



Misleading concept of implementation of restorative justice in the case child trafficking who put parents as perpetrators

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Abstract

This research is a normative or doctrinal law study that examines the misleading of restorative justice concepts in the case of trafficking criminal acts. The case of human trafficking is the spotlight, both in the international and national, women and children tend to be victims of a large amount of the case. Child trafficking cases often place parents as perpetrators, relating to the case of eradication of the trafficking of people in Indonesia through the criminal justice system. The fact in the law enforcement society by using the criminal justice system is judged to not have run to the fullest, this can be seen from the many cases for the problem of trafficking of children who do not touch on the core of the case. The description thus gave explanation to the concept of restorative justice in the return of children trafficking victims by their biological parents in the pretext of parents have a duty to the children who are very much. The concept is judged more effectively because it focuses on recovery efforts, not retaliation. In fact, from the restorative justice effort there is a gap to the occurrence of a similar criminal act (recidiv), because it puts victims and perpetrators in the same situation and conditions. Thus, the concept of restorative justice in the return of child trafficking victims of people who are done by their biological parents experiencing *ketersesatan* thought/misleading, it puts law enforcement in the form of criminal sanctions to cause a deterrent effect is judged most effectively.

Keywords: misleading concept, restorative justice, human trafficking, criminal justice system

Introduction

Indonesia got attention from International Community because of it has high rate about human trafficking case. The case of human trafficking targeting children and women with the category "prey on the most desperate and vulnerable" it is in line with the Secretary-General of the United Nations (UN) Ban Ki-Moon stating that, "the practice of human trafficking must be terminated immediately, in the international community, the United Nations has a more concern for the case of human trafficking by improving the protection of migrant workers and children from the effects of exploitation ^[1]. Not only Indonesia, the case of human trafficking with victims of women and many children occur in various parts of the world, one of the biggest factors of the rise of human trafficking cases is such a high level of poverty and factors Low education. An accurate information reported from the organization of Save the Children, in 2015 there was a case of human trafficking with the total recorded 20,500 victims of human trafficking, 56% of the cases were related to trafficking for sexual exploitation, While 26% of cases were related to labor exploitation with victims under 18 years old with the specifications of victims as large women and children ^[2].

Recorded a report from United States Trafficking in Persons Reports, "over 10.000 investigations, arrests, prosecutions,

an/or convictions of human trafficking cases have taken place in the 150 countries covered in invaluable in understanding the nature and scope of the problem of human trafficking ^[3]. It is known that the human trafficking case has occurred in 150 countries with various cases and the type of problems of the human trafficking case. This, of course, becomes a serious homework from various countries in order to fight against human trafficking crimes.

Indonesia in order to regulate human trafficking crimes was regulated specifically in Law No. 21 of 2007 about Eradication of Human Trafficking. The case of human trafficking in Indonesia is increasing from year to year. Based on the data was collected, in 2005-2014 there were 6,651 people, with about 1,156 of them being children. Especially for West Java ranks first with a total casualty of 2,151 or equivalent to 32.35% ^[4]. According to the Indonesian Children Protection Commission, the child's trafficking case involves children since 2018, continuing to increase. From January to September 2018, noted 264 trafficking cases involving children, "there were 80 child exploitation cases involving child prostitution victims, then 75 cases of sexual exploitation and 52 cases of children's

¹ <https://theirworld.org/explainers/child-trafficking> - accessed on Saturday, March 7 2020 at 10.19 a.m. (GMT +7)

² <https://www.savethechildren.net/news/one-four-victims-trafficking-and-exploitation-europe-are-children> - accessed on Saturday, March 7 2020 at 10.29 a.m. (GMT +7)

³ <https://www.globalcenturion.org/programs/researchanddevelopment/international-case-law-research/> - accessed on Saturday, March 7 2020 at 10.43 a.m. (GMT+7)

⁴ KPAI: Innalillahi, Dalam 11 Tahun Perdagangan manusia Capai 6.651 Orang, <http://www.kpai.go.id/berita/kpai-innalillahi-dalam-11-tahun-perdagangan-orang-capai-6-651-orang>, accessed on Saturday, March 7 2020 10.50 a.m. (GMT +7)

trafficking victims, resulting in a total of 4,264 cases" [5]. Indonesia has arranged this proceeding with Law No. 21 of 2007 on the Eradication of Human Trafficking. The normative definitions of human trafficking are listed in article 1 with the following explanation:

"Human Trafficking is the Act, recruitment, transport, shelter, delivery, transfer, or acceptance of a person with the threat of violence, using violence, kidnapping, transmission, falsification, fraud, misuse of power or A vulnerable position, a debt attachment or a fee or benefit, thereby obtaining the consent of the person in control of the other person, whether in the country or between countries, for the purpose of exploitation or resulting in the Exploited. "

Most of the victims of human trafficking are women and concrete step children should be done immediately. This is because the child is the future of the nation, children are expected to be strong potentials, having a spirit of strong nationalism that is expected to be a potential leader in the future, and strong character in preserving the integrity of the nation.

