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Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

The Effectiveness of the Evidentiary System and the Protection of Victim-Witnesses in Criminal Procedure for the Prosecution of Human Trafficking Cases

Nur Puji Tri Wijayanti

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: nur79wijayanti@gmail.com

Abstract. *The Crime of Human Trafficking (TPPO) is a transnational crime that operates behind a veil of secrecy (a clandestine crime), making the evidentiary process the most crucial challenge in the criminal justice system. In the majority of cases, the victim-witness serves as the sole primary piece of evidence (the key witness) capable of revealing the modus operandi, the identity of the perpetrators, and the syndicate network. However, their position is highly vulnerable to threats, intimidation, and profound psychological trauma. The main issue raised in this article is the ineffectiveness of the traditional evidentiary system under the Indonesian Code of Criminal Procedure (KUHP), which demands a rigid standard of material proof when confronted with a lack of physical evidence. The current system often fails to balance the need for legal truth with the human rights of victim-witnesses, resulting in the phenomenon of secondary victimization within the courtroom due to exploitative cross-examination. This study employs normative legal research (doctrinal legal research) by applying three primary approaches: the statutory approach, the conceptual approach, and the comparative law approach. The analysis focuses on synchronizing national legal instruments, namely Law Number 21 of 2007 on the Eradication of Human Trafficking, Law Number 8 of 1981 (the Code of Criminal Procedure/KUHP), and Law Number 31 of 2014 on the Protection of Witnesses and Victims. The findings indicate that the current evidentiary system in criminal procedure remains formalistic and has not fully adopted a victim-oriented approach. The establishment of the Witness and Victim Protection Agency (LPSK) has not been accompanied by radical procedural reform within the courtroom, leaving victims frequently required to confront perpetrators in person. This study recommends reconstructing the regulatory framework to legitimize the use of virtual courtroom technology as an absolute right of victims, as well as implementing a shifting burden of proof concerning aspects of exploitation. These conclusions contribute to the development of Indonesia's criminal justice system based on the philosophy of Dignified Justice, under which the enforcement of the law must*

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never be achieved at the expense of the dignity and psychological well-being of victim-witnesses.

Keyword: *Criminal; Procedure; Prosecution Trafficking; Victim.*

1. Introduction

The Crime of Human Trafficking (TPPO) has become one of the most serious threats to human civilization in the twenty-first century. As a transnational organized crime, human trafficking exploits millions of women and children every year for enormous financial gain. The defining characteristics of this crime are its covert, systematic nature and its involvement of highly organized criminal networks. Because it operates in secrecy, this crime rarely leaves tangible physical evidence at the crime scene, unlike conventional crimes such as murder or theft.

The absence of sufficient physical evidence places the criminal justice system in a position of heavy reliance on human testimony. In human trafficking cases, victim testimony often becomes the only evidence capable of reconstructing the chronology of the crime, from recruitment and transportation to the stage of exploitation.¹ Victims are the key witnesses. Without coherent and courageous testimony from the victims, public prosecutors will face significant difficulty in preparing charges that are both solid and convincing to the court.

However, relying on the testimony of trafficking victims is far from simple. Victims of human trafficking often suffer devastating psychological harm resulting from physical violence, unlawful confinement, sexual slavery, and death threats directed at their families in their hometowns. Acute trauma or Post-Traumatic Stress Disorder (PTSD) leaves them extremely vulnerable. Requiring them to speak and relive every detail of their suffering before law enforcement authorities is a process that demands the highest level of protection and caution.

It is at this point that Indonesia's criminal justice system, guided by the 1981 Code of Criminal Procedure (KUHP), faces its greatest challenge. KUHP was designed with the philosophy of protecting the human rights of suspects and defendants to receive a fair trial. One manifestation of this principle is the defendant's right to confront witnesses who testify against them in court. However, when this philosophy is rigidly applied in human trafficking cases, it creates a situation

¹ M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP: Penyidikan dan Penuntutan* (Jakarta: Sinar Grafika, 2010), hlm. 289

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in which vulnerable victims are forced to confront face-to-face (vis-à-vis) the criminal syndicates that once abused them.

