

Legal Protection of Children as Victims of Commercial Sexual Exploitation



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ABSTRACT: Commercial Sexual Exploitation of Children is a crime committed against children which is currently happening a lot and is reported in print and electronic media, besides that this crime often occurs within the domestic sphere between villages and cities and even across national borders. Children are the nation's next generation and development successors who should be prepared as subjects for implementing sustainable development and controlling the future of a country. So to find out and examine more deeply about the legal protection of children as victims of sexual exploitation, researchers wish to conduct research on how is the legal protection for child victims of sexual exploitation? This research is a legal research using statutory approach (statute approach) and concept approach (conceptual approach). The results of this study are that the protection of children as victims of commercial sexual exploitation is carried out on the legal basis of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection according to the principle of *lex specialis derogat legi generali*. The protection of children as victims of commercial sexual exploitation is carried out in three stages of legal protection, namely the legal protection stage before the criminal justice process, during the criminal justice process, and after the criminal justice process. accompanied by a Legal Counselor from the Social Service for Women and Children. Legal protection for children as victims of commercial sexual exploitation is carried out by referring to the accusator principle, namely by means of persuasion, not by means of violence and prioritizing the rights of the examinee.

KEYWORDS: Accusator Principle, Victims of Commercial Sexual Exploitation and Legal Protection of Children.

INTRODUCTION

Indonesia is a constitutional state as stated in Article 1 paragraph (3) of the 1945 Constitution. Laws are formulated to regulate and protect the interests of society so that conflicts do not occur and to uphold human rights. Law is a social institution, which functions as a tool to regulate society. Indonesia as a constitutional state has laws and regulations governing child protection. Indonesia ratified the Convention on the Rights of the Child in 1990, much progress has been shown by the Indonesian government in implementing the Convention on the Rights of the Child. In addition, Indonesia has ratified the International Labor Organization Convention (hereinafter abbreviated as ILO) Numbers 138 and 182 which basically seeks to prevent the possibility of children falling into the exploitation of the world of work which is counter-productive to the continuation of their education.

Indonesia has ratified the UN convention on the rights of the child (KHA) through Presidential Decree Number 36 of 1990 which has become an important momentum in the efforts of the government and society to protect children's rights. This convention is an international treaty or agreement that regulates the recognition, respect, and especially the protection of children's fundamental rights. All countries that have agreed to and ratified the UN convention are expected to protect children from all forms of exploitation that endanger the physical and moral of the child. Article 34 specifically expects all States to take various measures at the national, bilateral or multilateral level to prevent exploitation for sexual purposes.

Indonesia, which has ratified the Convention on the Rights of the Child and ILO Conventions Numbers 138 and 182, has an obligation to implement provisions and regulations in its policies, programs and governance procedures. Therefore, Indonesia ratified Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The law has articles that normatively guarantee efforts to fulfill children's rights.

Children are a gift given by God, they are the next generations of the nation. However, it is unfortunate that currently the level of crime against children in society is growing rapidly. Our anxiety as citizens of Indonesia is increasingly infecting our minds and consciences. This is because cases of prostitution crimes involving children as commercial sex workers are increasingly prevalent in Indonesia. The news on television and in the newspapers did not escape reporting this case.

Childhood is a period of physical and psychological growth and development as well as a period when they are still innocent and naive. They have great potential to become victims of adults who have sexual deviations or even to seek economic benefits from their innocence. The presence of child sex workers in Indonesia is nothing new. Many children become victims of economic

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and sexual exploitation because of the motivating factors that cause a child to be required to do work. Child labor itself is an activity carried out by minors to fulfill the needs of themselves and their families.¹

The younger generation is part of national development which will later occupy an important position in realizing the ideals of the Indonesian nation. So, it is mandatory for children to obtain protection. If a child's rights have been violated or his personality has been exploited by the adults around him, it is clear that the actions of these adults have damaged and destroyed national development goals. Commercial Sexual Exploitation of Children is a crime committed against children which is currently happening and is often discussed in various media, both print and electronic, besides that this crime often occurs within the domestic sphere between villages and cities as well as across national borders. In the modus operandi of this crime, several people were involved or even involved corporations and state administrators who abused their authority and power so that the crime was more widespread in the form of organized and unorganized crime networks.²

Sexual Exploitation of Children, hereinafter abbreviated as ESKA, is a crime that befalls children. The 1996 Stockholm, Sweden Declaration and Agenda for Action against Commercial Sexual Exploitation of Children defines CSEC as a fundamental violation of children's rights. The offenses consisted of sexual assault by an adult and the giving of payments in cash or kind to a child, or a third person, or other persons. The child is treated as a sexual object and as a commercial object. Commercial Sexual Exploitation of Children is a form of coercion and violence against children, and leads to forms of forced labor and modern slavery.³