Based on increased child trafficking cases, governments need to focus seriously on combating human trafficking crimes. Such efforts are not only the preventive, repressive, and responsive, but also the efforts to the recovery or protection of children who become victims of child trafficking after the criminal justice process. The rehabilitation is thus aimed at restoring the child's future. Given that child trafficking is a complex issue requiring a multi-sided approach, policymakers should be encouraged to critically check the legislation for the purpose of strengthening or supplementing those legal products that are capable of Protect children from sexual exploitation and economic exploitation. The mandate of the Constitution of the Republic of Indonesia is contained in article 28B paragraph (2) of the Constitution of the Republic of Indonesia of 1945 which states "The right of the child to survive, grow and develop and the right to be protected from Violence and discrimination". It is then an indicator that the Indonesian people need a more specific and in-depth reference to handle the cases of child trafficking.

The Indonesian Government's concern for the dignity and values of children is in fact before the Convention on the Rights of the Child. The concern is contained in Law No. 4 of 1979 on Child Welfare. Government concerns are further strengthened by devoting the principles of the Convention on the Rights of the Child to the Law No. 35 year 2014 of the amendment to Law No. 23 of 2002 on Child Protection, established by the Government for the rights of children. The rights of natural children are the responsibility of parents. The obligation of the parents to be considered in ensuring the continuation of the rights of the Child has been governed by the United Nations Convention, Law No. 1 of 1974 on child Welfare and Law No. 4 of 1974 on Marriage, namely: the United Nations Convention on the Rights of the Child, emphasizes that there is only one rule regarding parental responsibilities toward their children, namely: "Parents are responsible for raising and nurturing children, Countries take measures to help parents who work so that

children receive care and facilities ". Whereas Law No. 1 of 1974 does not explicitly govern the rights of children, but regulates parental responsibilities toward children.

Explicitly arranged parental obligations intended to ensure the rights of the child are executed correctly and responsible in the context of child protection. However, in reality nowadays there are many problems that arise related to child rights violations, one of which is about child trafficking. Child trafficking lately is very wide, one of the cases of child trafficking takes place in Surabaya. Police reveal child trafficking practices through social media under the guise of parenting foundations. This case has lasted for 3 months. On record, there are four babies sold by perpetrators. Not only sold in Surabaya, the perpetrators also often receive adoption in other areas such as Semarang and Bali. The infant price reaches Rp 22 million. The results are divided by the perpetrators. For example, Manager got Commission Rp 2.5 million. Then the baby mother gets Rp. 15 million, and midwives working as intermediaries between buyers is Rp. 5 million [6]. One of the causes of child trafficking is poverty, in which case the children engage as workers to help the family economy. Not only serve as workers, but worse is the parent who sells their children's organ. In this case, the parent acting as the perpetrator of the child's trafficking must be given the toughest and unworthy sanction to obtain custody of the child in order to fulfill the child's obligations and rights.

United States, in the span of decades has an alternative form of justice in addressing the case of human trafficking, which became an interesting discussion among practitioners, survivors and people suspected of acting as perpetrators of crimes Human trafficking. There are three model forms of alternative justice that can be applied in the case of human trafficking, such as Procedural Justice, Restorative Justice and Transitional Justice [7]. Procedural Justice states that the process of achieving justice is more important than the result of the case, in that it can be understood that Procedural justice focuses on the achieving point of justice. The model of restorative justice stated that the results of justice including a verdict of imprisonment, confinement or fines, may not always serve the interests of survivors (victims), individuals accused of conducting crimes (perpetrators), and their communities do not always respond best, but this model of the cadism is poured out on the restorative process of the parties involved and impacted by human trafficking [8]. The people who support the restorative justice model argued that this model is rated

