

The Crime of Human Trafficking from the Perspective of National and International Law

Daffa Jati Nugroho¹, Yusuf Saefudin²
Universitas Muhammadiyah Purwokerto

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ABSTRACT

Human trafficking is a form of abuse that violates human dignity. Human trafficking in the form of organised crime networks is increasing both domestically and internationally. This organised crime makes it difficult for governments to deal with it and protect its victims. Bloomsbury University refers to human trafficking as "human trafficking", which is "the illegal process of finding and mistreating people for unpaid and often unpleasant labour in settings with no rights defined as the act. How is the legal regulation of human trafficking crimes nationally and internationally and how is the legal protection for victims of these crimes? The method used in writing this research is an analytical approach with legal concepts or statutory approach. The results of the research show that although the regulation on human trafficking is contained in international instruments such as the Palermo Protocol, the domestic regulation in Law Number 21 Year 2007 on Crime Eradication does not allow the trade of human organs by Indonesians. However, if the organ can be used to save the life of another person, for example by transplantation, there will be additional legal requirements for human organ transplantation. For the regulation of human organ trafficking in Indonesia, Law No. 21 Year 2007 on the Eradication of the Criminal Offence of Trafficking in Persons. Currently, the form of protection for victims of human trafficking and human trafficking offences is to punish the perpetrators legally and fulfil the needs of the victims.

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Corresponding Author:

Daffa Jati Nugroho

Faculty of Law, Universitas Muhammadiyah Purwokerto
Jl. KH. Ahmad Dahlan, Kembaran, Banyumas, Jawa Tengah 53182, Indonesia

I. INTRODUCTION

Human trafficking is a crime that has a low risk of being caught but can generate huge profits. In Indonesia, human trafficking is still widely practiced and sometimes involves parties such as the government and legal officials (such as border police and immigration officials). The act of human trafficking is not only troubling the national community but also internationally and has attracted international attention. Human trafficking violates human rights that are upheld by every individual and country (Bramantyo et al., 2019). These crimes include exploitation, forced labor, mistreatment of victims, and violence, all of which violate human rights. Victims of human trafficking are treated inhumanely, they are considered slaves who must always obey their master and serve him constantly. They live in fear because they experience violence every day, even threats and intimidation from the perpetrators become routine for the victims.

In human trafficking practices, the gender of the victim matters, as it is a determining factor in demand and supply. It is easier for women and children to be victimized than men, as they are considered more vulnerable. In addition, children and women are more often exploited in the form of prostitution and sexual slavery, which is highly profitable for traffickers. In human trafficking cases involving women as victims, it is not always only the perpetrators who are at fault, but the state also plays a role in failing to provide proper protection and rights for women. Sometimes, the culture of a country also influences the way it views women, who are considered weak and unimportant, making them more vulnerable to becoming victims of human trafficking.

These situations are particularly dangerous in the absence of adequate regulation and policy intervention in a country. The inaccuracy of domestic legal arrangements has led to difficulties in apprehending human traffickers, both at the national and international levels. This is evidenced by the difficulty in bringing perpetrators to trial (Murty et al., 2020). Moreover, many victims do not get the rights they should get in accordance with applicable legal provisions.

II. RESEARCH PROBLEMS

1. How is human trafficking regulation considered from the perspective of national and international law?
2. What are the legal guarantees for victims of human trafficking?

III. RESEARCH METHODS

This research uses prescriptive legal research methods or statutory approaches and comparative or comparative approaches (Taufani & Suteki, 2018). Normative legal research means that research is carried out by examining all regulations and laws relevant to the research subject (Roisah, & Disemadi, 2019). By using this method, the following research areas can be obtained. Literature and secondary data, legal principles, legal systems, comparative law. The comparative approach consists of conducting research by comparing the legal system applicable in one country with the legal system of another country or several countries with the same purpose, but the differences in the law help identify similarities with the main focus of this research is to explore the legal arrangements of the crime of human trafficking according to national and international law and what legal protection exists for victims of human trafficking according to the current law, therefore we use a prescriptive approach. In addition, the approach in this research also uses Analytical & Conceptual Approach or Legal Conceptual Analysis.

