LEGAL PROTECTION FOR VICTIMS OF HUMAN TRAFFICKING CRIMES

a Hufron, b Syofyan Hadi

ABSTRACT

Purpose: Human trafficking is a transnational crime imposed on human beings, and for this reason, Indonesia has prohibited it and enforced criminal sanctions on human trafficking offenders. The objective of this research is to elaborate and analyze legal protection for human trafficking victims that is regulated in laws and regulations, including its problems.

Theoretical reference: This legal research applies legal and regulatory approaches and a conceptual approach, and its legal material is analyzed through a normative method.

Method: The legal material used is primary legal material in the form of laws and regulations, such as Human Trafficking Eradication Law, Witness and Victim Protection Law, Indonesian Migrant Worker Protection Law, and other laws as well as secondary material in the form of textual books, journal, reports, and others. The primary legal material was collected using the inventory and categorization methods.

Results and Conclusion: The findings of this research show that Indonesia has regulated legal protection for human trafficking victims, be it preventive or repressive. The ratification of various laws and regulations, the imposition of sanctions, and the assignment to the government to prevent human trafficking were implemented as preventive legal protection. Meanwhile, repressive legal protection in the form of protection from the Witness and Victim Protection Agency (LPSK), restitution and rehabilitation, civil lawsuit filing, and repatriation by the state.

Implications of research: The major and fundamental problem in providing legal protection for human trafficking victims is its regulation, in which a contradiction occurs between the Human Trafficking Eradication Law and the Witness and Victim Protection Law.

Originality/value: The novelty of this research study is to provide better idea and understanding regarding regulatory alignment and synchronization are required so that human trafficking victims receive legal protection with legal certainty and justice.

Keywords: victim, legal protection, human trafficking crime.
PROTEÇÃO JURÍDICA DAS VÍTIMAS DE CRIMES DE TRÁFICO DE SERES HUMANOS

RESUMO

Propósito: O tráfico de pessoas é um crime transnacional imposto a seres humanos, e por essa razão, a Indonésia o proibiu e aplicou sanções criminais aos infratores do tráfico de pessoas. O objetivo desta pesquisa é elaborar e analisar a proteção legal para vítimas de tráfico de pessoas que é regulamentada em leis e regulamentos, incluindo seus problemas.

Referência teórica: Esta pesquisa legal aplica abordagens legais e regulamentares e uma abordagem conceitual, e seu material legal é analisado através de um método normativo.

Método: O material legal utilizado é material jurídico primário na forma de leis e regulamentos, como a Lei de Erradicação do Tráfico Humano, Lei de Proteção a Testemunhas e Vítimas, Lei de Proteção ao Trabalhador Migrante da Indonésia e outras leis, bem como material secundário na forma de livros textuais, revistas, relatórios e outros. O material legal principal foi coletado usando os métodos de inventário e categorização.

Resultados e Conclusão: Os resultados desta pesquisa mostram que a Indonésia tem regulamentado a proteção legal para as vítimas de tráfico de pessoas, seja preventiva ou repressiva. A ratificação de várias leis e regulamentos, a imposição de sanções e a atribuição ao governo para prevenir o tráfico de pessoas foram implementadas como proteção legal preventiva. Enquanto isso, a proteção legal repressiva na forma de proteção da Agência de Proteção a Testemunhas e Vítimas (LPSK), restituição e reabilitação, processo civil, e repatriação pelo Estado.

Implicações da pesquisa: O principal e fundamental problema na prestação de proteção legal para vítimas de tráfico humano é a sua regulamentação, em que ocorre uma contradição entre a Lei de Erradicação do Tráfico Humano e a Lei de Proteção a Testemunhas e Vítimas.

Originalidade/valor: A novidade deste estudo é fornecer melhor ideia e compreensão sobre alinhamento regulamentar e sincronização são necessários para que as vítimas de tráfico humano recebam proteção legal com segurança jurídica e justiça.

Palavras-chave: vítima, proteção jurídica, crime de tráfico humano.