Rape is a form of sexual violence where sexual violence is an act that is categorized as sexual relations and behavior that is not normal, causing serious losses and consequences for the victims.⁴ Losses experienced by victims are in the form of short-term and long-term losses which include physical, mental and moral, social, economic losses. After a rape occurs, women who are raped usually experience prolonged trauma, feelings of shame, are unable to build good relationships in society and sometimes there is a negative stigma towards rape victims.⁵

Commercial sex exploitation or child prostitution is a social problem. This requires special attention because the impact that will be borne by children as victims of prostitution is very serious and dangerous for their future lives. Prostituted children are vulnerable to insults, deception, exclusion, exploitation and marginalization. Many of them cannot even get proper education, health is not guaranteed, and other basic needs are not fulfilled. According to ILO data, around 1.2 million children worldwide are still trafficked and trapped in hazardous work or forced labor into sexual exploitation. Trafficking in children is an immoral and illegal act that forces children to work in appalling conditions, where they are often terrorized and tortured by elements who live from taking advantage of their innocence.⁶

The condition that is more concerning is that children who are trafficked end up being exploited to become commercial sex workers. A recent rapid study conducted by ILO-IPEC in 2003 estimated the number of commercial sex workers under 18 years of age at around 1,244 in Jakarta, Bandung 2,511, Yogyakarta 520, Surabaya 4,990, and Semarang 1,623. However, this number could be several times higher considering the large number of commercial sex workers working in hidden, illegal and unrecorded places.⁷ Data from the Indonesian Child Protection Commission (KPAI) in 2010 to 2012, there is an astonishing increase in cases related to children. In 2010 there were 410 cases recorded and increased to 480 in 2011. Then, in 2012 it increased to 673 cases. In fact, according to Indonesia's ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children) records, in a 2013 study there were as many as 150 thousand children who became victims of trafficking for sexual purposes.

According to the National Coalition for the Elimination of Commercial Sex Exploitation of Children, commercial sexual exploitation in Indonesia is an unresolved problem. Until now, there are still children who are forced into prostitution, children who are used as objects of pornography, and children who are trafficked for sexual purposes and child sex tourism. UNICEF estimates that in Indonesia the number of prostituted children annually reaches 40,000.

Based on this description, in order to find out and examine more deeply about the legal protection of children as victims of sexual exploitation, researchers wish to conduct research on how legal protection is for child victims of sexual exploitation.

¹ Irwanto, 2008, *Menentang Pornografi dan Eksploitasi Seksual Terhadap Anak*, Medan, Koalisi Nasional Penghapusan Eksploitasi Seksual Komersial Anak, hlm. 5.

² Lilik Purwastuti Yudaningsih, "Perlindungan Hukum Terhadap Anak Sebagai Korban Eksploitasi Seks Komersial Anak", *Jurnal Ilmu Hukum Universitas Jambi*, No. 1, Vol. 1 (2015), hlm. 65.

³ ECPAT (End Child Prostitution in Asia Tourism), 2006, *Tanya & Jawab Tentang Eksploitasi Seksual Komersial Anak*, ECPAT Indonesia, hlm. 4.

⁴ Kristiani, M. D. "Kejahatan kekerasan seksual (perkosaan) ditinjau dari perspektif kriminologi", *Jurnal Magister Hukum Udayana*, No. 3, Vol. 3 (2014), hlm. 375.

⁵ Setiawan, I, "Tindak Pidana Perkosaan Dalam Tinjauan Hukum Pidana Indonesia", *Jurnal Ilmiah Galuh Justisi*, No. 1, Vol. 2 (2018), hlm 126.

⁶ Muhammad Alhada Fuadilah Habib, Rafelita Nian Sari, dan Wildana Mahmuda, "AYLA (Anak yang Dilacurkan): Studi Tentang Mekanisme Perekrutan Pekerja Anak di Industri Seks Komersial Jarak-Dolly Surabaya", *Jurnal Sosiologi Universitas Airlangga*, No. 1, Vol. 1 (2014), hlm. 47.

⁷ Merry Magdalena, 2010, *Melindungi Anak dari Seks Bebas*, Jakarta, PT. Grasindo, hlm. 27.

