

Legal Protection for Victims of Trafficking Crimes from Human Rights Aspect

Heni Susanti and Syafrinaldi

Department of Law, Universitas Islam Riau, Jln Kaharudin Nasution No.113 Marpoyan Pekanbaru – Indonesia

Keywords: Legal Protection, Trafficking, Human Rights

Abstract: The world has divided into three tiers of protection of human trafficking victims, based on the report of the American government in 2017. Indonesia falls into the tier 2 categories, namely countries whose governments have not fully met minimum standards in protecting victims of trafficking but still have significant efforts to adjust these standards. The pattern women trafficking begins with the manipulative stage. Prospective victims are not given real information about the type and place where they will be employed; this makes it difficult for victims to know early on about the possible risks that will occur in the future. This paper aims to find out how the legal protection women trafficking is viewed from the aspect of human rights and how the realization of the form of legal protection for human traffic victims. From the discussion that has been described, it can be concluded that efforts to protect victims of human trafficking crimes are a real form of protection of human rights. Legal basis Protection of victims of trafficking in persons is strictly regulated in Article 43 up to Article 55 of Law No. 21 of 2007 concerning of Trafficking in Persons. To protect the victims, every province/district in Indonesia needs to establish an integrated service center for victims and maximize all protection efforts for them.

1 INTRODUCTION

The second largest fast growing criminal industry in the world is the crime of trafficking in persons. The crime of human trafficking is a diverse problem that consists of fraud, coercion, coercion, and exploitation sexual purposes as well as for forced labor purposes (Moser, 2012).

“The UN defines approving acts of trafficking in persons namely recruitment, transportation, transfer, handling or acceptance of people, through the protection or use of violence or other forms of coercion, abduction, or decision, agreement or position of having permission for another person, for exploitation purposes. Exploitation must include, at a minimum, exploitation, forced labor or services, slavery or practices of slavery, slavery or expulsion or similar organs” (Barner et al., 2014).

Every human being born into the world is a creature created by God Almighty who has the dignity. The dignity of a human being has been attached to Human Rights since birth and protected by statutory Provisions. Human trafficking is a serious crime that violates human values and violates human rights. Countries around the world agreed that human traf-

ficking is one type of crime against humanity that must be addressed immediately. In its development, the United Nations has provided a definition of human trafficking, The United Nations defines human trafficking as: “The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.

For the most part in reality in the lives of the people, women and children are human beings who are at risk of being victims of trafficking in persons. those who are victims will be trafficked inhumanely, generally not only for the purpose of prostitution or other sexual exploitation, but also including exploitation, such as forced or forced labor, slavery, or slavery-like practices. The perpetrator of this crime recruits, transports, transfers, conceals or receives people for the purpose of trapping, or utilizing the victims with all its forms with the threat of violence, the use of violence, kidnapping, forgery, fraud, abuse of power or position, or giving payments or benefits so that

they get approval from people who control the victim. Forms of exploitation include forced labor or forced service, slavery, and practices similar to slavery, forced labor or forced service are working conditions that arise through means, plans, or patterns intended for someone to be sure that if he does not do certain work, then he or his dependents will suffer both physically and psychologically ¹.

In September 2017, “the number of poor people (population with per capita expenditure per month below the Poverty Line) in Indonesia reached 26.58 million people (10.12 percent), decreasing by 1.19 million compared to March 2017 that reached 27.77 million people (10.64 percent)” ². This is one of the factors that causes more people to be attracted by the false promises from trafficking syndicates. Because of the increasing economic demands, victims have no choice in finding legal jobs. They only assume that working abroad will make a higher amount salary without thinking of the risks afterwards. Victims of trafficking are usually more difficult to get maximum legal protection. The government will have difficulty tracing because the process is illegal and the identity is falsified by trafficking syndicates.

When viewed from a variety of factors, in general, the victim is a very disadvantaged part. Victims of trafficking in persons are also often overlooked in criminal justice processes. The formulation of the problem in this paper is: what are the rules governing legal protection for victims of trafficking in terms of human rights and how is the realization of legal protection against victims of human trafficking.

