

# Legal Protection for Child Victims of Human Trafficking Based On International Law

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**Abstract.** Child trafficking is the worst form towards human dignity violation and becomes a serious problem for the international community. This study aims to find aspects of international law in child trafficking as well as obstacles in efforts to overcome these legal problems. The study conducted by the author is descriptive analytical with a normative juridical approach. It can be seen that the high data on child trafficking cases is not directly proportional to the number of cases reported or handled by law enforcement officials and related institutions. The minimum standards for the prevention of child trafficking have not been optimally applied and have made significant efforts in overcoming it.

Keywords: Child, Law, Human, International community

## 1. Introduction

Child trafficking is a form of inhumane act and deprives the dignity of being a human being. Children belong to a vulnerable group to become victims of human trafficking. Victims are trafficked not only for the purpose of prostitution or other forms of sexual exploitation, but also include other exploitation, such as forced labor or services, slavery or slavery-like practices. Child trafficking is a transnational crime that must be a concern not only in the national scope, but also in the international scope. The state is obliged to protect every citizen, including children from all forms of crime, including human trafficking. Various legal protection measures must be implemented both nationally and internationally.

From the search results, various studies have been found with the theme of child trafficking, but after a review, there are various differences in the problems studied with previous writings. The first article is from Alinka Gearon with the title *Child Trafficking: Young People's Experiences Of Front-Line Services In England*. Alinka's article reports findings from an innovative qualitative study with 20 young people who were trafficked into and within England and their experiences of front-line services. The findings support the depoliticizing of child trafficking policy, away from a criminal justice approach, and abandoning labeling children as 'smuggled' and 'trafficked'. The second article is from writers Felicity Gerry and Narelle Sherwill with the title *Human Trafficking, Drug Trafficking, And The Death Penalty*. The article is related to the commitments of Australia and Indonesia to combat human trafficking. The two articles are very different from the research that the author reviewed. The third article is an article by Sanjay Roy and Chandan Chaman entitled *Human Rights and Trafficking in Women and Children in India*. It has great implications for future course as India is fast becoming a source, transit point as well as a destination for traffickers. The fourth article is an article by the author

Shatha Ahmad Al Assaf with the title Protection of victims of human trafficking in the Jordanian law: A comparative study with the UK Modern Slavery Act 2015. This study focuses on the adequacy of the protection provided by the Jordanian Human Trafficking Prevention. Law and measures the obligations incurred by Jordan according to the Palermo Protocol and compare the protection with The UK Modern Slavery Act 2015. The fifth article is from the author Jennifer Bossard with the title The Field of Human Trafficking: Expanding on the Present State of Research. The articles in this special issue reflect the diversity of scholarly work presented and discussed at the International Conference on Human Trafficking Research.

The author's previous research related to human rights is still in the scope of the child but is related to the privacy of the child. The purpose of this research is to ensure the fulfillment and protection of human rights, especially for children who are victims of human trafficking.

## **2. Method**

In this study, researchers used the normative juridical approach method, which is a study that emphasizes research on library material or secondary data, which includes Primary legal materials, namely legislation, international conventions, international customary law, principles of international law, decisions of the International Court of Justice, and doctrines. Secondary legal materials, namely materials that can help analyze and understand primary legal materials, such as research results, scientific works in the form of books, journals, papers and other literature whose substance is relevant to this research. Tertiary legal material, which is material that provides information about primary and secondary legal materials, such as legal dictionaries ( Black's Law Dictionary ). This research examines secondary data relating to child trafficking, and at this stage grammatical interpretation is carried out, namely interpreting the words of the relevant legislation, systematic interpretation of the law by linking one law with the law other laws, authentic legal interpretation that can be done by looking at the explanations of the legislators themselves.

The research carried out is analytical descriptive associated with legal theories and their practice related to the object of research. Data collection technique were carried out in two stages, library research and field research, in this case only as supporting data in research to support and complement the study of literature. All data obtained analyzed on a juridical qualitative. In thing this analysis do with pay attention hierarchy regulation legislation for regulation legislation of the no contradictory with regulation other legislation and achieved it certainty law.

## **3. Results and Discussion**

The definition of trafficking in persons (trafficking) is the most widely accepted worldwide is the definition of the United Nations (UN), which says that trafficking in persons (trafficking) is the recruitment, transportation, delivery, harboring or receipt of persons, by means of the threat or use of force. or any other type of coercion, abduction, fraud, deception or the abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve an agreement for one person to have control over another person, for the purpose of exploitation.

Based on the definition provided by the United Nations in 2000, there are three stages of the occurrence of the crime of trafficking in persons, namely:

- a. Process, including recruitment or delivery or transfer or harboring or acceptance.
- b. Way or method, including threats or coercion or kidnapping or fraud or lying or cheating or abuse of power.
- c. Purpose, namely prostitution or pornography or sexual exploitation or forced labor with inadequate wages or slavery or other practices similar to slavery and organ harvesting.

If these three stages have been met, a case can be said to be human trafficking. The consent of the victim is no longer relevant if one of the three stages already exists.

Human trafficking is not limited to recruiting, then sending or moving people from one place to another. But there are also exploitative conditions that are very likely to occur in the series of human

trafficking processes. This, of course, in addition to depriving the human rights, but also makes the victim vulnerable to physical torture, psychological trauma and even death. A very sad condition is that many victims of human trafficking are children. The definition of a child according to the United Nations Convention on the Rights of the Child, is formulated that "A child means every human being under the age of 18 years." The number of children who are victims of human trafficking has increased since the Covid-19 pandemic. KPAI's report on child trafficking, from January to April 2021, KPAI has handled 35 reports of TIP cases with a total of 234 children victims.