IV. RESULT AND DISCUSSION

1. Human trafficking regulations considered from the perspective of national and international law

The regulation on human trafficking is regulated in the Law on the Eradication of Trafficking in Persons, where articles 1 and 2 explain that any action that fulfills the elements of human trafficking is considered a criminal offense. Article 2 paragraph 1 of the Law explains that the crime of human trafficking can occur when someone recruits, harbors, transfers, sends, or receives people by means of threats or violence, as well as through kidnapping, fraud, forgery, abuse of power, or by trapping someone in debt for exploitation. The article also explains that perpetrators of these criminal acts are subject to a maximum prison sentence of 15 years and a minimum of 3 years, as well as a maximum fine of Rp. 600,000,000.00.

The implementation of laws against human crimes in Indonesia is regulated in Law No. 21/2007. According to the law, labor recruitment agents are considered witnesses in human trafficking cases.

- a. These agents are people who pay others to find workers from villages, take care of identities, manage shelter facilities, conduct medical health checks, provide job training, and send workers to the destination countries where they work.
- b. Calos, who come to a village, can work with various parties such as friends, neighbors, and even the village head, traditional leaders, community leaders, and religious leaders. The aim is to recruit workers who will be paid for both registered and unregistered labor agencies.
- c. Employers or owners of massage parlors, who employ women by force and do not pay wages, even to the extent of employing minors for profit.
- d. The government, which is involved in falsifying documents and facilitating the perpetrators to cross the border illegally, so as not to be caught by immigration officers, police, or even other officials involved in human trafficking.
- e. Employers, who force victims to work without rest, do not provide wages, conduct

confinement, and even commit acts of physical violence against victims including sexual violence.

The handling of human trafficking cases is significantly different from the handling of other crimes. The settlement refers to criminal procedural law, and follows the provisions stipulated in the UUPTPO. The settlement process includes the stages of investigation, examination, and prosecution in court. Article 41 paragraph 1 of the UUPTPO states that if the defendant does not attend the trial, the trial will continue and a verdict will be rendered without the presence of the defendant. Article 2 paragraph 1 describes witnesses in human trafficking cases, while article 7 paragraph 1 provides for an increase in criminal penalties for perpetrators who inflict serious injuries, cause life-threatening diseases, mental disorders, reproductive damage, and even pregnancy. Criminal penalties are increased by one third from the penalties stipulated in article 2 paragraphs 1-6, with a maximum sentence of 20 years imprisonment and a minimum of 4 years imprisonment and a maximum fine of Rp. 800,000,000.00.

In order for human crimes to be prevented and overcome, an international agreement is needed. This agreement forms the basis of the legal system and legal relationships between the countries involved, so that there is legal unity. Sometimes, a country's independence also depends on direct or indirect assistance from other countries (such as recognition from other countries). International agreements are one type of agreement that has principles that form the basis. The most basic principle is *pacta sunt servanda*, which binds the parties making the agreement or law. Regulations regarding international agreements are contained in Presidential

Letter No. 2826/HK/1960, which has been a guideline for international agreements for many years. This Presidential Letter explains that the ratification of international agreements can be done through Presidential Regulations or Laws, according to the material content in the agreement to be ratified.

Under the Palermo Protocol, countries party to the convention must adopt legislative and other measures deemed necessary to crack down, punish and prevent human trafficking, especially in protecting children and women who are often victims of human trafficking. In fact, before ratifying the Palermo Protocol on April 19, 2007, Indonesia had already passed a law on eradicating human trafficking in the country, namely Law Number 21 of 2007 on the Eradication of the Crime of Trafficking in Persons (PTPPO Law).

Indonesia has ratified several international treaties, and the link between national regulations and international treaties is regulated through treaty contracts, which means that Indonesia must comply with the legal regulations in the convention if it has ratified it, thus automatically becoming a state party. Ratification is important to legalize the agreement and can bind a country with other countries that have also ratified the convention. By ratifying the Palermo Protocol, Indonesia joins the UN's efforts to assist and prevent human trafficking, both as victims and witnesses.

