies or officials abusing public power to commit or facilitate the crime of trafficking in persons. Referring to the explanation of Article 8 above, it was concluded that the so-called state officials are government officials, which includes the lowest administration officials, the head of village or village chief.

Thus, the chairman of the neighborhood or village head did not include state officials, as referred to in Article 8 of the Law Combating Trafficking in Persons. Legal consequence is, when the criminal act of child trafficking, the chairman of the neighborhood or village head, who should know the expense of children from their homes, can not be charged with Article offenses referred to in Article 8. As chairman of the neighborhood or village head, who incidentally is the "apparatus" in direct contact with the public, or the most know the state of residence in the neighborhood, not serve as the subject of human trafficking, the chairman of the neighborhood or village head considers the expenditure of children from their environment, as something that is not its responsibility. It causes low self-awareness at the head of the neighborhood or village head, to closely monitor and administrative proceedings or expenditure / income of the child and the environment to be their area of authority.

This phenomenon, which in turn led to the perpetrators of the crime of child trafficking, especially of the recruiter as the beginning of the crime of trafficking in persons, be freely recruit children, with various modes such as persuasion raju crime, fraud, violence, threats of violence or debt bondage. Therefore, in order to provide legal protection is comprehensive to the child, so as not to become a victim of the crime of trafficking in persons, the provisions of Article 8 of Law on Combating Trafficking in Persons, must be changed, this quickly so that the head of the neighborhood or village head, either in an environment where the release of the child or children's place of origin, as well as children's shelter environment, serve as subjects of criminal.

Changes in Article 8 of the provisions laid down, must be preceded by the addition of a new article in the Law Combating Trafficking in Persons, which states clearly and unequivocally on the obligations chairman of the neighborhood or village head, which essentially provides that the head of the neighborhood or village head is obliged to closely monitor expenses or income of the child and to the environment.

3.3. Criminal Perpetrators of Criminal Sanctions Against Child Trafficking

As seen in the table above, that the criminal act of child trafficking set out in Article 5 and Article 6 of the Law on Combating Trafficking in Persons. In Article 5, is set on the criminal act of adoption for the purpose of exploitation, which is more outlined that: Anyone who does adoption by promising something or give something for the purpose of exploitation shall be punished with imprisonment of a minimum of 3 (three) years and a maximum of 15 (fifteen) years and fined at least Rp. 120,000,000.00 (one hundred and twenty million rupiah) and maximum Rp. 600,000,000.00 (six hundred million dollars).

While in Article 6 is set on sending the child into or out of the country that resulted in children being exploited. More Article in question is as follows: Any person who delivers the child into or out of the country in any way that results in the child exploitation shall be punished with imprisonment of a minimum of 3 (three) years and a maximum of 15 (fifteen) years and fined at least Rp. 120,000,000.00 (one hundred and twenty million rupiah) and maximum Rp. 600,000,000.00 (six hundred million dollars).

When compared to the adult criminal provisions trade in other articles in the Law on Combating Trafficking in Persons, the criminal sanctions which may be imposed on perpetrators of child trafficking are the same, the term of imprisonment of 3 (three) years and most 15 (fifteen) years and fined at least Rp. 120,000,000.00 (one hundred and twenty million rupiah) and maximum Rp. 600,000,000.00 (six hundred million dollars).

In another article, namely Article 17 arranged on criminal weighting against juvenile criminal offenders, the more states that, "If the criminal offense referred to in Article 2, Article 3 and Article 4 committed against a child, the criminal threats plus 1/3 (one third) ". The existence of a criminal weighting article against the perpetrators of criminal trafficking of children, as set forth in Section 17 above, on the face can be perceived as a commitment to protect children from trafficking a criminal act. By adding criminal 1/3 (one third), is expected to effect deterrence, so that people become afraid to commit crimes of child trafficking. However, if lived in greater depth, the formulation of criminal weighting separately from the principal crime, precisely does not show the country's commitment to actually protect children from criminal acts of trafficking in persons.

In its implementation, the provisions of a separate criminal weighting of the main criminal trafficking of children, is potentially harmful because it can be perceived as an additional penalty is voluntary, which may also not be dropped. When such things happen, then the criminal acts trafficking in children and women are considered equal to the trafficking of people in general. The logical result is the fundamental objective to be achieved from the enactment of the Law Combating Trafficking in Persons, which is to protect children from trafficking crimes, will not be achieved.

Referring to the above description, it was concluded that the Law on Combating Trafficking People not specifically provide legal protection for children, so that the perpetrators of criminal trafficking of children, can not be punished with heavy criminal deterrence effect. Therefore, in order to protect children from trafficking crime, the criminal provisions in the Law on Combating Trafficking People current must be changed, so that the child criminal provisions, set out in a special chapter or a separate chapter on child trafficking and women, and with the threat of a far more serious crime of trafficking of adults.

4. Conclusions

Law on Combating Trafficking in Persons, has not been able to protect children from trafficking crime. It happens because there are two (2) weakness in the Act referred to, first, the Law Combating Trafficking in Persons, did not enter the "apparatus" in direct contact with the public, the head of the neighborhood or village head, as the subject of a criminal. Therefore, the head of the neighborhood or village head does not have to oversee the strict vigilance of administration and or expenditure / income of the child and the environment to be their area of authority. It caused weak early prevention for children not to become victims of this crime. Second, the Act has not specifically provide legal protection for children, because of the threat of criminal punishment against perpetrators of child trafficking are the same as adult traffickers. The difference lies only in the criminal weighting, which provisions are made separately from the principal criminal, so that could be perceived as an additional penalty which voluntary or options.

To enable the early prevention of child trafficking, the provisions of Article 8 of the Law Combating Trafficking in Persons, must be changed, so that the head of the neighborhood or village head, either in the environment where the release of the child or children's place of origin, and the environment shelters children , serve as the subject of a criminal. Changes in Article 8 of the provisions laid down, must be preceded by the addition of a new article in the Law Combating Trafficking in Persons, which states clearly and unequivocally on the obligations chairman of the neighborhood or village head, which essentially provides that the head of the neighborhood or village head is obliged to closely monitor expenses or income of the child and to the environment. In order to effect deterrence, then the criminal provisions in the Law on Combating Trafficking People current must be changed, so that the child criminal provisions, set out in a special chapter or a separate chapter on the crime of trafficking in children and women, and with the threat of criminal which is much more severe than the criminal trafficking of adults.

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