Beyond the issue of physical confrontation, the criminal evidentiary system demands a stringent standard of material truth, namely proof "beyond reasonable doubt." Public prosecutors bear a heavy burden in proving every element of the offense, including criminal intent (*mens rea*) and the element of exploitation. When the strongest evidence consists solely of victim testimony, defense counsel can easily attack the victim's credibility and the consistency of their memory during trial in order to create reasonable doubt in the minds of the judges.

This situation gives rise to what victimology refers to as secondary victimization. Rather than obtaining justice, the judicial process itself becomes a second source of suffering for victims.² Courtroom questioning often becomes accusatory, attacks the victim's morality, or blames the victim (victim-blaming) by suggesting that they voluntarily accepted fraudulent job offers. Indonesia's criminal procedure system still lacks strong safeguards to protect the psychological dignity of victims from verbal attacks during trial.

The Indonesian government has not remained passive. The enactment of Law Number 31 of 2014 on the Protection of Witnesses and Victims, along with the establishment of the Witness and Victim Protection Agency (LPSK), represents a progressive step toward addressing this vulnerability. LPSK is mandated to provide physical, medical, and psychological protection. However, the protection offered by LPSK often ends at the courtroom door. Once the trial begins, full authority shifts to the panel of judges, and the conventional evidentiary mechanisms under KUHP once again take control.

There is a significant gap between substantive law (the Human Trafficking Law), which progressively regulates victims' rights, and procedural law (KUHP), which remains conservative regarding evidentiary procedures. Criminal procedure has not comprehensively integrated witness protection into the mechanism for discovering the truth. Consequently, many victims ultimately choose to remain silent, withdraw their reports, or provide inconsistent testimony out of fear, resulting in perpetrators escaping criminal liability through acquittals.

In analyzing this impasse, the theory of Dignified Justice, which has developed within Indonesian jurisprudence, offers a particularly insightful analytical framework. Dignified Justice asserts that the primary purpose of the law is to humanize human beings.³ If the criminal evidentiary system is implemented in a manner that destroys the dignity and psychological well-being of victim-

² Arif Gosita, *Masalah Korban Kejahatan: Kumpulan Karangan* (Jakarta: Bhuana Ilmu Populer, 2009), hlm. 55

³ Teguh Prasetyo, *Keadilan Bermartabat: Perspektif Teori Hukum* (Bandung: Nusa Media, 2015), hlm. 71-73

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witnesses, then the justice produced is merely an illusion of justice. Therefore, criminal procedure must be reconstructed to balance the defendant's right to defend themselves with the victim-witness's right to testify in a safe and dignified environment.

Based on this background, this article comprehensively examines the effectiveness of the evidentiary system and the protection of victim-witnesses in the prosecution of human trafficking cases. The primary objectives of this study are to identify the weaknesses of KUHP and current judicial practices, analyze the psychological impact on victim-witnesses, and formulate a concept for reconstructing criminal procedure including the optimization of remote testimony technology to achieve effective and humane enforcement of anti-human trafficking laws.

2. Research Methods

This research constitutes normative legal research (doctrinal legal research), focusing on the examination of legal principles, norms, and positive legal rules applicable within Indonesia's criminal justice system. The primary approach employed is the statutory approach. The analysis of positive law is conducted through both vertical and horizontal examinations of relevant legal instruments, including the Indonesian Code of Criminal Procedure (KUHP), Law Number 21 of 2007 on the Eradication of the Crime of Human Trafficking, and Law Number 31 of 2014 amending Law Number 13 of 2006 on the Protection of Witnesses and Victims. To complement the normative analysis, this study also employs a conceptual approach based on the Law of Evidence, witness protection doctrine in victimology, and the philosophy of Dignified Justice. Furthermore, a limited comparative law approach is utilized to examine judicial practices in countries that have ratified the Palermo Protocol and successfully integrated remote testimony technology into their criminal procedure systems. Primary and secondary legal materials are analyzed qualitatively to formulate practical recommendations for reconstructing legal policy.

