



UN Palermo Protocol's Implementation on the Legal Protection of Street Children Trafficked in Indonesia

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Abstract

Introduction to The Problem: As one of the countries which ratified the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, Indonesia recognizes the protection of child trafficking. However, the activity of child trafficking is still rampant throughout Indonesia.

Purpose/Objective Study: Hence, this research aims to analyze further the implementation of the UN Palermo Protocol on the legal protection of street children trafficked in Indonesia.

Design/Methodology/Approach: The research was normative legal research method or qualitative legal research.

Findings: According to the findings of the study, as part of the implementation of the UN Palermo Protocol, Indonesia has made significant efforts to combat human trafficking crime through multilateral agreements and cooperation, the establishment of some related services, and the enactment of numerous legal products. Despite the fact that many efforts have been made by Indonesia to address the crime of child trafficking, the law enforcement on the crime of human trafficking in Indonesia is still inadequate. There are still many children on the street who are victims of human trafficking. As a result, we propose that the government enact a specific law or a special supervision system to combat the trafficking of street children in Indonesia.

Paper Type: Research Article

Keywords: Street Children; Human Trafficking; Indonesia; UN Palermo Protocol

Introduction

Indonesia is one of the countries that agreed and promised to implement one of the supplementary of the Palermo Protocol entitled United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. This



protocol is intended to increase and expand international collaboration in preventing and combating human trafficking, as well as to improve victim care and assistance. This protocol is a broad multinational agreement to combat human trafficking on a global scale. It develops a worldwide framework and regulations to describe human trafficking, particularly that of women and children, to aid victims of human trafficking, and to combat human trafficking. It also provides the conditions for judicial cooperation and information exchanges among countries. Hence, Indonesia has successfully ratified this protocol through the Law No. 14 of 2009 concerning the Ratification of Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.

According to the Walk Free Foundation's World Slavery Index, Indonesia ranks eighth out of 167 countries in terms of the occurrence of modern slavery or human trafficking (Putri & Arifin, 2019). Moreover, approximately 714 thousand Indonesian people were recorded to be victims of human trafficking in 2014 (Putri & Arifin, 2019). As of 2018, there were a total of 329 human trafficking and exploitation cases. From 2005 to 2017, female victims were the most common victims of human trafficking, followed by children, who accounted for 15% of all victims (Takariawan & Putri, 2018). The phenomena demonstrate that human trafficking, particularly child trafficking, is still prevalent throughout Indonesia.

Further, according to various studies and reports from various non-governmental organizations, Indonesia is still a source area for trafficking. In this case, Indonesia serves as both a route and a target country for human trafficking. At least ten Indonesian provinces were identified as sources, sixteen as transit points, and at least twelve as recipients (Afifah & Yuningsih, 2016). Based on the data obtained by the Indonesian Child Protection Commission (KPAI), cases of child trafficking increased from 2010 to 2012 (Fadilla, 2016). Furthermore, the table below show the data gathered from Indonesian Child Protection Commission (KPAI) for Child Trafficking and Exploitation cases which were known and successfully granted protection during the last six years in Indonesia (Komisi Perlindungan Anak Indonesia, 2021).

Table 1. Successful Child Trafficking and Exploitation Cases in Indonesia

No.	Year	Child Trafficking and Exploitation cases in Indonesia
1.	2021	234
2.	2020	149
3.	2019	244
4.	2018	329
5.	2017	347
6.	2016	340



Human trafficking is a heinous crime that subjected the perpetrator to psychological, emotional, physical, cultural, economic, and social torment, and it is a violation of human rights (Kusuma, 2015). Human trafficking is a widespread method of slavery that includes forced labor, sexual slavery, and other types of exploitation (Solim, 2019). Human trafficking poses a major challenge to society, the country, and the state, as well as to basic life norms, including human rights. As a result, sex trafficking is vulnerable, especially for women and children. Children are one of the potential human capitals as the heirs to the nation's values. Kids, as members of the younger generation, need security and instruction to ensure full and healthy mental, physical, social, and emotional growth and development. Human trafficking against children would undoubtedly have an effect on growth and development, resulting in unfulfilled basic needs and violations of children's rights.

For more than a decade, the growing issue of human trafficking in numerous countries has piqued the interest of the international community, including Indonesia. The promise of security and enforcement of children's rights is embodied in the 1945 Constitution as well as other clauses of national and international law. Article 28B paragraph 2 of the 1945 Constitution specifies that "every child has the right to live, grow, and create, as well as the right to be shielded from abuse and discrimination." This guarantee is also provided by the ratification of international conventions on children's rights, namely by Presidential Decree No. 36 of 1990, which ratified the Convention on the Rights of the Child.

