

# Legal Protection for Women Victims of Trafficking in Indonesia in an International Human Rights Perspective

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**Abstract:** The research aims to analyze the legal protection of women victims of trafficking in Indonesia in an international human rights perspective. The type of research used is empirical normative legal research. The data obtained from this study is primary and secondary data obtained from the results of field research and literature analyzed and reviewed its legal relevance and used to decipher conceptions and theories used in this study, then the data obtained is analyzed qualitatively through a statute approach and conceptual approach. The results of this study show that the legal protection of women victims of people trafficking in the perspective of International Human Rights is found in Act of number 21/2007 about the Eradication of People Trafficking Crimes, but the provision of a form of protection against female victims is not supported by implementing regulations, such as government regulations.

**Keyword:** Legal Protection, People Trafficking Crimes, and Human Rights.

## 1. INTRODUCTION

Humans by nature have the same rights and are attached to themselves without exception, such as the right to life, the right to security, the right to be free from all kinds of oppression and other rights that are universally called Human Rights (HAM). The term HAM means that right is defined in the essence of humanity and for the sake of humanity. Human rights which are the basic rights of all mankind as a gift from God that are inherent in human beings, are natural, universal, eternal and are related to human dignity, are owned equally by everyone, regardless of gender, nationality, religion, age, language, status. social, political views, and others (Nuraeny, 2012).

One of the problems related to human rights in Indonesia is the criminal act of trafficking in persons which is a form of recruiting, sending, transferring, holding or receiving someone, with threats or the use of violence or other forms of coercion, kidnapping, fraud, lies, or abuse of power, or a vulnerable position or giving or receiving payments or obtaining an advantage in order to obtain the consent of someone who has power over another (Hynes, 2015), for the purpose of exploitation. Exploitation includes, at the very least, exploitation to prostitute other people or other forms of sexual exploitation, forced labor or service, slavery or practices similar to slavery, servitude or harvesting of organs. In Indonesia, the crime of trafficking in persons takes the form of trafficking for the purpose of sexual exploitation, domestic workers, migrant workers, child

labor and ordered marriage. The end of this crime is that victims are forced to work in a bad work environment and at an unreasonable salary (Irianto, 2006).

The report from the International Organization for Migration (IOM) states that the number of victims of human trafficking in Indonesia between 2005-2017 reached 8876 people. In 2017, the Directorate of General Crimes at Bareskrim Polri managed to repatriate 1083 victims of human trafficking (Lyneham, 2013). Of these, 1078 were adult women, the rest were children. Meanwhile, in a period of three months in 2018, there were 32 cases of human trafficking targeting children. Every province in Indonesia is both the origin and destination of trafficking in persons. Areas estimated to be recruitment centers are Java, Kalimantan, Sulawesi and Bali. The practice of human trafficking has entered the regions. The West Java region occupies the top position as an area that experienced human trafficking in 2015, with the number of victims reaching 2151 people. The second position is occupied by Central Java with 909 victims. Kalimantan is in third position with 732 victims (Putri, S. A, 2018).

Nowadays, the crime of trafficking in persons shows a significant increase, both in quality and quantity (Larsen, 2010). The increase in the criminal act of trafficking in persons is a direct impact of the process of social change and industrialization which tends to have resulted in the erosion of human values in society. As an effort to anticipate the criminal act of trafficking in persons, cooperation from various parties, both the government and social institutions is needed with the aim of providing protection and legal assistance, especially for women and children.

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Combating the criminal act of trafficking in persons certainly requires a special strategy, such as by taking repressive and preventive measures as well as rehabilitation of victims of trafficking in persons, as well as in disclosing the crime (Emmers, 2003).

The definition of trafficking that is most often used is the definition provided by the Trafficking Protocol (Purwanti, 2017). Human trafficking is the recruitment, transportation, transfer, holding or reception of people, using threats or other advantages in order to obtain the consent of someone who has control over another person, for exploitation purposes. Exploitation includes, at least exploitation, prostitution or other forms of sexual exploitation, meaning forced labor, slavery or similar practices, obstruction or harvesting of organs (Wicaksono, 2020).

