

LEGAL PROTECTION AGAINST CHILDREN WHO ARE VICTIMS OF HUMAN TRAFFICKING IN CIANJUR DISTRICT STUDIED BY HUMAN RIGHTS PERSPECTIVE^Ω

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Abstract

Trafficking in persons is a modern form of slavery. The eradication of human trafficking has been on the agenda in law enforcement because of its effects can interfere with social welfare. One form of trafficking in persons who lately is rampant child trafficking. The problems that can be studied is how the perspective of Human Rights in providing protection to children who are victims of trafficking and whether the implementation of legal protection for child victims of trafficking in Cianjur is in line with the concept of human rights. This study uses normative juridical approach and specification of descriptive analysis. Results from this study is the protection of child victims of trafficking in persons has been referred to the concept of human rights which the regional government make policies on prevention of trafficking, rehabilitation, counseling and empowerment of victims of human trafficking.

Key words: human rights, legal protection, trafficking

Abstrak

Perdagangan orang adalah salah satu bentuk perbudakan modern. Pemberantasan tindak pidana perdagangan orang sudah menjadi agenda dalam penegakan hukum karena dampaknya dapat mengganggu kesejahteraan sosial. Salah satu bentuk perdagangan orang yang akhir-akhir ini marak adalah perdagangan anak. Permasalahan yang ditelaah adalah bagaimana perspektif Hak Asasi Manusia dalam memberikan perlindungan terhadap anak yang menjadi korban perdagangan orang dan apakah pelaksanaan perlindungan hukum terhadap anak korban perdagangan orang di Kabupaten Cianjur sudah sejalan dengan konsep HAM. Penelitian ini menggunakan metode pendekatan yuridis normatif dan spesifikasi penelitian deskriptif analisis. Hasil dari penelitian ini adalah perlindungan terhadap anak korban perdagangan orang telah merujuk pada konsep HAM yakni Pemerintah Daerah membuat berbagai kebijakan tentang penanggulangan perdagangan orang, rehabilitasi, konseling dan pemberdayaan korban perdagangan orang.

Kata kunci: hak asasi manusia, perlindungan hukum, perdagangan orang

Introduction

Children, teenagers and adults as young people have very high expectation both for the family, society and State.¹ Child is one of the parties objects vulnerable to right violation. Definition of vulnerable groups are not defined explicitly in the legislation, as stated in Article 5 (3) of Law No. 39 of 1999 which states that

everyone, including vulnerable groups are entitled to treatment and protection with regard to specialization.

Recognition of the existence of children as subjects of human rights (read: human rights) are *sui generis* (*rights holders as sui generis*) marked when the Convention on the Rights of the Child (CRC) has been ratified by 193 countries. Thus

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¹ Dewi Asri Yustia, "Penerapan Restorative justice terhadap Orang Tuya Pelaku Perdagangan Anak dalam perspektif Sistem Peradilan Pidana Indonesia", *Jurnal Ilmu Hukum*, ISSN 0853-7100, Vol. 14 No. 1, 2013, Bandung: Universitas Pasundan, page 1839.

many as 193 government has received its obligation to take all measures legislative, administrative, social, and appropriate educational to protect children from all forms and manifestations of violence. In reality, the implementation of human rights law relies heavily on the willingness and the objectives of the state.²

Regulations regarding the protection of children's rights began with the Convention on the Rights of the Child (CRC). The Convention was approved by General Assembly of the United Nations (read: United Nations) on November 20, 1989 and ratified by Indonesia through Presidential Decree No. 36 of 1990 on the Ratification of the Convention on the Rights of the Child 25th August 1990. In the Convention on the Rights of the Child contained 4 (four) basic principles, namely the principle of non discrimination, the principle of the best interests of the child, the principle of the right to life, survival and development, the principle of respect for the views of the child.

In addition the second amendment of the 1945 Constitution Article 28 A till J has provided guarantees on human rights, which was later confirmed in Law No. 39 of 1999 on Human Rights. In such legislation does not distinguish between human rights on gender, class, rank and position, and age, so that everyone is entitled to protection. Follow-up of 1945 Constitution is the establishment of Law No. 21 Year 2007 on Combating the Crime of Human Trafficking.

