

Criminal Liability for Perpetrators of Human Trafficking against Children as Victims

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ABSTRACT

Human trafficking is one of the major crimes involving human rights violations. The main problem today is the crime of human trafficking, which is why almost every country is trying to reduce it because the number continues to increase from year to year. As in the example discussed in this paper, 28% of TIP victims are children, according to data collected from the journal. This study examines the sentencing of the court panel against TIP perpetrators who use children as unpaid sex workers. Literature review is an important legal material for Normative Juridical legal research in this study. The results of the study indicate that the perpetrator has legally committed TPPO against the child victim so that she can work as a prostitute without a warrant, and the perpetrator has also fulfilled the provisions of the Law on the Crime of Human Trafficking. Therefore, the panel of judges sentenced her to 5 years in prison and a fine of 120,000,000 Million Rupiah which will be replaced with 2 months in prison if the fine is not paid.

Keywords: Children, Victims, Criminal liability.

INTRODUCTION

Trade and business have been around for decades or even thousands of years, according to history. The strongest group will naturally dominate other weaker or lower groups, starting with one group subjugating another group. Human trafficking is currently a serious problem that affects more than just the Indonesian government. International human trafficking is also a risk, in addition to inter-island human trafficking. This transnational crime is considered a crime that is very dangerous to national and international sovereignty. Advances in technology, communication, and information can increase the number of crimes (Rochmah & Simangunsong, 2023). Human trafficking or commonly known as human trafficking is increasingly growing due to economic conditions that are getting weaker every day, low knowledge or insight into religion and morals in society, and the addition of strong economic organizations. So that the practice of human trafficking will be very dangerous to the lives of the wider community, especially for poor people and people who do not receive education so they do not have enough insight to protect themselves. (Kadek Novi Darmayanti et al., 2022). In 2023, the Chief of Police stated that there were 982 cases of Human Trafficking Crimes, hereinafter referred to as TPPO. This figure shows a very high spike compared to 2022, where there were 142 cases. Meanwhile, the number of TPPO victims also increased, namely in 2022 there were 668 victims and increased to 3,208 victims in 2023. The number of TPPO suspects in 2023 reached 1,361 people, this number experienced a drastic increase from 172 people in

2022(Tribatanews, 2023). TPPO is an act that is included in the type of fraud against human rights, because the crime is contrary to human dignity and honor.

One type of crime that falls into the category of blatant human rights violations is TPPO. Currently, almost all countries have passed laws that legalize TPPO, and a number of international governmental and non-governmental groups actively support various initiatives to end TPPO. Because it affects not only the political and economic aspects of society, but also the humanitarian and cultural aspects, TPPO is also one of the top five crimes in the world that must be addressed immediately. "Unchained Slavery" is another name for TPPO, which is common and very profitable for human traffickers. Children make up about 28% of TPPO victims worldwide(Ardin & Harefa, 2021).

TPPO targets many women and children to become victims. Every year there are 2.8 million children who become victims of TPPO worldwide. In Indonesia itself there are around 40,000 to 70,000 children who are targets of prostitution due to child trafficking every year(Renaldy et al., 2024). The law must remain firm in providing preventive measures and prosecution to the community so that they do not commit TPPO, because human trafficking is a crime that greatly degrades the dignity of the victim and the perpetrator of human trafficking itself. Law Number 21 of 2007 regulates the criminal penalties for perpetrators of TPPO. According to Law Number 21 of 2007, perpetrators of TPPO are threatened with a minimum of three years in prison, a maximum of life, and a fine of at least IDR 120 million and a maximum of IDR 600 million.

Child exploitation in Indonesia is no longer taboo, in fact, almost everywhere we can easily find child exploitation, including employing children as prostitutes. The money earned by the child does not belong to the victim child but to someone else, whether it is their parents, guardians or even strangers who are not related to them. Child exploitation tends to occur in children with lower middle class economy, but it is possible for it to occur in children with upper middle class economy.(Fatimah & Siregar, 2023)

One of the cases of child exploitation that has referred to child TPPO as a victim occurred in Gorontalo Province, precisely in Bulotada Timur District. A child as a victim who was only 13 years old was used as a commercial sex worker by a 40-year-old male perpetrator. The victim served 3 guests, but the money paid by the guests was taken by the perpetrator and not given to the victim, the victim was only given money for food and cigarettes. Seeing this case, the author is interested in examining Criminal Responsibility by the Perpetrator in the case of child TPPO as a victim.

METHOD

The research method used is the normative legal method, which is a technique for determining the existence of doctrines, principles, and legal regulations. With the need for legal sources that include legal regulations, normative legal research usually uses primary legal sources and complementary legal sources. Court decisions are the author's main source of legal information in this study.(Pradea et al., 2024).