Trafficking is a form of human rights violation against women, because it contains elements of threats, torture, and sexual violence as commodities that can be traded, all of which constitute a violation of human rights. In the situation of trafficked women and children, their rights continue to be violated. Because they were then detained, harassed and forced to work overseas (Windiani, 2017).

Human rights are the responsibility and obligation of every country through its apparatus to guarantee and provide protection to every citizen. Violence against women is a social problem and a health problem that must be addressed, therefore, the state with all the capabilities of all its officials must take responsibility for victims of female violence (Bajari, 2013). Indonesia itself has long been trying to guarantee human rights to women and is committed to providing protection through the ratification of the Convention on the Elimination of all forms of Discrimination Against Women was ratified through Law Number 7 of 1984 (Chan, 2014).

## **2. RESEARCH AIM**

The purpose of this study is to analyze the legal protection of women victims of trafficking in persons in Indonesia in an international human rights perspective.

## **3. LITERATUR REVIEW**

### **3.1. Definition of Legal Protection**

Legal protection is a form of protection for human rights that are harmed by others and legal protection is given to the community so that the community can

enjoy all the rights provided by law or it can be said that legal protection is a variety of legal measures that must be provided by law enforcement officials to provide a sense of security, both mind and physically from disturbances and various threats from any party (Raharjo, 2006: 74).

Legal protection is the protection of dignity as well as recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that will protect one thing from other things (Hadjon, 1987: 25). With regard to women as victims, it means that the law provides protection for the rights of women as victims of trafficking in persons from something that results in the fulfillment of these rights (Nuraeny, 2019).

Legal protection is a narrowing of the meaning of protection, in this case only protection by law. The protection provided by law is also related to the existence of rights and obligations, in this case those owned by humans as legal subjects in interactions with fellow humans with their environment. As a legal subject, humans have the right and obligation to take legal action (Naibaho, 2011).

According to Setiono, legal protection is an act or effort to protect people from arbitrary actions by authorities who are not in accordance with the rule of law, to create order and order, thus enabling humans to enjoy their dignity as humans (Setiono, 2004: 3).

On the other hand, Sim Continak defines legal protection as all government efforts to ensure legal certainty to provide protection to its citizens so that their rights as citizens are not violated, and those who violate them will be subject to sanctions in accordance with applicable regulations. Thus, it can be said as legal protection if it contains the following elements (Simanjuntak, 2011: 6) :

- a. There is protection from the government for its citizens;
- b. Legal certainty guarantee;
- c. With regard to the rights of citizens;
- d. There are penalties for those who violate them.

According to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship of values or principles that are manifested in attitudes and actions in creating order in the social life between people (Jamin, 2019).

Based on the description above, it can be concluded that legal protection is all forms of efforts to protect human dignity and human rights in the field of law.

### 3.2. General Definition of Human Trafficking

The definition of trafficking in persons emphasized in the agenda of the Global Alliance Against Trafficking in Women (GAATW) in Thailand in 1994 is:

All efforts or actions related to recruiting, transporting within or across borders, buying, selling, transferring, sending or receiving a person using deception or pressure including the use or threat of using force or abuse of force or bondage with the aim of placing or detaining people whether paid or not for unwanted work (domestic, sexual or productive) in forced or bonded labor or in conditions such as slavery in an environment other than the place where the person lived at the time of the first fraud, pressure or bondage time (Intercession, 2003: 12).

The definition given by GAATW regarding trafficking in persons at a glance has similarities in its meaning, but if you look closely the meaning that covers all elements of the Crime of Human Trafficking in Indonesia, namely in Law Number 21 of 2007, if understood in GAATW in one reading, it is not enough to immediately understand what that is meant because the words used are a little complicated. Understanding what is meant takes time (Ablisar, 2018).