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RESEARCH METHODS

This research is a legal research. The legal materials used are primary legal materials, secondary legal materials, tertiary legal materials and non-legal materials as supports in the object of research.⁸

The problem approach in legal research uses two approaches, namely the statute approach and the conceptual approach.⁹ Statutory approach (statute approach) is an approach taken to various legal rules, while the conceptual approach (conceptual approach) is used to understand the concepts related to the object of research.¹⁰

Techniques and methods of collecting legal materials by exploring various theories, opinions of legal scholars, government, legislative bodies to find the concept of criminalization/decriminalization of acts in legislation. The analysis of legal materials is carried out by collecting legal materials to be reviewed in accordance with the legal issues raised. Then conclusions are drawn by giving a prescription.¹¹

DISCUSSION

1. Legal Protection of Children

We can see legal protection as a protection given to legal subjects in the form of legal traps, both preventive and repressive, both written and unwritten. In other words, legal protection is an illustration of the function of law, namely the concept that law can provide justice, order, certainty and peace. Legal protection for children is one way to protect the future of the nation. Legal protection for children concerns all applicable legal rules. This legal protection is considered necessary because children are part of society who have physical and mental limitations. Therefore, children need special protection.¹²

Child protection should not be carried out excessively and pay attention to the impact on the environment and the child himself, so that the protection efforts carried out do not have negative consequences. Child protection is carried out in a rational, responsible and beneficial manner. It reflects an effective and efficient business. Child protection efforts must not result in the death of initiative, creativity, skills and other things that lead to dependence on other people and uncontrollable behavior, so that children do not have the ability and willingness to use their rights and carry out their obligations.

According to Arif Gosita, that child protection is an effort that supports the implementation of rights and obligations. A child who obtains and maintains the right to grow and develop in life in a balanced and positive manner means that he is treated fairly and is protected from harmful threats. Efforts to protect children can be a legal action that has legal consequences, thereby preventing children from arbitrary parental actions.¹³

Article 1 point 2 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection that child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate, optimally in accordance with the dignity of humanity, and receive protection from violence and discrimination. The scope of the meaning of protection and the purpose of child protection is in line with the convention on the rights of the child and the protection of human rights contained in the 1945 Constitution of the Republic of Indonesia. Article 22B paragraph (2) of the 1945 Constitution of the Republic of Indonesia confirms that every child has the right to continuity live, grow and develop and are entitled to protection from violence and discrimination.

Article 20 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, those who are obliged and responsible for the implementation of child protection include the state, government, community, family and parents. The forms of obligations and responsibilities of the state and government are contained in Articles 21 to 25 of the relevant laws, stating the following:

- a. The state, government and local government have the obligation and responsibility to respect the fulfillment of children's rights without distinction of ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status, birth order and physical and/or mental condition.
- b. To guarantee the fulfillment of the Children's Rights as referred to in paragraph (1), the state is obliged to fulfill, protect and respect the Children's Rights.
- c. To guarantee the fulfillment of the Rights of the Child as referred to in paragraph (1), the Government is obliged and responsible for formulating and implementing policies in the field of implementing Child Protection.
- d. In order to ensure the fulfillment of the Rights of the Child and implement the policies referred to in paragraph (3), the Regional Government is obliged and responsible for implementing and supporting national policies in the implementation of Child Protection in the regions.

⁸ Marzuki, P. M, 2005, *Penelitian Hukum*, Jakarta, Kencana Prenada Media Group, hlm. 35-36.

⁹ *Ibid.*, hlm. 35-36.

¹⁰ *Ibid.*, hlm. 35-36.

¹¹ *Ibid.*, hlm. 36.

¹² Marlina, 2009, *Peradilan Anak di Indonesia*, Bandung, PT. Refika Aditama, hlm. 100.

¹³ Arif Gosita, dalam Moch Faisal Salam, 2005, *Hukum Acara Peradilan Anak di Indonesia*, Bandung, Mandar Maju, hlm. 1.

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- e. The policy referred to in paragraph (4) can be realized through regional efforts to build child-friendly districts/cities.
- f. Further provisions regarding child-friendly district/city policies as referred to in paragraph (5) are regulated in a Presidential Regulation.