In reality the number of children labor each year is increasing. This doesn't only happen in Indonesia but also in almost all parts of the world. Government data in 2011 mentioned, from 6,500,000 (six million five hundred thousand) cases of violence against children, more than 1,700,000 (one million seven hundred thousand) case is a case of child exploitation in bad classification, including cases of children working on nightclubs, domestic servants, miners, and in

the middle of the sea, but from 1,700,000 (one million seven hundred thousand) cases, the government is only able to handle 11,000 (eleven thousand) cases in a year.³

According to data from the Indonesian Child Protection Commission (KPAI) states that in 2012 received reports from the public as much 10.10523 million (ten million one hundred and five thousand two hundred thirty) Indonesian children become victims of violations to special protection. The figures are grouped in 10 (ten) cluster, namely violence, children in conflict with the law, drugs, smoking, removal of the baby including abandonment and abduction, child trafficking, pornography and sex addict, the child becomes a victim of suicide, early marriage and child workers, Children who are victims of trafficking for the purposes of commercial sexual exploitation also increased in 2012. Noted, 673 (six hundred and seventy three) cases occurred, up from the year 2011, namely 480 (four hundred eighty) case. The emergence of various crimes in a new dimension recently showed growing crime in accordance with the development of society.⁴

Based on data from International Organization for Migration (IOM) in 2009 the number of people trafficked as many as 3,044 (three thousand and forty-four) people. The amount is made up of the baby 0.2%, girls 22%, boys 4%, 67% of adult women and men 6.8%. Victims are generally trapped in slavery, trafficking, ulcerative debt bondage, prostitution, pornography, and illicit work.⁵

The application of laws and regulations related to the protection of trafficking victims can not be implemented optimally. This is due to lack of awareness and lack of comprehensive regulations for law enforcement and government officials are less sensitive to the practice of human trafficking.

² Anita Kamilah, "Penyanderaan terhadap Penanggung Pajak dalam perspektif HAM dan Hukum Pidana", *Jurnal Ilmu Hukum Mimbar Justitia*, Vol. VI, No. 1, January-June 2014, Cianjur: Fakultas Hukum UNSUR, page 289.

³ Yacob Billi Octa, "1,7 Juta anak Indonesia korban eksploitasi", *Merdeka Newspaper*, Jakarta, Saturday, May, 5th 2012.

⁴ J. Hattu, "Perlindungan Hukum Terhadap Korban Kejahatan", *Jurnal Sasi*, Vol. 16 No. 4, October - December 2010, Ambon: Universitas Patimura, page 36.

⁵ Kelik M. Nugroho, "Kegentingan Masalah Perdagangan Orang", *Tempo Newspaper*, February 8th 2010.

Research Problem

This paper discusses about: *first*, How the perspective of Human Rights in providing protection to children who are victims of human trafficking?; and *second*, whether the implementation of the legal protection of child victims of human trafficking in Cianjur is in line with the concept of human rights?

Research Methods

This study uses normative juridical approach, using secondary data as the main data source of legislation, literature, dictionaries, journals, and coupled with field data as supporting data which the accuracy and validation of data can be accounted for. The location of this research is done in Cianjur. Selection of research sites in Cianjur, because Cianjur regency be sending area of the crime of trafficking in persons, especially as one of the suppliers in West Java and is also intended to facilitate the research, particularly in data collection as a support, according to the domicile Researchers.

Data analysis is the next step to process the results into a report. Analysis of the data by Lexi J. Moleong is the process of organizing and sorting data in a pattern, the category, and description of the base, so it will be able to find themes and working hypothesis can be formulated as suggested by the data.⁶

Discussion

Perspectives on Human Rights in Providing Protection against Child Who Being Human Trafficking Victims

Human rights is defined as the fundamental rights of the human person. This term has a difference in their designation, but have the same meaning. In Arabic it is called huququl hu-

man being, Droits de l'homme (France), menschenrechte (Netherlands/Germany), Derechos humanos (Spain), Direitos humanos (Brazil), dirittumani (Italy) and so on.⁷

Indonesia adheres to the principle and the concept of Pancasila contained in the Preamble to 1945 Constitution. In 1945 in the set of human rights, one of which is a children's rights, but in reality children in Indonesia who experienced exploitation still in a big number.

Child is one of the parties objects vulnerable to rights violation. Definition of Vulnerable Groups are not defined explicitly in the legislation, as stated in Article 5 (3) of Law No. 39 of 1999 which states that everyone, including vulnerable groups are entitled to treatment and protection with regard to specialization.

Child trafficking issue is very complex, so that the prevention or mitigation of trafficking victims must be integrated.⁸ In addition, law enforcement should be improved in trafficking. Problematic law enforcement in Indonesia is a way of thinking that is very positivist legislate/perspectives legislation.⁹ One that needs to be done is justice that has some characteristics with the concept of restorative justice eg criminal acts to be understood in the overall context, moral, social and economical and stigma can be removed through restorative actions.¹⁰

Child protection is an effort to hold a condition in which every child can exercise its rights and its obligations. The protection of children is any activity to ensure and protect children and their rights in order to live, grow, develop, and participate optimally in accordance with human dignity, as well as protection from violence and discrimination.

