

The Legal Protection of Child
As
Witness and/or Victims of Human Trafficking
In Investigation Process
(Study Case in Unit Protection of Woman and Children in Batu Police Station)

Essay

To Fulfill The Requirement of Graduation in Law Science

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ABSTRACTION

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Abstract: This study describes or illustrates well as address issues of legal protection of children as witnesses and/or of human trafficking in the investigation process. Legal protection is a protection given to the subject of the law in the form of legal instruments both preventive and repressive, both written and unwritten. Problems studied are (1) Urgency legal protection of children as victims of trafficking crimes in the investigation process, (2) The legal protection of children as victims of human trafficking in the investigation. The research method used is empirical jurisdiction.

Some indicators of legal protection of children as witnesses of human trafficking victims, namely: the role of victims, Position witnesses and victims, non-technical, and technical. Technical indicators include several things, namely: The rooms that used to investigated witness and victims, investigated procedures. Whereas, non-technical indicators include: policy and paradigm of police itself which says that legal protection should be given to children because of the laws governing the protection of children as victims and as perpetrators. The forms of legal protection provided by the Unit Protection of Woman and Child to the victim witness include: the anonymity of witnesses and / or victims, rehabilitation of health, counseling, assistance for witnesses and / or victims of the child, and a exclusive investigated room.

Keywords: Protection Law, Child, Victim and/or Witness, Human Trafficking

A. Introduction

Article 3 of the Act of Child Protection states that the principle of child protection aims to ensure the rights of children to live, grow, develop, and participate optimally in accordance with the dignity of humanity, and get protection from violence and discrimination, in order to realize quality of Indonesian children, morals, and welfare.

Children must be protected from falling victim to any action (individual or group, private and governmental organizations), either directly or indirectly.¹

Article 4 of the Law on Child Protection also mentions that: “Setiap anak berhak untuk dapat hidup, tumbuh, berkembang, dan berpartisipasi secara wajar sesuai dengan harkat dan martabat kemanusiaan, serta mendapat perlindungan dari kekerasan dan diskriminasi”.

Human trafficking has a lot going on in Indonesia, especially in children. This resulted in the denial of the rights of a child is seen as an object that can be bought and sold for personal profit. Number of children who are victims of human trafficking can result in the child experiencing trauma. Children are entitled to legal protection and adequate training, especially in the judicial process.

The process of disclosure of a criminal offense of trafficking in persons, the existence and role of the witness and the victim is required. As defined in Act Number 13/2006 on the Protection of Witnesses and Victims in the preamble (a) states that one of the legal evidence in a court proceeding is testimony of witnesses and / or victims are heard, start viewing, or experience the occurrence of an act crime committed by criminals. The fact that the witnesses were reluctant to testify in the investigation which led to the disclosure of the case to be blocked.

Quality protection of women and children should have the same quality with the protection of adults and men, because everyone has an equality before the law. Essentially children can't protect themselves from various kinds of actions that cause harm mentally, socially in many areas of their lives.

¹ Arif Gosita. *Masalah Perlindungan Anak*. Jakarta: Akademi Pressindo, 1989, hlm. 35.

Based on the background, the problem found, included : (a) What is the urgency of the legal protection of children as victims of human trafficking in the investigation process, (b) What are the forms of legal protection of children as victims of human trafficking in the investigation process.

Purposes of research, included: (a) To find out, describe, and analyze the urgency of the legal protection of children as witnesses of human trafficking victims, (b) To find out, describe, analyze forms of legal protection given to children as witnesses of human trafficking victims. The Benefit of research: (a) As the influx of new understanding on the part of academics to determine the urgency of the legal protection of children as witnesses of human trafficking victims, (b) As the development of knowledge gained during in college especially in the field of law relating to criminal law, (c) As a matter of information and knowledge for the general public to know the rights of the child as a witness protection to victims of human trafficking in the investigation, (d) As more sensitive information in regard to the rights of victims of human trafficking, especially in children who are rife that statutory rules made fully implemented

Type of research is empirical legal research. This study aims to gain a clear picture of the legal protection of children as witnesses of human trafficking victims in the investigation at the Unit Protection of Woman and Children, as well as various factors that influence it and eventually found a solution to the problems that arise.

This study uses sociological juridical approach that looks at the problems that exist under the rules applicable law then connected with facts.²

Researchers select and specify the location of the research Unit Protection of Woman and Children in Batu Police Station. Unit Protection of Woman and Children in Batu Police Station selected and considered for the research conducted at the police station on the grounds that Stone for 3 (three) years has been handling criminal cases with child victims of trafficking, so the choice of location of the methodology is reliable (well worth it). While the

² Ronny Hanitijo Soemitro, *Metode Pendekatan Hukum*, Cetakan IV, Ghalia Indonesia

types of data and data sources used in this study consisted of 2 (two) types, namely:

- a. Primary data is data that is acquired directly with sources and without intermediaries.³ The data in question is in the form of data from interviews conducted in the study.
- b. Secondary data is data that is derived from data documentation and archives and research libraries include official documents, books, research reports the results of which form the report, thesis and thesis related to the themes studied by researchers.