We can also interpret child protection as all efforts aimed at minimizing, preventing, rehabilitating and empowering children who experience acts of abuse (child abuse), exploitation and neglect, in order to ensure the survival and development of children in a natural way, both physically, mental and social. The definition of child protection can also be formulated as:

- a. An embodiment of the existence of justice in a society. This justice is social justice, which is the main basis for child protection.
- b. A joint effort to protect children to carry out their rights and obligations in a humane and positive manner.
- c. A human problem which is a social reality. According to the actual proportion, in terms of child protection in terms of mental, physical and social aspects, this means that the understanding, approach and handling of children is carried out in an integrative, interdisciplinary, intersectoral and interdepartmental manner.
- d. A result of interaction between certain parties, due to the existence of an inter-relationship between existing phenomena and their mutual influence. So it needs to be researched, understood, and internalized by anyone (object and legal subject) who is involved as a component of the existence (existence) of child protection. In addition, it is also necessary to research, understand, and internalize which symptoms influence child protection. Child protection is a complex and difficult problem so that its handling must be carried out simultaneously and together.
- e. An individual's actions that are influenced by certain social elements or certain communities, such as interests that can be motivated, social institutions (family, schools, Islamic boarding schools, government and so on), social values, norms (law), status, roles and so on. In order to be able to understand and appreciate correctly the reasons why people carry out child protection as an individual action (alone or together), it is necessary to understand the elements of the related social structure.
- f. It can be a legal (juridical) action that can have legal consequences that must be resolved based on the law. It is necessary to have regulations based on law to prevent and take action against the Implementation of Child Protection which causes mental, physical and social suffering to the child concerned.
- g. It must be endeavored in various fields of livelihood and family life, society, state and nation. The level of child protection in a society or nation is a benchmark for the level of civilization of that society and nation.
- h. Is a field of development of national law. Ignoring child protection issues will disrupt national development and the welfare of the people and children. Participating in national development is the right and obligation of every citizen.
- i. Is a field of voluntary service that is broad in scope with a new style (innovative, unconventional).

International instruments have also discussed a lot about legal protection of children, for example:

- a. Universal Declaration of Human Rights (Universal Declaration of Human Rights or DUHAM) which was ratified on December 10, 1948. Article 16 paragraph (3) of the Universal Declaration of Human Rights (UDHR) states that the family is the natural and fundamental unit of society and is entitled to protection by society and the state. This is closely related to children because children as part of the family need special care and protection and children still depend on the help and assistance of adults, especially their parents. Especially in terms of fulfilling their rights, a child cannot do it alone because his abilities and experience are still limited. Protection of children is the duty of adults and this has been regulated in the UDHR which is an international instrument that is universal.
- b. The Convention on the Elimination of All Discrimination Against Women (CEDAW), was adopted by the UN General Assembly on December 19, 1979 and entered into force as a treaty on December 3, 1981. Then ratified by Indonesia through Law Number 7 of 1984, which specifically regulates all aspects of women's lives including children who are free from discrimination in the fields of education, health, law, economy, social, politics and culture and protection from violence.
- c. Convention on The Rights of The Child, adopted by the United Nations in 1989 and ratified by Indonesia through Presidential Decree Number 36 of 1990 concerning ratification of the Convention on The Right of The Child (Convention of the Rights of the Child) on August 25, 1990, which regulates the rights of children's human rights as part of human society, including the protection of children from all forms of violence and discrimination. Broadly speaking the Convention on the Rights of the Child which consists of 45 articles can be categorized into 4 major sections, namely:

1) The right to survival

This right includes the right to obtain high standard health services, immunization against various diseases that cause death is one of the manifestations of this right.

2) Right to protection

Included in this right are protection against discrimination against violence, slavery and exploitation, in addition to that attention is also paid to providing protection to children without a family and also refugee children.

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3) The right to develop

The child's right to development includes all aspects of his life, be it physical, mental and socio-cultural aspects that must be adapted to his developmental age.

4) The right of the child to participate

Children have their own point of view in seeing a problem, but often this is not recognized by adults. The Convention on the Rights of the Child guarantees that if the child is able, then he can express his views on something, he can share his views.