The widely elaborated definition of trafficking in persons, when viewed carefully, does not differ much, where Law Number 21 of 2007 adopts the meaning from various sources, one of which is from a convention ratified by its followers (Ford, 2003). The definition of the Criminal Act of Trafficking in Persons in Article 1 and Article 2 of Law of the Republic of Indonesia Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons is "the act of recruiting, transporting, holding, sending, transferring, or receiving a person with threats of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, bondage or payment or benefits, so as to obtain the consent of the person who has control over the other person, whether done within the country or between countries, for the purpose of exploitation or causing a person exploited (Missbach, 2017).

According to Michelle O.P. Dunbar identifies trafficking in persons in a narrower context, namely in

relation to trafficking in women. According to him, the concept of trafficking in women is not only limited to forced prostitution (Sambas, 2019). In order to understand the general concept of trafficking in women, it is important that we know that prostitution is not only associated with trafficking in women. Not all victims of trafficking are prostitutes because not all prostitutes are made the object of trafficking in women. Women who voluntarily migrate for the purpose of sex workers or who migrate for others who are found to be in the world of industrial sector work which is not carried out by coercion, deception or other coercion, should not be interpreted as part of trafficking in women (Dunbar, 2000, Vol 8: 105).

As stated above, it can be concluded that women who are said to be victims of trafficking in women must have elements in the form of coercion, fraud and so on, which are elements of trafficking in persons, although it can be said that not all trafficking in women is associated with forced prostitution but this is inherent in community understanding about it so that the majority of women who voluntarily do the work are seen as victims of trafficking with the existing elements (Noveria, 2014).

In addition to the notion of human trafficking put forward by several experts. There are several other definitions regarding the criminal act of trafficking in persons including:

1. UN General Assembly Resolution No. 49/166 defines the term trafficking. Trafficking in persons is an illicit association by some people across national and international borders, largely stemming from the ultimate goal of forcing women and girls to work in the field of sexual and economic oppression and exploitation for the benefit of agents, agents and crime syndicates, as well as activities. other illegal activities related to trafficking, such as domestic help, fake marriage, illegal work, and adoption (Bairah, 2005: 9).
2. According to the UN Convention against transnational organized crime 2000 UN in Article 9. Human trafficking is the recruitment, transportation, transfer of shelter or reception of people, either under threat or by force or other forms of violence, kidnapping, fraud, cheating or abuse of authority or vulnerable situations or giving or receiving payments or profits in order to get the consent of someone who has control

over others to prostitute other people or other forms of sexual exploitation, forced or compulsory forced labor, slavery or practices similar to slavery, servitude, or harvesting of organs (Zuliah, 2015: 15).

The definition that explains the criminal act of trafficking in persons when compared with the existing definitions explains that this definition has similarities in the elements of a criminal act. The act of trafficking in persons is a worldwide crime because it is not only a problem for one country, but a transnational crime.

### 3.3. Overview of Human Rights

Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights Article 1 paragraph (1) stipulates that human rights are a set of rights inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld, high, and protected by state, law, government. And everyone for the honor and protection of human dignity (Kimura, 2006).

In general, human rights (HAM) is one with the dignity and nature of the human being himself, therefore it is also called a basic right. In Tap.MPR No.XVII / MPR / 1988 on Human Rights, it states that human rights are basic rights inherent in human beings that are natural and universal as a gift from God Almighty and function to ensure the survival, independence and development of humans and society that should not be ignored, seized or disturbed by anyone (Ahmar, 2018). Human Rights (HAM) is a set of rights inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government, and everyone for the sake of honor and protection of dignity and human dignity (Surtees, 2003).