Thus, the authors write this research to further analyze how does the implementation of the UN Palermo Protocol on the legal protection of street children as victims of human trafficking in Indonesia for the last three years. The writer undertook normative analysis in this study. Therefore, the study focused on the library (literature) research and relied on reading content. The qualitative analysis approach was used in this article.

Methodology

The method used in this writing is normative legal research. Normative legal research method or qualitative legal research is usually knowing as a study of documents, which use secondary data as its source, such as court decision, doctrines, regulations, legal theory or official documents, book, reports, and journals. The statutory approach was used in this research. The statutory method is used to examine the application of the UN Palermo Protocol on the protection of street children trafficked in Indonesia. The data is gathered by the examination of research items such as books, articles, and regulations.



Results and Discussion

Literature Review

Street Children

Children are the nation's future generation, whose survival must be ensured by the government. According to Ennew, the Inter-NGO Program for Street Children and Street Youth made the first attempt to identify street children in 1983, describing street children as children for whom the street, rather than its homes, has become true home, with little shelter, treatment, or direction from responsible adults (Hassen & Mañus, 2018). In general, the word "street children" refers to one of the street children. However, there are other words, such as "working children," "homeless children," and "displaced children" (Mapp, 2014). Recently, the word "street-connected children and youth" has been coined to characterize people who spend a significant amount of time on the street in everyday lives (Embleton et al., 2016).

Hence, according to several legal experts, street children can be divided into three groups, namely (Sugianto, 2013):

- a. Children on the road
Children on the street are divided into two categories, those who are just on the street for a brief time and those who live on the street.
- b. Children of the road
Children who grow up on the sidewalks, spend all of the time on the streets, do not have a family, and others do not know its families fall into this group.
- c. Vulnerable to be street children
Vulnerable to being street children refers to street children who have the opportunity or are at risk of becoming abandoned children. This suggests that such children if do not watch and foster would be ignored, increasing the likelihood of them becoming street children.

The phenomenon is also in line with the description by the United Nations Children's Fund (UNICEF). UNICEF divided street children into four categories, that is (Hai, 2014):

- a. Children at risk
Children at risk make up the most of this category. It refers to the children of the urban poor, who serve as a reservoir for street children.
- b. Children of the street
It applies to children who mostly live on the streets. Family relations may remain, but distant, and such children visit its former home only infrequently.
- c. Children on the street
Because of the families' acute hardship, children on the streets come to augment its families' incomes by working on the streets. Such children will return off to its homes at the end of the day. Essentially, these children polish shoes, wash and maintain cars, sell magazines and newspapers, and transport merchandise. This

kind of children may become one, though, not only as a result of extreme poverty, which has a financial impact on such communities, but also as a result of pressures, stress, or even crime.

d. Abandoned child

This type is somewhat similar to street children. In the UNICEF typology, it is a subcategory of the street child including orphans, runaways, migrants, and those who have no interaction with substantial caregivers.

Street children are one of the social phenomena that must be considered. Due to the living conditions on the streets, street children are vulnerable to danger and abuse, such as collisions, robbery, and so on. According to UNICEF, the precise number of street children is difficult to determine, although it is estimated to be in the tens of millions globally, with the number expected to rise as the global population increases and urbanization accelerates (Adeyemi, 2012).

The growing number of street children often inspires pessimistic attitudes in society. Not only do street children lack basic needs, but often oppressed against and abused by the community as well (Ahmed, 2018). Since culture assumes that street children are more likely to commit offenses, street children are often evicted from one area to another. As a result, street children should be constitutionally protected. The State and community have a significant impact on resolving this trouble.

Human Trafficking

Human trafficking is known as a business activity, organized crime, cybercrime, and transnational crime (Solim, 2019). Aside from the word “human trafficking,” another term for such activity associated with the economic abuse of individuals is “trafficking in persons” and “modern slavery” (Burke, 2017). This crime has existed since ancient times and is known as contemporary slavery because it is a practice of slavery that has evolved over time.

The Trafficking Victims Protection Act (TVPA) of 2000 describes human trafficking in two forms at the most specific level (Redmond, et al., 2022). The first is human trafficking, which is described as the recruiting, harboring, shipping, providing, or receiving of an individual for labor or services by the use of force, deception, or intimidation for involuntary servitude or slavery. The second concept of human trafficking is sex trafficking, which happens when a contractual sex act is caused by force, deception, or bribery, or when the person coerced to do sex acts is under the age of 18. After several countries adopted it, this Trafficking Act became the most critical international anti-trafficking tool to date, resulting in the gradual creation of a remarkably uniform anti-trafficking system worldwide (Shamir, 2012).