⁵ KPAI Catat 264 Kasus Perdagangan Anak Selama Januari-September 2018, <https://www.viva.co.id/berita/nasional/1087135-kpai-catat-264-kasus-perdagangan-anak-selama-januari-september-2018>, accessed on Saturday March 7 2020 at 11.15 a.m. (GMT + 7)

⁶ Perdagangan Anak Via Medsos Dibongkar, 1 Anak Dijual Rp 22 juta <https://news.detik.com/berita-jawa-timur/d-4249465/perdagangan-anak-via-medsos-dibongkar-1-anak-dijual--rp-22-juta>, accessed on Saturday March 7 2020 at 11.30 a.m. (GMT +7)

⁷ Thibault, J. & L. Walker. 1975. *Procedural Justice: A Psychological Analysis*. In the paper of Hillsdale, NJ: Erlbaum; Tyler, T. R. 1988. "What is Procedural Justice? Criteria used by Citizens to Assess the Fairness of Legal Procedures." *Law & Society Review*, 22(1), 103-136 in the book of Tyler, T.R. 1990.. *Why People Obey the Law*. New Haven, CT: Yale University Press, pp. 220.

⁸ Bolivar Fernandez, D. 2013. "For whom is restorative justice? A mixed-methods study on victims and (non-) participation." *Restorative Justice*, 1(2): 190-214; Mika, H. et al. (2004). "Listening to Victims—A Critique of Restorative Justice Policy and Practice in the United States." *Federal Probation*, pp. 68

most ideal as it leads to the healing process of not only the prosecution process only. Finally, the model Transitional Justice states that the greater efforts of society to provide a crime response by giving a sense of peace, spreading the sense of justice and thinking about the long-term settlement of human trafficking cases, Transitional Justice as a social reparation or social repair can be said as a service for individuals affected by human trafficking crimes by providing educational efforts, socialization and advocacy to individuals in need ^[9].

In the term of the settlement of human trafficking criminal cases, Indonesia has the settlement of a criminal justice system contained in the Law No. 21 of 2007 on the Eradication of Human Trafficking. The Indonesian criminal justice system should work optimally, it is intended for the perpetrators to obtain a deterrent effect, because child trafficking is a violation of human rights. The Indonesian criminal justice system has so far adopted the retributive justice approach, where crimes will be subject to article 10 of the Criminal Code. Along with the Times, the Indonesian criminal justice system enters a new phase in its development. One form of renewal in Indonesian criminal law is the regulation of criminal law in the perspective and achievement of justice for the repair and restoration of state after the event of criminal justice and a process known as restorative justice (restorative justice) that differs from the retributive justice (emphasizing justice in retaliation) and Restitutif justice (emphasizing justice in compensation). Restorative justice is a program that runs parallel to the criminal justice system. The philosophy behind this concept is that it is the emphasis on the need to reduce damage done to crime victims through negotiation, mediation, conciliation and victim empowerment. This approach relates to solving the problem rather than punishing the wrong perpetrator ^[10].

The concept of restorative justice is a major concern in the criminal justice system in Indonesia, one of which is the concept of restorative justice in the realm of the children's judicial system. The concept of restorative justice aims to prevent children being punished and replaced with guidance, due to the main focus of the justive restorative is the recovery of conditions that impact children. Act No. 11 of 2012 on the Child Criminal Justice System has put forward a restorative justice (restorative justice) approach and the process of redirection as an effort to resolve the crimes committed by children, so that the application of restorative justice will offer answers to important problems in criminal settlement cases. The presence of restorative justice concepts in youth criminal courts certainly breathe fresh air for children dealing with the law, but it becomes a problem if the concept of justice restoration is applied to the elderly as a child traffickers, On the grounds that parents have an obligation to protect the rights of children in full. This concept is misleading if the child is returned to parents who are victims of child trafficking with various motives aimed at benefiting themselves.