2 DISCUSSION

2.1 Rules of Legal Protection for Victims of Trafficking in Persons

Based on the draft plan of the third International Criminal Code in 1954, Slavery is included in the 13 crimes that have been established and can be sentenced under international law as crimes against the peace and security of all humanity (Hendriana et al., 2017). The International Organization for Migration states that since 2005 it has identified and helped victims of human trafficking in Indonesia as many as 3,339 people, which almost 90% are women and more than 25% of victims are children (Hidayat, 2013).

¹General Provisions in the Explanation of Law No. 21 of 2007 concerning Trafficking in Persons

²(<https://www.bps.go.id/pressrelease/2018/01/02>)

Slavery is the condition of someone under the ownership of another person. Humanitarian crime in the form of slavery is the act of placing a person in the power of another person which causes the victim to have no choice over the work that was illegally ordered by others to him, so that forced to do work that is not even in accordance with his wishes. Crimes in trafficking of women and children have increased and developed in the form of criminal networks, both organized and unorganized. the crime of trafficking in persons is not just an individual relationship but also develops to other legal subjects namely companies and state administrators who abuse their authority and power.

This rule regulates the scope of witness and victim protection, especially regarding trafficking in persons as the most important aspect of the law enforcement process, the aim being to provide basic protection for victims and witnesses. In addition, Law No. 21 of 2007 also gives great attention to the suffering victims as a result of criminal acts of trafficking in the form of restitution rights that must be given by perpetrators as compensation for victims, and regulating victims' rights to rehabilitation medical and social, repatriation and reintegration must be carried out by the state, especially for those who experience physical, psychological, and social suffering due to the crime of trafficking in persons ³.

In the provisions of Article 1 of Law No. 21 of 2007 referred to: “1. Human Trafficking is the act of recruiting, transporting, storing, sending, transferring, or receiving someone with the threat of violence, the use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt bondage or giving payments or benefits, to obtain approval from the person who controls the other person, whether done within the country or between countries, for the purpose of exploitation or causing people to be exploited.

“Article 2 (1) Any person who recruits, transports, accommodates, dispatches, transfers, or receives someone under threat of violence, use of violence, abduction, confinement, forgery, fraud, abuse of power or vulnerable position, debt entrapment or providing fees or benefits although obtaining approval from a person holding control over another person, for the purpose of exploiting that person in the territory of the Republic of Indonesia, is punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp120.000,000.00 (one hundred twenty million rupiahs) and a maximum of Rp.600,000,000.00 (six hundred mil-

³General provisions in the Explanation of Law No. 21 of 2007 concerning the Crime of Trafficking in Persons

lion rupiahs). (2) If the action referred to in paragraph (1) results in the exploitation of the person, then the offender shall be subject to the same criminal offense as referred to in paragraph (1).”

The form of repressive legal protection has referred to the rights of victims of human trafficking as regulated in Law No. 21 of 2007 concerning the Crime of Trafficking in Persons, among others: The confidentiality rights of the identity of victims of trafficking in persons and their families to the second degree (article 44), the right to protection from threats that endanger themselves, their souls / property (Article 47), the right to get restitution (article 48), the right to get health rehabilitation, social rehabilitation, repatriation and social reintegration from the government (article 51).”

In order to protect witnesses and victims, each province and regency / city must have a special service room at the local police office to conduct an examination at the level of investigation for witnesses and / or victims of human trafficking. It's just that in its implementation it still requires special attention and hard effort to realize it in accordance with existing rules. This is the duty and authority of the government to optimize special services for victims.

If there are things that endanger the victim or the family of the victim, in this case in accordance with the provisions of article 47 of Law No.21 of 2007 concerning Trafficking in Persons then the police must provide protection both before, during, and after the case examination.