3. Results and Discussion

3.1. Challenges and Ineffectiveness of the Evidentiary System in Human Trafficking (TPPO) Cases

The characteristics of human trafficking (TPPO) as an underground crime create highly complex investigative obstacles. In crimes such as murder or robbery, the police may find weapons, fingerprints, or CCTV footage. However, in TPPO cases, the instruments of the crime often consist of seemingly legitimate documents (passports, visas, forged employment contracts) and financial transactions disguised through multiple intermediary accounts. When these physical

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and documentary traces are minimal or have been destroyed by organized crime syndicates, the burden of proof shifts entirely to witness testimony, particularly that of the victim.

This reliance on victim testimony directly conflicts with the evidentiary principles established under the Indonesian Criminal Procedure Code (KUHP). KUHP adopts the principle of **unus testis nullus testis** (one witness is no witness), as stipulated in Article 185 paragraph (2). This principle requires the public prosecutor to present at least two witnesses, or one witness supported by other evidence (such as documents or expert testimony), to prove the defendant's guilt.⁴ In TPPO cases, it is extremely difficult to find factual witnesses other than the victim because the recruitment and confinement processes typically occur in highly concealed locations.

Furthermore, prosecutors face significant challenges in proving the elements of "exploitation" and *mens rea* (criminal intent). Human trafficking differs from people smuggling. In TPPO, it must be established that there was coercion, deception, abduction, or abuse of power leading to exploitation. Criminal syndicates frequently hide behind the argument that the victim gave "consent" to work abroad. To refute this false consent argument, the victim's testimony must be highly detailed and consistent regarding how the deception was carried out by the perpetrators.

The problem is that demanding consistency from a traumatized victim contradicts medical and psychological realities. Human memory following severe trauma tends to become fragmented. When repeatedly interrogated from the investigation stage (police report/BAP) through prosecution and trial, TPPO victims' testimonies often contain unintentional inconsistencies in detail. Within a rigid evidentiary system, these minor inconsistencies are aggressively exploited by defense counsel to argue that the witness is lying, thereby creating reasonable doubt in the judge's mind.

The ineffectiveness of the evidentiary process is further aggravated by the procedural system's failure to accommodate the parallel prosecution of money laundering offenses (TPPU). Ideally, when the victim's testimony is questioned, prosecutors should be able to use evidence of financial transactions (electronic transaction records) from the Financial Transaction Reports and Analysis Center (PPATK) as strong corroborative evidence. However, the lack of financial investigation capacity during the early stages of investigation means that comprehensive

⁴ *Undang-Undang Nomor 8 Tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana*, Pasal 185 ayat (2).

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financial transaction evidence is rarely presented at trial. Consequently, judges are left relying primarily on the verbal dispute between the victim and the defendant.

The imbalance in the burden of proof is also highly apparent. In extraordinary crimes such as TPPO, the state should be able to implement the principle of shifting the burden of proof, at least regarding the legality of assets or employment contracts claimed by the perpetrators. However, KUHAP conventionally places the entire burden of proof on the public prosecutor. The perpetrator only needs to remain silent or deny the allegations (the right to remain silent), while the victim and prosecutor must painstakingly prove every element of events spanning multiple jurisdictions.

The weak integration of forensic psychological expert testimony into criminal procedure also presents a significant obstacle. Psychologists' testimony is often treated merely as supplementary evidence regarding the victim's depression rather than as primary evidence confirming the existence of exploitation syndrome (trafficking syndrome). Judges who have not received certification in gender-sensitive and child-sensitive adjudication tend to place greater trust in administrative documents presented by the perpetrator than in psychological analyses provided by expert witnesses on behalf of the victim.

In conclusion, the current criminal evidentiary system remains designed to address conventional street crimes. When this formalistic framework is applied to organized crimes that manipulate psychology and administrative processes, it becomes highly ineffective. Public prosecutors are forced to fight with their hands tied, while human trafficking syndicates exploit the procedural safeguards afforded to defendants under KUHAP as a shield against criminal accountability.