According to Lade Sirjon, the basic concept of restorative justice and retributive justice is the position of victims in the

general criminal justice system different from the position of the victim in the criminal justice system of the child. This distinction is based on 2 (two) different concepts of justice adopted in the general criminal justice system and children's criminal justice system. In the general criminal justice system the concept of justice adopted is the retributive justice, whereas in the criminal justice system more child to restorative justice The second concept of this justice has some difference in looking at some basic concepts In criminal (formal and material) law and the implementation of criminal justice, in particular the position of the victims of crime ^[11]. Sirjon says that both concepts of justice have some differences in seeing some basic concepts in criminal (formal and material) law as well as criminal justice processes, especially the positions of perpetrators of criminals. In this case, it should be examined with a humanitarian view, in which case the parents who have sold their children are no longer worthy of being fully parents. Child detention, pursuant to article 10 paragraph (1) of the Children's Welfare, stating that parents who have been proven to ignore their responsibilities as intended in article 9, result in barriers to developmental growth Children, their parents authority may be revoked as parents for his son. Based on the fact that the author feels that there is a misleading concept of restorative justice when applied to the human trafficking case in this case is child trafficking. The completion of restorative justice is not the right option, coupled with the role of parents as perpetrators of the criminal act, the recovery of which is the main value of restorative justice, cannot be achieved if there is no deterrent effect of the parents acting as actors.

Research Method

This research is a legal study which is category as normative or doctrinal legal study ^[12] conducted with a review of the literature "Research Library" is a process for discovering the rules of law, principles of law, and legal doctrine to solve the legal issues faced by examining the literature materials that focus on conducting analysis and studying primary and secondary legal materials so that legal research will be able to produce theoretical arguments or new concepts as an attempt at resolving legal issues. This legal research uses both primary and secondary legal materials regarding the case of child trafficking using restorative justice solutions and criminal justice system in the case of child trafficking.

Research Result

Child protection as one effort to safeguard and protect, so that each child can exercise right and development for the development and growth of the child well, mentally and socially ^[13]. Children have roles as generations of life, which are the hopes of parents, communities and countries to be able to bring families, communities, and countries to

⁹ Teitel, R.G. 2003. Transitional Justice Genealogy. *Harvard Human Rights Journal*, 16: 69-94, pp. 78

¹⁰ Lipika Sharma, 2017, Restorative Justice system: A comparative analysis, *International Journal of Law*, vol.3, Issue 3, May 2017, pp. 39

¹¹ Lade Sirjon, 2018, Legal protection against victims in compulsory diversion based on law number 11-year 2012 about the criminal justice system, *International Journal of Law*, Vol. 4; Issue 4, July 2018, pp. 22

¹² Peter Mahmud Marzuki. 2014. *Penelitian Hukum, Edisi Revisi*. Jakarta: Kencana Prenada Media Group.pp. 60

¹³ Mading Gultom. 2010. *Perlindungan Hukum Terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia*. Bandung: Refika Aditama, pp. 33

better quality of life in the future ^[14]. Families, especially parents are the primary basis and a very important role in fulfilling the growth and development of children apart from environmental and educational factors. The rights of the child are governed by Law No. 4 of 1979 on the welfare of the children listed in article 2 through Article 8, which is in essence children taking into account the welfare, care, and guidance based on good affection in the family. Also. As beneficiaries in special care for growth and development with life. Children get the service to develop social skills according to the nation's culture and personality, to be citizens of a good and useful country. Children have the right to care and protection both in terms of birth and after being born. Children are limited to environmental protection that can harm or inhibit their correct growth and development and the various rights of children governed by statutory regulations.

Nowadays, there are many cases that are very alarming, parents as the main media to protect, give mercy and fulfill the various rights of children who should be found to be a frightening scourge which is precisely damaging the future of children. Through various negative behaviors, one of which is human trafficking whose victims are children. Child trafficking can occur due to the absence of a conducive situation of safety and exploitation of children in both the community and even family environment ^[15]. Human trafficking has the definition of "*Trafficking in human beings: Recruiting, transporting, transferring, harbouring or receiving people for the purpose of exploitation, by means such as coercion, deception, abuse of vulnerability, or payment to someone who has control of the intended victim. For children, the means do not matter, as long as the purpose is exploitation. Trafficking can take place within the borders of a State or across borders*" ^[16]. Based on this it is known that there is a very vulnerable human trafficking (in this case the child becomes a victim) of deeds committed against the law with the purpose of exploitation, even the case of human trafficking across the boundary's country.

The United Nations Children's Fund (UNICEF) notes that "Children remain the second most commonly detected group of trafficking victims globally after women ^[17]. Based on that, it can be noted that children become the greatest victim in human trafficking, it can be said that the child becomes a trading commodity of the case ^[18]. Human trafficking, in this case is a child's trafficking driven by various causal factors influencing each other, among them poverty (low economic level), low levels of education, weak awareness of people. Concerning protection of children and

other contributing factors ^[19].