The provisions of Article 48 of Law No.21 of 2007 concerning Crime regulate the following matters:

1. Every victim of human trafficking or his heirs has the right to obtain restitution
2. Restitution as referred to in paragraph (1) in the form of compensation for:
 - (a) Loss of wealth or income
 - (b) Suffering
 - (c) Fees for medical and / or psychological care actions and / or
 - (d) Other losses suffered by victims as a result of trafficking in persons
 - (e) The restitution is given and included at the same time in the court decision about the case of the human trafficking
 - (f) The granting of restitution as referred to in paragraph (1) is carried out since the decision of the court of first instance is imposed
 - (g) Restitution as referred to in paragraph can be entrusted beforehand in the court where the case is decided

(h) The granting of restitution shall be carried out within 14 (fourteen) days from the date the notification of the decision which has obtained permanent legal force is notified

(i) In the event, the offender is decided freely by the court of appeal or cassation, the judge orders the decision so that the money for the refund is returned to the person concerned

In the implementation of granting restitution to the victim is not fulfilled beyond the time limit referred to in article 48 paragraph (6), the victim or his heir notifies the matter to the court. Furthermore, if the perpetrators of the crime of trafficking in persons are unable to pay restitution, the perpetrators can be subject to a substitute sentence for a maximum of 1 (one) year.

The provisions of Article 51 of Law No.21 of 2007 concerning the Crime of Trafficking in Persons clearly state that if victims of trafficking in persons have the right to obtain health rehabilitation, social rehabilitation, repatriation and social reintegration from the government if the person experiences physical or psychological suffering due to a criminal act human trafficking. The rights of victims can be filed by victims or families of victims, friends of victims, police, escort volunteers, or social workers after the victims report their cases or other parties report them to the Indonesian National Police. If victims of trafficking are abroad and need legal protection due to criminal acts of trafficking in persons, then the government of the Republic of Indonesia through its representatives abroad must protect the personal and interests of the victims, and try to repatriate victims to Indonesia at the expense of the state.

2.2 Realization of Legal Protection for Victims of Trafficking in Persons

The law is the creation of the community, but at the same time, he also created the community, so that the law in accordance with the development of society. This is in accordance with the opinion that "a good law should be in accordance with the law who live in the community (the living law). So the law must reflect the values in the society (Roy and Chaman, 2017).

Women, men and children in Indonesia who are exploited in several sectors such as, on plantations, including oil palm plantations; fisheries, fish processing and construction, and in mining and manufacturing. while women are generally exploited in the domestic sector and sex trafficking. Victims are often recruited to lure offers of work in restaurants, factories, or domestic workers but are actually used as

commercial sex workers. Debt bondage is very common in victims of trafficking. Women and girls were made commercial sex workers in mining operations in Maluku, Papua and Jambi. When the state stopped and closed prostitution on a large scale around 2014, and another thing that happened was that the protection of women working in prostitution areas was reduced, this resulted in a significant increase in vulnerability to sex trafficking crimes in other regions, including Bali and Papua. Children were victims of sex trafficking in Batam, Riau Islands province, and in West Papua province in previous years. Many reports show an increasing number of students and high school students who use social media to recruit and persuade other students, including those under the age of 18, to commercialize sex. The Riau Islands which borders Singapore and Bali are the destinations for child sex tourism.

Female Trafficking Crime is an act that is contrary to human values, dignity and human rights and violates Human Rights so it needs to be abolished. Women's trafficking practices have also expanded in the form of organized crime networks, both between countries and within the country, which pose a threat to the people of the nation and to the norms of life based on respect for Human Rights.

Human Rights were born before the law existed, meaning that human rights are a basic and sacred right that is naturally inherent in every human being until the end of his life as a gift from God through the state with existing legal rules, also formalizing human rights to in a set of legal rules. From this position, law becomes a sine qua non requirement in upholding human rights. Regarding human rights is one of the sources of justice that awaits the political steps of world leaders to enforce it (Effendi and Effendi, 2007).

