

Conference Paper

Child Trafficking: An Issue for Criminal Law Reform in Indonesia

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This paper aims to examine the problems with Indonesia's proposed criminal law reform. It is a legal normative research kind. It can be obtained by using a literature study. The implementation of this research is limited to how the development orientation to find issues of child trafficking relates to reform of the criminal law. The orientation of reforming national criminal law cannot be contradicted by another regulation. Crime, criminal responsibility, and sentence are the three main problems in criminal law that represent the concept of balance. The issue of national criminal law reform for child trafficking is based on political, practical, and sociological considerations. The urgency of preventing and eradicating child trafficking needs to be carried out by formulating trafficking in persons in the Law No. 1 of 2023 Concerning Penal Code in an explicit, firm, and well-substantiated manner, as well as by including the meaning, scope, and limitations trafficking in person, including child trafficking.

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1. INTRODUCTION

Criminal law reform is political field of criminal law. It is needed to create a criminal law with a national character. Laws related to child protection are still an interesting matter to study and research. This is because children have a special place to continue the goals of the nation in the future. The complexity of the problems faced by children is still an assignment for the country that has not been completely resolved. In essence, children are defenseless against the many form of criminality that poses a risk to their own safety. So in this case, child protection is still one of the main priorities that must be met by the state [1]. Children, in a general sense, get special attention from the centralist perspective of all life. Legal definition of children is positioned as both object and primary topic in a process of legalization, generalization, and systematization of laws pertaining to children. Children's existence and rights, both as legal subjects and as individuals with equal rights and obligations, shall be protected by this legal safeguard [2]. Child

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protection refers to all actions taken to ensure that each kid can exercise his legal rights and responsibilities and that their physical, mental, and social development proceeds in a healthy manner. Children are the future of the country and state, so protection is crucial. The survival of children based on human rights requires constant direction in order to develop excellent Indonesian human resources, have competitiveness, and be able to lead and sustain national unity within the Republic of Indonesia based on Pancasila. Children are protected from all possibilities of self-harm by the growth and development of their mental, physical, and social skill [3].

Universal children's rights were established by the UN General Assembly on November 20, 1959, by proclaiming a declaration of children's rights. With this declaration, it is hoped that all parties will recognize children's rights and encourage all efforts to fulfill them [4]. Indonesia still has the complexity of children's problems, which until now have not been completely and comprehensively resolved. Therefore, several recommendations are important to consider in order providing comprehensive protection to children as victims. It becomes a victim because there are other parties who commit crimes. Losses that are often received or suffered by victims are physical, mental, economic, self-esteem, and so on. This loss also applies to children as victims of crime. Many of the children who are victims are afraid to report the crimes they experience because of their powerlessness as a vulnerable group [5].

Child trafficking is a form of crime that threatens children as victims. The Indonesian Child Protection Commission records case reports based on child protection clusters. Trafficking and exploitation cases that occupy cluster 9 have a total of 1,409 cases. The case consists of six categories: child trafficking, child prostitution, commercial sexual exploitation of children, child labor exploitation, illegal adoption, and child as perpetrator of commercial sex recruitment. Child trafficking is a form of human trafficking where victims are categorized as children or people aged 18 and under for exploitative purposes. Children who are victims of trafficking will also be forced to work as child soldiers, be involved in criminal acts, and be sold for illegal adoption purposes. Trafficking in children is a crime against humanity, a form of violence against children, and a violation of human rights. Child trafficking is a modern kind of slavery. Trafficked children are used as workers for relatively long working hours and are prone to experiencing physical, mental, and sexual violence.

The development of the legal framework of trafficking in persons, especially children as victims, has developed so rapidly. This can be seen in the stipulation of child trafficking in Law No. 21 of 2007 Concerning the Elimination of Human Trafficking Crime and Law No. 35 of 2014 Concerning Amendments to Law No. 23 of 2002 Concerning

Child Protection. However, returning to the reform of the national criminal law, the crime of trafficking in children must also occupy an important position in relation to the reform of the national criminal law in Indonesia. In the Indonesian Penal Code, the crime of trafficking in persons has been included in certain offenses regulated therein. Indonesia has Law No. 21 of 2007 through Law No. 14 of 2009 concerning the Ratification of Protocols to Prevent, Prosecute, and Punish Trafficking in Persons, Especially Women and Children, which complements the United Nations Convention against Organized Transnational Crime. When viewed in the Indonesian Criminal Code, the criminal act of trafficking in persons does not describe the elements of child trafficking. Child trafficking does not require regulation regarding the method, but rather the act and purpose of exploitation. Based on this, this writer raises an article regarding the urgency of reforming the criminal law for the crime of child trafficking. The main problem of the research is whether the issues of child trafficking relate to criminal law reform in Indonesia.

2. METHODOLOGY/ MATERIALS

This research type is legal normative research. Characteristic of this research is qualitative descriptive research. Secondary data can be obtained by using a literature study. The implementation of this research is limited to how the development orientation to find issues of child trafficking relate to criminal law reform in Indonesia.