3.2. The Phenomenon of Secondary Victimization and the Limitations of Protection in the Courtroom

The courtroom, which philosophically represents the sacred venue for the pursuit of justice, often transforms into a second arena of trauma for TPPO victims. Criminal procedure requires open hearings and the physical presence of witnesses. Article 153 paragraph (3) of KUHAP fundamentally mandates that criminal proceedings be open to the public. Although trials involving sexual offenses may be conducted behind closed doors, TPPO cases involving labor exploitation often remain open to the public. The presence of spectators and the perpetrator's family members in the courtroom constitutes a form of passive intimidation that undermines the victim's psychological resilience.

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The greatest threat to victims' psychological well-being is the principle of confrontation, whereby KUHAP requires witnesses to testify in the presence of the defendant. Facing their trafficker, illegal recruitment agent, or abusive employer face-to-face (vis-à-vis) can trigger overwhelming emotional shock. Medically, re-encountering the source of trauma may reactivate a paralyzing fear response (freezing response). Consequently, victims who previously testified fluently during police investigations may suddenly become silent, cry uncontrollably, or even faint while seated in the witness stand.

In this psychologically distressed state, victims must also endure cross-examination by defense counsel. The standard defense strategy in exploitation cases is to destroy the witness's credibility. Questions frequently involve victim-blaming, degrading the victim's morality, or accusing the victim of fabricating the story to obtain financial compensation. Without robust legal protections during trial, the dignity of women and children is systematically stripped away in the name of "the defendant's right to defend themselves." This constitutes an exceptionally brutal form of secondary victimization.

It is at this point that the authority of the Witness and Victim Protection Agency (LPSK) often reaches its jurisdictional limits. LPSK possesses full authority to physically protect witnesses outside the courtroom, accommodate them in safe houses, and provide close security escort up to the courtroom entrance. However, once the witness enters the courtroom, the panel of judges becomes the sole authority (*dominus litis* during the trial). LPSK lacks procedural authority to interrupt attorneys' questioning or suspend proceedings when the victim experiences severe distress, except with the permission and discretion of the judges.

The lack of preparedness among law enforcement officials in implementing trauma-informed trials further worsens the situation. Judges and prosecutors in Indonesia are not yet required to undergo specialized training in the psychology of TPPO victims. Consequently, when victims become confused or respond slowly due to trauma, judges frequently reprimand them in a stern tone to answer more decisively, thereby intensifying the intimidation. This absence of perspective makes the justice system appear highly masculine, bureaucratic, and devoid of empathy.

This phenomenon demonstrates a normative conflict between the defendant's right to a fair trial guaranteed by the Constitution and KUHAP, and the victim-witness's right to personal security and protection of dignity. KUHAP, inherited from an earlier era, places excessive emphasis on protecting suspects from arbitrary state power while overlooking the reality that, in modern crimes, victims are the weakest party and require special protective intervention against the arbitrary actions of criminal syndicates.

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Several partial solutions have been attempted, such as judges ordering defendants to leave the courtroom while witnesses testify (Article 173 of KUHP). However, this measure depends entirely on judicial discretion and is not an absolute right of the witness. Furthermore, defense counsel remains in the courtroom and retains the right to continue cross-examination. Thus, the protection provided remains incomplete and fails to eliminate the psychological pressure exerted by the defense.

From the above analysis, it is evident that the courtroom has become the principal bottleneck in enforcing laws against TPPO. The limitations of formal protection during trial compel victims to sacrifice their mental health as the price for achieving justice on behalf of the state. A legal system that allows victims to be psychologically destroyed in pursuit of a criminal conviction fails to fulfill the essence of Dignified Justice, making radical reconstruction urgently necessary.

3.3. Reconstructing the Evidentiary and Protection System Based on Dignified Justice

To address the ineffectiveness of the evidentiary system and the threat of secondary victimization, Indonesia's Criminal Procedure Code (KUHP) and the Human Trafficking Law must be fundamentally reconstructed by shifting the paradigm from an offender-oriented system to a victim-centered one. The philosophical foundation of this reconstruction is the theory of Dignified Justice.⁵ Dignified Justice requires evidentiary procedures to be designed to protect human dignity, ensuring that the search for material truth no longer becomes a legal instrument that destroys the victim's future.