Trafficking in persons, especially children, is widespread in the form of criminal networks that are transnational in nature, so that this becomes a threat to the international community and international legal norms based on human rights. Human trafficking is classified as a transnational crime group. Conceptually, transnational crime is a crime or crime that crosses national borders. Its cross-country nature encourages the international community to make efforts to prevent, overcome and protect victims as well as cooperation between countries. One of the efforts made by the international community is the Ratification of the United Nation Convention Against Transnational Organized Crime (UNCATOC) or known as the Palermo Convention on November 15, 2000 which was carried out by the United Nations (UN). The Palermo Protocol does include a sub-section that provides in particular that the recruitment, transportation, transfer, harboring, or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in the aforementioned definition of trafficking in persons. Such a section would help clarify the special problems and needs of children who are victims of trafficking.

The convention stipulates five types of transnational organized crime, namely:

- a. Corruption Crime.
- b. Money Laundering Crime.
- c. Trafficking in Persons, especially women and children.
- d. Migrant Group Smuggling Crime.
- e. The Crime of Illegal Trade in Firearms.

The Palermo Convention (2000) confirms that the main objective of the convention is to enhance and strengthen cooperation between the state parties in preventing and eradicating the five types of crimes that fall under the jurisdiction of the Convention.

The Indonesian government has signed the Convention Against Transnational Organized Crime. In addition, there are additional protocols (I and II), Protocol I concerning the Smuggling of Migrants by Land, Sea and Air (Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the UN Convention Against TOC). Protocol II concerning the Prevention, Eradication and Punishment of Trafficking in Persons, Especially Women and Children (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against TOC). In addition, the Indonesian government has also ratified the Convention on the Rights of the Child (Convention on the Right of the Child, 1989). Convention on the Rights of the Child legalized with the aim of providing protection for children, and upholding children's rights throughout the world.

In dealing with child trafficking in Indonesia, UNICEF created the NPAs (National Plan of Action for the Elimination of Child Trafficking) program. The implementation of the National Plan of Action for the Elimination of Child Trafficking (NPAs) is realized by the implementation of related programs in an effort to deal with the problem of child trafficking in Indonesia.

Indonesia as part of the Southeast Asian countries that are members of ASEAN also makes efforts to prevent and control trafficking in persons, especially children. One of the results of this form of cooperation with ASEAN is to formulate the ASEAN Convention Against Trafficking in Persons Especially Women and Children as the legal basis for cooperation in the Southeast Asian Region. Indonesia is the 9th country to ratify ACTIP, namely through Law Number 12 of 2017 concerning the ratification of the Asean Convention Against Trafficking in Persons, Especially Women and Children. The ASEAN Intergovernmental Commission on Human Rights (AICHR) encourages a human rights-based approach in handling victims of the crime of trafficking in persons.

On December 12, 2000, the Indonesian government signed the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime. and Children, complementary to the UN Convention on Transnational Organized Crime, hereinafter referred to as the UN Trafficking Protocol.

In relation to the protection of the human rights of victims, the UN Trafficking Protocol, among others, contains provisions regarding:

- a. Services to and protection of victims, including protection to the extent possible the privacy and identity of victims.
- b. Provision of relevant information regarding administrative and judicial processes.
- c. Assistance services in the context of enabling the views and interests of victims to be disclosed and the interests of the victims to be considered by the criminal court.
- d. Physical, psychological and social recovery efforts for victims, including the provision of adequate housing, counseling and information provision, health, psychological and material services, job opportunities, education and training, according to the age, gender and special needs of victims, and paying particular attention to children's needs include adequate housing, care and education.
- e. Protection of the victim's physical safety, the possibility of getting compensation for the losses suffered.
- f. Possibility of obtaining a temporary or permanent residence permit.
- g. The return of the victim (to the extent possible voluntarily) by taking into account the safety of the victim and also by considering the status of the lawsuit filed regarding his condition as a victim of human trafficking.

Legal efforts in providing protection to child victims of the crime of human trafficking consist of three stages, namely the stage of legal protection when a crime occurs, the stage of trial for the perpetrator of the crime and the stage when the decision is read out in court.

The stages of legal protection for child victims of human trafficking are a form of fulfillment of the rights of child victims of trafficking in persons. The following are some of the rights of children victims of child trafficking, namely:

a. Repair Rights

Reparation is an effort to restore the condition of children as victims of child trafficking so that they return to their original state. Reparations consist of various aspects, namely the restoration of the physical, psychological, property or social status of the confiscated victim. Regarding the trafficking of children, the child tends to suffer in terms of mental and mental health.

b. Compensation Rights

Compensation is compensation provided by the state because the perpetrators of the crime of child trafficking do not have the ability to pay full compensation as they are already their responsibility.

c. Restitution Rights

Restitution is a form of compensation given to the victim or his family by the perpetrator or a third party. The compensation is in the form of returning property, payment of compensation for loss or suffering, or reimbursement of costs for certain actions. Child victims of child trafficking have the right to obtain restitution or compensation due to the crime of trafficking in persons.

d. Rehabilitation Rights

Rehabilitation is a stage to help things get back to what they used to be, or there is a similar replacement as before. Rehabilitation consists of economic rehabilitation, social rehabilitation, and educational rehabilitation

Clear and concrete actions are needed to fulfill the various rights of child victims of child trafficking mentioned above.

#### 4. Conclusion

Legal protection for child victims of human trafficking under international law is regulated in the Convention Against Transnational Organized Crime (December 2000) The Palermo Protocol. In addition, there are additional protocols (I and II), Protocol I concerning Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the UN Convention Against TOC. Protocol II concerning Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children, Supplementing the UN Convention Against TOC and the Convention on the Right of the Child, 1989. The stages of legal protection for child victims of human trafficking are a form of fulfillment of the rights of child victims of trafficking in persons.

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