

## COMBATING COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN MEDAN CITY

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### ABSTRACT

The crime of commercial sexual exploitation of children has become a major issue both nationally and internationally because it is considered a gross violation of human rights. Indonesia is one of the countries that is committed to combating the commercial sexual exploitation of children. It is reported that North Sumatra is one of the senders and receivers of the trafficked children. Medan, one of the cities in North Sumatra is included in the category of sender and recipient. This is supported by the geographical location of Medan which is very strategic as the capital of North Sumatra province. Based on this, the problems discussed in this research were: 1) How to manage the child protection from commercial sexual exploitation of children in accordance with the laws and regulations in Indonesia; 2) What response to commercial sexual exploitation of children in Medan was; 3) What obstacles found in the prevention of commercial sexual exploitation of children in Medan were. This research used descriptive analytical method with juridical normative approach by describing how the commercial sexual exploitation of children (CSEC) happened and how to overcome it. The legal source materials used were primary, secondary, and tertiary legal materials. The results showed that the regulations of commercial sexual exploitation of children have been regulated generally on national and international scale. Crime prevention efforts against sexual exploitation of children in Medan was based on two approaches, penal and non-penal policy. It could be seen from the penal policy of the Court Verdicts No. 1554/Pid.B/2012/PN.Mdn and No. 2743/Pid.B/2006/PN.Mdn in which the defendants were found guilty. But it seemed that the sentences did not meet the elements of justice. While in the non-penal policy, some efforts to prevent were applied in Medan, such as preventive and repressive supervision and handling the CSKA. There were three obstacles found in the prevention of CSEC; in terms of legislation, law enforcement officials, and culture.

**Keyword:** Crime Prevention, Commercial Sexual Exploitation of Children, Medan.

### ABSTRAK

Kejahatan eksploitasi seksual komersial terhadap anak, telah menjadi masalah utama baik secara nasional maupun internasional, adapun yang menyebabkan hal ini karena kejahatan eksploitasi seksual komersial anak merupakan satu bentuk pelanggaran berat hak asasi manusia. Indonesia adalah salah satu negara yang berkomitmen dalam memberantas eksploitasi seksual komersial anak. Sumatera Utara adalah sebagai salah satu daerah pengirim dan penerima anak yang diperdagangkan, salah satu kota di Sumatera Utara termasuk dalam kategori pengirim dan penerima adalah kota Medan, hal ini didukung letak geografis kota Medan yang sangat strategis sebagai ibukota propinsi Sumatera Utara. Berdasarkan pada hal tersebut, maka masalah sebagai bahasan dalam penelitian ini yaitu 1) Bagaimana pengaturan tentang perlindungan anak dari eksploitasi seksual komersial anak menurut peraturan perundang-undangan di Indonesia, 2)



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Bagaimana upaya penanggulangan eksploitasi seksual komersial anak di kota Medan, 3) Hambatan-hambatan apa yang ditemukan dalam penanggulangan eksploitasi seksual komersial terhadap anak di kota Medan. Metode yang digunakan dalam penelitian ini adalah yuridis normatif dan yuridis empiris. Sifat penelitian ini adalah deskriptif analitis yang ditujukan untuk mendeskripsikan bagaimana terjadinya ESKA dan penanggulangannya, Sumber bahan hukum yang digunakan meliputi bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier. Hasil penelitian dapat disimpulkan bahwa pengaturan tentang eksploitasi seksual komersial anak secara umum diatur dalam peraturan berskala nasional dan berskala internasional. Upaya penanggulangan terhadap kejahatan eksploitasi seksual komersial anak di kota Medan, berdasarkan pada dua pendekatan yaitu penal dan non penal, secara penal dapat dilihat dari putusan-putusan hakim antara lain Putusan Nomor 1554/Pid.B/2012/PN.Mdn dan Putusan Nomor 2743/Pid. B/2006/PN.Mdn, dalam kedua putusan ini terdakwa dinyatakan bersalah, tetapi hukuman yang dijatuhkan oleh hakim dirasa belum memenuhi unsur keadilan. Sedangkan secara non penal upaya penanggulangan di kota Medan antara lain seperti adanya pengawasan yang bersifat preventif dan refresif dan penanganan ESKA. Ada tiga hambatan dalam penanggulangan ESKA antara lain adanya hambatan dari segi perundang-undangan, hambatan dari aparat penegak hukum, hambatan dari segi budaya.

**Kata Kunci:** Penanggulangan Kejahatan, Eksploitasi Seksual Komersial Anak, kota Medan.

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## 1. Introduction

Commercial sexual exploitation of children is a problem that is very detrimental to the dignity of children. This problem is currently widely revealed in general, it can be interpreted that commercial sexual exploitation of children is related to a form of exploitation of children that is carried out sexually for commercial interests. This phenomenon can be marked by the ease of finding child prostitutes who are selling themselves or being sold openly in the media in front of the public, both electronic media such as television, the internet, mobile phones and print media such as newspapers, magazines, newspapers and so on.

Referring to the UNICEF report in 1998, in Indonesia there were around 40,000-150,000 children or people under the age of 18 who engaged in commercial sexual activities, either through prostitution or pornography, spread throughout the regions such as Java, Sumatra, Batam, Riau, Kalimantan, Sulawesi, Lombok, Maluku and Papua.

Criminal acts related to children's activities, the problematic exploitation of children as objects of trade (commodities) and the satisfaction of depraved lusts (animalistic) of certain individuals or groups who run sexual businesses, promise multiple benefits. According to Jalaluddin Rahmat, humans have animalistic nature. Lust is a source of energy that moves the body. To maintain humanity, Allah created various safeguards. One of these safeguards is reason, with reason humans can not blindly follow their lusts, even with reason, they can control their lusts to improve their quality of life. But not all humans, especially adults, are able to control their minds, especially when it is noted that this business never loses and is even very promising, considering the amount of profit obtained from organizing these activities. The size of the profit depends, among other things, on how the business manager packages his merchandise. The perpetrators also cruelly carry out popular money-making tricks, namely by bringing in and supplying underage girls. In other words, to satisfy the lust of idle men. The crime of commercial sexual exploitation of children is also considered the third largest form of organized crime in the world after drug and arms trafficking.

Commercial sexual exploitation of children can be defined as the use of children for sexual purposes in exchange for cash or other forms between children, buyers of sex services, intermediaries or agents, and other parties who profit from the trade in child sexuality. Considering the fact that law enforcement in Indonesia to this day to prevent commercial sexual exploitation of children is still very weak, so that many perpetrators are still free. If the perpetrators are convicted, the sentences are light even though the crime of commercial sexual exploitation of children is categorized as a fundamental violation of children's rights. The violation is in the form of sexual violence by

adults with compensation to children, or third parties, or other persons. Children are treated as sexual and commercial objects. This is a manifestation of forced labor and modern slavery of children, because children are often forced, experience physical violence and trauma.

The increasingly advanced state of society's civilization and unstoppable technological progress have made the world of communication and entertainment broadcast on television have negative influences from western culture that are different and contradictory to eastern customary norms. Coupled with the lack of filters or even none at all, and the lack of spiritual education, the shows that are watched directly are imitated and followed without first thinking. The lack of attention and supervision from parents, family, closest people and the educational environment as well as the influence of a bad environment make it easier for children to fall and get trapped in this dark world. Based on psychological studies, children are not miniature adults. Children are autonomous individuals who are in the process of finding their identity, the task of adults is to help children grow and develop and provide enlightenment so that they find their destiny and not to bend, colonize, oppress and defeat them so that children must do exactly what adults want.