Meanwhile, human trafficking is described in Article 3 of the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, as “the transportation, relocation, recruitment, concealment, or adoption of another by threats or the use of force or coercion, such as kidnapping, fraud, or abuse of power,



or the receiving or distribution of rewards in order to obtain consent from control holders over others for exploiting purposes.”

As a result, we can assume that the characteristics of human trafficking are as follows (Moeri & Chrisna, 2016):

- a. Actions that include recruiting, transporting, moving, hiding, or receiving.
- b. Threatening people, using intimidation, different acts of assault, kidnapping, theft, stealing, abusing authority, or giving/receiving bribes or profits in order to gain consent from the individual in charge of the victim.
- c. Pursues exploitation, trafficking, or other forms of sexual exploitation, as well as slave labor, debt, subservience, and organ harvesting.

Nowadays, various governments have adopted anti-slavery or anti-trafficking legislation, and some legislatures, including Indonesia, have developed specialist anti-slavery agencies and taskforces (Brysk & Choi-Fitzpatrick, 2012). In Indonesia domestic law, the definition of human trafficking is stated in Law No. 21 of 2007 that is the act of hiring, detaining, transferring, delivering, traveling, or receiving anyone with threats of assault, incarceration, abduction, theft, forgery, misuse of authority or place of dependence, servitude, or transfer funds or benefits to gain the consent of a power holder over the other individual, throughout or even between countries, in order to manipulate people.

UN Palermo Protocol and its Relation to Child Trafficking

International agreements are often used by the international community to regulate specific topics. Such term also used the formal expression ‘treaty.’ However, it may also be in other given names, such as the word ‘convention.’ A human being is born free and equal in dignity and democracy. This is governed by the product of international human rights law, particularly treaties. Children have four basic rights, according to the Convention on the Rights of the Child: the right to live, the right to grow and develop, the right to contribute, and the right to be safe (Fitri et al., 2015).

Children, along with women, are the world’s most vulnerable victims of human trafficking. As a result, such individual is entitled to protection. The UN Protocol on Prosecuting, Punishing, and Preventing Human Trafficking is now in place, allowing the international community to prosecute, punish, and prevent human trafficking. In December 2000, 148 countries met in Palermo, Italy, for the United Nations Convention against Transnational Organized Crime (Jérôme, 2015). Among the 148 countries that signed the new UN Convention, 121 signed it, while more than 80 signed another additional protocol, the United Nations Protocol aims to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. This anti-trafficking protocol was named or known as the United Nations Palermo Protocol (Allain, 2015).

This Protocol is the culmination of two years of talks at the UN Centre for International Crime Prevention in Vienna. This Protocol is intended to supplement



the UN Convention against Transnational Organized Crime. Its goal is to defend and support victims of human trafficking while also ensuring that the human rights are completely protected (Belloh & Olutola, 2022). According to Article 2, “the purposes of this Protocol are (a) to prevent and fight against human trafficking, with special emphasis on women and children, and (b) to protect and assist victims of such trafficking, with full respect for human rights; and (c) to encourage cooperation among States Parties in order to achieve those goals.” This protocol encourages every country that participates in this convention to establish the necessary steps to prosecute, punish, and prevent human trafficking, particularly for women and children, by introducing the idea of the “3P” model of modern slavery prevention, victim care, and prosecution efforts (Hakim & Rahman, 2016).

Implementation of UN Palermo Protocol on Protection of Street Children Trafficked in Indonesia

Indonesia now has a series of laws in order to ensure that children's rights are protected, prospered, and fulfilled. Prior to ratifying the Convention on the Rights of the Child, Indonesia ratified Child Welfare Law No. 4 of 1979 (Sukadi, 2013). However, this law is insufficient to protect children. Then, in 1990, Indonesia ratified the Convention on the Rights of the Child through Presidential Decree No. 36. Further, Indonesia passed Law No. 3 of 1997 on Juvenile Courts and Law No. 23 of 2002 on as amended into Law no. 35 of 2014 concerning Child Protection. Hence, Indonesia is one of the countries that agreed and promised to follow through on the Palermo Protocol. One of these three protocols is one to deter, prosecute, and punish human trafficking, especially of women and children (named United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children).

Indonesia ratified it successfully through Law No. 14 of 2009 on Ratification of Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. After signing the Protocol, Indonesia took nine years to ratify it. Furthermore, many laws have been enacted in Indonesia to support the regulation of this issue. Among all the legal instruments in Indonesia, Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, abbreviated as UUPTPPO or “PTPPO Law,” is in force. The enactment of the PTPPO Law in Indonesia focuses on civil safeguards for victims of human trafficking.