Human rights are rights that humans have simply because they are human. Humanity has it not because it is given to it by society or based on positive law, but solely because of its dignity as a human being. The formulation of human rights can be seen more clearly in the preamble text of the 1945 Constitution from the first to the fourth paragraph (Hartiwiningsih, 2018). The first statement is essentially an acknowledgment of the existence of freedom to be independent, the statement of independence as the right of all nations is a universal recognition of human rights to live free from oppression of other nations and affirms the existence of an equal position over all nations in the world

(Lindquist, 2010). Recognition of humanity is the essence of the formulation of human rights, because in essence human rights are a basic right that every human being has simply because he is human (Smith, 2010: 11).

Judicial recognition and justice which are listed in the first and second paragraphs refer to the basic universal moral norms that underlie other norms, either in the field of ethics or law. Justice is the spiritual essence of the rule of law that every nation should have. That power should be exercised fairly, so that prosperity can be achieved which is the state's obligation to ensure the welfare of its people (Septinawati, 2018).

The third paragraph states the desire of the Indonesian people to have a free life and is closed by the existence of people's independence. If interpreted broadly, this statement of independence is not only independent externally from colonization by other nations, but also independence internally. This means that independence from other nations cannot be replaced by oppression by one's own nation (Farhana, 2018).

In the fourth paragraph of the Preamble to the 1945 Constitution, the objectives of the establishment of an Indonesian government are emphasized to protect the entire nation and all the blood of Indonesia (Vlieger, 2012), promote public welfare, educate the nation's life and participate in implementing world order based on eternal peace and social justice. The basis for achieving this goal is universal moral norms, namely independence, lasting peace and social justice which are very much in accordance with the spirit of human rights (Smith, 2010: 97).

Based on the definitions of the definition of human rights, a conclusion is drawn that human rights are inherent in human beings which are natural and fundamental as a gift from God that must be respected, guarded and protected by every individual, society or state. Thus, the essence of respect and protection of human rights is to maintain the safety of human existence as a whole through balancing acts, namely the balance between rights and obligations, and the balance between individual interests and public interests (Ramada, 2019).

## 4. RESEARCH METHODS

This research is a normative empirical legal research to obtain academic excellence and truth about

the protection of the law against women victims of trafficking in persons in Indonesia in an international human rights perspective. This research is an evaluative and prescriptive research. It is said that the research is evaluative because this research provides an in-depth analysis of the form of legal protection given to women victims of trafficking in persons in Indonesia, which is bound by the provisions of international law, especially international human rights. The prescriptive nature of this research can be seen in that this research also provides the right solution based on the principles of international law and international human rights law, especially in the field of legal protection to overcome obstacles in providing protection to women who are victims of trafficking in persons.

This study uses a statute approach and a conceptual approach. The legal approach is used by the author to study or examine all regulations related to the initiation of the formation and implementation of laws, policies, programs, activities and legal protection of women victims of trafficking in persons. Review of regulations is carried out from the highest level of regulations to the lowest regulations based on the order of the prevailing laws. The conceptual approach used in this research is to examine the doctrines, principles, and concepts in the science of law associated with legal issues which are the main problems that the researchers studied, namely legal protection for women victims of trafficking as part of international human rights.

Data analysis is a description of the methods of analysis, namely how to use the collected data to be used in solving research problems. Primary and secondary data obtained from the results of field research and literature are analyzed and assessed for their legal relevance and used to describe the conceptions and theories used in this study. The data in this study were analyzed qualitatively, which means that this analysis seeks to find the truth based on the value or quality of the data obtained, namely the suitability of indicators of legal protection for women victims of trafficking in persons. To carry out this qualitative analysis, the researcher conducted an analysis through the following stages, namely: (1). Collecting data grouped according to the object or variable in the study; (2). Sorting and processing data regarding laws, policies, programs, activities and funding for primary and secondary education in border areas; (3). Evaluating data by quantification and

prescription according to their relevance, (4). Establish conclusions and recommendations if needed.