Lifestyle changes followed by easy population mobility and improving community income that have occurred recently have become very interesting, because with this situation we notice that the sex industry is actually increasingly rampant and increasingly complex in type, besides prostitutes or commonly called classic prostitutes who operate on the streets and houses for call girls, there are groups of women called *perek* (experimental women), and most recently ABG (newly big kids) or commercial teenagers who look for prey in discos, cinemas and malls.

North Sumatra, until now in fact there are many cases of commercial sexual exploitation that make children as objects. It is no longer a public secret that later these children will be sent and placed in prostitution areas on Sicanang Island, Belawan (Medan) and Bandar Baru (Deli Serdang), Bukit Maraja (Pemantang Siantar), Warung Bebek (Deli Serdang), small hotels in Medan and even to Batam Island (Riau).

Referring to the facts about the rampant practice of commercial sexual exploitation of children, efforts are needed to overcome it so that sexual exploitation of children can be handled immediately and properly. The author is interested in conducting research on Commercial Sexual Exploitation of Children in Medan City, considering the very strategic geographical location of Medan City as the capital city of North Sumatra Province, it cannot be denied that Medan is one of the cities where Commercial Sexual Exploitation of Children is rampant and is also inseparable from Commercial Sexual Exploitation of Children.

Child prostitution has been a sad phenomenon for a long time, even recorded since the 1970s, in 1998 the phenomenon of children began to flourish in Medan, this child prostitution occurs in billiard places, Gajah Mada playground, in shopping centers, cafes, in boarding houses, the types of ESKA experienced by children are child prostitution both with and without student status and child trafficking for sexual purposes. From 50 Information found 45 children as victims of child prostitution and 5 children victims of child trafficking for sexual purposes.

In terms of handling and protecting children who are commercially sexually exploited, it is also not optimal and adequate, this can be seen from the cases of CSEC which have not decreased but have increased and until now the cause is still very unclear, but the poverty factor and the stigma that appears in society about children who are trapped in this sexual exploitation are very bad as triggers for children to continue to return to the "dark world."

## 2. The main problem

Based on the description of the existing background, several problems can be formulated, including:

1. What are the regulations regarding the protection of children from commercial sexual exploitation of children according to laws and regulations in Indonesia?
2. How are efforts to combat commercial sexual exploitation of children in the city of Medan?
3. What obstacles are found in overcoming commercial sexual exploitation of children in the city of Medan?

### 3. Method

This study uses a normative legal approach because in terms of prevention, binding regulations are needed both in terms of anticipation or prevention of ESKA actions against children and as protection so that children are not trapped in these actions and the existence of regulations for those who carry out ESKA. Therefore, the approach in this study begins by observing the laws related to ESKA which are the main focus of the study, namely regulations related to children and efforts to overcome ESKA as a problem studied in Medan City.

### 4. Research Results

#### 4.1. National Legislation on ESKA

The enactment of Law Number 23 of 2002 concerning Child Protection is seen as the beginning of a new enlightenment and a very important beginning (condition sine qua non) to protect children.<sup>1</sup>

Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking. Child trafficking is a violation of human rights and also the rights of children that treats children as victims merely as commodities to be bought, sent and resold, a phenomenon that occurs throughout the world continues to develop and change in its form and complexity, but remains only the exploitative conditions placed on humans.<sup>2</sup> The presence of Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking which specifically regulates human trafficking, although this law does not provide a specific definition of child trafficking, the issuance of this law provides clear and specific regulations regarding human trafficking.

Law Number 44 of 2008 concerning Pornography. Child pornography is undeniably very vulnerable to sexual violence received by children because basically child pornography can be made by coaxing, threatening or forcing, or deceiving children. However, it should be noted that these images can be made without the child's knowledge or involving real children. But the consequences are clear, regardless of how child pornography is produced, the use of child pornography increases the risk of children being made objects of sexual violence, therefore pornography is a very serious threat to the safety and welfare of children.<sup>3</sup>

Table 1 Table 1.2 ESKA Data 2014-2015

| NO | VICTIM NAME (Initials) | AGE       | TYPE SEX | EDUCATION          | CASE TYPE                                   | CASE POSITION/OBSTACLES                     | ORIGIN OF VICTIMS/CHILDREN |
|----|------------------------|-----------|----------|--------------------|---|---|----------------------------|
| 1  | YUL                    | 16 years  | Woman    | JUNIOR HIGH SCHOOL | Child Prostitution                          | Will be tried at Medan District Court       | Medan                      |
| 2  | NAW                    | 15 years, | Woman    |                    | Early-age marriage                          | Peace at Deli Tua Police Station            | Medan                      |
| 3  | EF                     | 27-Aug-97 | Woman    | SENIOR HIGH SCHOOL | Trafficking for the purpose of prostitution |   | Medan                      |
| 4  | BU                     | 16 years  | Woman    | SENIOR HIGH SCHOOL | Trafficking for the purpose of prostitution | Still in the process at the Regional Police | Medan                      |
| 5  | MA                     | 15 years  | Woman    | SENIOR HIGH SCHOOL | Trafficking for the purpose of prostitution | Still in the process at the Regional Police | Medan                      |

<sup>1</sup> Ries Hartadi (Ministry of Culture), Muhammad Joni (National Commission for Child Protection), Let Them Smile, Jakarta: PT. Kammex Communications, July 2004, p. 28

<sup>2</sup>Agustinanto Fatimana, Davis Jamie, Hamim Anis et al., Trafficking in Indonesian Women and Children, ICMK and American Center For International Labor Solidarity and Usaid, 2003, p. 227

<sup>3</sup>Irwanto, Erna Sofwan Sukrie, et al., Op Cit., p. 10

|   |     |          |       |                    |   |   |       |
|---|-----|----------|-------|--------------------|---|---|-------|
| 6 | Mel | 15 years | Woman | SENIOR HIGH SCHOOL | Trafficking for the purpose of prostitution | Still in the process at the Regional Police | Medan |
| 7 | TIN | 15 years | Woman | JUNIOR HIGH SCHOOL | Child Prostitution                          | Still in the process at the Regional Police | Medan |

Source: Data from PKPA

## 1. Analysis of Decision Number 1554/Pid.B/2012/PN.Mdn

### a. Chronology of the Case

Starting around December 2011 in Sukabumi, witness Entin offered the victim a job as a cashier at a cafe in Medan. The victim agreed to the offer, then on December 14, 2011, the victim and a man, witness Ikbal, left Sukabumi for Jakarta and were escorted by witness Entin. After arriving in Jakarta, the victim and witness Ikbal met the defendant's wife, witness Asrat Nitawati, and stayed there for 5 (five) days.

On December 19, 2011, the victim witness and witness Ikbal left for Medan by plane. They arrived in Medan at 23.00 WIB, the victim witness and witness Ikbal were picked up by the defendant<sup>4</sup>Andreas Ginting alias Ucok at Polonia Airport. Then taken by the defendant to a mess, which is close to Cafe Pesona located at Jalan Setia Indah No. 30, Sunggal Kanan Village, Sunggal District. The next day around December 20, 2011, the victim witness started working as a Waiter or waitress at Cafe Pesona which is close to the mess where the victim witness lives.