- d. The United Nations Guidelines for the Event of Juvenile Delinquency (The Riyadh Guidelines) contained in the United Nations (UN) Resolution Number 45/112 dated 14 December 1990 which consists of 7 (seven) sections containing 66 points of guidelines on "Juvenile delinquency" and "youth crimer" are guidelines for preventing child crime, starting from government policies to specific programs, including community involvement in it.
- e. The United Nations Standard Minimum Rules for The Administration of Juvenile. Justice (The Beijing Rules) which became UN resolution No. 40/33 dated 29 November 1985.
- f. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. This declaration is based on considerations at The Seventh United Nations Congress on the Prevention of Crime and the Treatment of offenders, which was held in Milan, Italy on 26 August-6 September 1985. This declaration recommends limits to be taken at the international level and the level region to improve access to justice and adequate care, restitution, reparations and social assistance for victims of crime and outlines the main steps taken to prevent victimization associated with abuse of power and provide remedial care for victims in care.
- g. The Slavery Convention (1926) and Supplementary Convention on the Abolition of Slavery, the Slavery Trade and Practices Similar to Slavery (1956). the 1926 Slavery Convention, and the 1956 Supplement to the Convention on the Abolition of Slavery, the Slave Trade and Practices Equating to Slavery, 1956. The 1956 Supplement to the Convention broadened the scope of the definition contained in the 1926 Convention, whereby slavery includes practices and institutions of slavery arising in marriage and exploitation of children and young people growing up. Article 1 of the 1956 Convention states that a child is a person under 18 years of age. Article 2 states that participating countries must establish an age limit for marriage.
- h. The Convention on the Suppression of Traffic in Persons and The Exploitation of the Prostitution of Others (1949). Convention on the Suppression of Trafficking in Persons and the Exploitation of Prostitution. This convention is an international instrument that only determines human trafficking and exploitation in prostitution. This convention is also included in the context of protecting children from human trafficking and prostitution.
- i. The International Covenant on Civil and Political Rights (1966). International Instrument on Civil and Political Rights, 1966. Article 7 states that no one shall be subject to torture, cruelty, inhuman acts and degrading of humanity.
- j. The Labor Convention of the International Labor Organization:
 1. Conventions Number 29 and Number 105 concerning Force Labour and Abolition of Forced Labor.
 2. Conventions Number 79 and Number 90 concerning Night Work for Young Workers.
 3. Convention No. 138 concerning Minimum Limits for Children Who Can Work.
- k. The Tourism Bill of Rights and Tourist Code (1985) which has been ratified by the WTO (World Tourism Organization). In Article VI it is stated that participating countries prevent the possibility of using tourism for the exploitation of prostitution and all its purposes.
- l. Refugee and Humanitarian Law. Refugee and Humanitarian Law.¹⁴

The international instruments above have established a set of children's rights and the obligations of countries that sign and ratify them to protect children. Indonesia as one of the countries that ratified these instruments is obliged to implement them, namely by enacting laws regarding children's rights related to:

1. Formation of law or harmonization of law in accordance with the norms contained in these international instruments.
2. Law enforcement regarding children's rights which is carried out as a functionalization of legal norms.
3. Carry out concrete action programs related to the protection of children's rights.

2. Restorative Justice Against the Crime of Rape.

The definition of exploitation according to Article 2 paragraph (1) of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons is Exploitation, namely actions with or without the consent of the victim which includes but is not limited to prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, use of physical, sexual, reproductive organs, or unlawfully or organ and/or tissue transplantation or use of a person's energy or ability by another party to gain material or immaterial benefits.

¹⁴ Muhammad Joni dan Zulchaina Z. Tanamas, 1999, *Aspek Hukum Perlindungan Anak dalam Perspektif Konvensi Hak Anak*, Bandung, P.T Citra Aditya Bakti, hlm. 101.

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End Children Prostitution, Child Pornography, and the Trafficking of Children for Sexual Purposes International (ECPAT International) provides a definition that commercial sexual exploitation of children is a fundamental violation of children's rights. The violation is in the form of sexual violence by an adult in exchange for a child, or a third person, or other people. Simply put, children are treated as sexual and commercial objects. It is the embodiment of forced labor and modern child slavery. This is because it is not uncommon for children who are forced to experience physical violence and trauma.

Aroma Elmina Martha defines sexual exploitation including sexual intercourse between husband and wife that is carried out without consent, rape, sexual abuse, sexual control over the right to produce offspring, and various forms of sexual manipulation (fraudulent acts) carried out by perpetrators (criminals) with the intention of causing physical suffering, emotional, sexual, and physical to others.

The basic difference between commercial sexual exploitation of children and sexual violence against children is the remuneration factor. This right is because in sexual violence against children there is no commercial advantage or even goodness, even though sexual exploitation is also violence. Through commercial sexual exploitation of children, a child is used for sexual purposes in order to obtain money, goods or services for the exploiters, intermediaries or agents and other people who benefit from the sexual exploitation of the child.

Article 66 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection explains that special protection for children who are exploited economically and/or sexually as referred to in Article 59 paragraph (2) letter d is carried out through:

- a. dissemination and/or dissemination of provisions of laws and regulations relating to the protection of children who are exploited economically and/or sexually.
- b. monitoring, reporting, and imposing sanctions
- c. involvement of various companies, labor unions, non-governmental organizations, and the community in eliminating economic and/or sexual exploitation of children

Article 2 of the UN Declaration on the Elimination of Violence against Women explains that violence against women is any act based on gender differences that results in or is likely to result in physical, sexual or psychological misery and suffering for women, including threats of certain actions, coercion or arbitrary deprivation of liberty, whether what happened in front of or in personal life. As for violence against children, it explains that every act aimed at children results in misery and suffering, both physical and psychological, whether it occurs in public or in private life.