1 INTRODUCTION

One of the international problems that garners global attention is the high number of human trafficking crimes (Indonesian: Tindak Pidana Perdagangan Orang - TPPO). According to the data of the United Nations on Drugs and Crime in the 2022 Global Report on Trafficking in Person, global human trafficking is on the rise annually. In 2020, the number of trafficked persons was 1 million people. The number decreased by 11% from that in 2019, which was 1.13 million due to the Covid-19 pandemic. The data can be viewed as follows:3

---

According to the data from Counter Trafficking Collaborative (CTDC), in 2021, the identified types of exploitation suffered by human trafficking victims are mostly in the labor sector in the form of forced labor as much as 75%, followed by sexual exploitation as much as 25%, and other forms of exploitation as much as 1%. The data can be viewed in the following graph:

Indonesia is one of the global human trafficking contributors. In fact, in 2022, the United States of America placed Indonesia on the Tier 2 Watchlist because it is considered to have yet to fulfill the minimum standard of human trafficking eradication despite its several attempts to prevent and handle human trafficking victims. The Data from the Online Information System for Children and Women Protection (SIMFONI PPA) shows that the number of human trafficking cases in 2020-2022 remains high, specifically 1,418 cases and 1,581 victims. Up to mid-2023, the number of identified human trafficking victims was 273 persons. The numbers are certainly concerning, and

---

state action is necessary for every citizen to receive protection insurance according to their human rights.

Realizing the urge for protection for human trafficking victims, Indonesia has actually taken various strategic actions. Among others, Indonesia has ratified the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime through Law No. 14 of 2009. Moreover, Indonesia has also established several laws that regulate the prohibition, criminal sanctions, and protection for human trafficking victims, namely Law No. 21 of 2007 regarding the Human Trafficking Crime Eradication (hereinafter referred to as the Human Trafficking Eradication Law), Law No. 13 of 2006 regarding the Witness and Victim Protection as amended by Law No. 31 of 2014 (hereinafter referred to as the Witness and Victim Protection Law), Law No. 18 of 2017 regarding Indonesian Migrant Worker Protection (hereinafter referred to as the Indonesian Migrant Worker Protection Law), and several regulations for its implementation. In fact, to strengthen the strategic actions for human trafficking crime eradication, Presidential Regulation No. 69 of 2008 regarding the Task Force for Prevention and Handling Human Trafficking Crimes has been produced and amended by Presidential Regulation No. 22 of 2021 (hereinafter referred to as the Human Trafficking Task Force Presidential Regulation).

The many laws and regulations turn out to fail to ensure the decline of Indonesia’s human trafficking crime; in fact, the number of human trafficking cases in Indonesia tends to increase, based on the data presented in SIMFONI PPA. On the other hand, legal protection for human trafficking victims is yet to be optimal, be it in the preventive or repressive aspects. Besides the empirical issues of the law’s implementation, the fundamental problem of human trafficking victim protection is the contradiction of the Human Trafficking Eradication Law and the Witness and Victim Protection Law. For this reason, this research focuses on describing and analyzing the existing condition of the regulation of legal protection for human trafficking victims and the problems in regulating legal protection for human trafficking victims.

2 RESEARCH METHODOLOGY

This research is legal research that aims to seek legal regulations, principles, and doctrines to resolve the main problem in this research, namely legal protection for human
trafficking victims. The implemented approach is a regulatory approach by the means of observing and analyzing regulations that oversee human trafficking and a conceptual approach by the means of reviewing and analyzing legal concepts, theories, and doctrines, be it in administration law, constitutional law, criminal law, and civil law. The legal material used is primary legal material in the form of laws and regulations, such as Human Trafficking Eradication Law, Witness and Victim Protection Law, Indonesian Migrant Worker Protection Law, and other laws as well as secondary material in the form of textual books, journal, reports, and others. The primary legal material was collected using the inventory and categorization methods, while the secondary legal material was collected through literary studies. After being collected, the legal material is analyzed through a normative analysis to reach a conclusion and prescription for the research problem. The stages of research can be viewed as follows:

Figure 3. The stages of research

3 RESEARCH AND DISCUSSION

3.1 THE EXISTING CONDITION REGARDING LEGAL PROTECTION FOR HUMAN TRAFFICKING VICTIMS

The core of a legal state is dynamic and contentious, continuously generating pros and cons among experts. Nevertheless, a legal state is always considered a universal