Human Rights have a wide scope and cover a variety of lives (Ali, 2010), as follows:

1. Everyone has the right to the protection of his personal, family, honor, dignity and property rights
2. Everyone has the right to recognition before the law as a personal person wherever he is
3. Everyone has the right to feel safe and secure and to protect against the threat of fear of doing or not doing something
4. Everyone must not be disturbed which is a right relating to personal life in his residence
5. Everyone has the right to independence and confidentiality in the communication relationship through electronic means must not be disturbed, except by order of a judge or other legitimate power in accordance with the Law

6. Everyone has the right to be free from torture, punishment, or mistreatment, inhumanity, enforced disappearance and loss of life
7. Everyone must not be arrested, suppressed, discredited, ostracized, exiled or disposed of arbitrarily
8. Everyone has the right to live in a safe, peaceful society and state, which respects, protects and fully implements human rights and basic human obligations as stipulated in the Law

According to Mahfud MD, the Preamble and Body of the 1945 Constitution does not have a strong enthusiasm in providing protection for human rights or more embracing the desire to restrict human rights, to be just a citizen right that must be determined in a law made by the legislature. More explicitly, Mahfud said, in various analyzes it was mentioned that one of the causes of human rights violations was because our constitution did not really elaborate on the protection of human rights in its articles explicitly. In contrast to Dahlan Thaib's opinion, it would be found that there are at least 15 human rights principles if examined in the Preamble, Body, and Explanation, namely as follows:

1. The right to self-determination
2. Citizens' rights
3. The equality rights in the law
4. The right to work
5. The right to a decent life
6. The right to associate
7. The right to express an opinion
8. The right to have religion
9. The right to defend the country
10. The right to get teaching
11. The right to social welfare
12. The right to freedom and independence of the judiciary
13. The right to maintain cultural traditions
14. And the right to defend regional languages

Crimes under the United Nations Convention Complementing the United Nations Transnational Organized Crime Convention, A / 55/383, or the UN Trafficking Protocol, Palermo 2000 determined by the General Assembly on 2 November, 2000 is trafficking in Persons Shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability to obtain consent of a person

having control over another person, for the purpose of exploitation. "Exploitation shall include, at a minimum, the exploitation of the prostitution of sexual exploitation, the practice is similar to slavery, servitude or removal of organs"⁴.

The last calculation from the Global Slavery Index conducted by the Walk Free Foundation in 2014 estimated that 35.8 million people consisted of men, women and children who were victims of trafficking in persons around the world. Then a survey conducted by ILO (International Labor Organization) from 2001 to 2005 there were around 12.3 million people become victims of human trafficking, and in 2012 it increased to 20.9 million people⁵. In 2013, the United States Trafficking in Person (TIP) reported that there were around 27 million people, both men, women and children who were victims of human trafficking crimes. US Department of State, 2013 Trafficking in Persons Report⁶.

From the table above, it can be explained that the number of victims of human trafficking handled by IOM is very large, namely 6748 victims. This is a proof that the existence of Law No.21 of 2007 concerning the crime of human trafficking has not been maximized, so that there is a need for maximum effort to be carried out by all components in the community, both by law enforcement officials, institutions, and the public.

In the framework of protecting human rights against victims of human trafficking, the government is still working minimally to prevent trafficking in persons. Most prevention efforts are carried out at the district or city and provincial levels; funding and activities are carried out by different task forces in each region. The task force of national anti-trafficking in persons, under the auspices of the Ministry of Women's Empowerment and Child Protection, held several meetings during the reporting period and adopted a National Action Plan for 2015-2019 to eradicate human trafficking. National meetings and action plans focus on improving the rehabilitation and reintegration services for the victims and restoring the coordination between government ministries and other stakeholders. With the support of international donors and NGOs, Women's Empowerment and Child Protection and the local government designed a trafficking awareness campaign