On January 8, 2012 at 15.00 WIB, the defendant invited the victim witness to visit the defendant's parents' new house, namely Dahlia Sari Purba, located on Jalan Melati Raya Medan. They went there with the two maids of the Defendant's mother, namely one male maid named Bahagia and one female whose name was unknown to the Defendant by riding a Soluna Silver car with No.Pol.B.1136 UN.

Then after arriving at the house, the two maids were ordered by the defendant to clean the house, while the victim was invited to get back into the car. The defendant took the victim to the Pardede International Hotel on Jalan Ir Haji Juanda No. 12 Medan, while in the car the witness asked the victim "why didn't they come along?" then the defendant answered "they stayed here to clean".

Upon arrival at the hotel, the defendant immediately went into the restaurant to order food and drinks to be delivered to room 409 that the defendant had ordered. Then the defendant and the victim witness ate and drank, after finishing the defendant invited the victim witness to bed and raped the victim even though the victim begged the defendant did not care, even the defendant promised to take responsibility, buy a house, car and motorbike for the victim witness.

After finishing, the defendant invited the victim witness to pack up and the defendant returned to the defendant's mother's house, namely witness Dahlia Purba on Jalan Meranti Raya, picked up her mother's two maids, then returned to the Mess Jalan Setia Indah No. 30, Sunggal Kanan Village, Sunggal District. After the incident, the victim witness returned to work as usual.

On January 12, 2012 at 00.00 WIB, the victim witness said to witness Marlan and witness Anggriawan "please bro, I consider you my father, my life is ruined, my future is gone, my virginity was taken by Mr. Andre by force in a hotel room". After saying that, the victim witness ran to the room of witness Dahlia Sari Purba to drink insect poison, then was stopped by witness Marlan, then the victim witness fainted. Finally, witness Marlan took the victim witness into the victim witness's room.

On January 16, 2012 because he could no longer stand it at around 16.00 WIB. The victim sent a text message to witness Andini Anggriawan, witness Marlan's girlfriend, "Sis, help me, I'm really sick." Then witness Marlan called the victim and said, "Be patient, I will help Lisna get out of Cafe Pesona". Then at around 18.00 WIB the victim asked permission from witness Ella on the pretext of buying fried rice, and finally met with witness Marlan in front of Cafe Pesona. Then witness victim was given a ride by witness Marlan to witness Marlan's brother's house to avoid the defendant.

<sup>4</sup>Article 1 point 15 of the Criminal Procedure Code explains that a defendant is a suspect who is charged, examined and tried in court.

Then the next day together with witness Marlan, the victim witness reported the incident she experienced to the North Sumatra Regional Police. Due to the defendant's actions, the victim witness felt objectionable and sued the perpetrator who had forced and threatened to have sex with the victim.

#### **b. The indictment**

The indictment<sup>5</sup> against the Defendant used by the Public Prosecutor is an Alternative charge<sup>6</sup>. In the first indictment, the defendant is threatened with a criminal penalty in Article 2 paragraph (1) of Law of the Republic of Indonesia No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking. Meanwhile, in the second indictment, the defendant's actions are as regulated and threatened with a criminal penalty in Article 82 of Law of the Republic of Indonesia No. 23 of 2002 concerning Child Protection.

#### **c. Claims**

Letter of Claim<sup>7</sup> Public Prosecutor's Criminal Case Register Number: PDM-603/Ep.2/Mdn/07/2012 dated 13 November 2012, which demands that the Panel of Judges examining and trying this case decide:

1. Declaring the defendant ANDREAS GINTING ALIAS UCOK guilty of committing the crime of "Human trafficking" as regulated and threatened in Article 2 paragraph (1) of Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking;
2. Sentencing the defendant ANDREAS GINTING ALIAS UCOK to 4 (four) years in prison, minus the time the defendant has been in detention, and a fine of Rp. 120,000,000,- (one hundred and twenty million rupiah) subsidiary to 2 (two) months in prison.
3. Stating evidence<sup>8</sup> in the form of:
  - a) 1 (one) photocopy of Birth Certificate No. 1.960/Year 1998 in the name of Lisna Widiyanti which has been legalized and issued by the Head of the Civil Registry Office Dra. Ratu Dwi Yayah Dj on March 16, 1998;
  - b) 1 (one) yellow t-shirt with Spongebob written on it, 1 (one) pair of black shorts, 1 (one) white and pink bra, 1 (one) pair of pink underwear;
  - c) 1 (one) sheet of Birth Certificate No. 1.960/Th 1998 an. Lisna Widiyanti; Returned to the victim witness Lisna Widiyanti
  - d) 1 (one) sheet of Pardede International Cottage Guest Book dated January 8, 2012, Returned to Pardede International Cottage
4. Declaring that the defendant be burdened with paying court costs of Rp. 1,000 (one thousand rupiah);

#### **d. Legal Facts**

Based on the information, each witness was linked to one another and the existence of evidence<sup>9</sup>, evidence, linked to the defendant's statement, the following legal facts were found:

1. Witness Statement<sup>10</sup>:
  - a) Witness Lisna Widiyanti explained

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<sup>5</sup> What is meant by an indictment is a letter or deed containing a formulation of the alleged criminal act, which can temporarily be concluded from the preliminary examination letters which are the basis for the judge to carry out the examination,

<sup>6</sup> The forms of indictment include the following:

1. Single Indictment
2. Alternative Indictment
3. Subsidiary Indictment
4. Cumulative Indictment
5. Combined and Mixed Indictments

<sup>7</sup> Prosecution is an action by the public prosecutor to refer a criminal case to the competent district court in the case and according to the method regulated in this law with a request that it be examined and decided by a judge. See KUHAP Article 1 point 7.

<sup>8</sup> Evidence is tangible, movable or immovable goods that can be used as evidence and its function is to be shown to the accused or witnesses in court to strengthen the judge's belief in determining the accused's guilt.

<sup>9</sup> Evidence is anything that is related to an act, where the evidence can be used as evidence to create a judge's belief in the truth of a criminal act that has been committed by the defendant.

<sup>10</sup> Witness testimony is one of the pieces of evidence in a criminal case in the form of information from a witness regarding a criminal event that he himself heard, saw himself and experienced himself, stating the reasons for his knowledge.