2. Legal guarantees for victims of human trafficking

Victims of crime are actually the most harmed party, but they are not protected as well as the perpetrators of crime according to the law. Andi Hamzah emphasized that in discussions of criminal law, especially those related to human rights, often only discuss the rights of suspects without paying attention to the rights of victims.¹

Prassell emphasized that the position of victims in the handling of criminal cases is very low, as he stated: "Victims are often forgotten in the study of crime. Those who are victims of violence, robbery, theft, and other crimes are often ignored, while the police, courts, and academics focus more on known offenders".

Law has the main purpose of providing certainty and justice. Legal protection must be done well to protect victims both at the national and international levels. Unfortunately, the suffering experienced by victims is often only used as a basis for making laws or instruments of punishment for perpetrators. In fact, it is the victim who actually suffers more than the perpetrator who is subject to punishment. Many victims suffer from psychological disorders or mental disorders due to the stress they experience. They may become moody and stay away from the environment and even their own families, some even think of ending their lives. With the passing of Law No. 21/2007 on the Eradication of Trafficking in Persons in Indonesia, victims of human trafficking have hope of obtaining their rights under the law. Articles 43 to 45 explain the rights of victims and witnesses of human trafficking.²

Rights provided by law to victims include:

- a. The right to use all available legal remedies
- b. The right to receive compensation for all acts that caused suffering
- c. The right to legal counsel
- d. Right to legal protection if threatened by the perpetrator
- e. The right to compensation provided to heirs if the victim of human trafficking dies

- f. The right to refuse to give testimony if it endangers his/her life
- g. The right to rehabilitation and guidance
- h. The right to get back what rightfully belongs to him/her.

Basically, legal protection for victims of human trafficking does not only include punishment for perpetrators, but also involves the legal fulfillment of victims' rights. These rights include:

- a. Right to Restitution, restitution is compensation for both material and immaterial losses given to victims or heirs by the perpetrator in accordance with the law and the decision of the court judge. Article 48 paragraph 1 of the UUPTPO regulates this matter. Restitution as a payment of compensation can be in the form of reimbursement of costs, reimbursement for suffering or losses experienced by the victim, return of property, and payment of something that should belong to the victim.
- b. The Right to Protect the Identity of the Victim
The government or authorized officials are responsible for providing guarantees of protection to victims or victims' families for testimony that has been given. This is stipulated in Article 44 paragraph 1 of the UUPTPO.
- c. Right to Reintegration
Repatriation, Social, and Health Rehabilitation. Rehabilitation is needed for victims who have been traumatized by depression and stress. Health rehabilitation is needed to restore the psychological and physical condition of victims of human trafficking to recover as before. Victims have the right to receive health rehabilitation from the government, repatriation to their place of origin, a good social environment, and reintegration.
Victims are also entitled to compensation, which has been regulated in Article 48 paragraph 2 of the UUPTPO, compensation can be given to victims or their inheritance:
 - a. If the victim has lost his/her income or wealth
 - b. If the recovery of mental or physical health requires costs
 - c. Compensation for suffering experienced during this time
 - d. Other losses suffered by the victim due to human trafficking.

Compensation can be filed together with a case report to the local police station. The investigator will then deal with the reported crime. The public prosecutor will inform the victim about the compensation and the amount that the victim will receive for the crime of human trafficking.³

V. CONCLUSION

The act of human trafficking is highly condemned by countries and even the world because it violates human rights by depriving victims of their freedom. In Indonesia, the law that regulates the crime of human trafficking is contained in Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons. This law is the implementation of the Palermo Protocol which has been ratified by Indonesia. The law stipulates penalties for perpetrators and protects the legal rights of victims and witnesses. In the international arena, the crime of human trafficking has been regulated in several international instruments, including the Palermo Protocol. Legal protections for victims include imprisonment for perpetrators, restitution or compensation for victims or their heirs, rehabilitation to restore the physical and mental condition of victims, a good social environment, repatriation, and legal protection from threats by perpetrators against their testimony.

Protection of individuals who are victims of crime has two meanings, namely: 1) legal defense to prevent the occurrence of crime; 2) protection to obtain legal guarantees / compensation for the suffering / loss suffered by individuals who have become victims of crime. Criminal law policy on legal protection for victims of human trafficking is regulated in Law No. 21 of 2007 on the Eradication of Trafficking in Persons and Law No. 31 of 2014 on the Amendment to Law No. 13 of 2006 on Witness and Victim Protection.

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