## 5. DISCUSSION

### 5.1. Legal Protection for Women Victims of Trafficking in Persons in Indonesia in an International Human Rights Perspective

Legal protection for women against all activities that exploit illegally is essentially a form of human rights violation, as a right inherent in humans that is obtained from birth and a gift from God that cannot be reduced. Every form of trafficking in persons, especially women, is a violation of human rights which treats the victim as a commodity that is bought, sold, sent, and resold. This kind of phenomenon that applies throughout the world continues to develop and change in form and complexity, which remains only the exploitation it places on humans (Anis Hamim and Ruth Rosenberg, 2003: 12). In the framework of human rights protection, basically protection of women is one of the manifestations of the right to life, the right to be free from servitude or slavery. This human right is permanent and universal, which means it applies to everyone regardless of origin, gender, religion and age, so that every country is obliged to uphold it without exception (Iksan).

There are various international instruments related to trafficking in persons, one of which is the Universal Declaration of Human Rights. In Article 4 of the Universal Declaration of Human Rights (UDHR) it is stipulated that "no shall be held in slavery or servitude: slave trade shall be prohibited in all their forms". The provisions of Article 4 clearly prohibit slavery and the slave trade.

In Indonesia, it has Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. Even though there are regulations on human trafficking, until now there have been no implementing regulations for this law to support such as government regulations. The government also has not yet used this law in dealing with cases of trafficking in persons, especially in efforts to protect the law for women victims of trafficking in persons.

Legal protection for victims of trafficking in persons is protecting the rights of every person who is a victim of a crime of trafficking in persons to receive equal treatment and protection by law and legislation. Therefore, in every legal violation that has occurred against the victim and the impact suffered by the victim,

the victim has the right to receive the necessary assistance and protection in accordance with the legal principle, namely equality before the law. Meanwhile, what is meant by assistance and protection for victims is related to the human rights of victims such as the right to get physical assistance, the right to get assistance in solving problems, the right to regain their rights, the right to receive guidance and rehabilitation, the right to receive protection from threats and the right to obtain compensation (restitution/ compensation) from both the perpetrator and the state.

The Criminal Procedure Code only provides legal protection to victims in the form of compensation through a combination of cases, and does not regulate other forms of legal protection. The failure to specifically regulate legal protection for victims of crime, especially victims of human trafficking, has created injustice, because often the public prosecutor who represents the victim only makes charges or judges only give relatively light sentences to the perpetrators. Protection of victims of trafficking in persons can include forms of protection that are abstract (indirect) or concrete (direct). Abstract protection is basically a form of protection that can only be enjoyed or felt emotionally (psychologically), such as satisfaction (satisfaction).

Meanwhile, concrete protection is basically a form of protection that can be enjoyed in real terms, such as gifts that are either material or non-material. Material giving can be in the form of compensation or restitution, exemption from living expenses or education. Providing protection of a non-material nature can be in the form of freedom from threats, from news that is degrading to humanity. Protection of victims of trafficking in persons can be carried out through law, both administrative, civil and criminal law. Determination of the criminal act of trafficking in persons and efforts to combat trafficking in persons by law, through various stages, actually also contains efforts to protect victims of trafficking in persons, although they are still abstract or indirect. However, it can be said that today, the provision of protection for victims of crime by the criminal law still does not show a clear pattern (Muladi, 20006: 87).

The formulation (determination) of the act of trafficking in persons as a criminal act (with criminal sanctions) in statutory regulations is essentially the provision of indirect protection against victims of crime. One of the efforts to protect victims in trafficking cases is through a court ruling on the incident. The assumption is that the higher the number of criminal

threats against the trafficking perpetrator means that the victim has received legal protection, because with the imposition of a heavy criminal sanction against the perpetrator, it is hoped that similar events will not occur, in other words, the potential perpetrators will think twice about trafficking in persons considering the grave threat. Granting crimes to perpetrators of (violence) crimes has not been able to provide a perfect sense of justice. This is especially so if the victim suffers physical and psychological harm. Protection can also be provided in other forms, for example medical and psychological services are also needed for victims to restore their confidence, restore their enthusiasm for life, as well as compensation in the form of compensation costs as compensation for medical expenses for victims. This protection is very necessary for victims of trafficking human beings who really need recovery from losses, both physical (economic, health) and psychological (trauma). The state can provide protection for victims of trafficking in persons with the consideration that the state has failed to provide a sense of security to its citizens, who in this case are victims of human trafficking.