- 1) Victim witness Lisna Widiyanti was offered a job by Titin Sumartini as a cashier at the Pesona Restaurant/Cafe in Medan with a salary of IDR 1,000,000 (one million rupiah) per month.
  - 2) Cafe Pesona which is managed by the defendant employs men and women including Ela Julaeaha, Nyai alias Ai, Deden, Minar and Diana who were previously brought in from Suka Bumi, West Java, where some of these people work as drivers, cleaning services, and also as waiters, namely serving and accompanying guests who come to drink at the cafe and the waiters are advised to appear sexily, with sleeveless shirts and shorts;
  - 3) Cafe Pesona opens at 20.00 WIB until 03.00 WIB where the salary received by each waiter is Rp.300,000,- (Three hundred thousand rupiah) per month. In addition to the bottle bonus, namely a bonus from each drink sold of Rp.2000,- (Two thousand rupiah) per bottle, as well as tips from guests whose amounts vary but the victim witness was never paid as promised;
  - 4) After Lisna Widiyanti worked for almost a month at Cafe Pesona, the defendant took the victim witness Lisna Widiyanti out on the pretext of wanting to see the defendant's new house. Then he took the witness Lisna Widiyanti to the Pardede International Cottage Hotel in the Polonia area of Medan, and there the defendant had sex with the victim witness Lisna Widiyanti like a husband and wife, with the promise that the defendant would be responsible for the act and the defendant asked that the relationship not be known to other people;
  - 5) After witness Lisna Widiyanti could no longer stand the situation she experienced at Cafe Pesona, the witness fled from Cafe Pesona on January 16, 2012 at 18.00 WIB. Assisted by witness Marlan, a security guard at Cafe Pesona. Furthermore, witness Marlan also helped witness Lisna Widiyanti report the incident to the North Sumatra Regional Police and the North Sumatra Regional Police reported the incident experienced by the victim witness to the Indonesian Child Protection Committee of the North Sumatra Region and the North Sumatra KPAID coordinated with the West Java KPAID and the West Java Regional Police.
- b) Witness Enong Sulyani (Victim's Mother) explained:
- Lisna Widiyanti was offered a job by Titin Sumartini as a cashier at a restaurant in Medan with a salary of Rp. 1,000,000 (one million rupiah) per month, but at that time the witness objected because Lisna Widiyanti was still a child, but because Lisna Widiyanti cried to be allowed to work in Medan, finally the parents of the victim, Lisna Widiyanti, allowed the victim to go to Medan.
- c) Witness Titin Sumartini alias Entin explained:
- 1) Witness Titin Sumartini alias Entin who was in contact with the defendant via cellphone and the defendant also asked Titin Sumartini alias Entin for help to find someone to work at Cafe Pesona as a waiter and driver with the promise that the defendant would give a bonus of Rp. 1,000,000 (one million rupiah) for each person;
  - 2) The witness still took Lisna to Medan even though the witness knew that the victim was still a child, because he was tempted by the defendant's promise of an honorarium of Rp. 1,000,000 (one million rupiah) for each person recruited to work in Medan. But the defendant only transferred/sent money to witness Titin Sumartini alias Entin twice, namely the first amount of Rp. 350,000,- (three hundred and fifty thousand rupiah) and the second amount of Rp. 200,000,- (two hundred thousand rupiah);
  - 3) On December 14, 2011, witnesses Titin Sumartini alias Entin, witnesses Lisna Widiyanti and Ikbal Salehudin left Sukabumi for Jakarta towards the defendant's house. At the house, they met the defendant's wife, witness Asrat Nitawati, and learned from her maid that the defendant had called from Medan to inform them that there was someone from Sukabumi who wanted to stay at home first, who wanted to be sent to Medan;
- d) Witness Marlan explained:
- 1) The witness worked at the Pesona Café owned by the defendant Andreas Ginting from November 4 2011 to January 14 2012 as a security guard and supervisor of waiters who came from outside Medan.

- 2) Witness Marlan prevented the victim from drinking the insecticide and took the victim to the room because the victim had fainted.
- 3) On January 16 2012, the victim sent a text message to the witness asking for help and then the witness replied to the text message and promised to help the victim.
- 4) Accidentally, two days after the victim's text message to the witness, the witness saw Lisna coming out of Café Pesona, then the witness took the victim with the aim of saving the victim and finally the witness took the victim to report to the North Sumatra Regional Police.

In addition, for the purposes of examining this case, evidence has been confiscated in the form of:

- 1) 1 (one) photocopy of Birth Certificate No. 1.960/Year 1998 in the name of Lisna Widiyanti which has been legalized and issued by the Head of the Civil Registry Office Dra. Ratu Dwi Yayah Dj on March 16, 1998;
  - 2) 1 (one) yellow t-shirt with Spongebob written on it, 1 (one) pair of black shorts, 1 (one) white and pink bra, 1 (one) pair of pink underwear;
  - 3) 1 (one) sheet of Birth Certificate No. 1.960/Th 1998 in the name of Lisna Widiyanti; Returned to the victim witness Lisna Widiyanti.
  - 4) 1 (one) sheet of the Pardede International Cottage Guest Book dated January 8, 2012, Returned to Pardede International Cottage.
2. Expert Witness<sup>11</sup>

Muslim Harahap, Head of the Working Group at the Indonesian Child Protection Commission for the North Sumatra Region, explained:

- a) The witness was appointed by the North Sumatra KPAID to accompany Lisna Widiyanti because she is still a minor.
- b) Before making a report to the police, the witness interviewed Lisna, who was still a minor at the time. It was revealed that when having sex with the defendant, the witness was under threat from the defendant that he would be killed if he told anyone else.
- c) At the time at the Regional Police, Lisna was in a gloomy, shocked, and afraid state and only trusted Marlan. Then after that Lisna was sent to a Shelter, a safe house by P2TP2A from January 20 to February 11, 2011.

3. Letter<sup>12</sup>

Based on the Visum Et Repertum letter No.47/OBG/2012 from Dr.Pringadi Hospital, Medan City, North Sumatra, dated January 20, 2012, signed by Dr.Zulhaiji A.Husin, Sp.OG, an.k.a. Lisna Widiyanti, during the examination, it was found:

|             |   |
|-------------|---|
| Head        | : no abnormalities  |
| Chest       | : no abnormalities  |
| Extremities | : Hymen tearing at 1 (one) o'clock, 3 (three) o'clock, 5 (five) 7 (seven) o'clock not reaching the bottom and 11 o'clock until the bottom |
| Conclusion  | : Hymen is no longer intact.  |

4. Instruction<sup>13</sup>

There is a correspondence between the witness's statement, the expert witness's statement, the defendant's statement and the post-mortem report which are interrelated with each other so that it can be concluded that a criminal act was committed by the defendant.

5. Defendant's Statement<sup>14</sup>

<sup>11</sup>Expert testimony/expert witness is information provided by someone who has special expertise regarding matters required to shed light on a criminal case for the purposes of an examination.

<sup>12</sup>Tolib Effendi, Op cit p. 177.

<sup>13</sup>Indicative evidence is an act, event or situation which, due to its correspondence, either between one and another, or with the crime itself, indicates that a crime has occurred and who the perpetrator is.

<sup>14</sup>Tolib Effendi, Basics of Criminal Procedure Law, Malang: Setara Press, 2014. p. 180.



- a) The defendant Andreas Ginting alias Ucok returned to Medan on November 15 2011 to manage the Pesona cafe owned by the defendant's parents, named Dahlia Sari Purba, which is located on Jalan Setia Indah No. 30, Sunggal Kanan Village, Sunggal District, Deli Serdang Regency, while the defendant's wife, namely witness Asrat Nitawati, lives on Jalan Banggil No. 12, Rawamangun, East Jakarta;
- b) The salary provisions for each waiter are Rp. 300,000 (Three Hundred Thousand Rupiah) and there are no rules for waiters in the café to wear sexy clothes or accompany guests who only pour drinks for the guests.
- c) The costs incurred by Lisna on the trip from Sukabumi to Medan were entirely borne by the defendant.
- d) The defendant only found out that the victim witness was a minor from the other waitresses at the cafe, but Lisna was still willing to work.
- e) The defendant invited Lisna to go for a walk to the defendant's parents' house with his two maids, namely Bahagia and his wife, and had intended to have sexual intercourse with Lisna.
- f) The defendant took Lisna to the Pardede Hotel because he was happy with Lisna and had sex like husband and wife. This was not the first time he had done this with his employee. Before Lisna, the defendant had done it with one of his female employees who had resigned, named Diana.