RESULTS AND DISCUSSION

Case Position

At the defendant's boarding house in Bulotadaa Timur Village, Sipatana District, Gorontalo City, on Friday, September 15, 2023 at around 20.00 WITA and on Saturday, September 16, 2023 at 03.30 WITA or at other times in September 2023, the defendant recruited, transported, sheltered, sent, transferred, or received a person with threats of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt trapping or giving payment or benefits even though obtaining the consent of the person in control or another person, for the purpose of exploiting the person in the territory of the Republic of Indonesia, resulting in the person being exploited, if between several acts, even though each act is a crime or violation, there is a relationship or interconnectedness so that it must be viewed as one continuous act, the defendant carried out the acts in the following ways:

On Friday, September 15, 2023, when the victim's child who was still 13 years old (based on the Birth Certificate Extract, born in Gorontalo on March 22, 2010 with the initials NH, which was signed by the Head of the Population and Civil Registration Service of Gorontalo City) contacted the defendant by telephone. In the telephone call, the defendant told the victim's child to come to the defendant's boarding house in Bulotadaa Timur Village, Sipatana District, Gorontalo City and for the accommodation and travel costs of the victim's child would be borne by the defendant. After that, in the afternoon, the victim's child immediately left Pohuwato Regency for Gorontalo City by taxi which would be paid by the defendant after arriving in Gorontalo City, then at around 21.00 WITA the victim's child arrived at the defendant's boarding house and the defendant paid for the taxi rental that the victim's child was riding in, then the defendant told the victim's child to rest in one of the boarding rooms behind the defendant's house, but not long after the defendant called the victim's child and told the victim's child that there was a guest who had to be served by the victim's child. After that, the defendant told the victim's child and the guest to enter one of the boarding rooms where the victim's child served the guest by having sex like a husband and wife, after the victim's child finished serving the guest, the defendant received payment from the guest of Rp. 300,000, - (three hundred thousand rupiah) and the defendant told the victim's child that the money was already with the defendant, but the defendant did not give the victim's child money but the defendant only bought cigarettes for the victim's child. A few moments later the defendant called the victim's child back to serve a guest in one of the boarding rooms behind the defendant's house, and the victim's child served the guest by having sex like a husband and wife like the previous guest. After the victim's child finished serving the guest, the defendant received payment from the guest in the amount of Rp. 300,000 and the defendant again told the victim's child that the money was with the defendant, but once again the defendant did not give the victim's child money but only bought cigarettes for the defendant. (DECISION Number 53/Pid.Sus/2024/PN Gto, 2024).

The next day, on Saturday, September 16, 2023 at around 03.30 WITA, when the victim's child was resting, the defendant again called the victim's child to serve a guest in a room provided by the defendant, then the victim's child served the guest by having sex like a husband and wife, after the victim's child finished serving the guest, the defendant received payment from the guest of Rp. 200,000 and the defendant again told the victim's child that the money was

already with the defendant but the defendant only gave the victim's child money to buy cigarettes and food. After that, the victim's child said goodbye to the defendant to go out to buy food and then told the defendant again that the victim's child was found by Gorontalo Opsnal officers(DECISION Number 53/Pid.Sus/2024/PN Gto, 2024).

Imposition of Criminal Sanctions by the Panel of Judges

Ottow Wijanarto Tiop Ganda Pura Siagian, SH, MH, Muammar Maulis Kadafi, SH, MH, and Effendy Kadengkang, SH, MH, as the panel of judges led the trial with the agenda of reading the verdict against the defendant in the trial held at the Gorontalo District Court on Tuesday, July 9, 2024 as follows:

1. By using Article 2 Paragraph (2) of Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking in conjunction with Article 64 Paragraph (1) of the Criminal Code, it is stated that the defendant has been proven legally and convincingly guilty of committing the crime of "Carrying out transportation, sheltering, sending by paying for the purpose of exploiting people in the territory of the Unitary State of the Republic of Indonesia on an ongoing basis" as per the first alternative charge.
2. The defendant was sentenced to five years in prison and a fine of Rp. 120,000,000.00 with the provision that if the fine is not paid it will be replaced with two months in prison.
3. The amount of the criminal penalty is reduced by the length of time the defendant was arrested and detained.
4. Determines that the defendant is still in detention.
5. Demanding the defendant pay court costs of Rp. 5,000.00 (five thousand rupiah)(DECISION Number 53/Pid.Sus/2024/PN Gto, 2024).

