

# Human Rights Based Law Protection Model for the Mental, Spiritual and the Healing Victims of Child Trafficking In Indonesia

<sup>1</sup>Sulistya Evinigrum, <sup>2</sup>Hartiwiningsih Hartiwiningsih, <sup>3</sup>Mohamad Jamin

<sup>1</sup>Doctoral Student, Universitas Sebelas Maret, Surakarta, <sup>2</sup>Professor, Universitas Sebelas Maret, Surakarta,

<sup>3</sup>Associate Professor, Universitas Sebelas Maret, Surakarta.

## Abstract

**Abstract:** The protection needed by children to face the reality of being the victims of child trafficking is not only physical protection, but mental, spiritual, and social healing as well. The punishment system still focuses on criminals instead of the victims. The law protection model for the victims of child trafficking in Indonesia is not comprehensive, so there is little chance that the victims get their rights. Although Act Number 21 Year 2007 has guaranteed the victims' rights, the chance to get their rights is relatively minimal.

**Keywords:** law protection, children, trafficking and human rights

## Introduction

Indonesia is still considered weak in handling trafficking in person cases. Indonesia Tier-2 has arranged minimum policies as a deterrent to human trafficking. The law enforcement needs to be in accordance with the applicable law, *Pancasila* and the the 1945 Constitution of the Republic of Indonesia, and human rights. There are regulations related to the victims of child trafficking, for example Article 2 of Act Number 21 Year 2007 on the Eradication of the Criminal Act of Trafficking in Persons<sup>(1)</sup> that states, an act of recruitment, transportation, storage, shipping, transfer or acceptance of somebody with the threat of violence, the use of violence, confinement, falsification, fraud, abuse of power, or vulnerable position, debt bondage, or giving payment or benefits, so that the perpetrator gets permission from the person who have control of somebody else, whether it is done domestically or internationally, in order to exploit or make somebody to be exploited. The birth of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children as one of the

protocols created from the United Nations Convention Against Transnational Organized Crime in Palermo, 12<sup>th</sup> – 15<sup>th</sup> December 2000, as stated by Bank Data KPAI<sup>(2)</sup> is a very useful international instrument to prevent and fight trafficking in persons, and especially child trafficking.

According to the background above, the writer conducted two main problems that will be discussed is Why is the law protection on the victims of child trafficking? And How is the ideal human-rights-based law protection model for the victims of child trafficking?

## Research Method

Normative research method is used in this paper, which is a research done with library studies. The discussion is based on the theories, legislations, documents, law journals, paper, and references which are relevant to the research topic, as stated by Marzuki.<sup>(3)</sup>

## Result and Discussion

### 1. The Law Protection for The Victims of Child Trafficking

Children are the most vulnerable group to the criminal act of human trafficking. As stated by Norris<sup>(4)</sup>, "Child Trafficking, whilst not a phenomenon, remains a heinous activity as children are the most vulnerable members of society, yet it is exactly this vulnerability

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#### Corresponding Author:

**Sulistya Evinigrum,**

Ir Sutami Street. Surakarta. Indonesia. email:  
evinigrumsulistya@yahoo.co.id

that makes trafficking possible in the first instance. Official statistic by the Home Office and the United Nations highlight a continuing increase in this “industry” and whilst most of society holds the notion that children are not a commodity to be bought and sold, there remain a small but determined proportion of the population who are willing to exploit children for profit.”

In 2014 (January-April), there are 600 cases and 876 victims, 137 of which are child perpetrators, as stated in the UAJY Library.<sup>(5)</sup> In 2016, there are 99 prostitution victims. Today, according to the data of *KPAI* (The Indonesian Commission on Child Protection) during 2016, the trend of child sexual crimes tends to increase. In that year, there are 1,593 cases of children sexual crimes. According to Mia<sup>(6)</sup>, 25 cases among them are online sexual crimes. Article 1 paragraph (2) of Act Number 35 Year 2014 Amendment of Act Number 23 Year 2002 on Children Protection defines Children Protection as any activities to guarantee and protect children and their rights to live, grow, thrive, and participate optimally according to their human dignity and get protection from violence and poverty. The victims of child trafficking are usually used in prostitution and exploitation. The protection for the victims of child trafficking is regulated in Act Number 1 Year 2007 on The Eradication of The Criminal Act of Trafficking in Persons. Chapter V paragraph 43 stated that the protection for the witness and victim is conducted based on Act Number 13 Year 2007 on the protection of witness and victim. The protection model based on Act Number 1 Year 2007 on The Eradication of The Criminal Act of Trafficking in Persons does not differentiate between children and adults, article 44 stated that the victims are given the right of confidential identity for the victims, witnesses, and their family until the second degree. Article 47 gives the police the duty to provide protection before, during, and after the process of case review.