The most fundamental reform that must be legislated is the full recognition of remote testimony (teleconference testimony) as a fundamental right for TPPO victim-witnesses, particularly women and children. The new Criminal Procedure Code should require judges to facilitate virtual testimony from LPSK safe houses or specially designed courtroom facilities (equipped with screens or protective barriers) whenever requested by the victim. Such virtual testimony must be recognized as possessing exactly the same evidentiary value as physical courtroom attendance, thereby eliminating opportunities for defendants to challenge its admissibility.

Second, the definition and evidentiary value of expert testimony should be expanded. Testimony from clinical psychologists, psychiatrists, and social workers who have accompanied victims throughout their recovery should be elevated to the status of independent and decisive evidence. Criminal procedure should recognize "Human Trafficking Trauma Syndrome" as a legal fact. Consequently, if a victim's testimony contains minor inconsistencies due to trauma-

⁵ Barda Nawawi Arief, *Kapita Selekta Hukum Pidana: Pembaruan Kebijakan Hukum Pidana* Jakarta: Kencana, 2018, hlm. 112.

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impaired memory, judges may rely on forensic psychological expert testimony to conclude that such inconsistencies actually constitute strong evidence that the victim experienced genuine exploitation and trauma.

Third, courtroom protection must be reconstructed by limiting exploitative cross-examination. The Supreme Court should issue a Supreme Court Regulation (PERMA) providing Guidelines for Adjudicating TPPO Cases that explicitly prohibit defense counsel or judges from asking questions unrelated to the criminal acts, particularly questions attacking the victim's sexual history, lifestyle, or past morality. The defendant's right to defend themselves must not be interpreted as the right to engage in character assassination of the victim.

Fourth, institutional synergy between Public Prosecutors and LPSK must be firmly established within criminal procedure law. Prosecutors should no longer simply wait for police investigation reports (BAP). They should be granted authority to collaborate with LPSK during the pre-prosecution stage to develop a "Trauma-Informed Prosecution Strategy." LPSK should also be granted procedural standing in court through victim advocates who are authorized to raise objections directly before the judges whenever questioning by opposing counsel exceeds humanitarian boundaries and threatens the victim's psychological well-being.

Fifth, the burden of proof should be reconstructed. Specifically regarding the frequently raised defenses of "consent" or claims that victims were "fully paid," the law should implement a shifting burden of proof. Once the prosecutor has established the elements of recruitment and transportation, the burden should shift to the defendant (the syndicate or corporation) to prove that no deception or coercion occurred. If the defendant fails to do so, the element of exploitation should be deemed legally established.

For TPPO cases involving minors, evidentiary rules should operate under the principle of strict liability. A child's consent, or even the consent of the child's parents, must not negate the criminal element of exploitation in TPPO. Testimony from minors need not be given under oath, but its evidentiary value should not be reduced to merely corroborative evidence. Modern criminal procedure should recognize testimony from child victims, accompanied by a psychologist, as valid and independent witness evidence.

From both philosophical and pragmatic perspectives, these procedural reforms seek to establish legal equilibrium. The state continues to require rational proof before punishing offenders (retributive justice), while simultaneously ensuring that the evidentiary process is conducted through procedures that protect, heal, and uphold the dignity of victim-witnesses (Dignified

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Justice). Only through such a secure evidentiary system will victims feel sufficiently safe and protected to speak out and expose human trafficking syndicates down to their roots.

4. Conclusion

The effectiveness of the evidentiary system and witness-victim protection in Indonesia's criminal procedure for prosecuting TPPO cases remains very weak and heavily influenced by a formalistic paradigm. The absolute dependence on victim testimony under rigid evidentiary standards frequently results in perpetrators escaping criminal liability. At the same time, the design of criminal procedure (KUHP), which requires physical confrontation in the courtroom, has created a phenomenon of secondary victimization that severely damages victims' psychological well-being. The limited authority of the Witness and Victim Protection Agency (LPSK) within courtroom proceedings demonstrates that Indonesia's criminal justice system has not yet fully embraced the philosophy of a victim-centered approach and Dignified Justice. As long as victim-witnesses must risk their lives and mental health during trial, the prosecution of TPPO cases will continue to be placed at a significant disadvantage.

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