One of the concrete efforts of protection is the provision of shelters (safe houses). In essence, the protection policy for victims is an integral part that cannot be separated from the protection policy. Based on this concept, the role of the state in creating social welfare is not only limited to meeting the material needs of its citizens, but more than that in order to fulfill a sense of comfort and security in their activities. Legal protection for victims of the crime of trafficking in persons is increasingly gaining a position in connection with the existence of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.

Based on empirical evidence, women are the group with the highest number of victims of trafficking in persons. Victims are trafficked not only for the purpose of prostitution or other forms of sexual exploitation, but include other forms of exploitation, such as forced or forced labor, slavery, or slavery-like practices. Thus, the protection of women victims of trafficking in persons must be a special concern for all groups including the government.

Provisions regarding the protection of victims of trafficking in persons according to the Law on the Eradication of the Crime of Trafficking in Persons, are manifested in the fulfillment of rights, including :

### **a. Right to Confidentiality of Victim's Identity**

This is regulated in Article 44 paragraph (1). And the right to keep this identity secret is also given to the victim's family to the second degree, if the victim receives physical or psychological threats from outside in relation to the victim's testimony (Article 44 paragraph (2)).

### **b. The Right to Obtain Restitution**

This is regulated in Article 48 paragraph (1). Restitution according to Article 1 point 13 of the Law on the Eradication of the Crime of Trafficking in Persons is "payment of compensation charged to the perpetrator based on a court decision or a judge who has permanent legal force for material and immaterial losses suffered by victims or their heirs".

### **c. Right to Health, Social Rehabilitation, Return and Reintegration**

This is regulated in Article 51 paragraph (1). Rehabilitation is one of the concrete steps taken to repair something that has deviated or is damaged. Rehabilitation measures for victims of trafficking in persons are carried out so that the victim's condition is recovered physically and psychologically, so that the victim can return to his life in the community environment as before.

Based on the foregoing, the government is actually ordered to prevent trafficking in persons and to provide protection, especially human rights for victims. The demands for the enforcement of human rights include 2 (two) important things, namely meeting the needs and fulfilling the right to develop. Fulfilling this need means being able to fulfill human rights, because various needs are absolute, which means they must be fulfilled, otherwise there will be disturbances and even death. Meanwhile, fulfilling the right to development means living in accordance with human dignity, not only means fulfilling needs, but everything that is necessary or beneficial for development (Piet, 2004: 38). However, in many countries including Indonesia this awareness has not been heeded, it is still just a dead formula in articles of law and then becomes political rhetoric among the political elite.

## **6. CONCLUSION**

The crime of trafficking in persons is an extraordinary crime, because it undermines human dignity as a creature of God Almighty, which means it is a form of human rights violation. Therefore, the state

must seriously address various causes and backgrounds, starting from law enforcement, socialization, and legal efforts in protecting the interests of victims against the criminal act of trafficking in persons which refers to national or international human rights.

Regarding the legal protection provided by the state for women and children as victims of the crime of trafficking in persons, Law Number 21 of 2007 has provided regulations regarding the provision of protection for victims of trafficking in persons, either directly or indirectly, including providing restitution in the form of compensation for loss of wealth. or income, suffering, costs for medical and / or psychological treatment, and / or other losses to victims of trafficking. However, the provision of direct protection is also not supported by implementing regulations, such as Government Regulations.

## **7. SUGGESTION**

The government should immediately issue implementing regulations (Government Regulations) to implement laws relating to mechanisms for providing compensation and restitution to victims of trafficking in persons as well as in enforcing human rights, especially for women.

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