

LEGAL ANALYSIS OF THE PROTECTION OF THE RIGHTS OF VICTIMS OF THE CRIME OF HUMAN TRAFFICKING

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Abstract

This study aimed to analyze the law on protecting the rights of victims of the crime of human trafficking. This research uses normative juridical analysis and a statute approach. The sources of law in this study are based on primary and secondary sources of law, which refer to the norms contained in the legislation. Then the research results are described systematically to answer the questions that have been asked. Analysts of legal materials in this study use a grammatical-interpretation method, namely interpretation according to the grammar and words used for legislators to state their objectives. To protect the rights of victims of human trafficking, there are still dualisms in the TIP law and the Criminal Procedure Code in settlement of restitution for victims. This makes solving the problem of human trafficking difficult. In this case, it is necessary to review the substance of the TIP law; this is due to other issues as contained in this law.

Keywords: *Analysis, Victim's Rights, Human Trafficking, Crime.*

A. INTRODUCTION

One of the essential dimensions of globalization is the change in the boundaries of a country. Globalization erases and blurs the boundaries and barriers of a nation. According to Anthony Giddens, globalization is leaving nation-states in the sense that the powers that were once owned by the state, including those that underlie Keynesian economic management, have been weakened (Daud & Supoyono, 2019). With that, globalization is a double-edged sword. It provides new facilities for meeting cultures and identities between nations, but it also opens and provides new spaces for various symptoms of destruction, including crime, human trafficking and terrorism (Putri & Arifin, 2019).

The field of life that is relevant to experiencing changes and new challenges in globalization is human traffic, both official (legal) and unofficial (illegal) (Garcia, 2019). In the context of Indonesia, this migration pattern occurs more explicitly considering the character of Indonesia, which is more a country that provides labour for neighbouring countries whose economies are more prosperous. This character encourages the emergence of out-of-country migration in Indonesian migrant workers to various countries that can provide employment (Wardani & Yustitiani, 2021). The exploitation of Indonesian migrant workers in slavery forced labour, extortion, oppression and unpaid salaries as human trafficking.

Social problems in the international class or in the global sphere that have been heard by most people, of course, make the international community feel that these are not problems that must be handled by the country where the cases are rampant, but if there are social problems that make certain situations unfavourable. It also interferes with human survival, and it interferes with or violates human rights (Van Buren et al., 2021). So as an international community, we should see and also respond or take action against the actions that are the problem.

The crime of trafficking in persons or also often called Human Trafficking, in this case, includes acts of trafficking in persons and various acts of violence committed and

multiple acts of harassing or harassment; this is because the existence of this mobilization activity also provides benefits for the country; therefore comfort and especially security for every human being must be considered significant, especially since the problem has violated human rights, of course, it is his obligation to solve it. Data in 2019 shows that most victims are between the ages of 15-17 years which are presented in the image below:

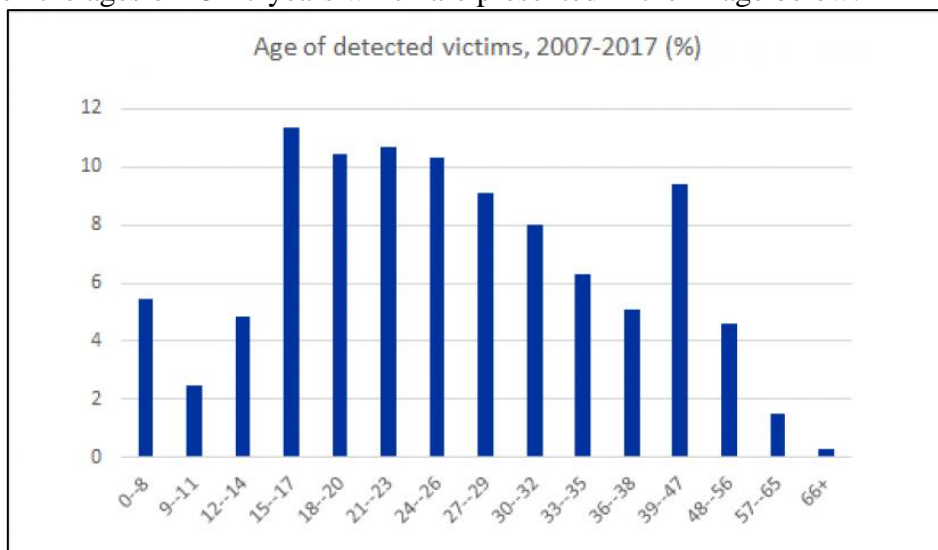


Figure 1. Age of Detected Victims

Source: The Counter-Trafficking Data Collaborative (CTDC) (2019)

The data above is still tiny because there are many Indonesian immigrant workers with undocumented status who do not hesitate to smuggle themselves through the port route using illegal boats through the waters of the Riau Islands or Johor waters which have an impact on the lack of security factors such as the safety of the ship itself. It was found that Indonesian migrant workers died because they drowned in the waters.

The evolution of the quality of criminal acts or crimes demonstrates that territorial barriers between countries, both within and beyond regions, have increasingly dissolved (Okaych et al., 2018). The development of cross-territorial criminal acts further heightens the difficulty of cooperation between countries in their prevention and eradication efforts, especially if the crime involves foreign nationals (Sweileh, 2018).

A transnational crime, transnational offense, or transnational offense is a crime or offense that spans national borders. This notion was initially promoted internationally in the 1990s at the United Nations' Eighth Congress on Crime Prevention and Offender Treatment (Annafi, 2020). Transnational crime, as defined by the United Nations, is large-scale and complex criminal activity carried out closely or loosely by organized groupings with the purpose of establishing, supplying, and exploiting unlawful markets at the expense of society (Putri et al., 2016). A crime can be said to be transnational if it has the following elements: a) it is committed by more than one country; b) preparation, planning, direction and supervision are carried out in other countries; c) involving an organized criminal group where the crime is committed in more than one country, and d) have a severe impact on other countries. Data on victims of human trafficking based on the educational background is presented in the following figure:

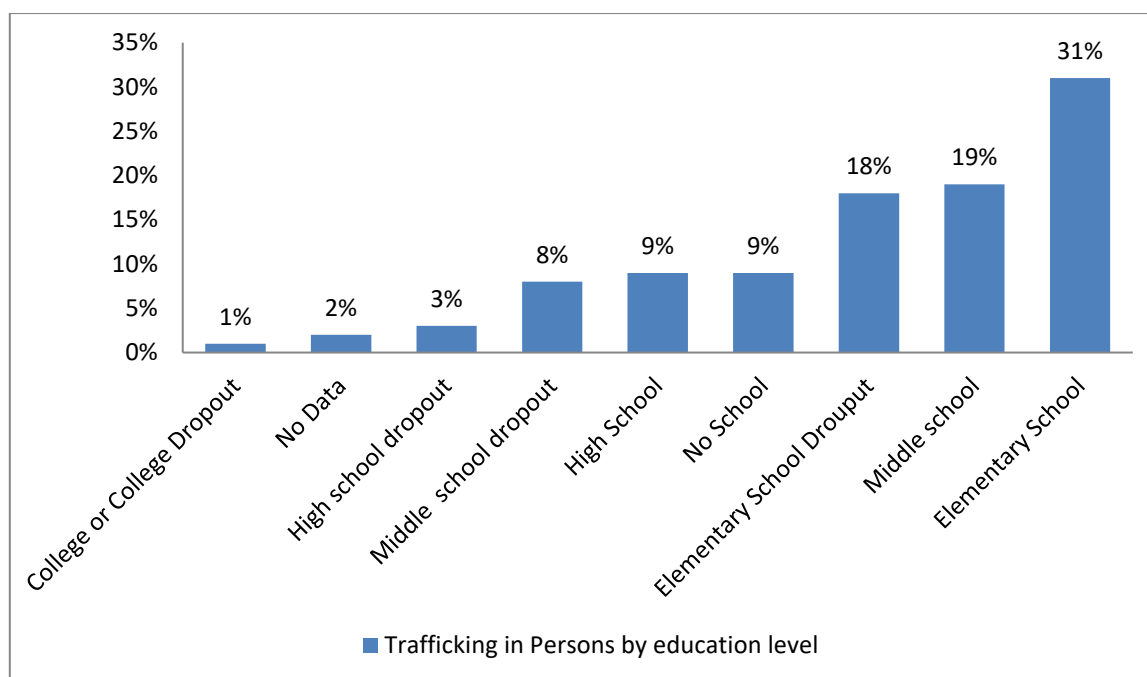


Figure 2. Trafficking in Persons by Education Level

Source: IOM Indonesia

Based on the data above, it can be said that minimal education can make the chances of being entangled in human trafficking higher. In addition to low education, other factors can influence victims to be implicated in the crime circle of human trafficking, namely natural disasters, inability or lack of life skills. In some cases, the perpetrators of human trafficking act as labour agents who distribute workers to certain companies abroad. The victims who survived and testified have admitted that they were caught in the circle of a human trafficking syndicate precisely because they were tempted by the amount of income they would earn if they worked abroad (Sumirat, 2017). But specifically, what they experienced was far from what they had imagined. Coercion, intimidation, and violence are things they have to face. In several cases found, victims of human trafficking who were not rescued always ended up in death or mental illness due to the violence they experienced (Sulistiyo, 2012).

To break the cycle of trafficking, the government must provide a decent livelihood to help curb this illegal activity. If the state can give certainty to its citizens, citizens will not think about looking for a living abroad and breaking the chain (Sari et al., 2021). In addition, other efforts can be made, namely providing information and understanding to various groups regarding this issue. The socialization efforts are more than just giving knowledge to the community about this matter. It also warns public awareness about human trafficking (Salsa, 2020).

Meanwhile, the existing state of affairs means that many victims of human trafficking are effectively unable to obtain reparation for their suffering. Where payback is extremely rare because victims are unaware of their rights and law enforcement officials failed to tell victims of their rights from the start, it was discovered that even law enforcement personnel were unaware of how to file for the appropriate restitution method (Wagianto, 2014). Within the scope of the notion of victim protection legislation, the first consideration must be the nature of the victim's loss. The loss is significant not only in terms of material or physical pain, but also in terms of psychological distress (Yusitarani & Sa'adah, 2020). This is a result of the trauma associated with the loss of trust in society and public order. Anxiety, distrust, cynicism, despair, loneliness, and other avoidance behaviors are all possible symptoms of the

condition. As a result, this study will examine the law governing the protection of the rights of victims of human trafficking.

B. METHOD

This research uses normative juridical analysis and a statute approach. The sources of law in this study are based on primary and secondary sources of law, which refer to the norms contained in the legislation. The technique of tracing legal materials is obtained from library research, regulations, journals, and legal cases. Then the research results are described systematically to answer the questions that have been asked. Analysts of legal materials in this study use a grammatical-interpretation method, namely interpretation according to the grammar and words used for legislators to state their goals (Nenohai, 2021).

C. RESULT AND DISCUSSION

1. Government Efforts in Combating Human Trafficking

To prevent the crime of human trafficking, the government has begun to improve the legal system. This improvement starts with improving the legal system, from the substance of the law and the legal culture that lives in society—then implemented with a law enforcement process following existing rules. The government's role in providing protection and regulating placement for migrant workers includes issuing various legal instruments ranging from the constitution to implementing regulations. The following laws regulate the protection of migrant workers who are victims of the crime of human trafficking. Most Indonesian migrant workers face forced labour conditions, most cases related to working conditions in the receiving country, such as unpaid wages, forced labour, irregular working hours, sexual harassment and physical violence (Mawardi, 2020).

