

Special Protection for Children as Victims of the Crime of Sending Children

Audya Mayasari Muin^{1*}, Arnita Pratiwi Arifin²

audyna.mayasar@unhas.ac.id^{1*}, arnita.arifin@unhas.ac.id²

¹Faculty of Law Hasanuddin University, Makassar, Indonesia.

²Faculty of Law Hasanuddin University, Makassar, Indonesia.

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Abstract

Protection of children from a crime is not only regulated in Law Number 23 of 2002 concerning Child Protection in conjunction with Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. It is also regulated in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. The philosophy of regulating the crime of trafficking in persons is to protect women and children from exploitation by subjects of criminal law. The crime of sending children is regulated in Article 6 of the PTPPO Law. The formulation of criminal acts in Article 6 is a representation of both preventive and repressive legal protection against children as victims of criminal acts. In contrast, the inclusion of criminal sanctions in prison and fines and confinement in lieu of fines in Article 6 of the PTPPO Law is a development of the theory of the purpose of punishment, namely the theory of balance that accommodates not only the interests of the victims but also of the perpetrators and society. The form of protection given to children as victims of shipping crimes which is regulated in the PTPPO Law is restitution and rehabilitation. As a result, the author concludes that along with restitution and rehabilitation, children are also provided with medical assistance, psychosocial rehabilitation, and psychological rehabilitation as regulated in the LPSK Law.

I. Introduction

Coffee is one of the most popular drinks in the world. So it is not strange that until now the coffee business is mushrooming both in big cities and in small towns. Coffee is a food commodity that is enjoyed by people from various types of circles. The history of the discovery of coffee itself, was discovered by the Ethiopians on the African continent since 800-850 BC. The people of the African continent, especially the Ethiopians, claim that coffee is a nutritious drink that can provide energy. They consume coffee by mixing coffee beans with animal fat and also wine to meet their protein needs.

To construct the proper development and growth of children's physical, psychological, and social, Child Protection is the efforts made to create conditions for children to be able to exercise their rights and obligations. Children's protection regulated in various laws and regulations have legal consequences. That is in line with the mandate of the Constitution of the Republic of Indonesia contained in Article 28B section (2) of the 1945 Constitution of the Republic of Indonesia.¹

Juridically, humans or people who are trafficked are classified as criminal acts of trafficking in persons. The criminal act of trafficking in persons in English is called *the criminal act of trafficking in persons*, while in Dutch, it is called *de strafbare feiten van mensenhandel*, which consists of two syllables, namely crime and trafficking in persons.² Human trafficking (*human trafficking*) is a classic problem that often occurs. The public view (*communis opinio*) that states human trafficking is a form of modern slavery cannot be denied. Trafficking in persons is a crime whose consequences not only comes from an economic aspect but also from a political, cultural, and humanitarian aspect.³

Crime is conceptualized as a criminal act. The definition of trafficking and the crime of human trafficking is contained in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons (UU PTPPO). Trafficking in Persons is an act of recruiting, transporting, harbouring, sending, transferring, or receiving a person through threats of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or position of vulnerability, debt bondage, giving payments or benefits, to obtain approval from the person who has control over the other person, whether it is done within the country or between countries with the aim of

¹ Nelsa Fadilla, *Legal Protection Efforts Against Children as Victims of Trafficking in Persons*, Journal of Law and Justice, Volume 5 Number 2, July 2016, pp.182-183.

² Rodliyah and Salim HS, 2017. *Special Elements of Criminal Law and Criminal Sanctions*, Depok, Raja Grafindo Persada, p. 257.

³ Mahrus Ali and Bayu Aji Purnomo, 2011. *Trafficking in Persons: Dimensions, International Instruments and Their Arrangements in Indonesia*, Bandung, Citra Aditya Bakti, p.1.

exploitation or causing people to be exploited.⁴ However, the crime of human trafficking refers to any activities or series of actions that fulfil the elements of a crime specified in this law.⁵

There are several forms of criminal acts of trafficking in persons, including: first, migrant workers are people who migrate from their place to another area and work in the new place for a relatively long period. Second, child labour (both action and trial action). Third, the crime of prostitution, which is legally defined as the sale of sexual services. Fourth, trafficking in children through adoption. Fifth, slavery under the guise of marriage and ordered brides. Sixth, the trading of organs.⁶