Violence aimed at women (all ages) continues to occur everywhere. Violence can be perpetrated by people at every level of education, economy, culture, or religion. Basically, violence occurs due to world understanding that is still dominated by men (patriarchy) and women are only considered as second class human beings (second sex).

The weakness of women, including children, makes children easy to become victims of commercial sexual exploitation. The city of Semarang has data that the mechanism for recruiting girls to become victims of commercial sexual exploitation is through fraud (73%), coercion with violence (13%), debt bondage and regeneration or learning respectively (7%). Meanwhile, the forms of exploitation experienced by girls, as found by Suyanto, range from the obligation to take turns serving customers, perform oral sex, serve men whose genitals are pierced, become victims of sodomy and so on.

Children as victims of commercial sexual exploitation must be protected as Article 76 I of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection prohibits Everyone from placing, allowing, doing, ordering to do, or participating in exploitation, economically and/or sexually towards the Child. Article 88 states that Everyone who violates the provisions referred to in Article 76 I, shall be punished with imprisonment for a maximum of 10 (ten) years and/or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiahs).

Regulations regarding children as victims of commercial sexual exploitation are also contained in Article 1 point 7 of the Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of Criminal Acts of Trafficking in Persons, the article reads that exploitation is an act with or without the consent of the victim which includes but is not limited to prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, exploitation of physical, sexual, reproductive organs, or unlawfully removing or transplanting organs and/or body tissues or utilizing a person's energy or ability by another party to gain material benefits nor immaterial.

Article 2 paragraph (1) of the Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons also regulates the crime of commercial sexual exploitation. The article reads: Everyone who recruits, transports, shelters, sends, transfers or accepts someone with threats of violence, use of violence, kidnapping, confinement, counterfeiting, fraud, abuse of power or a position of vulnerability, debt bondage or gives payments or benefits despite obtaining consent from a person who has control over another person, for the purpose of exploiting said person within the territory of the Republic of Indonesia, 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).

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With regard to punishment or sanctions regarding commercial sexual exploitation crimes, it must be carried out to the fullest extent possible, not only to punish the perpetrators of crimes but to provide a deterrent effect so that in the future there will be no more similar cases. The punishment for the perpetrators of crimes (defendants) is not only in the form of imprisonment or fines but also in the form of accountability to the victim, namely in the form of restitution or compensation. The victim's right to restitution is regulated in Article 48 paragraph (1) and paragraph (2) of Law Number 21 of 2007 concerning the Crime of Trafficking in Persons, which states that every victim of the crime of trafficking in persons or their heirs has the right to obtain restitution. Restitution referred to here is the payment of compensation that is charged to the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or his heirs. The restitution is in the form of compensation for:

- a. loss of wealth or income
- b. suffering
- c. costs for medical and/or psychological treatment measures, and/or
- d. reimbursement of medical and/or psychological treatment costs

Legal protection for children as victims of commercial sexual exploitation is divided into three stages of legal protection, namely:

a. Legal Protection Prior to the Criminal Justice Process

This process is carried out, namely when a child is taken or reported to the Police, the child gets psychological protection. The Police handle child problems by delegating them to the Police Unit for the Protection of Children and Women. The unit has its own room that is comfortable and safe for children. This is in accordance with Article 22 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which explains that the State, Government and Regional Governments are obliged and responsible for providing support for facilities, infrastructure and availability of resources. human beings in the implementation of Child Protection.

Provision of a comfortable and safe space for children as witnesses and/or victims is also in accordance with Article 1 point 8 of the Law Concerning the Protection of Witnesses and Victims, that all efforts to fulfill rights and provide assistance to provide a sense of security to Witnesses and/or Victims must be implemented by the Witness and Victim Protection Agency (LPSK) or other institutions in accordance with the provisions of the law.

The process of conveying testimony made by children is carried out in a safe place and with parties who do not belittle children as witnesses and/or victims of commercial sexual exploitation. This is in accordance with Article 4 of the Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims which reads: witness and victim protection aims to provide a sense of security to witnesses and/or victims in giving statements in any criminal justice process.