Speaking of child trafficking, there is an increase in the case of child trafficking in Indonesia, but this is not comparable to that of the law enforcement used as an attempt in the case of child trafficking, judicial efforts in the realm are assessed is not maximal, this is due to the rise of law enforcement officials who do not understand the core case of child trafficking as the cause of criminal acts. Limited public understanding of human trafficking issues has become an obstacle to the enforcement of legal efforts in the judicial sphere, whereas the participatory efforts of various layers of society are required in the prevention, protection and Law enforcement. In addition, the law enforcement factor, the public awareness factor on law is one of the success factors in the law enforcement process, in addition to the legal factor itself.

The criminal justice system focuses on the "punishing criminal for their wrongs", or it can be said to punish the perpetrators for mistakes made, which sometimes occur a case in which a crime victim feels their need has been ignored or less regarded, or can be said to have been filled with punishment for perpetrators ^[20]. There is a presumption that the criminal justice system is a conservative effort that focuses solely on the lawbreaker, resulting in more harm because it does not lead to victims, families and the public ^[21]. The excuse of law enforcement by using the criminal justice system is judged not to be maximally, this can be seen from the many cases for the problem of child trafficking that does not touch on the core of the case (root problem). There is an assumption that the settlement through the model of retributive justice with the use of the court ways (criminal justice system) has been undertaken a lot, both in terms of settlement efforts and the amount of action used by the law enforcement officers and the number of *opoenas* used by the court to take action and use methods in the realm of the criminal justice system. However, the settlement effort through judicial pathways is not yet able to give significant results because there are many gaps especially when there is a family relationship for victims and perpetrators. Based on this pretext, restorative justice concept emerged as a settlement effort in dealing with human trafficking. Restorative justice is expected to build awareness of the perpetrators to be able to take and bear back responsibility for their actions and ability to control over self-behavior in the future.

There is an understanding that "restorative justice focuses on responding to and understanding the victims well as those affected by the crime, rather than focusing solely on the offender ^[22]. The concept of restorative justice focuses

¹⁴ Gatot Supramono. 2007. *Hukum Acara Pengadilan Anak Cetakan 3*. Jakarta: Djembatan, pp. 1

¹⁵ ... the International Labour Organization (ILO) concern about child trafficking, source from. <https://theirworld.org/explainers/child-trafficking> – accessed on Saturday March 7 2020, at 10.23 a.m. (GMT +7)

¹⁶ United Nations Children's Fund. 2016. *Unrooted: The growing crisis for refugee and migrant children*. New York: UNICEF, pp. 17-18

¹⁷ https://www.unicef.org/publications/files/UNICEF_A_child_is_a_child_May_2017_EN.pdf – accessed on Saturday March 2020 at 12.30 p.m. (GMT +7)

¹⁸ *Ibid*

¹⁹ Shaw, Mark and Mangan. 2014. *Illicit Trafficking and Libya's Transition: Profits and Losses*. Washington DC: United States Institute of Peace, pp. 5-7

²⁰ Hon Y. Bennett Burkmeper. Jr Nina Balsam and May Yeg. 2007. *Restorative Justice in Missouri's Juvenile Justice System* dalam Caeina Patrilli. 2011. *Restoring Human Trafficking Victims Through Victim -Offender Dialogue*. United Kingdom: B.A. French Language and Literature of Yeshive University, pp. 217

²¹ *Ibid*.

²² ... a progressive theory that attends to the needs of victims instead of focusing on the offender.. Mark S. Umbreit, Betty Voss, Robert B. Coates and Elizabeth Lightfoot. *Restorative Justice: an empirically grounded movement facing many*

on how to restore the condition (recovery) of victims who are affected by the crime with appropriate and good treatment, rather than focusing only on the perpetrator. The restorative justice process begins with a deep focus on victims, individuals and communities affected by crime, together actively participating in the resolution of problems arising, it is generally accompanied by facilitator. The restorative justice process includes mediation, conciliation, conferences and sentenced plans to be dropped [23]. The restorative justice process in the case of child trafficking aims to seek a recovery effort in order to achieve justice for children as a victim through rehabilitation and reintegration efforts [24]. Restorative justice puts a higher value in the direct involvement of the parties, where the victim is able to return the control element, while the perpetrator is encouraged to assume responsibility as a step in fixing the error caused by crimes or in establishing their social value systems [25].