3. RESULTS AND DISCUSSIONS

In response to the state of Indonesian law, which still has a Western culture because of the application of the principle of conformity of the Dutch state to its colonial peoples, it is necessary to reform the law. According to Sudarto, legal reform, particularly in the area of criminal law, is seen as being urgent for the first three of these reasons: political; an independent nation must have its own national laws for reasons of pride; and economic. Second, sociological factors support the idea that a country's laws should represent its culture. Third, there are practical benefits of having regional laws that is not translation of foreign laws as the laws that are applicable in a country. Reform of the criminal law is a component of broader legal reform. According to Barda Nawawi Arief, criminal law reform fundamentally forms a component of a larger national effort to increase the effectiveness of law enforcement through better legal protection, reasoned approaches to combating crime, and reasoned approaches to resolving social issues that can be

addressed by the legal system. The renewal of criminal law, according to the author, can be understood as legal politics carried out after actual events in society, or post factum legal politics. Furthermore, Sunaryati Hartono said that legal politics cannot be separated from the social and traditional realities that exist in a country [6].

In order to avoid conflicts between different laws, the direction of the renewal of Indonesian criminal law must consider both alternatives that can be used to address the country's legal pluralism and how to incorporate existing laws from society into positive law within the framework of Pancasila. Reviewing a number of morally wrong prohibitions that are not covered by positive law is an effort to accommodate the law that already exists in society. According to Devlin, The practice of making more immoral activities criminal is a reflection of society as a whole. Criminalization based on behavior that is deemed immoral can be justified, just as controlling immoral behaviors through the legal system might [7]. In line with the opinion of Devlin, according to Sudarto, The present purpose of reforming Indonesian criminal law is to reorient the fundamental principles, socio-philosophical, sociocultural, and sociopolitical values of Indonesian criminal law in line with the nation's ideology-based aspirations [8].

The urgency for criminal law reform can be reviewed from various aspects, such as sociopolitical, socio-philosophical, and sociocultural aspects, or it can also be reviewed from various other aspects, such as social policy, criminal policy, and law enforcement policy, which means that criminal law reform is essentially a manifestation of change and renewal of various aspects and policies that form the basis of renewal [9]. Efforts to reform the Criminal Code, apart from being aimed at reforming and reviewing three main issues in criminal law, the formulation of criminal responsibility, *and* the formulation of sanctions in the form of both punishment and action (treatment), are also trying to maximally provide a philosophical basis for the essence of the Penal Code so that it is more meaningful in terms of human values (humanitarian values) both related to the perpetrators of criminal acts (offenders) or victims.

Human trafficking is categorized as a type of crime. Saporinah Sadli gave her opinion regarding crime, which is a form of "deviant behavior" that develops in society, and in reality, no society is free from crime [10]. One effort to overcome crime can be done, which is the oldest form of effort as old as human civilization. Trafficking in persons is a form of crime that is committed within the territory of a state and is carried out by crossing the boundaries of that territory. Considering that the scope and dimensions of this crime have rapidly expanded, trafficking in persons is included in organized crime, cybercrime, and transnational crime. Victims and practices of trafficking in children are not treated humanely. Children are exploited in forms such as treating victims to work, which leads

to practices of sexual exploitation, slavery and other forms of slavery, organ transplants for the sale of organs, and people getting huge profits from traffickers. To attain the principles of better punishment and see more parts of human rights, criminal law reform has become a very urgent need to implement a major change [11]. This requirement is consistent with the strong aim to achieve the most equitable law enforcement feasible. Since law enforcement, as is well known, is not a neutral activity but rather has its own social structure, it varies over time, from one system to another, and from one location to another [12].

The efforts to reform the criminal law policy have been quite significant, with the formulation of various types of special crimes outside the Penal Code into the Penal Code. In the Penal Code, a criminal act is formulated which implicitly includes trafficking in persons, namely in Chapter XIX concerning Crimes Against People's Freedom, in Part One concerning Trafficking in Persons, in Paragraph 4 concerning the Crime of Trafficking in Persons, in Article 455 which regulates: a person who recruits, transports, harbors, sends, transfers or accepts a person by means of threats of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or position of vulnerability, debt bondage, or gives payments or benefits despite obtaining the consent of the person who has control over other people, for the purpose of exploiting said person in the territory of the Republic of Indonesia, shall be punished with minimum imprisonment of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Category IV and at most Category VII.