to inform citizens about immigration practices and safe recruitment procedures. In addition, Women's Empowerment and Child Protection has established 25 new anti-trafficking in persons task forces at the regional level, and together with NGOs it provides professional-based training and scholarships for women and school-aged children living in communities that are targeted for recruitment to reduce their vulnerability to human trafficking. Nevertheless, human trafficking Task Force itself is still in lack of operational funds and dependent on the relevant ministry funding contributions. Lack of funding in the task force in the regions and weak internal coordination among task forces at the regional and national levels often obstruct the anti-trafficking efforts. Women's Empowerment and Child Protection and local government received funding support from international donor organizations and NGOs to design and implement campaigns to increase awareness of human trafficking in order to inform citizens about immigration practices and safe recruitment procedures. In November 2015, for the first time, the Ministry of Manpower launched 18 service centers in the villages of origin of migrant workers to increase people's vigilance of human trafficking. These service centers receive funding and human resources assistance from the government to provide anti-trafficking campaign material for prospective migrant workers, economic empowerment programs for at-risk youth, and other care and services for victims⁷.

The shortcomings in structural components are obstacles to the protection of victims of human trafficking. The lack of maximum efforts to protect victims of human trafficking can be seen⁸ as follows:

1. The lack of commitment from law enforcement officials to resolve cases of human trafficking
2. The lack of government commitment in funding that the budget for victims of human trafficking has not been fully adequate
3. The lack of service personnel with a psychologist background
4. The lack of increase in human resources through service officers, so that not many officers are competent in performing services
5. The lack of post-treatment empowerment budget

⁴UN Convention Against Transnational Organized Crime Protocol and Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children Supplementing the Transnational Organized Crime UN Convention, 2000 ; 383

⁵<http://www.ilo.org/>

⁶<http://www.state.gov/j/tip/rls/tiprpt/index.htm>

⁷Annual Report on Trafficking in Persons, US Embassies and Consulates in Indonesia, 2016

⁸IOM Indonesia, Response to the Ratification Plan of ASEAN Convention Against Trafficking in Person Especially Women and Children (ACTIP), Paper was presented at the FGD for Finalizing the Preparation of Academic Scripts, official translation by ACTIP-Bogor 2016

Table 1: Table of victims of Human Trafficking who were assisted by International Organization of Migration (IOM)

Nationality	Frequency				Total
	Woman		Man		
	Children	Adults	Children	Adults	
Indonesian	953	4976	166	653	6748
Burmese	0	0	9	1324	1333
Cambodian	0	2	66	296	304
Thai	0	0	1	77	78
Laotian	0	0	0	13	13
Grand Total	953	4978	182	2363	8476

Source : IOM Indonesia : 2016

Substantial problems are also seen in Law No. 31 of 2014 which is the result of renewal of the previous Law, namely the provisions of Law No. 13 of 2006. There have been changes, however, the government regulation no.44 of 2008 concerning the provision of compensation, restitution and assistance has still not been revoked and renewed. Next is the provisions of Law No. 35 of 2014 concerning amendments to Law No.23 of 2002 about child protection which does not specify about how to protect children who are the victims of human trafficking (Fadila, 2015).

The pattern of trafficking in women begins with the manipulative stage. Prospective victims are not given options about what their jobs are and the risks. Usually they are taken out of town and promised high-paying jobs. Sometimes by brokers, victims and their families have been asked for money or given debt status. In the second stage, victims are taken and forced to live in a very inappropriate shelter. Their identity cards and money are taken so that they cannot escape. Then, the victim is transferred from one broker to another, followed by a payment transaction. At the next stage, the victims are employed as unskilled laborers, commercial sex workers for the entertainment business and military purposes; they were also involved in drug trafficking (narcotics), forced to work as beggars, involved in selling babies, and so on. At this stage they often experience violence, abuse, or rape. Because of identity forgery, it is difficult to track the whereabouts of victims (Irianto, 2006).

The victims of human trafficking usually do not have access to get the rights they are supposed to have. They become victims in several stages starting from the recruitment process to post-trafficking. In fact, many of them preferred to return home without completing legal proceedings until the case was completed. The victims prefer to go back to their hometown because in the judicial process it takes a long time, while they need money to cover their living costs. The government and police, in terms of

funding, do not really help them. This is due to an insufficient budget to cover all the needs of victims for a long time. This is what causes them to feel aggrieved many times.