In general, this law provides a legal foundation and guidelines for the government and society to follow in order to eliminate human trafficking. Witnesses and/or victims of the illegal act of human trafficking have the right to anonymity under Article 44 paragraph (1) of this statute. Which is in accordance with Article 6 of the Palermo Protocol of the United Nations on the Support and Security of Victims of Human Trafficking and the Law No. 14 of 2009 concerning the Ratification of Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children



in Indonesia. It is stated that “in appropriate cases and to the extent permitted by domestic law, each State Party shall protect the privacy and identity of victims of human trafficking, including, inter alia, by initiating legal proceedings relating to such trafficking confidential.”

Human trafficking victims in Indonesia are protected by this PTPPO Law also. There are several rights of victims of human trafficking protected in this Law, namely the right to protection of secret identities, the right to health rehabilitation, social rehabilitation, rehabilitation of return and rehabilitation of integration, and the right to get restitution or the right to compensate for anything that has harmed them, whether it is physical and economic. Syapriyani concludes in her paper that this PTPPO Law divides the procedural provisions for the defense of children who are victims of human trafficking into three stages: protection at the time of the crime, the trial stage for the criminal offender, and the stage following a court decision. The description of the three stages is (Syapriyani, 2020):

- a. At the time of the illegal act of human trafficking, the stage of protection includes the threat of punishment for anyone who knows about and intentionally abandons economically and/or sexually abused minors, children who are trafficked.
- b. The stage of protection at trial for the perpetrators of the illegal act of human trafficking.
- c. The post-trial stage is the granting of the right to submit to the court in the form of restitution rights, which are the perpetrator’s responsibility.

Hence, the claimants will receive some restitution in matters related to granting restitution and justice to victims of crime under this PTPPO Law. The provision of legal protection for victims of trafficking in persons, in particular, restitution issues, have been regulated in Article 48 to Article 50 of Law Number 21 of 2007 also regulated in Article 35 of Law Number 26 of 2000 concerning Human Rights Courts, which governs the protection of human social welfare.

This PTPPO Law also mandates the formation of a Task Force to ensure the implementation of this law, which was realized in 2008 with the issuance of Government Regulation No. 69 of 2008 concerning the Task Force for the Prevention and Handling of the Crime of Trafficking in Persons (Wuryandari, 2016). Further, the existence of this Government Regulation was also strengthened by the issuance of Government Regulation No. 9 of 2008 concerning Integrated Service Procedures and Mechanisms for Witnesses and or Victims of the Crime of Human Trafficking.

Furthermore, besides ratifying the Palermo Protocol into Indonesian law, Indonesia takes other necessary steps to combat human trafficking, particularly of children. According to Article 9 paragraph (1) of the Palermo Protocol which was ratified into the Law No. 14 of 2009 concerning the Ratification of UN Palermo Protocol in Indonesia, “States Parties shall establish comprehensive policies, programs, and other measures to prevent and combat human trafficking; and to protect victims of human



trafficking, particularly women and children, from victimization.” Hence, as part of the implementation of this international agreement, Indonesia is also actively working to eliminate human trafficking.

Indonesia takes an active role in preventing and eradicating human trafficking, particularly among children, not only at the international but also at the regional cooperation levels. Efforts to eradicate and prevent human trafficking are carried out through ASEAN (Association of Southeast Asian Nations) cooperation by holding several agreements. This is in accordance with Article 9 paragraph (4) of the Law No. 14 of 2009 as well as the Palermo Protocol, which states that “States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to reduce the factors which make people especially women and children, vulnerable to human trafficking, such as poverty, underdevelopment, and the absence of equal opportunities. ”

To address this issue, ASEAN has been discussing and paying attention to Transnational Organized Crime, including human trafficking, since the early 1990s. One of the initiatives is the creation of the Treaty on Mutual Legal Assistance in Criminal Matters (ASEAN MLAT). This treaty can provide a legal aid mechanism to combat transnational organized crime in a region where ASEAN member countries can help each other with requests for data, evidence, and testimony for criminal investigations and proceedings.

Further, Indonesia, along with the other ASEAN members, developed a Plan of Action to Combat Transnational Crimes (ASEAN-PACTC) in 2002, recognizing that human trafficking as one of eight transnational crimes, and promise to collaborate to address this issue ([Wuryandari, 2016](#)). ASEAN also has held several meetings and made legal instruments related to this matter, such as the ASEAN Declaration Against Trafficking in Persons, Women and Children 2004, the Leaders' Joint Statement on Strengthening Cooperation in Anti-Trafficking in Persons in Southeast Asia 2011, the ASEAN Declaration of Human Rights in 2012 and the latest ASEAN Convention against Human Trafficking. Especially the Number of Women and Children (ACTIP) in 2017.