The police carry out the protection of children by working with the Social Service for the Protection of Children and Women. The Office of Social Affairs provides facilities for child psychologists and legal counselors so that children get motivation and support. The Social Service for the Protection of Children and Women also provides orphanage facilities and provides skills such as reading, writing, sewing and cooking. Regarding victims who experience trauma and severe psychological pain, the Social Service for the Protection of Women and Children works with women's organizations to provide shelter facilities for victims.

b. Legal Protection During the Criminal Justice Process

Protection is a form of service provided to victims from law enforcement officials or security forces to provide a sense of security and comfort both physically and mentally, safe from threats of terror and violence from any party. Legal protection for children as victims of commercial sexual exploitation is carried out based on the accuser principle, namely carried out with a persuasive or persuasive approach, not using violence and prioritizing the rights of the examinee. This is given at the stage of investigation, investigation and prosecution and or examination in court.

1). Preliminary Examination

Preliminary examination consists of the stages of investigation, investigation, prosecution, preparation of indictments, as well as pre-trial.

a). Investigation Stage by Investigators

Article 1 Paragraph (5) of the Criminal Procedure Code formulates that what is meant by investigation is a series of investigative actions to seek and find an event suspected of being a crime in order to determine whether or not an investigation can be carried out according to the method regulated in this law. When the investigator carries out this process, the investigator does not use violent means but in a way that is safe for the child.

b). Investigation Stage by Investigators

The definition of investigation according to Article 1 Paragraph (2) of the Criminal Procedure Code is a series of investigative actions in matters and according to the methods regulated in this law to seek and collect evidence with which evidence makes clear about the crime that occurred and to find the suspect. Investigators carry out this process without intimidation and violence against children. Investigators also do not demean children as victims of commercial sexual exploitation so as to provide

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a sense of security for children. For the sake of this process and for the safety and welfare of the child, the child has the right to get a legal assistant so that the Social Service for the Protection of Children and Women provides a Legal Counselor.

c). Stage of Prosecution by the Public Prosecutor

Article 1 point (7) of the Criminal Procedure Code defines that prosecution is the act of a public prosecutor to transfer a criminal case file to the competent district court in matters and according to the manner stipulated in this law with a request to be examined and decided by a judge at trial. The public prosecutor actually transfers the case file to the district court without adding or subtracting from the testimony of witnesses or victims, in this case children.

2) Determination Stage

The determination stage is the stage where a criminal case is examined, tried, and decided by a judge in court

a). Examination at court hearings

Based on Article 152 of the Criminal Procedure Code, the District Court is of the opinion that if the letter of delegation of cases is included in its authority, the Chairperson of the District Court shall appoint a Judge who will hear it. The judge who is appointed to try, issues a Decision Letter whose contents determine the day of the trial and instructs the Public Prosecutor to summon the accused and witnesses to appear at the Court hearing.

The Head of the District Court appoints a Juvenile Judge to be able to hear cases of children as victims of commercial sexual exploitation. This stage also conducts examination of witnesses and victims, of course, for children as victims, it is carried out in a safe atmosphere for children. This is done by using informal language, so that children can understand and understand well.

For the sake of this process and for the safety and welfare of the child, the child has the right to get a legal assistant so that the Social Service for the Protection of Children and Women provides a Legal Counselor. Witnesses and Child Victims are given protection and treated accordingly by the Legal Counselor from the Social Service.

The District Court also provides legal assistants and a separate place for child victims to wait for the trial process to take place and convey their statements and testimonies. This is in accordance with Article 5 of the Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims and in accordance with Article 1 point 12 of Law Number 35 of 2014 concerning Amendments to the Law Number 23 of 2002 concerning Child Protection.

b) Proof Stage

The proof stage is a form of application of the principle of "presumption of innocence" which is formulated in point c of the general explanation of the Criminal Procedure Code, "Every person who is suspected, arrested, detained, prosecuted and/or presented before a court hearing, must be presumed innocent until there is a court decision stating his guilt and obtaining permanent legal force.

The process at the proving stage is not carried out formally and rigidly, but in language that children can understand. Judges and Law Enforcers also do not wear togas. The Criminal Justice process is also carried out to protect children by not uniting the room between perpetrators and victims.

c) Stage of Decision Making by the Judge

The Chief Justice of the trial declared the examination closed. The chairman of the trial/council stated that the examination was closed (Article 182 Paragraph (3) of the Criminal Procedure Code), so the Judge held a final deliberation to make a decision (Article 182 Paragraph (3) of the Criminal Procedure Code).

3) Implementation Phase

The implementation stage of this court decision is carried out after a criminal case has been examined, tried, and decided in a court session whose decision has permanent legal force (Incracht). Court decisions are carried out accordingly.