---

principle and one of the main principles for the effectuation of a government. In existing arguments, especially in the studies of substantive legal state, legal protection for human rights is always placed as one of the main pillars of a legal state. In fact, it may be argued that a legal state and legal protection for human rights are inseparable wholeness. Similarly, Indonesia has declared itself as a state in Article 1 Section (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Indonesian Constitution), acknowledging and ensuring legal protection for human rights. It may even be argued that the 1945 Indonesian Constitution is one of the constitutions that comprehensively regulates the assurance for human rights protection. One of those rights is the protection from violence and discrimination, the right to obtain a fair and equal assurance of legal protection before the law, and the right to be free from torture or treatment that condescends the honor and dignity of a human being as regulated in Article 28B Section (2), Article 28D Section (1), and Article 28G Section (2) of the 1945 Indonesian Constitution.

One of the inappropriate treatments that does not revere human rights and dignity is human trafficking. In fact, the preamble firmly considers as stated in point b of the Human Trafficking Eradication Law “that human trafficking, especially women and children, is an action that clashes with the honor and dignity of human beings and violates human rights, and thus it must be eradicated.” By virtue of this law, Indonesia has regarded human trafficking as one of the criminal offenses against humanity or a crime that violates human rights, which occurs across state borders (transnational organized crime). To provide legal protection for human trafficking victims, Indonesia has taken various actions that mainly can be categorized into two, namely preventive legal protection and repressive legal protection. Preventive legal protection is the legal protection provided before a dispute (in casu human trafficking victims). Meanwhile,
repressive legal protection is the legal protection given in the form of dispute resolution (in casu after there are victims of human trafficking). Several forms of preventive legal protection are as follows:

The ratification of various laws and regulations, such as Law No. 14 of 2009, the Witness and Victim Protection Law, the Human Trafficking Eradication Law, the Indonesian Migrant Worker Protection Law, several implemental regulations such as the Regulation of the Government No. 7 of 2018 regarding the Provision of Compensation, Restitution, and Assistance for Witnesses and Victims as amended by the Regulation of the Government No. 35 of 2020 (hereinafter referred to as Governmental Regulation No. 7 of 2018) as well as other relevant regulations. The ratification of these laws and regulations is solid and actual evidence of Indonesia’s good faith in preventing and eradicating human trafficking.

The imposition of criminal sanctions not only upon individual human trafficking offenders but also corporation and state administrators as well as offenders that commit crimes in relation to human trafficking. The Human Trafficking Eradication Law has regulated and imposed criminal sanctions from Article 2 to Article 27 (26 Articles) with 25 types of actions falling under the category of human trafficking crimes. These provisions in the Human Trafficking Eradication Law are reinforced with the imposition of criminal sanctions in the Indonesian Migrant Worker Protection Law Article 79 to Article 87 (9 Articles).

Obligating the Government, Regional Governments, and the public to prevent human trafficking as regulated in Article 57 of the Human Trafficking Eradication Law. The Government and Regional Governments are obligated to create policies, programs, activities, and budget allocations to prevent and attend to human trafficking victims. The Human Trafficking Eradication Law also obligates the Government to form a Task Force whose function is to coordinate human trafficking eradication, both prevention and management. The Task Force has been established through the Human Trafficking Task Force Presidential Regulation. To enhance human trafficking prevention in the labor sector, the Government and Regional Governments are obligated to protect Indonesian Migrant Workers before work, during work, and after work as regulated in the Indonesian Migrant Worker Protection Law.