One form of the crime of human trafficking is regulated in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, which is the crime of sending children. The object of the criminal act of sending as a form of trafficking in persons is the child. The child referred to under the Law on the Eradication of Criminal Acts of Trafficking in Persons that is under Article 1 point 5 is someone whose age is 18 (eighteen) years old, including children who are still in the womb. Arrangements for children as victims of criminal acts are not only regulated in Law Number 23 of 2002 concerning Child Protection in conjunction with Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection but also regulates the protection of children as victims. In Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.⁷

The current Child Protection Act, both in Law Number 23 of 2002 and in its amendment, namely Law Number 35 of 2014, is a special regulation that regulates children, especially children as victims of crime. In Article 3 of the Child Protection Act, it is stated that the purpose of child protection is to guarantee the fulfilment of children's rights so that they can live, grow, develop, and participate optimally under human dignity and receive protection from violence and discrimination to realize quality, noble and prosperous Indonesian children.⁸

The current phenomenon is that many children are used as objects of the criminal act of human trafficking. The data for this phenomenon can be obtained from the police or various mass media, that discuss the issues frequently. KompasPedia page, as one of the media, states that the number of cases of trafficking in children has remained high over the past 3 (three) years. For instance, in 2019, there were 244 cases, 149

⁴ Article 1 Number 1 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.

⁵ Article 1 point 2 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.

⁶ Abdul Rahman Prakoso, Putri Ayu Nurmalingda, 2018. *Legal Policy Against Trafficking in Persons*, National Seminar on Law, Semarang State University Volume 4 Number 1. p.4.

⁷ Ririen Ambarsari, et al, 2016. *Juridical Study on Legal Protection of Women and Children Victims of Human Trafficking*, Journal of Panorama Hukum, Vol.1, No.1 June 2016, ISSN: 2527-6654, p.65

⁸ Gege Agus Sukawantara, et al, 2020. *Children as Victims of Trafficking in Persons According to Law Number 35 of 2014*, Journal of Legal Construction, Vol 1, No.1, September 2020, p.221.

cases in 2020 and as of April 2021 there were 35 cases with 234 children as victims.⁹

Based on the background above, what is being studied in this research is about:

1. What is the form of special protection for children as victims of the criminal act of sending children in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons?
2. How is the formulation of criminal sanctions against perpetrators for the criminal act prevention of sending children based on Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons?

2. Research Method

To answer the formulation of the problem, the author uses a normative research type, which is a research method that examines law from an internal perspective with legal norms as the object of its research study. The approach method used is the statutory approach, consisting of the process of reviewing all laws and regulations related to legal issues contained in this research. ¹⁰The types of legal materials used to answer the formulation of the problem are primary and secondary legal materials. The primary legal material is Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, while the secondary legal material is legal books and journals that are relevant to this study.

The technique of collecting legal materials is conducted through library research. Primary and secondary legal materials that have been obtained are then analyzed using concepts, theories, and principles of criminal law, which will be presented descriptively.

⁹ <https://kompaspedia.kompas.id/baca/paparan-topic/menutup-celah-perdagangan-anak> accessed on Tuesday, 19 October 2021, 14.55 WITA.

¹⁰ Peter Mahmud Marzuki, 2011. *11th Print Legal Research*, Jakarta, Kencana Prenada Media, p.15.

3. Results and Discussion

Special Forms of Protection for Children as Victims of the Crime of Sending Children in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons

Legal protection is the provision of protection for human rights when it is being harmed by others. The aim is to provide freedom for the community to enjoy all the rights granted by law. In other words, legal protection is a legal remedy that must be given by law officials to provide a sense of security without disturbance both mentally and physically from various threats from any party.¹¹ On the other hand, Philipus M. Hadjon argues that legal protection is an action to protect or provide assistance to legal subjects by using legal instruments.¹²

In providing legal protection, a platform is needed in its implementation. This is called a medium of legal protection which is divided into 2 (two), namely:

- a. Preventive Legal Protection is protection provided by the government to prevent violations. This is contained in laws and regulations that aim to prevent violations and provide signs and limitations when carrying out an obligation.
- b. Repressive Legal Protection is the ultimate protection in the form of sanctions such as fines, imprisonment, and additional penalties given when a dispute or violation has occurred.¹³

