

## LEGAL PROTECTION OF CHILDREN VICTIMS OF PEOPLE TRADING THROUGH 'AWIG-AWIG' IN TIANYAR CENTRAL VILLAGE, KUBU SUB-DISTRICT, KARANGASEM REGENCY

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### ABSTRACT

*The crime of persons trafficking has become extra ordinary crime, as it grows nationally and internationally. The development of technology and information as one of the causes exploited by the perpetrators, the consequences are still difficult to be eradicated. The casualties caused more women and children, which impact on health both physically, mentally, psychologically, and vulnerable to violence, resulting in pregnancy, as well as HIV / AIDS. Factors that cause children to be victims of child trafficking are due to poverty factors with socio-economic limitations in addition, almost 60% of children do not have birth certificates, of which circumstances make it easier for predators to disguise the child's own identity. Child trafficking occurs in addition to involving parents, neighbors as intermediaries, as well as the role of formal and informal figures from which the children helped facilitate the processing of work permit letters. The child in such circumstances, obviously cannot enjoy the peace, happiness, dignified right of life, free from the dangers that threaten him. For that, children need to get protection because they are not mature physically, mentally and socially. Indonesia through Presidential Decree No.36 of 1990 ratified the Convention on the Rights of the Child related to exploitation, trade, prostitution, hunger, illiteracy, conflict that befell children. Consequently, legal products related to children should refer to the Convention on the Rights of the Child. Law No.21 of 2007 on Persons Trafficking, Articles 43-55 which regulate the rights of victims, but is intended for adults and non-children. As a result, the implementation of the Act to protect children is not maximal, even though the perpetrator has been charged with criminal sanction and fine. It is deemed necessary to regulate substantive forms of protection in the form of a regulation or "awig-awig" (customary law), which apply only to a society that has been subject to the regulation/awig-awig.*

Keywords: Legal Protection, Child Victim, Trafficking, Awig-awig

### INTRODUCTION

Children are the trust and grace of God Almighty who have the dignity as a whole person, become the foundation of future hope for the nation, state, society and family. For that, children need to get the widest opportunity in order to grow and develop optimally both physically, mentally, and socially. Therefore, the state, government, community, family, and parents are obliged to provide protection and guarantee the fulfillment of child rights in accordance with their duties and responsibilities.

Currently, it is estimated that as many as 100 thousand children are trafficked every year that the majority women and the biggest problem that causes the trafficking of children so big is still caused by economic factors. In Indonesia, not a few children are forcibly employed in some companies, and the most are in the gold, foot-ware, and tobacco industries (Liputan6.com). Reports from the United States Department of Justice mentions that nearly 40% of children work out of their desires (US Department of Justice, 2006). That means, the child works in forced circumstances, or even an element of violence in children.

The case that occurred in Central Sulawesi, a mother by selling her own child of 7 months with the price of five hundred thousand rupiah, because it was just as an intention to fulfill the desire of his parents to have a tape recorder. The case of such a child is only one of the many problems of child trafficking in Indonesia. The result is certainly contrary to Law No.39 of 1999 on Human Rights in Article 4 namely "the right to life, not to be tortured, personal freedom, thought and conscience, the right not to be enslaved". The government is certainly obliged to provide good protection through surveillance, preventive protection, care and rehabilitation.

Indonesia has issued Law No.21 Year 2007 on the Eradication of Trafficking in Persons with the objective of being able to reduce the number of crimes of trafficking in persons and or to be able to penalize any acts which aims at exploitation. The law however does not seem to accommodate child trafficking yet, nor does it clearly contain the meaning of child trafficking, which is substantially different from that of trafficking. This is certainly influential in the effort to eradicate child trafficking, while on the other hand, the complexity of the problem of child trafficking in relation to the fulfillment of the rights both inherent in the child's self, as well as in obtaining education, growing and developing, and getting protection. Such circumstances occur in children in the village of Central Tanyar, Kubu sub-district, Karangasem regency, because in certain seasons children can disappear for 1 (one) month from the village, to find work both as beggars and as laborers. Such circumstances necessarily jeopardize the safety of children from trafficking in persons, and when associated with the Law No.21 of 2007 on Trafficking in Persons, children are not protected, because the law only regulates the rights of victims destined for person adults and not for children, where as children's rights are very different from adults. This certainly affects the implementation of Law No.21 of 2007 on Trafficking in Persons.

### II. PROBLEMS

Based on the above description, two research questions are formulated:

1. Why children are the victims of people trafficking?
2. What is the effective form of protection against children in preventing the commission of people trafficking?

