

Criminal Responsibility for Child Exploitation in the Form of Human Trafficking Using Overseas Exchange Programs

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Article Info

Article history:

Received : 07 July 2023

Published : 02 November 2023

Keywords:

Children's Rights, Criminal Law,

Diversion

Article Info

Article history:

Accepted : 07 July 2023

Published : 02 November 2023

Abstract

Currently, it is estimated that the number of Indonesian children aged under 14 (fourteen) years who are economically active is around 2 (two) to 4 (four) million children. But mere numbers cannot describe the physical, intellectual, emotional and moral suffering that child workers have to endure. That number does not reveal what the future will be like for an uneducated child, the future for someone without hope of improvement. Accountability for perpetrators of criminal acts of child trafficking is contained in Article 83 of Law Number 23 of 2002 concerning Child Protection. It is hoped that the government can create a more comprehensive Human Trafficking Crime Law. There are heavier legal sanctions against all parties involved in the practice of human trafficking.

Abstrak

Dewasa ini diperkirakan jumlah anak Indonesia usia di bawah 14 (empat belas) tahun yang secara ekonomis aktif adalah sekitar 2 (dua) sampai 4 (empat) juta anak. Tetapi sekadar angka saja, tidak dapat menggambarkan penderitaan fisik, intelektual, emosional dan moral yang harus ditanggung pekerja anak. Angka itu tidak mengungkapkan bagaimana hari depan seseorang anak yang tidak berpendidikan, hari depan seseorang tanpa harapan akan perbaikan. Pertanggungjawaban pelaku tindak pidana perdagangan anak terdapat di dalam Pasal 83 Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak. Pemerintah diharapkan dapat membuat Undang-Undang Tindak Pidana Perdagangan Orang yang lebih komprehensif. Adanya sanksi hukum yang lebih berat terhadap semua pihak yang terlibat didalam praktek Perdagangan Manusia.

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1. INTRODUCTION

1.1 Background

In the past, human trafficking was a symbol of social status, where someone who had a high social status, both economically and in power or politically, was guaranteed to own the slaves or slaves they bought. What is meant by the word 'slave' is a person or human being who is bought to become a slave, servant, servant or accomplice. At that time, every person who owned slaves would be considered to have a high social status, so this was something that was considered common, which did not need to be studied in light of scientific developments.

In the history of human trafficking, initially the objects of human trafficking were women. In Ancient Greek society, women were used as buying and selling transactions in markets, like trading animals or other goods. The next development in Ancient Greece was that women were used as a mere outlet for lust. Women are completely worthless. This is proven in a famous legend in Greece, namely the story of the Goddess Aphrodite. The goddess Aphrodite easily betrayed her husband, who was considered a god by Greek society.

Until now the main problem of human trafficking is a problem of definition. The definition of human trafficking is a source of controversy, both among government and non-government institutions. There have been many definitions of human trafficking put forward

by various groups, but none of these definitions is widely recognized (there is no widely recognized definition of human trafficking). In fact, in the international context, the issue of defining human trafficking is an issue that contains quite a lot of debate and attention, especially in relation to the meaning of human trafficking and certain efforts that must be taken to overcome it. In the crime of human trafficking there is also the crime of child trafficking where the subject is a minor.

Child trafficking is any action of a trafficker that contains one or more acts of recruitment, transportation between regions and between countries, handling, departure, reception and temporary accommodation or at the destination, of women and children. By means of threats, use of verbal and physical violence, kidnapping, fraud, deception, taking advantage of a position of vulnerability (for example when someone has no other choice, is isolated, drug dependent, debt trapped, etc.), giving or receiving payments or benefits where women and children are used for the purposes of prostitution and sexual exploitation (including pedophilia), illegal immigrant labor or illegal child adoption, jermal work, mail-order brides, domestic servants, beggars, the pornography industry, drug trafficking and the sale of body organs and other forms of exploitation.

Currently, it is estimated that the number of Indonesian children aged under 14 (fourteen) years who are economically active is around 2 (two) to 4 (four) million children. But mere numbers cannot describe the physical, intellectual, emotional and moral suffering that child workers have to endure. That number does not reveal what the future will be like for an uneducated child, the future for someone without hope of improvement.

1.2. Formulation of the problem

Based on the problem formulation described above, the author will hereby raise the problem formulation to be discussed as follows:

1. What is the legal regulation in Indonesia regarding the criminal act of human trafficking?
2. How is accountability for criminal acts of human trafficking against children?

1.3. Writing purpose

This research was written and prepared with the following objectives:

1. To find out about positive legal regulations in Indonesia regarding criminal acts of human trafficking, and;
2. To find out responsibility for criminal acts of human trafficking against children.

1.4. Writing system

INTRODUCTION

This chapter contains background, problem formulation, writing objectives, and writing systematics.

SAMPLE CASE

This chapter contains examples of cases that will be raised in this research.

DISCUSSION

This chapter contains a discussion of the problem formulation raised in this research.

CLOSING

Contains conclusions on the discussion that has been formulated.