Indonesian government was very attentive to the phenomenon and the reality protection of

⁶ Lexi J. Moleong, 2000, *Metode Penelitian Hukum*, Jakarta: PT. Remaja Rosdakarya, page 183.

⁷ Majda El Muhtaj, 2008, *Dimensi-Dimensi HAM Mengukur Hak Ekonomi, Sosial, dan Budaya*, Jakarta: Raja Grafindo Persada, page 17 - 18.

⁸ Eva Johan, "Tindak Pidana Trafficking Anak Menurut Hukum Pidana Internasional dan Implikasi dari Lahirnya Undang-Undang No. 14 Tahun 2009", *Jurnal Ilmu Hukum*, Vol. 134 No. 1, April 2012, Bandung: Fakultas Hukum Universitas Pasunda, page 1244.

⁹ Kristian, "Penyelesaian Perkara Pidana Dengan Konsep Atau Pendekatan Keadilan Restorative (Restorative Jus-

tice) Khususnya secara Mediasi (Mediasi Penal) Dalam Sistem Hukum Pidana Indonesia Ditinjau dari Filsafat Hukum", *Jurnal Mimbar Justitia*, Vol. VI No. 2, Juli-December edition 2014, Cianjur: Fakultas Hukum UNSUR, page 458.

¹⁰ Ainal Mardiah, dkk, "Mediasi Penal sebagai Alternatif Model Keadilan Restoratif dalam Pengadilan Anak", *Jurnal Ilmu Hukum Pascasarjana Unsyiah Kuala*, Vol. I No. 1, August 2012, Aceh: Pascasarjana Universitas Syah Kuala, page 5.

children, in particular about the exploitation of children is considered as one of the forms of human rights violations. Legal protection is strongly related to hazards or risks that might arise and faced by children at work, considering the children have not been quite able to avoid the possibilities of the of the job risks. In the context of human rights protection, as human beings, children also have the same rights as other human beings on earth, namely the right that is understood as inherent rights naturally since he was born, and without it human beings (women and children) are can not live as human beings naturally. Every child is entitled to get protection if necessary, but also must be given a greater opportunity to participate in matters relating to older people obligation concerning their lives.¹¹

Protection of children's rights is a human right which is guaranteed by Constitution of the Republic of Indonesia, namely in Article 28B. In this case the child should receive the widest possible opportunity to grow and develop optimally, both physically, mentally and socially. In Law No. 23 of 2002 on Child Protection Article No. 59 states that the Government and State institutions are obliged and responsible to provide special protection to children in emergency situations, children in conflict with the law, children from minority groups and isolated, exploited economical children and/or sexually and trafficked children. First, seeing the seriousness of human trafficking and exploitation problem of children, government has made various efforts, which are: *first*, the government has formulated a Plan of National Action for Elimination of Child Trafficking (Presidential Decree No. 88/2002); *second*, guided by Law No. 21 of 2007 on the Eradication of Trafficking in Persons (PTPPO); *third*, establishment of an Integrated Service Center (PP No. 9 of 2008 on the procedures and mechanisms for integrated services for witnesses or victims of Trafficking Crime in Persons); *fourth*: the PTPPO Task Force formation composed of various elements of government and society (PERPRES No.

69 of 2008 on the Prevention and Response Task Force TPPO); *fifth*, regulation of the Women's empowerment and Child Protection State Minister Number 10 Year 2012 About Free Establishment and Strengthening Prevention and Response Task Force on Child Trafficking Crime; *sixth*, Regulation of State Minister for Women and Child Protection empowerment No. 11 of 2012 on Prevention and Handling Guide Trafficking

The problem is, the availability of these regulations have not been followed by law enforcement in accordance with the Act, this time law enforcement officers more use the Penal Code (KUHP) to catch the perpetrators of human trafficking whose have wider network but weak punishment and does not create a deterrent effect for offenders. Data derived from the National Police Criminal Investigation entire Police in Indonesia in 2007-2013, there were 267 cases of trafficking in the process as many as 137 cases, a total of 120 and the P21 in SP3 as many as 10 cases. Most cases of trafficking is only 50% (percent) cases were processed by prosecutor (JPU).