#### **e. Judge's Verdict**

Based on the facts revealed in the trial, the Panel of Judges considered that because the Public Prosecutor's indictment was alternative in nature, the Panel of Judges was given the authority to choose one of the First or Second Indictments in accordance with the facts revealed in the trial, and if one of the indictments had been proven and fulfilled, then the other indictment did not need to be considered any further.

Based on the facts revealed at the trial, the Panel of Judges will consider the First Charge, violating Article 2 paragraph (1) of Law No. 21 of 2007, the elements of which are as follows:

##### **1) Elements of Every Person:**

Based on the provisions of Article 1 paragraph (4) of Law No. 21 of 2007, the definition of Every Person is an individual or corporation that commits the crime of human trafficking. An individual in this case is meant to be a person as a legal subject who can be held accountable according to law;

As a result of the examination at the trial, the identity of the defendant as described in the Public Prosecutor's Indictment is correct, the defendant is a person who is physically and mentally healthy and can be held legally responsible;

The defendant can be blamed for having committed the act as charged by the Public Prosecutor and this will still be considered in the next element;

##### **2) Elements of recruiting, transporting, harboring, sending, transferring or receiving a person by means of threats of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt trapping or giving payment or benefits even though obtaining the consent of a person who has control over another person:**

Based on the facts in the trial, it was proven true that the defendant should have known that the victim witness Lisna Widiyanti was not yet 15 (fifteen) years old, born on July 25, 1997, but the defendant still accepted and employed the victim witness as a waitress at the Pesona Cafe who worked from 20.00 WIB to 03.00 WIB, a job that was not appropriate for a woman who was still a minor, and the defendant actually had sexual intercourse with the victim witness again at the Pardede International Cottage Hotel, with a promise to be responsible for his actions.

Based on the above facts, according to the Panel of Judges, this element has been proven and fulfilled;

##### **3) Elements For the purpose of exploiting the person in the territory of the Republic of Indonesia:**

What is meant by exploitation according to Article 1 number 7 of Law No. 21 of 2007 is an action or without the consent of the victim which includes but is not limited to prostitution, forced labor or service, slavery or practices similar to slavery, or practices similar to slavery,

oppression, extortion, physical, sexual, reproductive organ exploitation or unlawfully removing or transplanting organs and/or body tissue or utilizing the energy or utilizing the energy or ability of a person by another party to obtain material or immaterial benefits.

In the opinion of the Panel of Judges, the defendant's actions have been proven and fulfilled, so in the opinion of the Panel of Judges, the defendant has been proven legally and convincingly guilty of committing: "The crime of human trafficking", therefore because the First Charge has been proven and fulfilled, the Second Charge does not need to be considered any further.

After considering everything, both aggravating factors such as the defendant's actions disturbing the community, not supporting the Government's Program in Eradicating Human Trafficking Crimes and has caused suffering and shame for the victim and her family. As for mitigating factors, the defendant frankly admitted his actions so as not to complicate the examination in court, the defendant has never been convicted, admitted guilt and regretted his actions and the defendant is married and has a wife and a child. Therefore, there are no things found that can eliminate the defendant's sentence or reasons that can eliminate criminal responsibility for the defendant, therefore the defendant must be found guilty and punished.

The Panel of Judges declared that the Defendant Andreas Ginting alias Ucok was legally and convincingly proven guilty of committing the crime of Human Trafficking and sentenced the defendant to imprisonment for: 3 (three) years, and a fine of Rp. 120,000,000,- (One hundred and twenty million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 2 (two) months and granted the Restitution Claim/Lawsuit filed by the biological mother of the victim witness Lisna Widiyanti, which should be partially granted, namely in the form of material and immaterial compensation of (Rp. 49,700,000,- minus Rp. 15,000,000,-) plus Rp. 30,000,000,- equal to Rp. 64,700,000,- (Sixty four million seven hundred thousand rupiah).

#### **f. Decision Analysis**

The decision taken by the panel of judges depends on the judges' deliberation, based on the assessment they obtained both during the trial process, the indictment in connection with the available evidence and also the matters and facts discovered and proven to be true in the court hearing.

Based on the facts revealed at trial, the defendant violated Article 2 paragraph (1) of Law No. 21 of 2007, where the judge's considerations were not only based on the elements in the article used, but also on the facts obtained during the trial and also the supporting evidence.

##### **a. Elements of every person**

The definition of every person referred to in Article 1 paragraph (4) is an individual or corporation that commits the crime of human trafficking. Every person referred to in this article is anyone who commits the crime of human trafficking and is considered capable of being held responsible for all his actions. While a corporation can be in the form of a legal entity or association.

The Panel of Judges is of the opinion that the element of every person is fulfilled by considering that the defendant is a person who is mentally healthy so that all his actions can be accounted for according to applicable law.

After analyzing the judges' considerations, it can be concluded that the priorities include the following:

1. The actions committed by the defendant and the facts of the incident that have been discovered.
  - a) Andreas Ginting is a sane and physically healthy person.
  - b) Andreas Ginting is the Manager and is responsible for the Pesona cafe.
2. Supporting evidence
  - a) Statement from the defendant that the identity contained in the indictment is the identity of the defendant.

Based on the facts of the acts committed and the incidents found as well as the supporting evidence, it can be concluded that the judge's considerations are in accordance with the elements of every person with the understanding of every person as referred to in Article 1 paragraph (4) of Law Number 21 of 2007 concerning the Crime of Human Trafficking, where the Panel of Judges sees that

the Defendant is a person who is mentally healthy so that all his actions can be accounted for according to applicable law.

- b) The element of recruiting, transporting, harboring, sending, transferring or receiving a person by means of threats of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt trapping or giving payment or benefits even though the consent of a person who has control over another person is obtained.

The Panel of Judges in this case is of the opinion that the elements of recruiting, transporting, sheltering, sending, transferring or receiving a person with the threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt trapping or giving payment or benefits even though obtaining the consent of a person who has control over another person are proven to be true and fulfilled, this is obtained based on the facts obtained during the trial.