Legal protection is given not only to perpetrators but especially to victims of crime, in this case, children. The definition of a child in the Trafficking in Persons Law is someone whose age is 18 (eighteen) years old, including a child who is still in the womb.¹⁴

One form of preventive protection carried out by the government in preventing the criminal act of trafficking in persons is the establishment of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. The criminal act of trafficking in persons regulated in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons has a philosophical basis for its stipulation. Not only a philosophical basis, but this law also has a juridical basis and a sociological basis for its formation.¹⁵

The philosophical basis for the formation of this law is to protect women and

¹¹Satjipto Rahardjo, 2000. *Law Studies*, Bandung, PT Citra Aditya Bakti, p.53.

¹²Philipus M. Hadjon, 2011. *Introduction to Indonesian Administrative Law*, Yogyakarta, Gajah Mada University Press, p.10.

¹³Islamia Ayu Anindia, 2018. *Legal Protection Against Trafficking of Children with the Mode of Marriage in a Victimological Perspective*, Journal of Litigation, Vol.19, No.1. 2018, p.92.

¹⁴Article 1 point 5 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.

¹⁵Ginjar Kusuma, 2001. *Trafficking of women and children in Indonesia and its problems*, Jakarta, Komnas HAM, p. 49.

children from exploitation by legal subjects. Exploitation is conceptualized as an act with or without the consent of the victim, which includes but is not limited to prostitution, forced labour or services, slavery or practices similar to slavery, oppression, extortion, physical, sexual exploitation, reproductive organs or removing or transplanting organs and, or body tissue, or take advantage of a person's energy or ability by another party to gain material or immaterial benefits.¹⁶

However, the juridical basis in regulating the crime of human trafficking has been determined in Law Number 21 of 2007, concerning the Eradication of the Crime of Trafficking in Persons, which consists of 11 chapters and 67 articles. The sociological basis for enacting this law is that many women and children are trafficked by people who are not responsible.

Regarding the crime of sending children regulated in Article 6 of this PTPPO Law, as for the provisions Article 6 the PTPPO Law, that: "Anyone who sends a child to or from the country in any way that results as the child being exploited shall be punished with a maximum imprisonment of short 3 (three) years and a maximum of 15 (fifteen) years, and a minimum fine of Rp. 120,000,000.00 (one hundred million rupiahs) and a maximum of Rp. 600,000,000.00 (six hundred million rupiahs)."¹⁷

The elements of a criminal act regulated in Article 6 of the PTPPO Law are:

- a. The perpetrators are people;
- b. The criminal act he committed was sending a child;
- c. The purpose of sending children is to exploit them;
- d. Criminal sanctions for perpetrators are imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years, and a minimum fine of Rp. 120,000,000.00 (one hundred million rupiahs) and a maximum of Rp. 600,000,000.00 (six hundred million rupiahs).

Each element in Article 6 above can be explained that what is meant a child under the PTPPO Law is someone whose age is not yet 18 years old, including a child who is still in the womb. So, the object of this crime of human trafficking is a child whose age limit has been determined above. The legal subject action that must be taken to be charged with this article is sending children. What is meant by sending is the act of dispatching or porting a person from one place to another (Article 1 number 10 of the PTPPO Law). Thus, the legal subject has to take an action by departing or porting the child from one area to another. Based on the elucidation of Article 6 of the PTPPO Law, the phrase "sending children to the country" in this provision means sending children between regions within the territory of the Republic of Indonesia.

The purpose of sending the child is so that the child becomes exploited. Exploitation

¹⁶Rodliyah and Salim Hs, *Op. Cit*, p. 262-263.

¹⁷Sitti Aisyah Kara, 2018. *Sanctions System for Trafficking of Children According to Islamic Law*, Journal of Islamic Discourse, Volume 06 Number 2, August 2018, pp. 313-314.

is an act with or without the consent of the victim, which includes but is not limited to prostitution, forced labour, slavery or practices similar to slavery, oppression, extortion, physical, sexual, reproductive organs or removing or transplanting organs and, or body tissues, or utilizing a person's energy or ability by another party to gain material or immaterial benefits (Article 1 number 7 of the PTPPO Law). So the purpose of the child being sent by the perpetrator is to gain material and immaterial benefits.