To obtain data with respect to this research, the authors use interviews and literature. Interviewing is one of the techniques of data collection by making unilateral questioning systematically, based on the purposes, this study uses the type-free interviews, which were conducted using an interview guide with:

- Head of Unit Protection of Woman and Children
- 2 members of the Unit of Woman and Children

Literature for secondary data that reading books and studying literature in accordance with the existing discussion. Technical analysis of the data used in this study in the form of descriptive analysis.

B. Result of Research

Urgency of Child Legal Protection as Victim and/or Witness of Human Trafficking In Investigation Process

Witnesses and victims in the criminal justice process should be given legal protection. practice of legal protection of the victims are often ignored their rights, among other charges weak, weak demand, mild demands, not knowing progress of the case, does not receive compensation and the rights of others.

Some indicators of protection of witnesses and victims in the criminal justice system, namely:

1. The role of witnesses and victims

The role of a witness in a criminal investigation process is very important, because the investigator was not able to uncover a criminal offense in the

³ Rianto Adi, *Metodelogi Penelitian Sosial dan Hukum*, Garfit: Jakarta, 2004, hlm. 20.

absence of witnesses. In the process of the investigation, the investigator always put the statements of witnesses, because witnesses affect the investigation case file when the file is transferred to the prosecutor. The prosecution refused to accept the investigative files in the absence of witnesses, investigators therefore always trying to find witnesses.

Based on the results of interviews conducted by the author to one of the members of the Unit Protection of Woman and Children in Batu Police Station, said that the victims tend to be covered up during the investigation process ongoing. Witnesses say the victim was not fully what he had experienced, so the investigators write witness statements based on what is expressed by the witnesses during the investigation. Sometimes, after the prosecution files are transferred or telling the victim gave the truth to prosecutors.⁴ Based on the information given to prove that the victims can affect the judicial process.

The presence of witnesses in the investigation process is placed as the party providing information, the information is used as evidence in a criminal act reveal. Article 117 sub articles 1 of the Criminal Procedure Code a witness in giving testimony must be free of pressure from anyone and in any form. Witness testimony is an important testimony of a witness is proper protection from all kinds of pressures and threats.

2. Position Witnesses and Victims

Witnesses have an important position in proving a criminal offense. Article 184 of Criminal Procedure Code states that a witness is primary evidence. The importance of the position of witnesses in Article 184 sub article 1 of the Criminal Procedure Code states valid evidence is:⁵

- a. witness testimony
- b. Expert testimony
- c. Letter
- d. Guidance
- e. Description defendant

⁴ Result of interview with Briptu Siti N.L as investigator in Unit Protection of Woman and Children in Batu Police Station, Januari 2013

⁵ Kitab Hukum Acara Pidana

Article 184 sub article 1 put witnesses on the first position. It indicates that that witness testimony as evidence that very important. Because of witness testimony in the investigation is very influential on the docket handed to prosecutor's investigation. Presented witness testimony in a criminal offense can be burdensome (called as a charge) or defense witnesses (called as a de charge).

One member of the Unit Protection of Woman and Children said that some cases of human trafficking, victims are reluctant to testify. When investigators asked him to undergo a process of investigation the witness went to Borneo. Police have repeatedly asked witnesses to come but the witness never came to testify. In the end, the investigators followed the witness into Borneo to bring witnesses to the Batu Police Station for questioning.⁶

Some indicators were found by researchers on the urgency of the legal protection of children as victims of crime sweeteners:

1. Technical

- a. room facilities

Based on article 45 of the Law states that for protection of human trafficking witnesses and / or victims of every provincial and district / city shall establish a special service at the office of the police to conduct an inspection. The exclusive investigation room is meant to witnesses and / or victims of child feel comfortable and safe in the examination process. Whereas, in article 46 of Human Trafficking Act also states that each county / city may establish one-stop shop to protect a witness and / or victim.

- b. Investigation Procedures

Based on article 17 sub article 1 of Police Regulation states officers did not wear uniforms that can affect the psychological witnesses and / or victims to be investigated. That is because the child has a weak psychic. Based on the results of observations made by the officer researchers tend to ask questions in a firm tone, so that the child becomes afraid to answer

⁶ Result of interview with Briptu Siti N.L as investigator in Unit Protection of Woman and Children in Batu Police Station, Januari 2013

the questions asked by the officer. Some of the questions cornering or blame witnesses and / or victims, so that the child feels uncomfortable at the time of examination. Officers are also asking very sensitive questions to get an accurate description of the witness and / or victim.