### III REVIEW REFERENCES

#### a. Legal Protection Against Children As Victims

Child-related legal protection is the protection of human rights, as well as the best interests of the child as provided for in the law. As Law No.35 of 2014 on Child Protection that regulates the protection of children's rights, including violence, exploitation, discrimination, and neglect, thus it becomes a legal umbrella in providing protection for children.

The imposition of sanctions against perpetrators who intentionally engage in intercourse, fornication or trafficking, selling or kidnapping, including transplantation of organs in the interest of themselves or others, shall be sentenced to a maximum of fifteen years and or a fine of not more than two hundred million rupiah. However, the imposition of such sanctions, in fact, has not been able to provide protection for children, because the Law No.21 of 2007 on People Trafficking, does not regulate legal protection when the child becomes a victim, consequently the imposition of a criminal against the offender is not in accordance with the sense of justice.

The Convention on the Rights of the Child expressly stipulates "a child is a person who is not yet 18 years of age, including a child still in the womb" (United Nations Children's Fund, Convention on the Rights of the Child, Resolusi PBB, No.44/25, 20 November 1989). Because of the child who in his soul is still unstable, and very easily affected by the environment (Kartono, 1981). According to Muladi, it is important to be given protection when children become victims in an effort to restore balance through enhancement of services, regulation and granting of rights, and conflict resolution (Muladi, 1997). Victimization is psychological suffering, and powerless (Irfan, 2001). Therefore, the child becomes the most difficult victim to be recovered, because of the acute suffering of trauma, and his future will be destroyed because of the incident that continues to haunt, which is the impact on his soul become unstable, it is difficult to forget what has been experienced, because his tranquility has been taken away (Irfan, 2001).

#### b. Crime of Child Trafficking

The Convention on the Rights of the Child is one of the human rights documents, which include child trafficking as one of the issues that must be prevented, set forth in Article 35, namely "participating countries will take national, bilateral and multilateral measures to prevent the abduction, sale or trafficking of children, for any purpose or in any form (Nuraeny, 2011). "For to achieve this, the Optional Protocol to the Convention on the Optional Convention on the Rights of the Child on the Sale, Prostitution and Child Pornography) which in Article 2 point a mentions" trafficking in children is any act or transaction of any kind transfer by persons or groups to persons or other groups with any lucrative purpose or any other consideration" (Nuraeny, 2011).

Indeed, child trafficking is a major problem because it can endanger children both physically and psychologically, because when the child becomes a victim, the child is vulnerable to exploitative work, being forced to work to support the family economy, but from the point of skill it is still very low, resulting in low wages received. In addition, child trafficking may occur due to fraud, execution, threats, exploitation, and treatment to victims like commodities that may be traded (Suyanto, 2003;49).

Law No.35 of 2014 on Child Protection, in Article 68 paragraph (2) stipulates that "everyone is prohibited from placing, letting, ordering or taking part in the abduction, sale or trade". Similarly, UNICEF encourages lawmakers to act more firmly against all activities related to trafficking in children because it involves the fate of children who are victims.

#### c. Understand and Function of "Awig-Awig"

Awig-awig is a rule made by *krama desa pakraman* (members of traditional village) and or *krama banjar pakraman* (members of traditional sub-village) used as a guide in the implementation of *Tri Hita Karana* (the harmony among members of the village, human to nature, and human to God), in accordance with *mawacara* (tradition agreed) village and religious *dharm*a in *pakraman village* or *krama banjar pakraman* respectively. Awig-awig has a strategic role because in addition to solving the problems that occur in the village of pakraman/banjar, (Fakultas Hukum dan Pengetahuan Masyarakat Universitas Udayana, Denpasar, 1970) also *awig-awig* created to regulate the life of the villagers in creating peace within the village. Awig-awig was born from the agreement of the villagers of *pakraman/banjar*, taken consciously and voluntarily by the community, with no voting system, but a deliberation to reach agreement, so that the value of this agreement is the key to the implementation of the *awig-awig*, which only binding on indigenous villages where the awig-awig was agreed upon.

### DISCUSSION

#### Factors of Child Trafficking

Child trafficking is generally committed by violating human rights, including the dignity of the child. The most favorable factors of child trafficking are the demand for jobs in the informal sectors that do not require special skills, and are willing to pay relatively low wages (Nuraeny, 2011;110). Trafficking uses the modus operandi ranging from persuading, deceiving, even by exploiting the vulnerability of children and their parents, and the most dominant trigger is the factor of poverty.