2. CASE EXAMPLES

2.1 Overseas Student Internship Program as a New Mode of Child Trafficking and Exploitation.

In the last three months, cases of trafficking and exploitation targeting minors have become increasingly worrying. The latest modus operandi now is to ensnare children in the practice of prostitution and then exploit them for economic gain, either by placing them in a bad work environment or through fake internship programs abroad. This was conveyed by the Chairman of the Indonesian Child Protection Commission (KPAI) Susanto at a press conference in Jakarta on Tuesday (3/4).

"There is the Umrah mode, there is the scholarship mode, through marriage, the tourism mode, and even finally through internships. It seems official but it seems to be the entry point for child trafficking," said Susanto.

KPAI Commissioner for Child Trafficking and Exploitation Maryati Sholihah added that at the beginning of this year there were eight cases of child victims of trafficking, 13 children victims of commercial sexual exploitation, nine cases of children victims of prostitution, and two cases of children victims of economic exploitation.

Maryati further revealed that based on data from the Criminal and Investigation Agency of the Republic of Indonesia Police Headquarters, during 2011-2017 there were 422 cases of child trafficking with the most common mode being sexual exploitation.

Data collected by IOM (International Organization for Migration) shows that during 2005-2017 there were 8,876 victims of human trafficking, of which 1,156 victims were children.

Retno Listiyarti, KPAI Commissioner for Education, said that a human trafficking syndicate that specifically operates in East Nusa Tenggara is able to easily persuade students to do internships abroad without competency certification or training, using passports with visit visas, and without overseas labor cards.

"It turns out that the schools offered actually have pride, that's what they've been selling. This means they are proud that their alumni or graduates who studied at their place, did their internships abroad," said Retno.

In fact, according to Retno, without going through training and not using a work visa means that children's rights are ignored when interning abroad. Apart from that, in some cases the type of internship work does not match the educational major they are pursuing.

Apart from that, Retno continued, there are several companies overseas that employ interns from Indonesia for up to 18 hours a day. This condition is made worse because the situation they face is not monitored by the Ministry of Foreign Affairs or the Indonesian diplomatic representative office in the country concerned because they are using a visit visa and not a work visa.

Therefore, Retno emphasized that companies that offer internships to students from Indonesia must receive recommendations from the Indonesian diplomatic representative office in the country concerned. Apart from that, there must be monitoring from the Embassy of the Republic of Indonesia and using a work visa.

KPAI – emphasized Retno – called on all vocational schools to be alert to this new mode and encouraged the Ministry of Education to closely monitor overseas internship programs for vocational high school students.

Some time ago, the National Police Headquarters Criminal Investigation Agency discovered 152 vocational school students in Kendal, Central Java, who were victims of the crime of human trafficking.

Kabareskrim Komjen Ari Dono Sukmanto said that in this human trafficking mode, hundreds of vocational school students were recruited through their own teachers who promised that they would be employed by an electronics company called PT Sofia Sukses Sejati located in Malaysia.

When he arrived in Malaysia, Ari said, it turned out that the company in question had closed. They ended up being employed at the Wallet Bird's Nest with inadequate wages.

"They were employed at a swallow's nest company with salaries and unhealthy shelter conditions," said Ari Dono.

The Ministry of Education and Culture stated that it would closely monitor overseas internship programs for vocational high school students.

3. DISCUSSION

3.1 Legal Regulations for the Crime of Human Trafficking

The term criminal act is a translation of "strafbaarfeit", in the Criminal Code there is no explanation regarding what exactly is meant by strafbaarfeit itself. Usually criminal acts are synonymous with delict, which comes from the Latin word delictum.

The term criminal act as a translation of strafbaarfeit was introduced by the government in the Department of Justice. This term is often used in specific criminal laws, for example: the Corruption Crime Law, the Narcotics Crime Law, and the Law on Pornography which specifically regulates the Crime of Pornography.

The term criminal act shows the meaning of a person's behavioral movements and physical movements. These things also exist for someone not to do something, but by not doing it, he has committed a criminal act.

The following are several articles contained in Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking:

- Article 5: "Any person who adopts a child by promising something or giving something with the intention of exploitation is punished with 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 twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah)."

- Article 6: "Any person who sends a child into or out of the country in any way which results in the child being exploited shall be punished with 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 twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah)."

The following is one of the articles contained in Law Number 23 of 2002 concerning "Child Protection":

Article 83: "Any person who trades, sells or kidnaps children for themselves or for sale, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah) and at least Rp. 60,000,000.00 (sixty million rupiah)."

3.2 Criminal Responsibility for Human Trafficking in Children

Hundreds of millions of children suffer and die due to war, violence, exploitation, neglect and various forms of abuse and discrimination. Throughout the world, children live in extremely difficult conditions, being permanently disabled or seriously injured by armed conflict, they are internally displaced or expelled from their countries as refugees, suffer from natural and man-made disasters, including the dangers of exposure to radiation. and hazardous chemicals, as children of mobile workers and socially disadvantaged groups due to racism, racial discrimination and related intolerance.