Implementation of The Law Protection of Child Trafficking Victims in Cianjur

As an illustration, the authors describe the data trafficking cases in Cianjur which can be seen in the table below:

Table 1. The amount of Human Trafficking Data Cases Handled By P2TP2A

No	Years	Number of Cases
1	2009	33 (thirty-three) cases
2	2010	21 (twenty-one) cases
3	2011	8 (eight) cases
4	2012	Twelve (12) cases
5	2013	32 (thirty-two) cases

Source: Integrated Services Center of Women and Children Office (P2TP2A) Cianjur Regency 2014.

whereas the data cases coming into Cianjur Police Resort are as follows:

Table 2. The Trafficking Cases Handled Data Cianjur Police

No	Years	Number of Cases
1	2010	8
2	2011	2

¹¹ Jean K Matuankotta, "Perlindungan Hukum Terhadap Anak Angkat Dalam Memeroleh Kejelasan Status Hukum Melalui Pencatatan Pengangkatan Anak (Suatu Tin-

jauan Dari Perspektif HAM)", *Jurnal sasi*, Vol. 17 No. 3, July-September 2011, Ambon-Maluku: Universitas Patimura, page 71.

3	2012	1
4	2013	1

Source: *The Trafficking Cases Handled Data Cianjur Police Resort.*

Based on such data cases, the victim handled that which been done by P2TP2A in collaboration with Local Government of Cianjur Regency is as shown in the table below.

Table 3. Pickup Data Results of Trafficking Victims

No	Years	Description
1	The second half of 2011	5 (five) victims
2	The second half of 2013	Two (2) cases that enter the stage of prosecution

Source : *Family Planning and Women's Empowerment Office of Cianjur Regency 2014.*

The data above shows that a change in the number of cases handled by several agencies, this is because that the complaint made by the victim to P2TP2A not all followed up into a report to the police to be resolved through legal channels.

Based on the results of the data above, not all victims report can handled by further action, related with human trafficking generally performed by syndicates and organized, makes it difficult to track down. Along with the trend of development and the demands of an increasingly complex society, it turns human trafficking victims continues to grow. The amount of the budget that has been issued by the state for development, it is not enough to eliminate the potential or possibility of human trafficking tragedies. In some cases, which occurred in almost all parts of the archipelago, the victims of trafficking in persons especially women and children get himself very traumatic, resulting in a very bad state, among others: the loss of a zest for life; loss of self-confidence; and loss of communication skills

Given the problem of children and women trafficking are increasingly complex and widespread, it would require a variety of efforts for prevention, protection and handling. Legal protection of the victim can be done with reference to the perspective of human rights, namely through approach/humanist models, which can be

done through advocacy/legal assistance to obtain restitution/compensation, restoration of mental/psychological traumatic, socialization legislation, and empowerment economic community. Model approach to economic empowerment is protection efforts, because of the research results, victims of human trafficking are generally motivated by economic factors, namely poverty and consumptive life-style. The penal approach is charged to the offender. Cianjur districts make local regulations No. 3 of 2010 on the prevention of trafficking and establish a task force as well as the Integrated Services Center of Women and Children (P2TP2A).

Efforts to approach legal protection of victims, especially against children and women are in Cianjur which refers to the perspective of human rights carried out: *first*, spiritual awareness; *secondly*, formation of motivation; third, preparation skills training (life skills/life-skill); and fourth, assistance flocking through community institutions in order to create a healthy and constructive process of interaction with the community and became an important human resource and is able to contribute to the development.

Legal protection through a human rights perspective, it is expected to be produced: *first*, the conception of establishment handling trafficking victims that can be immediately applied to create economic productivity; *second*, creation of government institutional support and integrated society in dealing with victims of trafficking; and *third*, the stimulus through the creation of alternative productive economic skills training program.

Protection of law based on human rights perspective in Cianjur carried out cooperation which includes the involvement of all components of society, government, communities, and the most important is the role of the family. Therefore, taking into account the characteristics of the typical community public trust needs to be built. Regent and law enforcement plays an important role in communication and socialization law to build trust from the community.¹²

¹² Yani Brilyani Tavipah, "Model Pembinaan Narapidana yang interaktif", *Jurnal Ilmu Hukum Litigasi*, Vol. 13, No.

1, April 2012, Bandung: Fakultas Hukum Unviersitas Pasundan, page 1291.

Closing

Conclusion

Based on the analysis conducted, it can be concluded that: *firstly*, the protection of children who are victims of human trafficking in persons in the perspective of human rights is to protect children and their rights in order to live, grow, develop, and participate optimally in accordance with the dignity humanity, as well as protection from violence and discrimination; *second*, implementation of legal protection for child victims of human trafficking in Cianjur refers to the concept of Human Rights, namely the establishment of regional Regulation No. 3 of 2010 on the prevention of trafficking in persons and the establishment of the task force and the Center for Women's and Children's Integrated Services (P2TP2A) in synergy with Local Government in assisting the protection of the law by providing legal assistance/advocacy, psychological assistance, and dissemination of laws and regulations, provision of skills training and economic empowerment approaches for victims of trafficking.

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