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Sexual Exploitation in Child Trafficking (Case Study Decision Number 29/Pid.Sus/2019/PN.Tim and 311/Pid.Sus/2021/PN.Pol)

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ABSTRACT

The purpose of writing this article is to explain the judge's considerations in deciding the practice of sexual exploitation in the crime of child trafficking based on court decision number 29/Pid.sus/2019/PN.Tim and Decision Number 311/Pid.sus/2021/PN.Pol. This decision provides a clear picture of the continued practice of trafficking children for sexual exploitation in Indonesia. The practice of trafficking children for sexual exploitation occurs because the victims are still minors so their minds are not yet perfect in making decisions and following up on what they have experienced. This is what exploiters take advantage of. The facts revealed at trial are of course the basis for judges in examining and deciding exploitation cases. Writing this article uses a normative juridical approach with a descriptive type where the author will explain the legal basis relating to sexual exploitation and the judge's considerations in Decision Number 29/Pid.Sus/2019/PN. Team and Decision Number 311/Pid.Sus/2021/PN. Pol. In the results and discussion, it is known that the government has issued several regulations that can be used to provide repressive legal protection for children, including Law Number 35 of 2014 concerning Child Protection. Decision Number 29/Pid.Sus/2019/PN. Team and Decision Number 311/Pid.Sus/2021/PN. The police also use the Child Protection Law to examine and decide cases of sexual exploitation in child trafficking

INTRODUCTION

Children who are social beings from birth have a right to life, freedom, and protection from everyone and everything, including the government. They are God's creations and have the right to be given their rights as human beings to guarantee their life in the world. Children's rights to life and liberty must not be taken away by any human being or other party. The parents must be held accountable for their illegal activities if they choose to abort the kid while it is still inside their womb.(1).

Children need to be given more attention because they can become victims of a large environment, so parties such as the State and society need to protect children from crimes in a large environment because children cannot protect their own rights. (2)Active internet users reach 95%, where the majority of users are children aged 12-17 years. Children being active on social media has a negative impact, namely that it is easy for children to become victims of sexual exploitation, now in Indonesia the victims have reached 500,000 children, especially sexual exploitation due to wrong treatment on social media.(3) The government has drafted laws and regulations to provide legal protection for children. The regulations above guarantee that children will be protected from various threatening or dangerous conditions as well as protection against sexual violence.(4)

The enactment of this regulation raises several legal issues such as physical or sexual crimes committed against children as well as child trafficking which causes many crimes to emerge in various forms, one of which is sexual exploitation of children. Slavery victims not only affect teenage children but also many women who become victims of human trafficking. The trade offered is usually in the form of prostitution or other work that can be done by powerless people, namely women. Apart from women, the presence of illegal workers who are given low salaries are underage children who are employed as beggars or other things.(5).

Criminal law concretely emphasizes that a person must bear all the consequences of his actions and behavior. This is called criminal responsibility.

If a perpetrator of a criminal act has fulfilled the elements of criminal law, sanctions need to be given in the form of accountability for what he has done. A violation that can damage human rights due to their position as humans and will damage the basic rights of Allah due to their position as God is the definition of the criminal act of child trafficking in the Islamic perspective. A person who enslaves another person is tantamount to positioning himself as God. Maqasid Al-Syariah emphasized that committing a criminal act is completely inconsistent with religious teachings. Apart from being prohibited in religious teachings, this offense will be detrimental to society and the state because it violates public welfare. (6).

The resolution of criminal acts of child trafficking or slavery through the perspective of Islamic law is a structured solution because Islam is a perfect and just religion which provides guidelines and ways to resolve these problems.(7) The guidelines of Muslims, namely the Koran and Hadith, comprehensively protect children from crime, where before humans looked for a way out to protect them, the presence of these guidelines has regulated them in such a way.(8) Based on the description above the problem can be formulated as follows : 1) what is the regulation regarding sexual exploitation of children in Indonesia and Islamic view. 2) what is the basis for the judge's consideration in giving a criminal decision, and what is the Islamic view on human trafficking cases.

METHODS

In line with the legal concerns that are the subject of this study, this research employs a normative juridical approach, a sort of legal research technique that rests its analysis on relevant rules, especially laws.(9) This research also uses a descriptive type, namely describing applicable laws and regulations linked to legal theories and the practice of implementing positive law related to research problems.(10) This research attempts to explain the existing facts and describe the problems in Decision Number 29/Pid.Sus/2019/PN.Tim and Number 311/Pid.Sus/2021/PN.Pol. Secondary data is the kind of information that the author employs in his study. The author outlines a qualitative data analysis strategy that involves summarizing the

phenomena under study and expressing it in regular, structured phrases to make the investigation's findings easy to interpret.