In terms of analyzing the considerations of the Panel of Judges, then by referring to the facts the following things were obtained:

1. the actions committed by the defendant and the facts of the incident that have been discovered.
  - a) The defendant was proven to have recruited both female and male workers who came from Sukabumi, West Java.
  - b) The Pesona Cafe managed by the defendant opens from 20.00 WIB to 03.00 WIB and in this case the defendant suggested that the waitresses should appear sexily.
  - c) The defendant, through witness Titin Sumartini, asked to find workers to work at the Pesona cafe managed by the defendant, by promising to give the witness a bonus of IDR 1,000,000 (one million Rupiah) for each person recruited.
  - d) Witness Titin Sumartini admitted that at the defendant's request, the witness offered a job to the victim witness Lisna Widiyanti to work in Medan as a cashier, promising a salary of Rp. 1,000,000 (one million) per month. Tempted by the promise of witness Titin Sumartini, the victim witness accepted it even though the victim witness was still 15 years old.
  - e) After the victim Witness agreed to work in Medan, Witness Titin Sumartini called the Defendant to inform him of this. Then the defendant transferred some money to the Witness.
  - f) All costs incurred by the victim witness on the journey from Sukabumi to Jakarta were paid by witness Titin Sumartini while the journey from Jakarta to Medan was borne by the defendant.
  - g) The victim witness fled from the Pesona Cafe and asked for help from witness Marlan to report the incident to the North Sumatra Regional Police.
2. Supporting evidence:  
Statements from Victim Witness Lisna Widiyanti, Witness Enong Sulyani, Witness Titin Sumartini, Witness Marlan, Witness Muslim Harahap.

Based on the facts of the acts committed and the incidents found and the supporting evidence, the Defendant is proven to have committed an act violating the Criminal Act of Human Trafficking. Thus, the basis for the judge's consideration of using the elements of recruiting, transporting, sheltering, sending, transferring, or receiving someone with the threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt trapping or giving payment or benefits even though obtaining the consent of a person who holds control over another person, has been proven true and fulfilled.

- 3) Elements for the purpose of exploiting the person in the territory of the Republic of Indonesia:

The definition of exploitation is an act or without the consent of the victim which includes but is not limited to prostitution, forced labor or services, slavery or practices similar to slavery, or practices similar to slavery, oppression, extortion, physical, sexual, reproductive organ exploitation or illegally removing or transplanting organs and/or body tissue or utilizing the energy or ability of a person by another party to gain material or immaterial benefits.

In the consideration of the panel of judges, it is argued that the defendant based on the facts of the trial, has been proven to have exploited the victim witness. The actions carried out by the defendant are included in the category of being against the law by utilizing someone's energy or ability to gain benefits both materially and immaterially.

Based on this and also referring to the judge's considerations, the following matters can be analyzed:

1. The actions committed by the defendant and the facts of the incident that have been discovered.
  - a) While working at the Pesona Cafe, the victim was never paid, even for food he had to use his own money which he got from guests.
  - b) After one month of working at the Pesona Cafe in Medan, the defendant invited the victim to visit the defendant's mother's house, but apart from that, the defendant, who had evil intentions towards the victim, actually took the victim to the Pardede Hotel and forced the victim to have sex and threatened not to tell anyone and promised to be responsible for his actions.
2. Supporting Evidence

Visum Et Repertum Letter No.47/OBG/2012 from Dr.Pringadi Hospital, Medan City, North Sumatra, dated January 20, 2012, signed by Dr.Zulhaiji A.Husin, Sp.OG, an.k.a. Lisna Widiyanti.

Based on the legal facts proven in court and supporting evidence, it can be concluded that the defendant was proven to have exploited the victim witness, the defendant employed the victim witness without pay even though the victim witness was still a minor and the defendant also took advantage of the victim witness to satisfy his lust for his personal gain.

In addition to the legal facts obtained during the trial. The Panel of Judges also considered the aggravating and mitigating factors for the Defendant. The Panel of Judges also considered the rights of the defendant and the sense of justice created in society and the most important thing is that the provisions of the law can be fulfilled so that peace and security are created in society.

In the case of the crime of human trafficking committed by the defendant Andreas Ginting, the Panel of Judges declared that he was legally and convincingly proven guilty, sentenced the defendant to imprisonment for: 3 (three) years, and a fine of Rp. 120,000,000,- (One hundred and twenty million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 2 (two) months and granted the Restitution Claim/Lawsuit filed by the biological mother of the victim witness Lisna Widiyanti, which should be partially granted, namely in the form of material and immaterial compensation of (Rp. 49,700,000,- minus Rp. 15,000,000,-) plus Rp. 30,000,000,- equal to Rp. 64,700,000,- (Sixty four million seven hundred thousand rupiah).

Based on the existing analysis, the criminal verdict against the perpetrator in this case is very light from the prosecutor's demands, namely 4 (four) years in prison, where the judge only decided 3 (three) years in prison, namely a short sentence used in this article, as stated in Article 2 paragraph 1, namely anyone who recruits, transports, shelters, sends, transfers, or receives someone with the threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt trapping or giving payment or benefits even though obtaining approval from a person who has control over another person, for the purpose of exploiting the person in the territory of the Republic of Indonesia, shall be punished with imprisonment of at least 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).

The judge as the final spearhead in deciding this case, considered the mitigating factors for the defendant during the trial, including where the defendant admitted his actions to the victim and admitted that he regretted it, the defendant also did not complicate the trial process by not being convoluted in providing information, in addition the defendant also has a responsibility to his family but in this case even though the judge acknowledged that the defendant's actions disturbed the community, did not support the Government's program in eradicating human trafficking and had caused suffering and shame for the victim and his family, the decision made by the judges did not seem to consider the position of the child as a victim, the child will bear the shame for the rest of his life, the minimal punishment given was felt to be very unfair to the victim.

Bagir Manan further stated that the quality of a judge's decision depends on seven things, namely:<sup>15</sup>

1. The judge's knowledge includes understanding the concepts of justice and truth;
2. The integrity of judges includes the values of honesty and must be trustworthy;
3. Independence of the judiciary which is free from influence from the parties to the case or public pressure;
4. Political order, social order, law as a tool of power, then law as a requirement for political and legal order has moral power;
5. Facilities within the judicial system;
6. The work system related to other management systems includes the community's oversight function to avoid the loss of public trust in regional judicial institutions;
7. The condition of the legal rules in formal and material legal rules is still contains weaknesses.

In the criminal justice system, law enforcement officers in carrying out their duties must be truly professional and always uphold the law and the values of justice, but in this case the judge does not seem to uphold the values of justice for the interests of the victim, because the judge is only guided by the legal considerations that occur during the trial, without considering non-legal considerations in the decision such as the consequences of the defendant's actions against the child, where the child as the victim almost ended his life by committing suicide because the victim felt impure, alienated and ashamed of his condition. The judge as the spearhead in law enforcement should be able to give the defendant a heavier sentence, this is considering where the perpetrator's actions are very disturbing, with the minimal punishment for the defendant does not rule out the possibility of other perpetrators, besides that the actions carried out by the defendant are very contrary to the commitment and programs of the Indonesian government which is fighting to save the next generation of the nation who are used as sexual objects by lechers.

The prosecutor as the public prosecutor in this case, should be able to pay more attention to the interests of the victim as the party who is greatly harmed, the public prosecutor's demand of only 4 (four) years is felt not to reflect justice for the child who is used as an outlet for the perpetrator's perverted lust, the public prosecutor should give the maximum demand to the perpetrator so that it can be seen that there is seriousness in handling cases related to commercial sexual exploitation of children. With this seriousness, cooperation and the active role of law enforcement officers together with the government can be seen as an effort to eradicate acts of commercial sexual exploitation and protect the human rights of children as victims.

## **OBSTACLES AND SOLUTIONS IN HANDLING ESKA IN MEDAN CITY**

The handling of ESKA in Medan City is still considered very minimal and ineffective, this is influenced by the obstacles in handling ESKA in Medan City, these obstacles can be seen in three parts, namely the first obstacle in terms of legislation, the second obstacle in terms of law enforcement officers and the third obstacle in terms of culture.