Poverty originally stemmed from the demand for the fulfillment of basic needs in society, and ended in the non-fulfillment of basic rights, so that child trafficking is no longer as a common crime, but has become an extraordinary crime. Data obtained from the Village of Central Tianyar, Kubu Sub-district, Karangasem District, in the care of *awig-awig* management on child protection, almost all children in the village are not educated, if they are educated it is only until primary school. Such a situation, obviously, affects limited socioeconomic circumstances, and may encourage exit from a limited state. So that money

and poverty are the main factors, for the reason of not being able to support the children continue their education, because they have many children, entangled in debt, young married parents / divorced. In such circumstances, in order to get a lot of income and quickly, parents themselves who actually deliver their children to intermediaries or brokers to find jobs both in the city and where else. It is related to the social control theory of Travis Hirschi who holds that "a person becomes good or evil, depending on his community, in particular the power of attachment or relationship between parent and child, in the case of the parental ability to refrain from committing a crime, affect the relationship between parents and children" (Sahetapy, 1992;20).

Other factors, almost all children in the Village of Central Tianyardo not have birth certificates, so automatically the child is not registered in the state documents. Such limitations make it easy for child predators to disguise the child's own identity.

#### **Efforts for Legal Protection through "Awig-Awig"**

Based on the trafficking cases occurring in Indonesia, it can be identified that the modification of child trafficking are in the form of prostitution, pornography, sexual exploitation, kidnapping, child labor, and adoption. In trafficking the most affected people are children and women, who will be at risk with their health, and very vulnerable to violence, unwanted pregnancy, sexually transmitted infections (HIV/AIDS). Because it has become a government obligation to attempt to prevent, overcome and even combat trafficking of children.

Government officials in the Village of central Tianyar, Kubu Sub-district, Karangasem District, through *Bendesa Adat* (customary village head), have been trying to provide protection to their community, especially children, in order to prevent the exploitation of children by formulating preventive efforts in the *awig-awig* owned by the village. This is in line with Rosco Pound's view in his theory of "law as a tool of social engineering" that legislation and criminal law enforcement should aim to change the mindset of every society to anticipate and overcome the increasingly complex patterns of crime (Kristian, 2017;133).

The purpose of the formulation of efforts to prevent the occurrence of child trafficking is, to protect children in order that parents do not sell their children just because of very limited economic factors. It has been formulated by adding four additional articles related to child trafficking. A number of such articles are (1) to regulate "the existence of women and children in the family shall be maintained and protected by all family members", (2) stipulates that "the citizen shall be obliged to protect the woman and child, or raping women and children in both physical and non-physical forms. In more detail mentioned among other things that the prohibition of harmful acts that are in the form of: not rape, do not order to do abortion, not marriage in the too incest blood relationship, such as cases of parents with step children, deeds not care or not pay attention to women and children in the family, (3) professing "parents, community and teachers are obliged to give encouragement and give opportunity for children to study for at least nine years according to government program", and (4) to set marriage age limit that is "marriage allowed done when the male has a minimum age of 19 years and a woman aged 16 years ". Furthermore, if a number of articles are violated, then the parents will be sanctioned in accordance with the village decision as arranged in the *awig-awig*.

The addition of the article in the *awig-awig* is done because of limited public understanding of the substance formulated in the applicable National Act such as Law No.21 of 2007 on Trafficking in Persons, Act No.35 of 2014 on Child Protection, and others. So to anticipate that children in the Village of central Tianyar become victims of child trafficking, it is arranged in the *awig-awig* applicable within the village. Because every Indigenous village in Bali, it is very respectful of the existence of *awig-awig* that has been owned and applied in every village, considering the sanctions are more binding and better known, even very feared by the community. On the basis of that, it is appropriate that the protection of children from people trafficking is set up in *awig-awig* in order to anticipate that children in Village of central Tianyar are not victimized by trafficking crimes.

#### **Conclusion**

1. The crime of trafficking in children, the modus operandi often uses fraud, and the seduction done by predators against children. For the village of central Tianyar, Kubu sub-district, Karangasem regency, the cause of child trafficking is due to the inadequacy of children and their parents, caused by the limited of education that is only up to elementary school education, in addition to money and poverty factors, from the community opens job opportunities in the village. As a result many children have to get out of their village with limited ability possessed into seasonal laborers in an uncertain period of time and with low wages.
2. Effective efforts to prevent child trafficking in the Village of central Tianyar, Kubu Sub-district, Karangasem Regency is to formulate four articles in the *awig-awig* already owned. Because through the formulation in *awig-awig*, Adat village residents more easily understand the substance of child trafficking crimes, compared with the substance of the national law. Besides that, with *awig-awig* felt by its citizens is more binding when violated. On the basis of that, it is precisely the people of Village of central Tianyar have listed in their village *awig-awig*, the prohibition of children trafficking, as an effort to protect the law against children.

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