The preamble to the 1945 Constitution of the Republic of Indonesia safeguards the entire nation and homeland of Indonesia in paragraph IV. Become one of the Indonesian state's objectives. Along with the protection of sovereignty and natural resources, one of the components that must be safeguarded is the protection of the people and the fulfillment of citizens' rights. Additionally, Article 27 paragraph (2) of the Republic of Indonesia's 1945 Constitution states that every person has the right to work and an acceptable standard of living for mankind. The meaning and significance of the importance of decent work and residence are clearly stated in the constitution. However, in reality, the limited number of job vacancies has made many people choose to become Indonesian migrant workers abroad. According to Article 28 letter (D) of the Republic of Indonesia's 1945 Constitution, everyone has the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law. And have the right to work and to be compensated and treated fairly in a job relationship.

It is also regulated in various laws, including Law Number 13 of 2003 concerning Manpower (the Manpower Act). Article 31 and Article 32 of the Manpower Law explain that it is the right of TKI to obtain, choose and change places of work according to their respective abilities, expertise and skills. It also includes receiving a decent income at home or abroad by considering dignity, human rights and legal protection. Indonesian Migrant Workers Abroad Placement and Protection Law No. 39 of 2004 This is the first law that controls the legality of sending migrant workers as well as the prevention and eradication of human trafficking. However, it does not need a proportional division of tasks and authorities between the central government, regional governments, and the private sector.

Additionally, there is law number 21 of 2007 aimed at combating human trafficking. Human trafficking is defined in this statute as the act of conveying, recruiting, sending, transferring, or receiving a person by force, kidnapping, forgery, fraud, or abuse of power or position. This law regulates the criminal threat for perpetrators of trafficking in persons

adheres to a minimum of punishment to the maximum. The victim is also entitled to compensation, restitution, and compensation from the perpetrator. This law also provides opportunities for government efforts to provide protection for victims, witnesses and reporters. Besides that, it is also known that the punishment in the case of trafficking in persons is known as in the Indonesian criminal law. The current enforcement of criminal law in dealing with TIP cases is based on several statutory provisions, namely the PTPPO Law, the Criminal Code, the Criminal Procedure Code, and several law enforcement regulations.

2. Legal Protection for Victims of Human Trafficking

Various studies and reports from several NGOs state that Indonesia is still a source of trafficking in persons and a transit and receiving country. At least ten provinces in Indonesia were identified as sources, 16 provinces as transit points, and at least 12 provinces as recipients. An accurate number has not been found for the number of women and children victims of trafficking in persons in Indonesia (Wulandari & Wicaksono, 2014). In 2018, the available data on victims in that year amounted to 74,616 people. However, most victims are afraid to report this crime to the authorities because there is a possibility of deportation and a possible realization of the behaviour.

The crucial problem in eradicating the crime of trafficking in persons is that a patriarchal culture still positions women as unequal to men, and there are still limited career opportunities for women. The paradigm regarding the ability and professionalism of women has not been considered equal to men; women are still considered as subordinates in the family. In many cases, there is still a culture of shame or taboo reporting abusive treatment from husbands to wives, children and women in their environment, etc.

The functions of legal protection provided by representatives of the Republic of Indonesia include avoiding or correcting the practices of the placement country that are discriminatory towards the state and its citizens, providing assistance or services to citizens who violate legal regulations abroad, and providing legal protection and assistance. The forms or models of protection for victims of crime can be given to victims of the crime of trafficking in persons to be able to explore the forms or models of legal protection that can be given to victims, namely as follows: (1) Provision of Restitution and Compensation, (2) Counseling and Medical Services/Assistance, (3) Legal Aid, (4) Information Provision (Tatali, 2021).

International Organization for Migration Indonesia, or IOM Indonesia, has established itself as a critical actor and partner of the Indonesian government in the fight against human trafficking. IOM Indonesia, as part of the Victim Assistance Program, assists Indonesian and foreign victims with repatriation, recuperation, and reintegration through its "victim relief fund" program. Physical and mental health care programs, temporary housing, family counseling, educational help, livelihood assistance, and legal assistance are all included in reintegration assistance. The service is given via a referral mechanism that collaborates with over 80 countries and non-state organizations.