Trading Children are a social problem that cannot be ignored in developing countries. The existence of every human being, in pursuing the fulfillment of needs, including efforts to increase welfare. And it needs to be a concern for all parties, especially in the field of law enforcement, its implementation is strictly regulated by law. Denial of the dignity of a child's human rights will occur if someone no longer views a child as a subject equal to himself, but rather as an object that can be bought and sold for personal gain.

That the Child Protection Law is regulated in Law Number 23 of 2002, with the following considerations:

- a) That the Unitary State of the Republic of Indonesia guarantees the welfare of each of its citizens, including the protection of children's rights which are human rights;
- b) That children are a trust and gift from the Almighty God, in whom the honor and dignity of being a complete human being is inherent;
- c) That children are the shoots, potential and successors of the young generation to the ideals of the nation's struggle, have a strategic role and have special characteristics and traits that guarantee the continued existence of the nation and state in the future;

- d) That in order for every child to be able to bear these responsibilities, he or she needs to have the widest possible opportunity to grow and develop optimally, both physically, mentally and socially, and to have noble character, it is necessary to make efforts to protect and realize children's welfare by providing guarantees towards the fulfillment of their rights and treatment without discrimination;
- e) That to realize the protection and welfare of children, institutional support and statutory regulations are needed that can guarantee its implementation;
- f) Whereas various laws only regulate certain matters regarding children and specifically do not regulate all aspects related to child protection;
- g) Whereas based on these considerations in letters a, b, c, d, e, and f it is necessary to enact a Law on Child Protection;

In Law Number 23 of 2002 concerning Child Protection, it is stated that the implementation of child protection is based on Pancasila and based on the 1945 Constitution of the Republic of Indonesia as well as the basic principles of the rights convention including (Article 2):

- a. Non-discrimination,
- b. The best interests of children are in all actions concerning children carried out by the government, society, legislative bodies and judicial bodies, so the best interests of children must be the main consideration,
- c. The right to life, survival and development are the most basic human rights for children which are protected by the state, government, society, family and parents.
- d. Respect for children's opinions is respect for children's rights to participate and express their opinions in decision making, especially when it concerns matters that affect their lives.

Child protection aims to ensure the fulfillment of children's rights so that they can live, grow, develop and participate optimally in accordance with human dignity and dignity and receive protection from violence and discrimination, in order to create Indonesian children who are of good quality, have noble character and prosperity (Article 3) .

As is commonly known, perpetrators of criminal acts, including the crime of trafficking in persons/children, will only be subject to criminal sanctions if they have been proven to have committed a criminal act and the person can be held responsible for the criminal act committed.

Every individual, including individuals in general who are involved in criminal acts of trafficking in persons/children, will be criminally responsible for the criminal acts they commit.

In relation to the criminal act of trafficking in persons/children, the perpetrator will only be held criminally responsible if he is proven to have committed an act in the form of recruiting a person/child with the threat of violence or using coercive means for the purpose of exploitation.

To make the enactment of Law Number 23 of 2002 concerning Child Protection effective, the formation of the Law not only mandates the establishment of an Indonesian Child Protection Commission, but also complements it with provisions regarding criminal law.

The criminal provisions in Law Number 23 of 2002 regarding Child Trafficking can be quoted as follows:

Article 83 which reads "Every person who trades, sells or kidnaps children for themselves or for sale, shall be sentenced to imprisonment for a maximum of 15 years and a minimum of 3 years and a maximum fine of IDR 300,000,000 (Three hundred million rupiah) and a minimum of IDR. 60,000,000,- (Sixty million rupiah).

4. CLOSING

4.1 Conclusion

- 1) Responsibility for perpetrators of criminal acts of human trafficking is that every individual, including individuals in general who are involved in criminal acts of trafficking in persons/children, will be criminally responsible for the criminal acts they commit. In relation to the criminal act of trafficking in persons/children, the perpetrator will only be held criminally responsible if he is proven to have committed an act in the form of recruiting a person/child with the threat of violence or using coercive means for the purpose of exploitation.
- 2) The accountability of perpetrators of the crime of child trafficking is contained in Article 83 of Law Number 23 of 2002 concerning Child Protection which states "Every person who trades, sells or kidnaps children for themselves or for sale, shall be sentenced to prison for a maximum of 15 years and a minimum of 3 years and maximum fine of Rp. 300,000,000,- (Three hundred million rupiah) and minimum Rp. 60,000,000,- (Sixty million rupiah).

4.2 Suggestions

Based on the analysis, descriptions and conclusions in the chapters that have been written, the author hereby provides suggestions, namely:

- a. It is hoped that the government can create a more comprehensive Human Trafficking Crime Law.
- b. There are heavier legal sanctions against all parties involved in the practice of human trafficking
- c. Involve more of the general public or community to provide initial information so as to minimize the practice of Child Trafficking/Selling.
- d. The active role of the Police is to respond to all information provided by the public regarding the practice of Child Trafficking/Sale.

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