## **2. The Ideal Law Protection Model for The Victims of Child Trafficking**

Trafficking victims do not only have the right to get law protection, but to get rehabilitation as well because they suffer economically, physically, and psychologically. Rehabilitation can be attempted by conducting mentoring by the non-governmental organizations or the child-protection-related organizations. The rehabilitation is expected to return and heal victims' condition both physically and psychologically. The mentoring conducted by the NGOs in attempting the rehabilitation

for the victims of child trafficking has the same purpose, but there are differences in terms of the technique of socialization based on the needs of child trafficking victims. The act on human trafficking has been enacted, but the local legal protection in city / regency level is highly expected since the local regulations will be very helpful in stimulating the effectiveness of the central legislation implementation. The implementation of the local regulations have 5 (five) purposes: 1) Prevent all forms of violence and trafficking in persons against women and children; 2) Protect women and children victims of violence and human trafficking; 3) Punish the perpetrators of violence and trafficking of women and children; 4) Provide security for women and children victims of violence and trafficking in persons; 5) Heal the physical, psychological and economic conditions of women and children victims of violence and trafficking, as stated by Absor.<sup>(7)</sup> Act Number 23 Year 2014 on Local Government supports that child protection becomes regional obligatory affairs, as quoted from Sindonews.<sup>(8)</sup> Although the legal instruments have been owned, on its progress, the Act Number 23 Year 2002 on Child Protection as amended by the Act Number 35 Year 2014 still cannot work effectively since there are some overlaps between sectoral legislations regarding to the definition of child. The amendment of Act Number 23 Year 2002 on Child Protection also confirms the need for punishment and fines for the perpetrator of criminal action against children, in order to give a deterrent effect, and stimulate concrete actions to heal the physical, psychological, and social condition of the victims of child trafficking and/or the children of the criminals. Integrative efforts are the responsibility of the society and state to realize the better survival of the victims of child trafficking, in which these efforts involve all components of the society and family. This step makes the victims of child trafficking feel that chances exist in their society and family. The importance of child trafficking victim's protection, in order to observe the victim – offender relationship for the sake of judicial process, both to seek for the perpetrators' responsibility, and to determine the form / amount of restitution and/or compensation for the victims. The state takes over the responsibility of the security of all its citizens because when a crime happens to a victim, it is as if the crime destroys the system of trust, so the function of law is to return the trust to the victim. The reformation of policy formulations is expected to overcome the social problems so that a prosperous society can be realized. Legislation emerges regarding to the protection of witnesses and victims to cover the lacks

of *KUHAP* (Criminal Code Procedure), for example Act of The Republic of Indonesia Number 31 Year 2014 on Witness and Victim Protection, and Act of The Republic of Indonesia Number 11 Year 2012 on Child Criminal Justice System. The legal aid attempts to give solution in developing the legal protection for the victims of child trafficking by accommodating the children's experience of being victims of child trafficking, especially those who experience sexual exploitation. In which it shows the correlation process between the authorities that handle law protection for the victims of child trafficking and the easy-and-effective service techniques for the process of law protection for the victims of sexual exploitation in child trafficking.

The law protection is realized in various ways such as those existing in the concept of integrated law protection on the victims of child trafficking, for example by; a) Coordinating and working on the mechanism between the authorized agencies in providing legal protection for children of human trafficking victims (child trafficking) and understanding the needs of victims; b) Renewing, developing of ideas and thoughts of revising policy formulations relating to the issues of legal protection for children of human trafficking victims (child trafficking);

c) Estimating the budget for dealing with legal protection for child victims of human trafficking (child trafficking), which starts from the process of mentoring, investigating, examining and restoring good names for victims. d) Communities are sensitive and responsive to their environment in monitoring cases of human trafficking (child trafficking); e) Providing human resources assistance, such as psychologists for human trafficking victims (child trafficking) in order to solve the problem of human trafficking crime (child trafficking); f) Providing a special room to conduct examinations, especially in sub-districts, in order to handle human trafficking crimes.