Besides preventive legal protection, human trafficking victims are also provided with repressive legal protection in various laws and regulations. Several forms of repressive legal protection are as follows:

### 3.2 PROTECTION FROM THE WITNESS AND VICTIM PROTECTION AGENCY

In the criminal justice system, the victim’s statement holds a significant role in proving the occurrence of a criminal offense. In reality, there are times when victims are threatened and intimidated, and thus they do not dare to give statements to law enforcers. This will certainly affect the enforcement of law because law enforcers will find it difficult to prove the occurrence of a criminal offense. In realization of this matter, in 2006, the Witness and Victim Protection Law was ratified. In Article 5 Section (1) of the Witness and Victim Protection Law, it was determined that every victim of a criminal offense has the right to receive protection, especially the freedom from threats when giving their testimonies in the criminal justice process. According to this law, the state is obligated to provide protection for criminal offense victims to give a sense of security for the victims so that they can give statements/testimonies of their experiences. This obligation of the state is carried out by the Witness and Victim Protection Agency (Lembaga Perlindungan Saksi dan Korban - LPSK) which is independent in carrying out its task. The main task of LPSK is to ensure that crime victims receive protection according to their rights and the provision of laws and regulations.15

Protection for criminal offense victims, in casu human trafficking victims, according to Article 8 of the Witness and Victim Protection Law, is given from the investigation phase at the police level. However, human trafficking victim protection by LPSK is not immediate, since according to the provision of Article 31 of the Witness and Victim Protection Law, LPSK is obligated to provide protection after the victim signs a statement of consent. This means that the victim is protected by LPSK after submitting a request. The human trafficking protection procedure can be viewed below:

---

Besides the legal protection provided by LPSK as described above, human trafficking victims are also given other forms of legal protection, such as: (1) giving testimonies without being physically present at court with the approval of reviewing judges, only with written statements; (2) giving statements through electronic devices; and (3) the victims are not allowed to be sued according to both criminal law and civil law for the statement and testimony they give provided that it is done in good faith.

3.3 PROVISION OF RESTITUTION AND REHABILITATION

To strengthen the legal protection for human trafficking victims, the Human Trafficking Eradication Law and the Witness and Victim Protection Law as well as their implementative regulations have determined that human trafficking victims have the right to receive restitution and rehabilitation. The provision of restitution is an attempt at legal protection and to bring justice for human trafficking victims. Article 1 Section 13 of the Human Trafficking Eradication Law determined that “Restitution is the compensation payment for loss charged to offenders according to a court decision with permanent legal force over material and/or non-material loss suffered by victims or their heirs.” According to that provision, restitution is as follows:

A compensation payment for loss which comprises material and non-material loss suffered by victims or their heirs. It indicates that restitution must be paid because of the direct loss of human trafficking victims or their heirs due to human trafficking. The forms of loss are regulated in Article 48 Section (2) of the Human Trafficking Eradication Law,

---

16 Irawan Adi Wijaya and Hari Purwadi, “Pemberian Restitusi Sebagai Perlindungan Hukum Korban Tindak Pidana,” Jurnal Hukum Dan Pembangunan Ekonomi 6, no. 2 (February 1, 2018), https://doi.org/10.20961/hpe.v6s2.17728.
namely (1) the loss of property or income; (2) suffering; (3) costs for medical and/or psychological treatment; and/or (4) other losses suffered by the victims as a result of human trafficking.

Paid by human trafficking offenders, and thus, a contrario, the restitution cannot be charged to anyone other than the human trafficking offenders.

Restitution payment is based on inkracht court decision. For this reason, following the provision of Article 48 Section (3) of the Human Trafficking Eradication Law, restitution must be stated in the court announcement of the verdict. Human trafficking offenders, according to the provision of Article 48 section (6) of the Human Trafficking Eradication Law, are obligated to make the payment at least 14 days after the verdict with inkracht van gewijsde (permanent legal force) is announced. If the human trafficking offenders are incapable of making payments, the court orders the public prosecutor to confiscate the convicts’ property and auction the property to make restitution payments. If the human trafficking offenders are still incapable of making a payment, it is replaced with the criminal sanction of substitute jail of one year maximum in accordance with the provision of Article 50 Section (4) of the Human Trafficking Eradication Law.