These three obstacles greatly affect the development of commercial sexual exploitation of children, because they are closely related to each other, laws and regulations as rules in efforts to overcome CSEC, efforts to realize prevention and overcoming CSEC in Medan City cannot be realized if the current regulations are not effective and have a deterrent effect. Law enforcement officers are the main pillars in minimizing the existence of commercial sexual exploitation of children, both in efforts to prevent it from happening, overcome its existence and protect children as victims of commercial sexual exploitation of children, in the application of criminal law, law enforcement officers who play a role include the Police, Prosecutors and Judges, all three have a very large impact on law enforcement and child protection efforts. The active role of the police to investigate a case found in the field or part of a complaint is the beginning of law enforcement efforts, patience and thoroughness are needed by the police in handling cases related to commercial sexual exploitation of children considering that the victims are children, where the investigation process is not the same as the general

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<sup>15</sup> Agustina Wati Nainggolan: Thesis on Analysis of Judge's Decisions in Drug Abuse Crimes (Study of Medan District Court Decisions), USU Postgraduate Law Studies, 2009 p. 93

investigation process, this is an effort to create comfort for children and also have a good impact on the child's psyche.

### 1. Obstacles in terms of legislation

Obstacles in terms of legislation can be felt in enforcing laws that have been issued, be it child protection laws, laws on human trafficking or other laws. Legal protection of children's rights is the right that arises in children to obtain genuine protection (protection rights) in every aspect of their lives from the state, thus this right creates an obligation that must be fulfilled by the state through its apparatus called law in order to create a system of national, state and social life that can protect the basic rights of children.

The obstacles in terms of legislation are:<sup>16</sup>

- a. In the laws related to commercial sexual exploitation of children, namely Law Number 23 of 2002 concerning child protection and Law Number 21 of 2007 concerning the crime of human trafficking, there is no difference in treating perpetrators who are children or adults, even though it is possible that sometimes the perpetrators are peers of the victim who have previously fallen into commercial sexual exploitation of children due to being exploited by adults, although in sentencing they still refer to the law on the juvenile criminal justice system. In the context of the Convention on the Rights of the Child (CRC), it can be understood that children are victims who must be protected and receive special treatment. Since 1990, the Republic of Indonesia has ratified the Convention on the Rights of the Child, one of whose articles regulates the protection of children from the possibility of being trafficked (Article 35 of the Convention on the Rights of the Child). In this context, the participating country, Indonesia, is obliged to provide protection by preparing judicial and administrative steps to criminalize the perpetrators.

### 2. Obstacles from the perspective of law enforcement officers

The obstacles in terms of law enforcement officers found in the city of Medan are:

- a. Law enforcement officers, in this case the police, cannot reach the main perpetrator, this is because the perpetrator's domicile is not in the same area as the reporting area or it could also be that the perpetrator has fled or is on the wanted list (DPO) to another area where his domicile is no longer known.<sup>17</sup>
- b. There had been a previous peace agreement between the perpetrator and the victim without the knowledge of the police or the assistant, so that the evidence and statements provided by the perpetrator and victim could not be proven.
- c. There are still limited human resources in law enforcement officers, including police, prosecutors and judges, who truly have the ability to handle cases related to commercial sexual exploitation of children.
- d. The unavailability of comprehensive facilities and infrastructure to support law enforcement officers in providing investigation space for children or special space for children, especially in the police, even though there is a child protection unit at the Medan Police, but we cannot find this child protection unit at the police stations in the city of Medan.<sup>18</sup>
- e. The lack of budget and lack of personnel in conducting raids causes raids to not be carried out often. Raids are only carried out occasionally according to the existing budget, and not infrequently when raids are carried out they do not get the conditions as expected, this is because the raid plan has been leaked to the parties who should have been caught in the raid.
- f. In addition, the judicial process is considered less effective, this can be seen in the trial from the prosecution process to the verdict process that occurs, sometimes it is considered less than optimal because it is too light so that the deterrent effect on perpetrators of ESKA is considered less than optimal, this happens because it is not uncommon for perpetrators to be punished with sentences that are considered disproportionate to the actions that have been committed.

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<sup>16</sup>The results of the interview with PKPA, namely the coordinator of PUSPA-PKPA Azmiati Zuliah, SH, MH. Date November 09, 2014

<sup>17</sup>Based on the results of an interview with the Medan City Police, namely Pani PPA IPTU Uly Lubis, April 2013

<sup>18</sup>Results of an interview with PKPA, namely the PUSPA-PKPA coordinator Azmiati Zuliah, SH, MH, July 6 2015

### 3. Cultural Barriers

Law and morals are closely related to human behavior and both are closely related because in law moral norms (ethics) are applied so that the law should be in accordance with justice, besides the law relying on the ideals of justice is also a moral demand. Morals refer to actions based on ethics as a habit.

Cultural barriers found in the city of Medan include:<sup>19</sup>

- a. The culture of corruption is still strong because of limited budget funding, so that law enforcement officers ask for funding from victims, while the victims are poor families. Likewise, there is still a culture of openness towards perpetrators if the case is to be resolved, it can be resolved with the agreed funding.
- b. The main perpetrators are backed up by law enforcement officers, making it difficult to catch and ensnare the perpetrators.
- c. Irresponsible sexual behavior and myths where men believe that taking a girl's virginity shows masculinity for men, the assumption that children who are still virgins can make them stay young and also have a small impact on sexually transmitted diseases that may arise.
- d. Children are considered as assets of their parents, so adults can do anything because they assume that the power lies with the parents and children must obey and comply with their parents or adults.
- e. The stigma in society that children as victims of commercial sexual exploitation of children are considered as perpetrators and then ostracized, so that children who have fallen into this dark world seem to have no hope of returning, so it is easier for perpetrators to persuade children to get trapped again, this is often done by people closest to the child.
- f. Consumptive lifestyle, children try to escape from poverty wanting a high lifestyle. This can be seen where children have become accustomed to luxury goods, such as cellphones, electronic goods and money, even though economically the child is not from a well-off family, they do not feel that they will be exploited by the perpetrator, with the lure of luxury they are accustomed to a luxurious lifestyle so they do not think about the impact in the future.