Based on above formulation, there are 3 elements: "everyone who does" (recruitment, transportation, shelter, delivery, transfer, or receipt), "using" (threats of violence, use of violence, kidnapping, confinement, counterfeiting, fraud, abuse of power or vulnerable positions, debt bondage, or giving payments or benefits), and "for a purpose" (exploiting the person). According to formula above, trafficking in persons can be fulfilled if one of the three parts is carried out. For example, If someone recruits by using a vulnerable situation for the goal of exploitation, that person has satisfied the requirements in this article on human trafficking. This article is the most important in determining other crimes related to trafficking in persons. This is because all other articles related to the crime of trafficking in persons in the Penal Code must first fulfill the elements of trafficking in persons. However, in the Draft Explanation of the Penal Code, it does not explain every important term used in the context of human trafficking crime. Besides that, there is an important meaning that is not defined in the Penal Code, namely the notion of "for the purpose of exploiting". This definition is not found either in the formulation of the article in the same chapter or in a different chapter, including in the explanation of the

definitions in Book I and the explanation of the article. Without this understanding, it can have important implications because, in the implementation or testing of this article, there will be obstacles.

Trafficking Protocol confirms that every act of recruitment, transportation, transfer, placement, or acceptance of children with the aim of exploitation is considered “trafficking in persons,” even if carried out by coercion or fraud [13] as described in Article 455 of the Penal Code. This emphasizes that for victims of child trafficking, without fulfilling the second element, namely by using violence, kidnapping, deceit, fraud, abuse of power, a position of vulnerability, or giving or receiving payments or benefits to get approval from people, this includes human trafficking. This has not been regulated in the Criminal Code. The Criminal Code equates elements of trafficking in persons, both for victims who are adults and for victims who are still children. The implication is that it will create a relatively heavy burden of proof for cases of child trafficking where the victims are children. Therefore, it will not be able to safeguard children who have been the victims of crime, and this will only separate the formula from the efforts made by the international community to stop and end child trafficking.

In the midst of reformulation of various types of specific crimes outside the Penal Code, which were later drafted into the Penal Code, it turns out that there is no clear and explicit regulation regarding of trafficking in persons. This shows that efforts to codify the Penal Code have not materialized in the near future. The Penal Code regulates trafficking in persons has not reflected the nature of the reform of the criminal law itself because it has not been able to realize a new, better Penal Code, namely that it has not been able to resolve all legal issues and has not been able to convene an overall codification of various criminal acts in Indonesian positive law. Penal Code should be able to realize the essence of criminal law reform.

As part of criminal law policy, criminal law reform should be able to carry out the improvement of criminal law regulations for the better, which can correct all deficiencies in the formulation of criminal acts in Indonesian positive law and realize codification as a whole. Therefore, the best effort that can be made to prevent formulation deficiencies related to trafficking in persons in Indonesia in the future is to formulate the crime of trafficking in persons in a clear, clear, and explicit manner into the Penal Code.

The guarantee of human independence is a basic right guaranteed by the state [14]. The fact is that human trafficking still occurs. One of the worst forms of treatment and a violation of human dignity is human trafficking. The criminal practice of human trafficking mostly targets women and children as its victims. The victims of human trafficking were subjected to other forms of exploitation as well, such as forced labor or forced services,

slavery, or acts that were comparable to slavery, in addition to prostitution and other forms of sexual exploitation. The act of recruiting, transporting, transferring, hiding, or accepting a person for the purpose of entrapping, submerging, or exploiting that person in the practice of exploitation in all its forms through threats of violence, use of violence, kidnapping, falsification, fraud, abuse of power, or position vulnerability, or by providing payments or benefits to obtain the consent of a person having control over the victim, is considered the crime of human trafficking.

In addition to individuals, corporations and government officials who abuse their positions of authority and influence are also guilty of the crime of human trafficking. The network of people trafficking offenders engages in a variety of operations both within and outside of the country. Further regulation and protection from trafficking in persons are regulated by Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. Article 83 of Law Number 23 of 2002 concerning Child Protection stipulates the prohibition of trading, selling, or kidnapping children for oneself or for sale. In child trafficking, children are usually used as commercial sex workers [15]. Law No. 1 of 2023 does not formulate a legally firm human trafficking definition.

4. CONCLUSION AND RECOMMENDATION

The conclusion is the orientation of reforming the national criminal law is rooted in Pancasila, Crime, criminal responsibility and sentences are the three main problems in criminal law that represent the concept of balance. The urgency of reforming the national criminal law for the child trafficking is based on political, practical, and sociological considerations. Then, the criminal law reform must be respect to International Law. Indonesia has ratified Protocols to Prevent, Prosecute, and Punish Trafficking in Persons, Especially Women and Children, which complements the United Nations Convention against Organized Transnational Crime which has been a Criminal Act in Indonesia that is Law No. 21 of 2007 Concerning the Elimination of Human Trafficking Crime. Law No. 1 of 2023 Concerning In Penal Code, child trafficking is regulated in Chapter XIX concerning Crimes Against People's Freedom, in Part One concerning Trafficking in Persons, in Paragraph 4 concerning the Crime of Trafficking in Persons, in Article 455. Based on the conclusion made above, the Indonesian Penal Code must be explicit, firm, substantially clear, and include the meaning, scope, and limits of the crime of trafficking in persons, including child trafficking.

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