The crime of sending children is a crime committed by a person or actor, in which the person or actor sends a child domestically or abroad intending to be trafficked. Based on the elements of Article 6 of the PTPPO Law above, this crime is included in the category of material offences. If the consequences prohibited in the law have been carried out by the perpetrator, material offences are considered complete. In addition, based on the crime of sending children regulated under Article 6, the consequence of the act of sending children is that the child must be exploited.

Formulation of Article 6 of the PTPPO Law as a form of preventive legal protection for victims of criminal acts of shipping, in this case, is children. In comparison, law enforcement in Article 6 of the PTPPO Law against perpetrators is one of the efforts to protect regressive law for victims, especially for the crime of sending children.

As a form of legal protection for children as victims of criminal acts, there are rights granted in the PTPPO Law, namely restitution and rehabilitation. Restitution is the payment of compensation that is charged to the perpetrator determined by the court decision, that has permanent legal force for material and/or immaterial losses suffered by the victim or the heirs.¹⁸ Meanwhile, rehabilitation is a recovery from disturbances to physical, psychological, and social conditions that aim to provide a person freedom to carry out their roles normally again, both in the family and society.¹⁹

Restitution for children as victims of shipping crimes can be in the form of compensation for:

- a. Loss of wealth or income;
- b. Suffering;
- c. Costs for medical and/or psychological treatment measures; and/or
- d. Other losses suffered by children as a result of shipping/trading.

In addition to restitution given to children who are victims of trafficking/trafficking, they are also entitled to receive health rehabilitation, social rehabilitation, repatriation and social reintegration from the government if the person concerned suffers both physically and psychologically as a result of the crime. Health rehabilitation is the restoration of the original condition, both physical and psychological. Social rehabilitation is the recovery from disturbances of social and

¹⁸Article 1 Number 13 Law Number 21 of 2007

¹⁹Article 1 Number 13 Law Number 21 of 2007

mental illness and the return of social functioning so that they can carry out their roles naturally both within the family and in society. While social reintegration is the reunification of victims of the crime of trafficking persons to a family or surrogate family who can provide protection and meet the needs of victims.²⁰

According to the author, based on Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, in addition to the rights of restitution and rehabilitation granted to child victims of the crime of shipping in Article 6 of the PTPPO Law, children as victims also have the right get medical assistance and psychosocial and psychological rehabilitation assistance. Medical assistance provides aid to restore the victim's physical health, including carrying out arrangements if the victim dies. For example, managing bodies until funerals. Psychosocial rehabilitation referred to all forms of psychological and social services and assistance aimed at helping to relieve, protect and restore the physical, psychological, social and spiritual conditions of victims so that they can carry out their social functions normally again. Witness and Victim Protection Agency (LPSK) seeks to improve the quality of life of victims by collaborating with relevant authorities in the form of assistance in fulfilling clothing, food, boards, assistance with finding a job or assistance with continuing education. What is meant by psychological rehabilitation is assistance provided by psychologists to victims suffering from trauma or other psychiatric problems to restore the victim's mental condition.

Formulation of Criminal Sanctions Against Perpetrators as a Form of Prevention of the Crime of Sending Children Based on Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons

Criminal law determines sanctions for every violation of the law that is committed. The sanction is in principle an intentional addition to suffering. This deliberate addition to suffering is the most critical differentiator between criminal law and other laws. A perpetrator of a crime must be subject to a legal consequence. The legal consequences are generally in the form of criminal penalties or sanctions.

Based on Article 10 of the Criminal Code, the types of criminal punishment are divided into two, namely:

- a. Principal punishment consists of capital punishment, imprisonment, confinement, fines, and imprisonment;
- b. Additional punishments include revocation of certain rights, confiscation of certain property, and announcement of a judge's decision.²¹

²⁰Explanation of Article 51 paragraph (1) of Law Number 21 of 2007

²¹Brian Septiadi Daud and Eko Sopoyono, 2019. *Application of Criminal Sanctions Against Human Trafficking in Indonesia*, Indonesian Journal of Legal Development Volume 1 Number 3, p.360

The formulation of the sending children crime is regulated in Article 6 of the Law on the Eradication of Trafficking in Persons, which states: "Anyone who sends a child to or from the country in any way that causes the child to be exploited shall be punished with a minimum imprisonment of 3 (three) years and a maximum of 15 (fifteen) years. With a minimum fine of Rp. 120,000,000.00 (one hundred million rupiahs) and a maximum of Rp. 600,000,000.00 (six hundred million rupiahs)".