Parents who act as actors in human trafficking crimes are generally parents with low economic levels, because of some cases that arise, economic problems are crucial. Besides the fact that the sacrifice of trafficking victims often does not consider the presence of the victims, this is due to the strong culture of dignity and respect for parents. The application of restorative justice settlement concept has Ketersesatan thought (misleading) related to human trafficking in which case the victim is a child, where the parent is placed as the perpetrator. Parents who act as perpetrators no longer have the right to become containers in order to fulfill their obligations on the rights of their children who have been victims of human trafficking. Misleading The concept of restorative justice was supported by the critical theories of Max Horkheimer and Theodor W. Adorno in the "Dialectic of Enlightenment". "Dialectic of Enlightenment" was written by Max Horkheimer and Theodor W. Adorno derived from the essence of critical theory [26].

The theory of "Dialectic of Enlightenment" gives an enlightenment to mankind with the aim of freeing people from fear and building independence over them, in line with the opening lines of the "Dialectic of Enlightenment" states that "*enlightenment has meaning to aimed at liberating human from fear and establishing their sovereignty*" [27]. The

thought of Horkheimer and Adorno aims to voice about the existence of human domination of other human beings, causing social domination, in this case there is an obvious example of new enslavement [28]. There is a boundary of the theory of "Dialectic of Enlightenment" in which, in this theory gives a clear picture of the culture of the barbarism (barbarism culture) which is done by humans over other human beings as the definition of human domination in This theory [29]. Formally, the limitation of the "Dialectic of Enlightenment", provides limitations on barbarism based on Nazi death camp fascism, from which there is a rationalization process to achieve "enlightenment" of barbarism [30]. The act of barbarism has two effects such are chaos and regularity.

In general, the Dialectic of Enlightenment contains critics of modernity, which was seen by Adorno and Horkheimer, as a forerunner of dominance or mastery [31]. The minds of Max Horkheimer and Theodor W. Adorno were in line with the criticism of Karl Marx, a differentiator of their thoughts that Adorno and Horkheimer did not explain the history of the mastery of the production relationship, but from human psychological impulses Have a strong desire to control the other party. Through the Dialectic of Enlightenment, Adorno and Horkheimer, further, criticize the awareness that exists in the society itself, with modern consciousness, where there is a ratio of dominance. Furthermore, Adorno and Horkheimer also assume that Dialectic of Enlightenment is seen as the advancement of a mythological perspective, has actually become the myth itself, in this theory human beings have to think rationally as poured In Eclipse of Reasons in the enlightenment dialectic theory [32]. Furthermore, this myth in turn also resulted in the suppression and control of one human over another. The fact of suppression, such as those experienced by Adorno himself, is the emergence of the ideology of fascism in Germany, in addition to the inequality due to technological

Frankfurt School. Institut für Sozialforschung. April, pp. 1-2

²⁸ ... based on Edmund Jephcott about definitive text form the Max Horkheimer archive about Dialectic of Enlightenment. Julian Roberts. 2004. The dialectic of enlightenment. *The Cambridge Companion to Critical to Critical Theory*. Cambridge University Press, pp. 57.

²⁹ ... terdapat sebuah kutipan menarik bahwa *the limits of enlightenment should see from two aspects such are positive and negative, in the end, it will be shown that there is interpretation about "Dialectic of Enlightenment" theory*. Daniel Malloy. Dialectic and Enlightenment: The concept of Enlightenment in Hegel and Horkheimer-Adorno. *Auslegung*, Vol. 27, No.2, University of South California, pp. 43.

³⁰ *Ibid*.

³¹ Max Horkheimer and Theodor W. Adorno. 1999. *Dialectic of Enlightenment*. Trans. John Cumming. New York: Continuum, hlm. 3 lihat dalam Daniel Malloy. Dialectic and Enlightenment: The concept of Enlightenment in Hegel and Horkheimer-Adorno. *Auslegung*, Vol. 27, No.2, University of South California, pp. 47

³² https://www.academia.edu/40683784/RESUME_Dialektika_Pencerahan_Dilema_Manusia_Rasional_dan_One_Dimensional - accessed on Saturday March 7 2020 at 13.20 p.m. (GMT+ 7)

opportunities and pitfalls. United Kingdom: Benjamin Cardozo School of Law, pp. 511.

²³ Office of the Special Representative of the Secretary-General on Violence Against Children. 2013. *Promoting restorative justice for children*. United States: UNON Publishing Service Section, hlm. Glossarium.

²⁴ ... in term of talking about restorative justice for children.. *Ibid*.