In the decision, the panel of judges considered the elements contained in the first alternative indictment of the public prosecutor, including:

1. Element of "Every Person" In the judge's consideration What is meant by every person is a legal subject who is the bearer of rights and obligations, namely the subject or perpetrator of a criminal act in the formulation of a crime, in this case every person who is accused of having committed a crime. Thus, this needs to be considered in order to ensure that the subject or perpetrator of the crime as stated in the public prosecutor's indictment is true personally and as a subject. The Panel of Judges is of the opinion that the element of "Every Person" has been fulfilled because the definition of "Every Person" in this element, namely the Defendant, is not ambiguous.
2. Elements "Who recruits, transports, shelters, sends, transfers, or receives a person by threat of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt bondage or giving payment or benefits even though obtaining the consent of a person who has control over another person, for the purpose of exploiting the person in the territory of the Republic of Indonesia" If one of these elements is proven, the judge will consider the second element as an alternative, and the element is considered proven as a whole. According to Article 1 number 7 of Law

of the Republic of Indonesia No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, exploitation is defined as any act, with or without the consent of the victim, which includes prostitution, forced labor or service, slavery or practices resembling slavery, oppression, extortion, physical, sexual, or reproductive exploitation, unlawful removal or transplantation of organs and/or body tissue, or the use of the power or ability of another person to obtain material or non-material benefits. Shipping is defined as the act of transporting a person from one location to another based on Article 1 Number 10 of Law of the Republic of Indonesia No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking. This was done by the defendant on September 15, 2023. Initially, the victim's child called the defendant and said that the victim's child wanted to go to Gorontalo City, then the defendant asked the victim's child to come to the defendant's place of residence and the victim's child's travel expenses would be borne by the defendant as long as the victim's child was ready to work at the defendant's place, so that in the afternoon the victim's child immediately left Pohuwato Regency for Gorontalo City using an illegal taxi which would later be paid by the defendant after arriving in Gorontalo City. As in the chronology stated in the court's decision, the victim's child worked by serving (having sex) guests who came to the defendant's boarding house 3 times but did not get paid and was only given food money and cigarette money.

3. Element "Several acts are related in such a way that they must be viewed as one continuing act" The phrase "several acts must have such a relationship" means that the acts must be related or relevant is not further explained by the law in the consideration of the panel of judges. Due to the similarities in terms of time and place, the place where several acts occurred, and other factors, this relationship can be interpreted in various ways. Based on the trial facts obtained from the statements of the Witnesses, and the Defendant's statement, it was revealed that the Defendant committed the act of ordering the victim's child to serve guests to have sex who ordered through the Defendant on September 15 and 16, 2023 in a room behind the defendant's house in Bulotadaa Timur Village, Sipatana District, Gorontalo City. Therefore, although each act is a crime or violation, there must be a relationship between the acts that makes it seem as if it is a continuous and completed act. Because all the requirements of Article 2 Paragraph (2) of the Republic of Indonesia Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking in conjunction with Article 64 Paragraph (1) of the Criminal Code have been fulfilled, then according to the judge at the Gorontalo District Court, the defendant is deemed proven to have committed the crime as charged in the first alternative charge. (DECISION Number 53/Pid.Sus/2024/PN Gto, 2024).

In the case of TPPO, the physical and psychological condition of children as victims must be considered considering that in this case the victim is only 13 years old so that in terms of physical and reproductive health she is not yet mature. There are several psychological impacts caused by child exploitation including anxiety disorders such as PTSD, phobias, panic attacks, and depression. Therefore, children as victims of TPPO should receive psychological assistance considering that children as victims will definitely feel helpless, feel humiliated, feel

like they have no self-esteem, grow distrust and fear of other people and the environment and feel like they have lost their direction in life.(Renaldy et al., 2024).

For that reason, the perpetrators who carry out human trafficking, especially against children, must be punished as severely as possible considering that children are the nation's generation who are expected to be the successors to the leadership of this nation. Therefore, the government should continue to make efforts so that TPPO decreases in Indonesia and the victims, especially children and women, receive protection and legal certainty from the government. One of the government's steps towards TPPO victims is to provide law enforcement assistance to victims so that victims receive legal protection and legal assistance and justice. In addition, efforts to prevent and handle TPPO have been strengthened in the 2025-2045 National Long-Term Development Plan (RPJPN)(PMK, 2024).

CONCLUSION

Children are a gift from God Almighty so they must be looked after, protected and given a decent education and life. Children must also be given agitation or understanding about human trafficking so that children can be careful with anyone they meet. In addition, a stable economic situation is one way to prevent children from being affected by human trafficking crimes. The perpetrators who commit TPPO deserve to be punished as severely as possible, especially if the child becomes a victim of TPPO. The role of the government can also prevent and suppress the number of TPPO crimes, for that all environments must take part in activities to prevent TPPO.

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