2. Non Technical

a. Policy

Batu police station does not have any specific policies that bolted to deal with witnesses and / or victims of crime in child trafficking, so that, using the Police Act and the Act of Trafficking to protect children as witnesses and / or victims of human trafficking.

b. Paradigm of Police

Based on the results of interviews conducted for one member of the Unit Protection of woman and Children regarding the protection against witnesses and / or victims of child trafficking crime, in this case because the law on legal protections for children. Such as the Act of Child Protection, Act of Juvenile Justice, and the Act of Human Trafficking. According to one of the officers, if there are no laws that govern, the legal protection of children is given by the laws in force in Indonesia.⁷

Based on the description of the urgency researchers can analyze the legal protection of human trafficking witnesses in the investigation process are considering having children in the position to witness a victim of human trafficking. The role and position of child witnesses is crucial in uncovering a crime is needed special protection. Because children are in fact not able to protect themselves and have weak mental and psychological trauma caused the child easily and stress that can affect the child's development. To obtain the testimony of child victims who needed special protection so that children do not feel depressed or prolonged trauma in the examination process.

Form Protection of Human Trafficking Witness and Victims In Investigation Process

⁷ Result of interview with Briptu Siti N.L as investigator in Unit Protection of Woman and Children in Batu Police Station, Febuari 2013

Based on interviews conducted by the author to one of investigator stated that the protection given to witnesses and victims of human trafficking are:

1. The anonymity of witnesses and / or victims

Identity of witnesses and / or victims to be kept secret so that the child can feel comfortable and safe when returning to the community.

2. medical assistance

Medical assistance provided by witnesses and / or victims, if there is interference with the health of witnesses and / or the victim.

3. The existence investigation room

The existence investigation room formation meant that children as witnesses and / or victims feel more comfortable in providing information without feeling pressured.

4. Repatriation

Repatriation of witnesses and / or victims made to witnesses and / or victims who are outside the city or abroad.

5. Counseling

Counseling given to witnesses and / or victims of human trafficking on the impact of medical. That witness and / or victims to understand and know about human trafficking.

Unit Protection of Woman and Children in Batu Police Station also provides protection to the community, not only to witness and / or victim. Protection provided in the form of:

1. Prevention of trafficking in persons

Unit Protection of Woman and Children in Batu Police Station conduct outreach through the smallest institutions in society such as youth clubs, events held by the PKK, programs organized by the community, and programs held by other governments.

This extension is so that the community can get to know and understand the forms of human trafficking to the smallest levels of society. Counseling is a form of protection provided Unit Protection of Woman and Children to the society, in order to prevent and avoid the crime of trafficking in persons. one example of counseling conducted by the Unit Protection of Woman and

Children is education about domestic violence and child trafficking in the inauguration of caretaker recitation of Al-Hidayah.

2. Eradication of Trafficking in Persons

Unit Protection of Woman and Children in Batu Police Station provides protection to the community through efforts to combat human trafficking crime. measures taken to eradicate trafficking in persons, as follows:

- a. Process all crime reports trafficking so victims can get justice and legal certainty.
- b. Ensuring comfort victims and provision of health services in coordination with other agencies concerned with the child victims of human trafficking.
- c. Each police who served in the unit protection of woman and children get briefing on human trafficking is done through government agencies and international institutions.
- d. Unit protection of woman and children in cooperation with the city government and NGOs was in town to optimize the eradication of human trafficking

Form is intended for the protection of society free from all forms of human trafficking is happening more and more lately

C. Closing

Conclusion

Some indicators of urgency victim witness protection in trafficking crime, namely:

- a. Technical
 - 1) The room facilities
 - 2) Investigation Procedures
- b. Non Technical
 - 1) Policy
 - 2) Paradigm of Police

Based on these indicators can be concluded that this is the reason for the legal protection of children as witnesses of crime victims trafficking in the process of investigation is the status of victims of child witness in a criminal

act of human trafficking, given that it is still early for a child experiencing crime of trafficking in persons. This led to prolonged trauma that can affect a child's future, and can destroy a child's future. Thus, the need for protection of children as witnesses so when the information to the investigating authorities don't cause trauma or stress to the child.

Forms of Child Legal Protection As Witnesses and/or Victims Human Trafficking in Investigation Process

- a. Witness Identity confidentiality and / or Victim
- b. Health or Medical Rehabilitation Rocks
- c. Counseling
- d. Repatriation
- e. Mentoring For Witnesses and / or Victims of Child
- f. The Existence Investigation Room

Suggestion

Input of what the author has described in this paper, there are several input / suggestion is as follows:

1. Academics should know about the urgency of the child protection law. It is intended that the rights of children not to be neglected.
2. The academics should develop knowledge about criminal law, especially regarding the crime that makes child trafficking victims as witnesses. Order later to minimize the crime of trafficking in people in Indonesia.
3. The law enforcement agencies should provide not only the socialization of human trafficking, but also provide socialization protection of the rights of children as victims of human trafficking are to be met. That the rights of the child in the process of investigation was abandoned, and the public can find out the rights of the child.
4. Party government to pay more attention to the fulfillment of children's rights, especially as victims of human trafficking.

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