The development of human rights protection principles through children law protection has always been the focus in the International Documents of the United Nations on Human Rights, for example Universal Declaration of Human Rights (UDHR); International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR), The Convention on the Rights of the Child (CRC); Convention Against Torture And Other Cruel, Inhuman or Degrading Treatment or Punishment. The approach used in the judicial system

to help the victims of trafficking (child trafficking), such as: the role taken by the law enforcements such as police, prosecutors, court, and correctional institution; through normative approach by implementing the applicable laws; through administrative approach by means of a management organization that has a working mechanism, with vertical relationships based on the prevailing organizational structure; through social approach where an inseparable part of the social system so that the whole community is partially responsible for the success or failure of the law enforcement agencies. The multi-pressure that happens to the victims of child trafficking and the perception of human trafficking (child trafficking) in the society shall result in the enforcement of policy formulations of child trafficking, the perpetrators of child trafficking will be given severe punishment such as death sentence or castration for those who commit sexual crime. Synergy of regulation is needed to protect the victims of child trafficking. In its implementation, the national legislation regulations do not give deterrent effects to the perpetrators of human trafficking (child trafficking). Local regulations are initiated by mapping the problems of child trafficking through stakeholder workshops from the government, NGOs, labor union, college, etc. The forum involves all stakeholders such as from social authorities, police, labor offices, family planning office, education authorities, regional development agency, public health agency, labor and migrant union, NGO, society, mass organization, college, and public education center. Those forums are useful in overcoming children trafficking because those forums act as a place to solve various problems and coordinate for the action to overcome trafficking, as stated by Absor. Some forms of children protection such as placing them in social homes are funded by *Jamkesmas* (public health insurance) which sources are the State Budget, Budget Implementation List, Local Government Social Work Unit, Local Government Work Unit on Transmigration and Labor, NGO which coordinates with the Local Government Social Work Unit, by attaching a certificate as resident of a hall, halfway house, foundation, or social homes, where the victims can get treatment (Act Number 11 Year 2009 on Social Welfare). If the social rehabilitation is done by the NGO, then the funding can be obtained from the State Budget which coordinates with the Ministry of Social Affairs or the Local Government Budget which coordinates with the Local Government Social Work Unit. It needs capability and capacity to make local regulation, especially regarding to the prevention

and protection of the victims of child trafficking. When making the regulations, the local government needs to refer to the Act Number 21 Year 2007 on the Eradication of the Criminal Act of Trafficking in Persons and Government Regulation Number 9 Year 2008 on National Action Plan for the reference for their activity. The positive expectation for the eradication of trafficking emerges when utilizing the established conditions that leads to the removal of trafficking that is supported by 1) Government's commitment, as shown by the ministry of woman empowerment; 2) The growth of community-based services that can be utilized to eliminate women and children trafficking; 3) Availability of community service facilities in terms of education, social and health; 4) Regional autonomy will be more efficient and effective in eliminating trafficking; 5) The existence of community organizations or non-governmental organizations that care about women and children; 6) The development of human rights enforcement; 7) Openness; 8) Democratization; 9) International commitment; 10) The existence of international institutions that support the eradication of trafficking; 11) Involvement of international NGOs observing women and children; 12) The information technology that supports the eradication of women and children trafficking, as quoted from Abdussalam.<sup>(9)</sup> To get optimum results in conducting those duties, some actions need to be taken, for example creating strategic alliance with the related sectors and stakeholders to build collective commitment as the framework of policy-making in all sectors; harmonizing international law instruments into the national law that strengthen the efforts to eradicate children trafficking; make an agreement with the legislature so that each Laws and Regional Regulations drafting considers the importance of children protection from trafficking; strengthening the coordination with local government in preventing and eradicating children trafficking; expanding the source of funds to support the eradication of trafficking; building strong cooperation with all components of the society so that trafficking eradication can become a collective program

The ratification of the convention of organized crime between countries and the two protocols on child trafficking, which are: a). Protocol to prevent, eradicate and punish human (especially women and children) traffickers. b). Protocol to prevent, suppress and punish trafficking (women and children) in persons. Supplementing the United Nations Convention Against

Transnational Organized Crime; the ratification of act on the eradication of women and children trafficking, act on the protection of witness and victim, act on domestic violence, act on the protection of migrant labors and its implementation rules; harmonization of international standards regarding on trafficking in the national law through revisions of Criminal Code, Criminal Code Procedures, Act on Marriage and Act on Human Rights Court. The policy formulations will be maximizing the National Action Plan to eradicate women and children trafficking and provide special regulations on the law protection of the victims of child trafficking.

**Conflict of Interest :** No

**Ethical Clearance :** Yes

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## Conclusion

1. The law and human rights protection to the victims of child trafficking is regulated in the national legislation system. The implementation of law protection to the victims of child trafficking is not appropriate yet, such as the appropriateness to the principles and regulations of children protection against child trafficking, the principles and regulations of children in the perspective of restitution, compensation and rehabilitation and non-legal policies, and the principles and arrangements for child protection in the perspective of regional autonomy

2. The law protection model is integrated with the formulation of women and children trafficking eradication policies, and by providing special regulations regarding to law protection for the victims of children trafficking. The revisions for future policies do not totally use applicable law, but they are more adjusted to the needs of the child. Strict sanctions need to be given to make deterrent effects, without setting aside the needs of the child.

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