Along with protection, the legislation gives victims of human trafficking with rights, including the right to the confidentiality of their identification and the right to seek protection against threats that jeopardize their lives or property. This includes the right to receive restitution from the government, as well as the right to rehabilitation, health, social rehabilitation, repatriation, and social reintegration. Victims residing abroad have a right to protection and repatriation at the expense of the state. Meanwhile, legal protection for Indonesian migrant workers who are victims of trafficking currently prioritizes the fulfilment of victims' rights.

3. Analysis of the Ineffectiveness of Restitution Settlement Procedures for Victims

By statute, the government is law enforcement and is accountable for victim protection within the criminal justice system. However, it turns out that law enforcement authorities have divergent views on how to administer the criminal justice system, particularly when it comes to reparations for human trafficking victims. This is prompted, among other things, by the dualism inherent in the treatment of trafficking victims as a result of existing legislation.

On the one hand, law enforcers prefer to use or apply a fusion of cases as defined in the Criminal Procedure Code because it is believed to provide greater legal certainty (as the degree of Criminal Procedure Code is greater than that of Government Regulation (PP) Number 44 of 2008, an elaboration of the Witness and Victim Protection Law). However, restitution is restricted in extent in terms of material losses. On the other hand, he supports the implementation of the Witness and Victim Protection Law and Government Regulation No. 44 of 2008, believing that this system can give restitution with a greater scope than the Criminal Procedure Code.

Furthermore, in the regulations agreed upon by the international community, any loss suffered by the victim of a crime can be replaced and counted as one of the rights of the victim of a crime. Compensation may take the form of the restoration of stolen goods, damage, payment of lost money, and injuries and psychological stress suffered by victims, as well as payments for pain and suffering and help to victims.

This notion highlights the need of a victim's healing being as comprehensive as possible and covering all areas of the crime's effects. Restitution enables the victim to reclaim his or her freedom, legal rights, social position, family life, and citizenship, as well as to return to his or her place of residence, reclaim his or her work, and reclaim his or her property. Based on the two principles of settlement in the process of alternating losses, there is a dualism regarding the payment of the restitution, which is explained in the following table:

Table 1. The Difference that Shows the Dualism of Compensation in the Form of Restitution According to the TIP Law and the Amalgamation of Compensation Cases According to the Criminal Procedure Code

Number	Compensation in the form of Restitution (TPPO Law)	Merger of Compensation Claims under the Criminal Code
1	The request for restitution is made jointly: a) since the victim reports the case to the local POLRI (the police must notify/inform the victim). b) investigators handle requests for restitution together with handling trafficking (which means the police are obliged to handle the request (explanation of Article 48 paragraph (1))	A compensation claim must be filed no later than a) prior to the Public Prosecutor submitting a criminal accusation. b) in the absence of the Public Prosecutor, the request is made no later than the judge's judgment (Article 98)
2	The Public Prosecutor is responsible for notifying the victim of her right to seek restitution. Additionally, the public prosecutor transmits the magnitude of the victim's damages as a result of trafficking, as well as the requests (Explanation of Article 48 paragraph (1))	The public prosecutor has no obligation to notify/inform the victim's right to apply for compensation in question. Therefore, in the implementation of joint civil cases, compensation for damages so far has not had much success
3	Restitution is deposited first in the court where the case is decided (Article 48	Criminal Procedure Code does not regulate the implementation of the

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	paragraph (1))	delivery of compensation to victims through consignment/depository
4	If the culprit is acquitted on appeal/cassation, the court orders that the restitution money be restored to the victim in his ruling (Article 48 paragraph (7))	If the case is not submitted for an appeal, then the request for an appeal regarding compensation is not permitted (Article 100 paragraph (2))
5	It is regulated about restitution (compensation) for victims, and prosecutors are given the authority to represent victims to apply for re	imbursement. The compensation claim must be submitted by the victim or his family himself through a merger of cases.