As for the criminal formulation in Article 6 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, namely:

1. The types of sanctions regulated in Article 6 of Law Number 21 of 2007 are the main punishments such as imprisonment and fines.
2. The length of punishment threatened in Article 6 of Law Number 21 of 2007 is imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 120,000,000.00 (one hundred million rupiahs) and a maximum of Rp. 600,000,000.00 (six hundred million rupiahs). The article elucidates a specific minimum punishment of imprisonment for a minimum of 3 years and a maximum of 15 years, with a fine of at least Rp. 120,000,000.00 (one hundred million rupiahs) and a maximum of Rp. 600,000,000.00 (six hundred million rupiahs).
3. The criminal formulation system in Article 6 of Law Number 21 of 2007 is cumulative (prison sentences and fines). This means that in imposing criminal punishment on the perpetrators, two main penalties must be charged at once, namely imprisonment and fines. However, based on Article 25 of Law Number 21 of 2007, if the convict is unable to pay the fine, they become subject to imprisonment for a maximum of 1 (one) year. From the formulation of Article 25, in Law 21 of 2007, the formulation of sanctions also stipulates imprisonment in lieu of fines.

The purpose of the inclusion of criminal sanctions in Law Number 21 of 2007, especially in Article 6, is to provide a deterrent effect so that the perpetrators of crimes do this continuously.²² With the inclusion of imprisonment as one of the crimes of deprivation of liberty and fines as payment of penalties for perpetrators against victims, when it is linked to the theory of sentencing objectives, this is following the theory of balance. This theory was first put forward by Roeslan Saleh. He stated that sentencing (criminal imposition) must accommodate the interests of society, perpetrators and victims as well. Punishment cannot only pay attention to the interests of the community or the interests of the maker. But, it must also pay attention to the feelings of the victim and his family.²³ Punishment, in the perspective of balance, is all three, namely society, perpetrators, and victims. If it only emphasizes the community's interests, it will give a criminal figure that places the perpetrator as a mere object. If you only care about the perpetrators, you will get a very individualistic picture of punishment, which only pays attention to the

²²Lourensy Varina Sitania and Eko Suponyono, 2020. *Accommodation for the Eradication of Insider Trafficking in International and National Legal Aspects*, Journal of Indonesian Legal Development, Volume 2, Number 1. hlm.49

²³M. Sholehuddin, 2011. *The Penalty System in Criminal Law, the Basic Idea of the Double Track System and Its Implementation*, Jakarta, Raja Grafindo, p.113.

rights of the perpetrators and ignores their obligations. On the other hand, if it only suppresses the victim, it will lead to a sort of punishment that only reaches very limited interests without affording to accommodate the interests of the perpetrators and society in general. ²⁴This theory appears with the aim that the rights of victims or families of victims of criminal acts are considered so that there is a balance of justice between perpetrators and victims. Therefore, the inclusion of criminal sanctions in Article 6 of the TIP Law accommodates not only the interests of victims of criminal acts but also the public who have the potential to become potential victims and perpetrators of crimes in the context of deterrence.

4. Conclusion

The conclusions of this paper are as follows:

1. A special form of protection for children as victims of the criminal act of sending children in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons is regulated in Article 6, where the PTPPO Law provides both preventive and repressive protection. The protection given to children as victims of shipping crimes in the PTPPO Law is restitution and rehabilitation. According to the author, in the future, not only restitution and rehabilitation will be given to children, but also medical assistance, psychosocial rehabilitation, and psychological rehabilitation as stipulated in the LPSK Law.
2. The formulation of criminal sanctions against perpetrators as a form of preventing the criminal act of sending children based on Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons is the inclusion of two major crimes at once, the cumulative between imprisonment and penalties and imprisonment in lieu of fines which these criminal sanctions are a representation of the balance theory that accommodates not only the interests of victims but also perpetrators and society.

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²⁴*Ibid.*

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