## 5. Conclusion And Suggestions

### A. Conclusion

Based on the description presented above, the following can be concluded:

1. Regulations on the protection of children from commercial sexual exploitation of children can be seen from laws and regulations both on a national and international scale, some regulations on a national scale include: Child Protection Law No. 23 of 2002, Law on the Eradication of Criminal Acts of Human Trafficking No. 21 of 2007, Law No. 44 of 2008 concerning Pornography, Presidential Decree No. 87 concerning the National Action Plan for the Elimination of CSEC, North Sumatra Regional Regulation No. 6 of 2004 concerning the Elimination of Trafficking of Women and Children. While on an international scale, including the Convention on the Rights of the Child which has been ratified to Presidential Decree No. 36 of 1990, the Optional Protocol to the Convention on the Rights of the Child concerning child trafficking, pornography and child prostitution, the Action Agenda against CSEC/Stockholm Declaration to eliminate CSEC 1996, the Yokohama Global Commitment to eliminate CSEC 2001.  
There are already many regulations regarding child protection in Indonesia, but the large number of regulations does not guarantee the effectiveness and adequacy of these regulations in eradicating commercial sexual exploitation of children. There are shortcomings in these regulations where these shortcomings become obstacles in eradicating commercial sexual exploitation of children.
2. Efforts to overcome commercial sexual exploitation of children in Medan City are carried out by implementing criminal law policies (Penal policy) and implementing policies outside criminal law (non-penal policy). Handling the problem of commercial sexual exploitation of children in Medan City through penal means can be seen in the decisions that have been produced by the Medan City District Court, including:
  - a. Decision Number 1554/Pid.B/2012/PN.Mdn

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<sup>19</sup>Based on the results of an interview with the PKPA, namely the PUSPA-PKPA coordinator Azmiati Zuliah, SH, MH, June 4 2015

In Judge's Decision Number 1554/Pid.B/2012/PN.Mdn, the Panel of Judges decided that the defendant was proven legally and convincingly guilty, where all elements of Article 2 paragraph (1) of Law Number 21 of 2007 concerning the Crime of Human Trafficking were fulfilled, it was explained that the threat of imprisonment was a minimum of 3 (three) years and a maximum of 15 (fifteen) years. In addition, the trial facts were also taken into consideration by the panel of judges in giving a verdict to the defendant. The Panel of Judges sentenced the defendant to 3 (three) years in prison.

b. Decision Number 2743/Pid. B/2006/PN.Mdn

In this verdict, the panel of judges stated that the defendant has been proven to fulfill all elements of Article 83 of Law Number 23 of 2002 concerning Child Protection in conjunction with Article 297 of the Criminal Code, and has been proven legally and convincingly guilty of committing the crime of trading children for sale and women who are not yet adults. The panel of judges in this case sentenced the defendant to 5 (five) years.

Both decisions do not reflect justice to the victims, because the impact of the perpetrators' actions has had negative impacts such as mental stress, feelings of inferiority, shame, various types of torture, infectious diseases and even death. In addition, the actions of the defendants do not support the Indonesian Government's commitment to protect Indonesian children from oppression and crimes of commercial sexual exploitation of children (ESKA).

In non-penal terms, efforts to combat commercial sexual exploitation of children in the city of Medan include:

- a. There is cooperation between the Medan city government, law enforcement officers, NGOs and the community, namely through preventive and repressive supervision.
  - b. Socialization, training and counseling for children and the community as basic education in efforts to prevent commercial sexual exploitation of children in the city of Medan.
  - c. Efforts to protect and rehabilitate children socially, cooperation with agencies related to the problem of commercial sexual exploitation of children.
  - d. Legal Enforcement and Assistance for Children.
  - e. Repatriation and social reintegration of victims of commercial sexual exploitation of children.
3. The obstacles seen in efforts to combat commercial sexual exploitation of children in the city of Medan can be categorized into three parts, namely:
- a. Obstacles and solutions from a legislative perspective  
Obstacles in terms of legislation in dealing with commercial sexual exploitation of children (ESKA) in the city of Medan include:  
In the law related to commercial sexual exploitation of children, there is no difference in treating child perpetrators or adult perpetrators. In addition, the law related to sexual exploitation, such as the law on child protection or the law on human trafficking crimes, still understands that one witness is not a witness. Another obstacle is the lack of Medan city regulations that regulate efforts to prevent, handle and protect the community from the crime of commercial sexual exploitation of children (ESKA).
  - b. Obstacles from the perspective of law enforcement officers  
Obstacles from the perspective of law enforcement officers found in the city of Medan include:  
The police cannot touch the main perpetrator; There is peace between the perpetrator and the victim without the knowledge of the police or the companion; Limited human resources in law enforcement officers, in handling cases related to commercial sexual exploitation of children; The unavailability of comprehensive facilities and infrastructure to support the police, including the inability to find a child investigation room in the police stations in the city of Medan; In addition, the judicial process is considered ineffective, this happens because it is not uncommon for perpetrators to be punished with sentences that are considered disproportionate to the actions that have been committed.
  - c. Cultural barriers  
Cultural barriers found in Medan include: The strong culture of corruption on the grounds of limited budget funding, thus hampering the handling of sexual exploitation; The ongoing culture of deking, where the main perpetrators are backed up by law enforcement officers; Irresponsible sexual behavior and myths; Children are considered as parental assets; Bad stigma in society towards children as victims of commercial sexual exploitation of children (ESKA); Consumptive lifestyle.

## B. Suggestion

Based on the description of the discussion and conclusions of this thesis research, suggestions for overcoming commercial sexual exploitation of children (ESKA) in the city of Medan include:



1. There is a need to improve regulations on commercial sexual exploitation of children (CSEC), where the existing threat of punishment is also expected to be made heavier, so that there is a deterrent effect for perpetrators.
2. There is a need for a regional regulation for the city of Medan regarding commercial sexual exploitation of children (ESKA), where the existence of this regulation can regulate in detail the handling and eradication of commercial sexual exploitation of children (ESKA) in the city of Medan.
3. It is expected that the Medan City Government will be more active in handling cases related to commercial sexual exploitation of children (CSEC). Cooperation between the Medan City Government and law enforcement officers is expected to be even better, so that harmony and compatibility are created in efforts to overcome commercial sexual exploitation of children (CSEC), with the aim that children's rights can be more guaranteed. In addition, the police are expected to provide protection for children as victims based on applicable laws and regulations, and judges who handle cases of commercial sexual exploitation of children can give maximum sentences to perpetrators and parties involved in the child sexual industry network, with the intention that perpetrators are deterred by their crimes and create fear in other perpetrators.
4. In addition, it is hoped that the government and NGOs will cooperate more by monitoring and providing formal and informal education for children so that children can understand how commercial sexual exploitation of children (CSEC) and its impact on their future, this can be done by increasing socialization and counseling for children in schools in the city of Medan.
5. In order to increase costs and facilities in overcoming commercial sexual exploitation of children (CSEC) so that law enforcement through existing criminal policies. And it is also necessary to increase cooperation between agencies related to overcoming CSEC, it is also hoped that supervision will be carried out more often such as raids as an effort to prevent the spread of CSEC in the city of Medan.

## References

- Agustina Wati Nainggolan: Thesis on Analysis of Judge's Decisions in Drug Abuse Crimes (Study of Medan District Court Decisions), USU Postgraduate Law Studies, 2009 p. 93
- Agustinanto Fatimana, Davis Jamie, Hamim Anis et al., Trafficking in Indonesian Women and Children, ICMK and American Center For International Labor Solidarity and Usaid, 2003, p. 227
- Alternative Indictment
- Combined and Mixed Indictments
- Criminal Procedure Code Article 1 point 15
- Criminal Procedure Code Article 1 point 7.
- Cumulative Indictment
- Irwanto, Erna Sofwan Sukrie, et al., Op Cit., p. 10
- Ries Hartadi (Ministry of Culture), Muhammad Joni (National Commission for Child Protection), Let Them Smile, Jakarta: PT. Kammex Communications, July 2004, p. 28
- Single Indictment
- Subsidiary Indictment
- Tolib Effendi, Basics of Criminal Procedure Law, Malang: Setara Press, 2014. p. 180.