²⁵ Dewi Asri Yustia. 2013. Penerapan Restorative Justice terhadap Orang tua pelaku Perdagangan Anak dalam Perspektif Sistem Peradilan Pidana Indonesia. *Jurnal Litigasi*. Volume 1 Bulan April, pp. 1847

²⁶ His own philosophical critical theory is closely related to fascism in the United States which as time progresses, envolved into modern cultural progressed <https://www.kompasiana.com/balawadaya/5e0c741d097f3637052b35a4/dialektika-pencerahan-5?page=all> - accessed on Saturday March 7 2020 at 13.11 p.m. (GMT+ 7)

²⁷ Frederik van Gelder. 2007. Horkheimer and Adorno's Dialectic of Enlightenment. *The Critical Theory of the*

advances that have manipulated humans in general. Adorno provides a conceptual analysis of how the Dialectic of Enlightenment is intended to secure freedom from fear and human authority, transformed into some form of political, social and cultural dominance, in which humans lose their individuality and society lose their human significance^[33]. This analysis comes with an explanation of the conceptual motives of the community's rationalization process in the context of Weberian, where capitalist domination is the greatest danger that can arise. The main object in Adorno's critical theory is the intertwined relationship between conflict in society as the totality and concrete form of the subject's life in society. The critical theory is oriented towards the idea of society as a subject, with individuals as its center. A theory becomes "critical" with the firmness of injustice, selfishness, and alienation generated by social conditions under the capitalist economy. The statements of Horkheimer and Adorno, essentially stating that humans are at some time due to various factors, will be influenced or controlled by other humans.

The theory of Dialectic of Enlightenment can be a guideline that parents acting as perpetrators in child trafficking, are influenced by a variety of factors including low levels of education, poverty, low awareness that children are individuals who must fulfill their fundamental rights in order to meet to increase to a better level of life in the future. A form of misleading restorative justice concept when the child is returned to the parents as human trafficking of his son. The concept of restorative justice can be a gap for parents to repeat the crime that has been done (recidiv), if not accompanied by recovery efforts in the parents either through mentoring experts and periodic socialization, so that the more effective efforts to implement is the criminal justice system with criminal penalties.

Basically, the application of criminal law also has a purpose other than to provide a deterrent effect to perpetrators of criminal acts by applying criminal sanctions, such as Jonkers' opinion on the purpose of punishment, so that there are two criminal objectives that can be used as a benchmark,³⁴ namely:

1. The purpose of influencing human behaviour in accordance with the rule of law. In classifying these objectives, it can be distinguished between influences aimed at the delinquency and behavior of others.
2. The purpose of eliminating the unrest caused by violations, commonly referred to as conflict resolution.

Punishment has a purpose relating to the conflict between the perpetrators and victims. During the criminal sanction process, the parents as perpetrators are given a regular personal approach to raising awareness to care for the child as it should be guaranteed by the Government, so that when the punishment is over, parents can feel deterrent and conscious so they can be "family" for their children to return. In accordance with Act No. 23 of 2002 concerning

child protection in the case of custody, if the parent is incompetent (in which case the parents are said to be incompetent because they have become traffickers of children and cannot fulfill the rights regulated and protected by the state), it is necessary to do the trust specified to comply with the requirements in accordance with the legislation. It is also clearly stipulated in article 10 paragraph (1) of the Child Welfare Act, namely:

"Parents are proven to neglect their responsibilities as referred to in article 9, resulting in the natural barriers of growth of child development, can be deprived of its power as a parent to his child. In that it is appointed parents of the body as guardians."

Conclusion

The concept of Restorative Justice cannot be applied effectively in the case of human trafficking that puts parents as actors to the child, it is because the child in an unsafe position in the care of his parents so that it is feared to potentially cause parents as perpetrators to be residivists. This, in line with the "Dialectic of Enlightenment" theory expressed by Horkheimer and Adorno, is essentially the theory that human beings at a time due to various factors, will be influenced or controlled by other humans. The theory of Dialectic of Enlightenment can be a guideline that parents acting as perpetrators in child trafficking, are influenced by a variety of factors including low levels of education, poverty. So, if the child as a victim is returned to the parents can be a gap of the occurrence of a similar criminal act (recidiv). Criminal sanctions are considered more effective if accompanied by a personal approach to the perpetrator, so in addition to creating a deterrent effect, it can foster a sense of consciousness for parents as the perpetrator that children must fulfill their rights properly and protected by the state.

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