The procedure of restitution payment according to the Human Trafficking Eradication Law can be viewed in the figure below:

Figure 5. The procedure of restitution payment

This regulation for providing restitution is different from the regulation in the Government Regulation regarding the Provision of Compensation, Restitution, and
Assistance for Witnesses and Victims. The procedure can be viewed in the following figure:

Figure 6. The regulation for providing restitution

Besides the right to receive restitution, human trafficking victims also have the right to be rehabilitated. Article 1 Section 14 of the Human Trafficking Eradication Law determines that “Rehabilitation is a recovery from disruption to physical, psychological, and social conditions so that (the subject) may retake their role normally, be it in their family or society.” The provision about rehabilitation is furthermore regulated in Article 51 of the Human Trafficking Eradication Law which states, “Victims have the right to receive healthcare rehabilitation, social rehabilitation, repatriation, and social reintegration from the government if they suffer physically or psychologically as a result of human trafficking crimes.” These rights are also not automatically obtained, but they must be based on a request to the Ministry or regional institution that handles healthcare and social affairs.

The provision of rights is also regulated in the Witness and Victim Protection Law and the Government Regulation regarding the Provision of Compensation, Restitution, and Assistance for Witnesses and Victims, but the terminologies of assistance and procedures are different from one another. Article 37 Section (1) of the Government Regulation regarding the Provision of Compensation, Restitution, and Assistance for Witnesses and Victims determines that “Witnesses and/or Victims of serious violations of human rights, terrorism crimes, human trafficking crimes, torture crimes, sexual
violence crimes, and severe torture crimes have the right to receive Assistance.” The forms of this assistance are regulated in Article 37 Section (2) of the Government Regulation regarding the Provision of Compensation, Restitution, and Assistance for Witnesses and Victims, namely (a) medical assistance; and (b) psychosocial and psychological rehabilitation. The assistance is requested by human trafficking victims, their families, or their proxies in writing to LPSK.

3.4 FILING A CIVIL LAWSUIT TO HUMAN TRAFFICKING OFFENDERS

Legal protection for human trafficking victims is not limited to restitution. The explanation of Article 48 Section (1) of the Human Trafficking Eradication Law determines that “In this provision, the mechanism for requesting for restitution is applicable from the time the victim reports their case to the local Police of the Republic State of Indonesia, and the case is handled by investigators simultaneously with the handling of the criminal offense that occurred. The public prosecutor informs the victim of their rights to request restitution, and furthermore, the public prosecutor informs the amount of loss suffered by the victims as a result of the human trafficking criminal offense along with the charge. This mechanism does not eliminate the victim’s right to file a lawsuit for their losses.” Based on the explanation, human trafficking victims are also given the right to file a civil lawsuit against human trafficking offenders on the basis of an act against the law (onrechtmatigdaad) as regulated in Article 1365 of the Civil Code. This mechanism of legal protection is enforced according to the civil procedural law regulated in the laws and regulations.

3.5 REPATRIATION BY THE STATE

The last repressive form of legal protection for human trafficking victims is repatriation as regulated in Article 51 Section (1) of the Human Trafficking Eradication Law. Furthermore, Article 54 Section (1) of the Human Trafficking Eradication Law determined that “In the event that the victim abroad requires legal protection as a result of human trafficking crimes, the Government of the Republic of Indonesia, through its representative abroad, is obligated to protect the victim’s person and interest and makes the best effort to repatriate the victim to Indonesia with the costs borne by the state.” According to the provision, the state is obligated to repatriate Indonesian citizens who become victims of human trafficking abroad. This obligation is not only for human
trafficking victims abroad but also for human trafficking victims within the country to be repatriated to their countries of origin.

3.5.1 Problems in Regulating Legal Protection for Human Trafficking Victims

The suboptimal legal protection for human trafficking victims in Indonesia is due to various factors. There are internal and external factors as well as normative and empirical factors. However, the authors argue that the most fundamental factor that causes the suboptimal legal protection for human trafficking victims is a normative factor, namely the problem in regulating legal protection which is the inconsistencies between the Human Trafficking Eradication Law and the Witness and Victim Protection Law. These inconsistencies bring forth legal uncertainty in the provision of legal protection for human trafficking victims. These inconsistencies are mainly in the provision of restitution and rehabilitation for human trafficking victims as can be viewed in the following table:

<table>
<thead>
<tr>
<th>Difference</th>
<th>Human Trafficking Eradication Law</th>
<th>Witness and Victim Protection Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human trafficking victim’s right to receive restitution</td>
<td>Human trafficking victim’s right</td>
<td>Victim’s right</td>
</tr>
<tr>
<td>Request</td>
<td>Submitting a request to the Public Prosecutor</td>
<td>Submitting a request to the Public Prosecutor through LPSK or to the court through LPSK</td>
</tr>
<tr>
<td>Forms of loss</td>
<td>There are 4 forms of loss</td>
<td>There are 3 forms of loss</td>
</tr>
<tr>
<td>Time of request</td>
<td>Before the Public Prosecutor files indictments or before a court decision with inkracht van gewijsde (permanent legal force)</td>
<td>Before a court decision with inkracht van gewijsde (permanent legal force) or after a court decision with inkracht van gewijsde (permanent legal force)</td>
</tr>
<tr>
<td>Requirement for LPSK decision and recommendation</td>
<td>-</td>
<td>LPSK decision and recommendation are required</td>
</tr>
<tr>
<td>Payment time</td>
<td>After a court decision with inkracht van gewijsde (permanent legal force)</td>
<td>After a court decision/determination with inkracht van gewijsde (permanent legal force)</td>
</tr>
<tr>
<td>Implementation of the Decision</td>
<td>Human trafficking offenders are obligated to implement the court decision to provide restitution within 14 days maximum</td>
<td>Criminal offenders are obligated to implement court decision/determination to provide restitution within 30 days maximum</td>
</tr>
</tbody>
</table>
The table above shows that the contradictory regulations regarding legal protection for human trafficking victims are numerous, especially in the aspects of substance and procedures of submitting restitution requests. Theoretically, the contradictory regulations regarding legal protection for human trafficking victims cause legal uncertainty and reduce the legal protection for human trafficking victims. In fact, such regulations can become an obstacle to the fulfillment of the rights of human trafficking victims that have been guaranteed in the laws and regulations as well as a hindrance to the government’s attempt to eradicate human trafficking in Indonesia.

Regarding this condition, the Government must immediately take concrete and strategic actions. The Government needs to align and synchronize the provisions in the Human Trafficking Eradication Law and the Witness and Victim Protection Law so that they can be a guide for handling human trafficking victims with legal certainty and justice.

Without a revision to these regulations, it is impossible for human trafficking to be eradicated thoroughly, and it is impossible for the victims’ rights to be provided completely. Moreover, it is necessary to take actions that enhance the substance of the Human Trafficking Eradication Law, such as (1) optimizing the imposition of criminal sanctions to force a deterrent effect toward the offenders; (2) optimizing the use of administrative sanctions which cumulatively can be combined with criminal sanctions, especially for state administrators who are involved in human trafficking and corporations; (3) simplifying procedures in fulfilling the rights of human trafficking victims to receive restitution and rehabilitation; (4) adopting the principle of strict liability so that the compensation of loss is given directly without having to be preceded by proving guilt at the court; and (5) adopting a special procedural law such as reversed onus, the *unus testis nullus testis* exception, and other exceptions.

**4 CONCLUSION**

Every citizen has the right to protection from violence and be free from torture as regulated in the 1945 Indonesian Constitution. To fulfill this right, Indonesia, through the Human Trafficking Eradication Law, has prohibited and criminalized every action of human trafficking. Indonesia has regulated preventive and repressive legal protection for human trafficking victims. Preventive legal protection is in the forms of (1) ratification of laws such as the Human Trafficking Eradication Law, Witness and Victim Protection Law, Indonesian Migrant Worker Protection Law, and other laws and regulations; (2) imposition of criminal sanction; and (3) the obligation of the Government and Regional Governments to take preventive actions to prevent human trafficking. Meanwhile, repressive legal protection is in the form of (1) provision of protection by LPSK; (2) provision of restitution and rehabilitation; (3) filing a civil lawsuit; and (4) repatriation by the state. The regulation of legal protection for human trafficking victims is yet to be optimal since its regulation is still contradictory, between the Human Trafficking Eradication Law and the Witness and Victim Protection Law, especially in terms of regulating substance and the procedure of providing restitution and rehabilitation. For this reason, the Government needs to align and synchronize the provisions in the Human Trafficking Eradication Law and the Witness and Victim Protection Law so that they can become a guide in handling human trafficking victims with legal certainty and justice.
REFERENCES