ACTIP was established to create a regional instrument that specifically addresses the issue of human trafficking. Indonesia ratified this convention in 2017 through Law No. 12 of 2017. The aim of this convention, according to Article 1, is to effectively deter and fight human trafficking, especially for women and children, as well as to ensure effective and equal punishment for traffickers, to preserve and help victims of trafficking to completely support the human dignity, and to increase collaboration between the entities to achieve this goal.

As an essential institution for law enforcement in Indonesia, the Police of the Republic of Indonesia (POLRI) also plays a role in bringing human trafficking cases to court. POLRI even collaborated with IOM (International Organization of Migration) in the form of an MoU (Memorandum of Understanding) to resolve this dispute, which



includes training, outreach, legal counseling, and assistance for victims (Darmastuti et al., 2015).

Hence, in an effort to embody the Palermo Protocol's Article 9 paragraph (3), which stated that "policies, programs, and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations, and other elements of civil society," Indonesia establish some services. The government is raising care accessibility for victims of human trafficking by establishing Integrated Service Centers in public hospitals. There is also an increasing number of non-governmental organizations and community organizations that have established crisis centers for children and women.

Thus, human rights are the responsibility and obligation of every country to guarantee and protect every citizen through its apparatus. Human trafficking, as one of the many abuses of human rights, must be addressed. Therefore, the State must use all of its resources to prevent, respond to, and share responsibility for victims of human trafficking, particularly street children who have no home or family. It is the government's responsibility to enforce the right to protection.

Based on data from the Ministry of Social Affairs taken from the SIKS-NG Application Dashboard as of May 26, 2021, there are 9,113 street children in Indonesia (Pusat Penyuluhan Sosial, 2021). However, the data gathered from Indonesian Child Protection Commission (KPAI) below shows only a small number of various kinds of street children that were successfully granted protection as a victim of Child Trafficking and Exploitation cases in Indonesia (Komisi Perlindungan Anak Indonesia, 2021).

Table 2. Various Kinds of Street Children Granted Protection in Indonesia

No.	Year	Abandoned Children with Social Welfare Problems	Abandoned Children	Begging Children	Children on the Road	Homeless Children
1.	2020	71	20	6	7	4
2.	2019	159	62	16	30	15
3.	2018	152	63	17	19	13
4.	2017	144	67	16	22	15
5.	2016	90	47	13	21	17

Comparing the data of successful street children which granted protection with the data of the number of street children in Indonesia, it is observed that only a small number of street children that were successfully granted protection by the government but only after such trafficking and exploitation cases happened. There



are still several reports of human trafficking to this day, with street children being the common victims. This means that despite the fact that there are many legal products in Indonesia to address the crime of child trafficking, including the ratification of UN Palermo Protocol, the fact remains that the law enforcement on the act of human trafficking in Indonesia is still inadequate. There are still many children, particularly street children susceptible as victims of human trafficking. Moreover, in Indonesia, the legal instrument only regulates the protection of children under the care of a parent or guardian; there is no specific provision that explicitly provides protection for street children. As a result, this problem may exacerbate the trafficking of street children, and such children will go undetected because the State does not provide adequate protection. Thus, the abandoned child as well as children on the street should be protected by the State.

Conclusion

The research found that children had protection rights under the Convention on the Rights of the Child. Thus, guardians and the state must protect children. Indonesia ratified the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children (known as the "UN Palermo Protocol") into its national law, Law No. 14 of 2009. Indonesia has implemented this treaty by signing multilateral agreements, creating related services, and passing many laws to combat human trafficking. Indonesia has made several attempts to address child trafficking, but there is no specific provision that protects street children, so law enforcement is still inadequate. Human trafficking still targets unidentified street children. Even though Indonesia ratified the UN Palermo Protocol and passed Law No. 14 of 2009 on the Ratification of Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, human trafficking enforcement is still lacking. Indonesia does not explicitly protect street children. This is a major issue because it may lead to more street children being trafficked and going unnoticed because the state does not provide more protection. Thus, street children should have been protected by the state, according to the authors. Thus, the authors recommend a law or strict supervision system to combat street child trafficking in Indonesia.

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Declarations

Author contribution : Author 1: initiated the research ideas, instrument construction, data collection, analysis, and draft writing; Author 2: revised the research ideas, literature review, data presentation and analysis, and the final draft.



Author 3: Literature review, data presentation and analysis, and the final draft.

Author 4: revised the research ideas, literature review, and the final draft.

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