RESULTS AND DISCUSSION

A. Regulation of Sexual Exploitation of Children

Sexual exploitation refers to any act or behavior in which an individual uses or threatens violence, offers payment, or takes advantage of a circumstance to gain consent from someone in a position of control

over another individual in order to engage in sexual activity or coerce intimate relationships..(11) The root causes of sexual exploitation of children occur within the family, resulting in economic pressure and uncertainty about the future. If a child's right to life is threatened, it must be the state's obligation to guarantee and protect the rights of children in order to achieve prosperity for society. The following is a table of regulations regarding sexual exploitation, namely:

Table 1. Regulation of Sexual Exploitation

No.	Regulation of Sexual Exploitation	Classification	Article
1.	Law No. 21/2007 on the Eradication of Trafficking in Persons	Form	- Article 1 angka 8 - Article 1
		Penalty	Article 2
2.	Law no. 35 of 2014 regarding Amendments to Law no. 23 of 2002 concerning Child Protection	Form	- Article 76F - Article 76I - Article 59 (2) - Article 67B
		Penalty	- Article 82 - Article 83 - Article 88
3.	Law no. 12 of 2022 concerning the Elimination of Crimes of Sexual Violence	Form	- Article 4 (1) - Article 4 (2)
		Penalty	- Article 6 - Article 12 - Article 13 - Article 14 huruf b
4.	Law no. 23 of 2004 concerning Domestic Violence	Form	- Article 5 huruf c - Article 8
		Penalty	- Article 46 - Article 47 - Article 48

A few of the laws that have been discussed about sexual exploitation have the power to uphold human dignity and work toward obtaining protection from the state that has been instituted by law in order

to prevent crimes like human trafficking. That the presence of these regulations not only protects the victims, but the perpetrators who commit an offense will receive sanctions. The following is an

explanation regarding the regulation of sexual exploitation as follows:

1. Law No. 21 of 2007 concerning the crime of human trafficking

Sexual exploitation in Article 1 point 8 reads, "Sexual Exploitation is any form of use of the victim's sexual organs or other bodily organs to obtain profit, including but not limited to all prostitution and obscene activities." Another article that emphasizes the criminal act of sexual exploitation is Article 12. This article reads, "Every person who uses or exploits a victim of a criminal act of trafficking in persons by means of sexual intercourse or other obscene acts with a victim of a criminal act of trafficking in persons, employs a victim of a criminal act of trafficking in persons. "any person who continues the practice of exploitation or takes advantage of the proceeds of the criminal act of trafficking in persons shall be punished with the same crime as intended in Article 2, Article 3, Article 4, Article 5 and Article 6." Criminal sanctions for perpetrators of sexual exploitation are contained in Article 2, which essentially carries a prison sentence of a minimum of 3 years and a maximum of 15 years. There is also a fine of at least IDR 120 million and a maximum of IDR 600 million.

2. Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning child protection

Article 76 F prohibits arranging, permitting, ordering, or engaging in the kidnapping, sale, and/or trafficking of children. It also lists laws pertaining to child trafficking. Article 76 states that "Every person is prohibited from placing, allowing, carrying out, ordering to carry out, or participating in economic and/or sexual exploitation of children." This article also forbids trafficking. Another provision is found in paragraph (2) of provision 59, which basically says that children who are victims of trafficking, children who are exploited economically or sexually, and children in emergency situations must all be protected. Article 83's criminal penalties for those who commit sexual exploitation include a minimum three-year jail sentence, a maximum of fifteen years

in prison, and/or a fine of at least IDR 60 million and a maximum of IDR 300 million. Article 82 paragraph (1) is an additional article that has a maximum fine of IDR 5 billion and a minimum and maximum sentence of 5 years and 15 years in jail. Article 88 is an additional article that imposes a maximum fine of IDR 200 million and a potential jail term of 10 years.

3. Law No. 12 of 2022 concerning the elimination of criminal acts of sexual violence

Sexual exploitation in this regulation has been mentioned in Article 4 paragraph (1) which is the scope of criminal acts of sexual violence, namely: a. Non-physical sexual harassment; b. Physical sexual harassment c. Coercion of contraception;& d. Forced sterilization; e. Forced marriage; f. Sexual torture; g. Sexual exploitation; h. Sexual slavery; and i. Electronic-based sexual violence. Paragraph 2 provides an expansion regarding criminal acts of sexual violence. The criminal act of sexual exploitation in paragraph 2 is stated in letter g, which reads "The criminal act of trafficking in persons aimed at sexual exploitation. Criminal sanctions for perpetrators of sexual exploitation are contained in Article 6 letter a which is in the form of a maximum prison sentence of four years and a maximum fine of IDR 50 million. Other articles are Articles 12 and 13 which carry a maximum prison sentence of 15 years and a maximum fine of IDR 1 billion.