Regarding after the issuance of the decision, the victim can apply for restitution and compensation as the perpetrator's responsibility for the loss suffered by the victim which is in accordance with Article 7A of the Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. Submission of requests for restitution can be made before or after a court decision that has obtained permanent legal force through the LPSK.

Regarding the punishment for the perpetrators of crimes, the convict is punished according to the value of justice according to the trial judge. Then after that, victims can still choose to remain sheltered and live in an orphanage provided by the Social Service for the Protection of Women and Children. This is in accordance with Article 1 point 12 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which reads, "Children's rights are part of human rights that must be guaranteed, protected, fulfilled by parents, family, society, government and the State".

c. Legal Protection After the Criminal Justice Process

The Social Service for the Protection of Children and Women provides home facilities and provides skills such as reading, writing, sewing and cooking. Victims can request their rights to restitution and compensation as stipulated in Article 7A of Law of the

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Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

Submission of requests for restitution can be made before or after a court decision that has obtained permanent legal force through the LPSK. Regarding requests for restitution that are filed after a court decision that has obtained permanent legal force, the LPSK can apply for restitution to the court to obtain a stipulation.

The Social Service for the Protection of Women and Children returns the child to the parents and guardians. The return of the child is carried out in accordance with deliberation and consensus between the Social Service and the child's parents/guardians.

The judicial process involving children separates or does not bring children together with perpetrators of crime. If the child is going to give his statement to the judge, the judge will remove the perpetrator from the room first. This is done to reduce the mental stress of the child. Children in the judicial process must be accompanied by parents or companions because children are not yet legally competent. The judicial process involving children is carried out informally. Judges, prosecutors and the entire legal apparatus do not wear formal dress (toga) and do not use standard language. This is done so that the judicial process does not put pressure on the child mentally and psychologically.

Regarding children who get both material and immaterial losses, the perpetrator is obliged to replace it. This is done by means of the perpetrator paying compensation to the victim, for example if the victim has spent a lot of money for treatment and psychological consultation, the perpetrator must replace it with an agreed amount of money.

Children who are victims of sexual exploitation also often do not come from the jurisdiction of the crime scene (TKP) so it is difficult to contact parents. If the victim does not know the whereabouts of his parents or does not have parents, the Social Service for the Protection of Women and Children can provide a companion for the victim. Regarding the victim who does not wish to be accompanied or motivated by the Social Service for the Protection of Women and Children, the Social Service for the Protection of Women and Children is obliged to inform the parents and has the right to return the victim to the parents.

Providing companions to children in accordance with Article 5 paragraph 1 of the Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims which states that witnesses and victims have the right to:

- a. obtain protection for personal security, family, and property, and free from threats relating to the testimony that will be, is being, or has been given
- b. participate in the process of selecting and determining forms of security protection and support
- c. provide information without pressure
- d. got a translator
- e. free from ensnared questions
- f. Get information about the progress of the case
- g. receive information about court decisions
- h. obtain information in terms of the convict being released
- i. identity withheld
- j. got a new identity
- k. get a temporary residence
- l. got a new residence
- m. obtain reimbursement of transportation costs as needed
- n. get legal advice
- o. obtain temporary living expenses assistance until the protection deadline expires; and/or receive assistance

CONCLUSION

There are 2 (two) types of application and implementation of legal protection for children as victims of commercial sexual exploitation, namely concrete legal protection and abstract legal protection. Here's a brief description:

a. concrete

Concrete legal protection is usually legal protection that is provided directly by special institutions that deal with the smooth implementation of legal protection for children, one of which is the Women's and Children's Service. The following is the concrete protection provided by the Women and Children Service for children as victims of commercial sexual exploitation:

1. Helping to carry out the implementation of children's rights as victims of commercial sexual exploitation as stated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.
2. Protecting and accompanying children as victims of commercial sexual exploitation before the criminal justice process, during the criminal justice process and after the criminal justice process.
3. Protection is carried out by referring to the accuser principle, namely by means of persuasion, not by means of violence and prioritizing the rights of the examinee.

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b. Abstract

In abstracto protection for children as victims of commercial sexual exploitation is carried out in accordance with statutory regulations:

1. Fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, Article 24 paragraph (1), Article 28, Article 33 and Article 34 of the 1945 Constitution of the Republic of Indonesia
2. Criminal Code (Criminal Code)
3. Law Number 39 of 1999 concerning Human Rights.
4. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.
5. Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.
6. Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons

The government that handles cases concerning children must be able to work optimally, supported by equipment, sufficient space and even the maximum budgeted funds for child protection. The government should also build LPSK in each region to make it easier to get access to protection. Non-Governmental Organizations (NGOs) must also act to reduce and resolve cases related to children.

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