In this dualism problem, the settlement of restitution through the mechanism contained in the Criminal Procedure Code is considered more effective and penetrative in terms of suppressing compensation for victims of human trafficking, but with several conditions such as law enforcement at the police level, prosecutors, and judges in a court having a perception in terms of giving loss in the form of restitution for the victim.

Restitution is not an act that exceeds the power of a court ruling or an act of trafficking, as it is governed in Article 48 paragraph (1) of the TIP Law, which reads. Each victim of a crime is entitled to compensation. In this instance, imposing a crime on the convict is insufficient to resolve the issue, even if the imposition of a crime satisfies the idea of the goal of punishment, which is to instill sorrow and teach the offender so that he does not do similar acts in the future. However, how about the victim's recovery as the party most damaged by a criminal conduct in other instances? According to Primoratz, punishment is unjustifiable if it has no effect on or even harms the perpetrator. Along with these issues, there are several others concerning the TIP Law that have legal flaws, including the following:

The TIP statute does not restrict the public prosecutor's jurisdiction to pursue plain legal remedies, both on appeal and in cassation, for a court ruling involving human trafficking. Article 28 of the TIP Law, on the other hand, specifies that investigations, prosecutions, and exams in court procedures involving human trafficking are conducted in accordance with the appropriate Criminal Procedure Code, unless otherwise specified in this law. Thus, Criminal Procedure Code becomes procedural law in this case.

This article is injurious to the victim since it violates his right to restitution, which is governed by Criminal Procedure Code articles 98-101. If the victim does not submit an appeal, the request for review is denied. The victim will suffer harm as a result of having to accept the choice. After all, if the defendant files an appeal, the civil case is automatically reopened. If not, the victim may appeal a decision denying compensation or restitution based on the burden of the victim's material and immaterial losses.

According to the explanation of Article 48 paragraph (1) of the TIP Law, the system for requesting compensation begins when the victim reports the incident to the local police and is handled by the investigator assigned to the crime committed. Additionally, the Public Prosecutor advises the victim of her right to seek restitution and submits the amount of loss specified in the claim (requisitor). This method does not preclude the victim from suing for her loss; nonetheless, the Public Prosecutor has the jurisdiction to seek restitution; the implementation mechanism is not governed by laws or regulations, for example, in terms of limiting the amount of reimbursement filed. The requirements of the article governing the restitution process are not contained in the article's body.

According to Article 48 paragraph (5) of the TIP Law, reparation may be deposited first with the court that decides the case. As a result of the above provisions, it is clear that

the TIP Law contains provisions that contradict the law's spirit of victim protection, specifically the clauses on voluntary restitution deposits. In comparison, the article's explanation explains that restitution in the form of money is deposited in court in accordance with applicable rules and regulations.

This provision is analogous to resolving civil disputes through conciliation. Depositing restitution funds begins during the inquiry stage. The article's use of the term "may" implies that there is no phrase "required," implying that restitution is deposited in court first. Ideally, the term should be modified to required. Mandatory carries the connotation of firmness or urgency, implying that statutory orders must be followed without exception. In other words, offenders of human trafficking are forced to make a deposit; if no coercive actions are used, the rules will be ineffective.

Because if the perpetrator continues to withhold restitution funds from the court, the culprit will also face no punishment. This precludes the realization of one part of the legal system, namely the application of regulations. If one component of the legal system fails to function properly, the provisions will be ineffective.

D. CONCLUSION

Based on the analysis of legal sources, it can be seen that the government's efforts in eradicating human trafficking against Indonesian workers include issuing various legal instruments ranging from the constitution to implementing regulations, cooperating both bilaterally, regionally, and multilaterally with other countries. However, in protecting the rights of victims of human trafficking, there are still dualisms in the TIP law and the Criminal Procedure Code in settlement of restitution for victims. This makes solving the problem of human trafficking difficult. In this case, it is necessary to review the substance of the TIP law, this is due to other issues as contained in this law, including the lack of regulated authority of the Public Prosecutor in carrying out further legal remedies, lack of information for the public and law enforcement in terms of the ideal mechanism for filing restitution, in short, replacement confinement if restitution is not carried out.

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