Another problem that arises is when victims are in a position where they have to give testimony that can affect their psychological state. They must recall the atrocities committed by the perpetrators, both physically and psychologically. In this case, the victim needs to get legal and psychological assistance to restore their condition, so that they can lead a normal life.

In order to optimize case disclosure and law enforcement, real legal protection is the right of victims of human trafficking. If a case of trafficking has not been revealed, this means that it will result in difficulties in not being able to identify the victims. This causes them to not be able to get full rights to the protection that should be obtained. Efforts to protect victims are a manifestation of protection of human rights that should be inherent and can be felt by everyone who becomes a victim of trafficking.

The social community also has a role in assisting efforts to prevent and handle victims of human trafficking. They can provide all information that they know to report the existence of a human trafficking to law enforcement or the authorities. In addition, the community can also participate in taking care of the victims.

3 CONCLUSIONS

If seen substantially, the national instrument governing the crime of trafficking in persons is quite good. The rights of victims are regulated in the provisions of Article 46 to Article 55 of Law No.21 of 2007 concerning Crime of Trafficking in Persons. In fact, this is still not maximally implemented due to several factors that influence it, including the level of readiness

and knowledge of law enforcement officials who have not been maximal in providing services to victims of human trafficking. In the framework of protecting human rights against victims of human trafficking, the government is still not exerting adequate effort prevent human trafficking. Most prevention efforts have been carried out at the district/city and provincial levels; funding and activities are carried out by different task forces in each region. Protection of victims of human trafficking still requires special attention from the government and law enforcement officials and the public. This needs to be done in order to optimize performance by task forces already established by the government.

REFERENCES

- Ali, Z. (2010). *Law Philosophy*. Sinar Grafika, Jakarta.
- Barner, J., Okech, D., and Camp, M. (2014). Socio-economic inequality, human trafficking, and the global slave trade. *Societies*, 4(2):148–160.
- Effendi, A. M. and Effendi, A. M. (2007). HAM dalam dimensi/dinamika yuridis, sosial, dan politik: proses penyusunan/aplikasi HA-KHAM (hukum hak asasi manusia) dalam masyarakat / A. Masyhur Effendi, Taufani S. Evandri ; Editor: Nurhadi. *1. HAK ASASI MANUSIA - ASPEK HUKUM, HAM dalam dimensi/dinamika yuridis, sosial, dan politik: proses penyusunan/aplikasi HA-KHAM (hukum hak asasi manusia) dalam masyarakat / A. Masyhur Effendi, Taufani S. Evandri ; Editor: Nurhadi*, 2007(2007):1–99.
- Fadila (2015). Legal protection efforts against children as victims of trafficking. *Persons, Legal and Judicial Journals*, 5(2):191–192.
- Hendriana, R., Widyarningsih, R., and Sari, D. P. Y. P. (2017). LEGAL PROTECTION TO WOMEN AND CHILDREN AS HUMAN TRAFFICKING VICTIMS IN VICTIMOLOGY PERSPECTIVE (Study in Banyumas Region)Ω. *Jurnal Dinamika Hukum*, 17(3):281.
- Hidayat, M. N. (2013). Efforts to eradicate and prevent trafficking in persons through international law and positive Indonesian law. *Al Azhar Indonesia Journal Social Institution Series*, 1:163.
- Irianto (2006). *Women Trafficking in the Narcotics Circulation Network*. Yayasan Obor Indonesia,, Jakarta.
- Moser, K. (2012). Prevention, prosecution, and protection: A look at the United States' trafficking victims protection act. *International Journal of Business and Social Science*, 3(6).
- Roy, S. and Chaman, C. (2017). Human rights and trafficking in women and children in India. *Journal of Historical Archaeology & Anthropological Sciences* Vol 1 Issue, 5.