4. Law No. 23 of 2004 concerning domestic violence

The regulation of sexual exploitation is contained in Article 5, which in essence is forced sexual relations within the household and with other people for commercial purposes and/or certain purposes. Another article is Article 8 which reads, "a. Forced sexual relations carried out on people within the household; b. "Forcing sexual relations between someone within the household and another person for commercial purposes and/or certain purposes." The criminal sanctions mentioned in Article 46 are in the form of imprisonment for a maximum of 12 years or a fine of a maximum of IDR 36 million. Another article is Article 47 in the form of imprisonment for a minimum of 4 years and a

maximum of 15 years or a fine of at least IDR 12 million and a maximum of IDR 300 million. As explained in Article 48, the penalty is imprisonment for a minimum of 5 years and a maximum of 20 years or a fine of at least IDR 25 million and a maximum of IDR 50 million.

Human trafficking is a form of modern slavery that must be eradicated together. Human trafficking, which is called modern slavery, will explore the history or story of the Prophet Muhammad who once fought slavery and is an appropriate/strategic step. So the presence of Islam will bring about a liberation movement. Because humans from an Islamic perspective are noble creatures and no one can enslave them.

According to jinayah jurisprudence, in the context of Jarimah, there are several types of punishment that can be imposed. Jarimah is an act that is prohibited by sharia' and the punishment is determined by God. If it is connected to the crime of human trafficking with jinayah fiqh, there are several types of punishment, namely:

1. Jarimah Hudud

Punishment that cannot be removed as an act of violating punishment whose type and threat of punishment is determined by the text, namely (had punishment (the right of Allah SWT) which is limited in number. This is found in the word of Allah SWT in Q.S Al-Maidah [5]: 33.

2. Jarimah Qishash/Diyat

Punishment for perpetrators of sinimah to the soul and limbs which is carried out intentionally. Diyat is a punishment for perpetrators of jarimah with the same object (life and limbs) but carried out

without intention. This is found in the word of Allah SWT in Q.S Al-Maidah[5]: 32.

3. Jarimah Ta'zirx

Punishment is preventive and prevents the emergence of danger so that the determination of the emergence of Jarimah is the authority of the ruler or judge regarding the benefit of the people. The crime of human trafficking is included in the category of jarimah ta'zir because the type of punishment is not specifically specified in either the Koran or Al Hadith.

Trafficking in persons, especially children, is one of the contemporary crimes or types of modern slavery. The need for firmness from ulil amri or the government in providing a regulation with the aim of providing punishment in the form of severe sanctions for child trafficking crimes that are very troubling to the community. Jurisprudence does not explicitly regulate investigation, prosecution and examination in court hearings. So the application of Sansk Ota'zir is left to 'ulillamri' including the minimum and maximum limits.

According to Islam, humans are born free or holy, so every form of oppression and slavery is a violation of the human rights bestowed by Allah Almighty. Therefore, no party or someone is allowed to exploit, harass, treat them harshly, or enslave them (Fuad Mustafid, 2019). Islamic legal perspectives on trafficking in persons such as human slavery are considered to undermine the basic rights of man as human beings and the rights of Allah as God. Child trafficking is considered a disaster. So according to the jurisprudence of trafficking in persons including jarimah which has several types of punishments, namely:

Table 2. Type of Jarimah Punishment

	Types of Punishment	Description	Al-Quran
1.	Jarimah <i>Hudud</i>	Punishment that cannot be abolished is an act of violation of punishment whose type and threat of punishment is determined by the text	Q.S Al-Maidah [5]: 33
2.	Jarimah <i>Qishash/ Diyat</i>	A form of punishment for perpetrators of fingering to the soul and limbs which is carried out intentionally.	Q.S Al-Maidah [2]: 32
3.	Jarimah <i>Ta'zir</i>	Punishment is preventive, prevents the emergence of danger so that the determination of the emergence of jarimah is the authority of the ruler or judge.	-

B. Judge's Consideration of Sentencing Decisions in Child Trafficking Crime Cases

The judge's basic considerations in handing down court decisions need to be based on maximum theory and legal basis so that they are balanced in theory and practice. The author conducted a case study of the court decision in the case of sexual exploitation in the crime of child trafficking at the Timika District Court Decision Number

29/Pid.Sus/2019/PN. Team and at Polewali District Court Number 311/Pid.Sus/2021/PN.Pol. The judge's basic considerations in imposing sentences on perpetrators of criminal acts of sexual exploitation of children in both cases used considerations that were both juridical and non-juridical in nature. The following is a table of judges' considerations of a juridical and non-juridical nature, as follows:

Table 3. Judge's Considerations

No.	Judge's considerations	Decision 29/Pid.Sus/2019/PN.Tim	Decision 311/Pid.Sus/2021/PN.Pol
1.	Juridical		
	a. Prosecutor's indictment	Article 83 of Law No.35 of 2014 Article 88 of Law No.35 of 2014	Article 88 of Law no. 35 of 2014 Article 83 of Law No.35 of 2014
	b. Proof	4 (Four) witnesses 3(Three) pieces of documentary evidence 3(Three) pieces of evidence	3(Three) witnesses 1 (One) piece of documentary evidence 6 (Six) items of evidence
	c. Demands	Proven to have violated Article 88 of Law No.35 of 2014	Proven to have violated Article 88 of Law No.35 of 2014
	d. Pledoi	Request for leniency	Request for leniency
2.	Non juridical:		
	a. Aggravating things	The defendant's actions violated a government program	The defendant's actions violated religious and social values
	b. Mitigating circumstances	The defendant has never been convicted	The defendant admitted and regretted his actions
	c. Defendant's condition	Physically and mentally healthy and seen as capable of responsibility	Physically and mentally healthy and seen as capable of responsibility

The judge's considerations include judicial power as stated in Article 24 paragraph (1) of Law No. 48 of 2009. Judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila and the Republic of Indonesia Law of 1945 for the sake of implementing the rule of law of the Republic of Indonesia. So in a trial, the judge's judgment must have a sense of justice so that it is in accordance with existing regulations. Judge's considerations in Decision Number 29/Pid.Sus/2019/PN. Timi and Decision Number 311/Pid.Sus/2021/PN. Pol is divided into two, namely juridical and non-juridical. Judicial considerations mean that the juridical facts revealed in the trial and by law have been determined.(5)

1. Prosecutor's indictment, a letter containing the formulation of the criminal offense with which the defendant is charged. Both decisions were charged with two counts. The charges are Article 83 and Article 88 of Law No. 35 of 2014 concerning Child Protection.
2. Proof, the activity of showing everything that is evidence related to a case. Based on Decision Number 29 /Pid.Sus/2019/PN.Tim, 4 witnesses were presented, namely Yuliana Bindura, Febrianti Mafikasari, Adi Bobel, and Erica Regita Butar-Butar. There is documentary evidence, namely a statement letter, dental examination certificate and family card. Evidence includes cellphones, money and clothes. Meanwhile, Decision Number 131/Pid.Sus/2021/PN.Pol The prosecutor presented 3 witnesses, namely the child of the sanctioned person SN, the child of witness F, and Iwan Septiawan Sapri. There is documentary evidence, namely two birth certificates. Evidence includes cellphones, money, clothes and trousers.
3. Charge, a letter containing proof of the indictment based on the evidence revealed at trial and containing the prosecutor's conclusions. The two decisions each required the defendant to be legally proven to have violated Article 88 of Law No. 35 of 2014 concerning Child Protection.
4. Pledoi, a form of defense carried out by the defendant. Based on the two decisions, each

defendant verbally submitted a request for leniency in sentence.

Non-juridical considerations are usually contained in aggravating or mitigating matters based on the defendant's background (12).

1. Aggravating circumstances, a situation that is related to a criminal act but outside of the criminal act itself. Based on Decision Number 29, it was stated that the defendant violated a government program. Meanwhile, Decision Number 311 stated that the defendant violated religious and social values.
2. Mitigating circumstances, a situation that can reduce the error so that it can lighten the sentence. Based on Decision Number 29, it is stated that the defendant has never been convicted. Meanwhile, Decision Number 311 stated that the defendant admitted and regretted his actions.
3. The condition of the defendant, the physical and psychological condition of the defendant before committing the crime. Based on the two decisions, each defendant was physically and mentally healthy and was deemed capable of taking responsibility for his actions.

CONCLUSION

Some of the regulations stated above that are used by judges in handling cases of sexual exploitation of children are Article 76I and Article 88 of Law Number 35 of 2014 concerning Child Protection. This regulation regulates sexual exploitation of children more specifically than other regulations. The criminal act of human trafficking in the form of sexual exploitation in Islamic law is known as slavery. This criminal offense in jinayah jurisprudence is Jarimah Ta'zir where the punishment will be determined by the uilil amri or judge. Because this crime is a contemporary crime for which the type of punishment is not explained in the Koran.

The judge's basic considerations in imposing sentences on perpetrators of criminal acts of sexual exploitation of children are using both juridical and non-juridical considerations. Whereas both decisions have fulfilled the elements of the judge's

consideration, the perpetrators must be given criminal sanctions.

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