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

Legal Protection for Women and Children as Victims of Human Trafficking in Indonesia with Restorative Justice in Criminal Procedure Reform towards a Pro Victima et Societatis System

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Abstract. *This study aims to conduct a normative analysis of the direction of restorative justice regulations in the reform of criminal procedure law in Indonesia and the concept of restorative justice regulations in the reform of criminal procedure law that can be aligned with the principles of criminal law oriented research is the existence of problems related to legal protection policies for women and children who are victims of human trafficking in Indonesia. This research is motivated by the fact that the criminal justice system in Indonesia is still dominated by a retributive paradigm but often fails to achieve substantive justice. The 2025 Criminal Procedure Code draft has explicitly regulated restorative justice, but the absence of considerations regarding social impact and public unrest indicates a potential shift towards proceduralism. Based on data from the Ministry of Foreign Affairs, it is known that there were 35 victims of human trafficking in 2010, while in 2011 and 2012, there were 33 people and 92 people, respectively. One of the policies made by the government regarding the above problems is Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking.*

Keywords: *Justice; Legal; Protection; Restorative; Trafficking.*

1. Introduction

The Indonesian criminal justice system, as stipulated in the Criminal Code (KUHP) and Law No. 8 of 1981 on Criminal Procedure (KUHP), was originally built upon a classical punitive philosophy. Under this framework, criminal behavior was regarded exclusively as an offense against state authority and public order. Consequently, the state held dominant and centralized control over the prosecution and punishment of offenders, while the role and interests of victims and the community were largely overlooked. This mindset placed criminal punishment as the main instrument for law enforcement, with the assumption that imposing severe sanctions would have a deterrent effect and prevent similar crimes in the future. This was because perpetrators of

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criminal acts were seen as responsible for their among the parties affected by a criminal act. Reflecting this approach, the Criminal Procedure Code Bill incorporates provisions on restorative justice mechanisms that actively involve victims, offenders, their families, and the wider community as integral components of the social recovery process. The inclusion of a dedicated chapter on restorative justice represents a significant advancement in the codification of these mechanisms.

The crime of human trafficking always has a serious impact on victims and their families, society and the State. Various problems that arise as a result of human trafficking related to the condition of the countries that are destination for human trafficking, countries of transit or countries where human trafficking occurs. This is also as experienced by Indonesia. Children are the easiest and most vulnerable to human trafficking. This crime puts them in a very high-risk position, such as risks related to health, pressures and acts of violence both physically and mentally that can threaten their quality as the next generation of the Republic of Indonesia.

Awareness of the importance of adequate legal protection for women and children, especially from various forms of human trafficking in the midst of a declining attitude of tolerance and respect among fellow citizens, makes the author interested in studying further on "Legal Protection of Women and Children Victims of Human Trafficking in Indonesia" in the form of research.

2. Research Methods

This research is a juridical normative based on considerations to study the principles or rules.⁵ The legal rules reviewed in this study are the Criminal Procedure Code (KUHP) and Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking. The approach used in this research was a statute approach and a conceptual approach. The author used the legal approach to study or examine all regulations related to the initiation of the formation and implementation of laws, policies, programs, activities and legal protection of women and children who are victims of human trafficking. Meanwhile, the conceptual approach used in this research was to examine the doctrines, principles, and concepts in the legal sciences which were then associated with legal issues which were the subject matter of research studies, namely legal protection for women and children victims of human trafficking as part of Human Rights. Analysis of legal materials is a description of ways of analyzing how to utilize the collected data so that it can be used in solving research problems. Primary and secondary legal materials in this study were obtained from the results of an analyzed literature study where an assessment was carried out on their legal relevance. This legal material was then used to describe the conceptions and theories used.

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3. Results and Discussion

The existence of the law in society aims to integrate and coordinate interests that are usually in conflict with one another. This, the law must be able to integrate these interests so that the conflicts that exist in them can be minimized. The definition of law in terms of linguistic terminology, which refers to the meaning in several dictionaries as well as the legal meaning that refers to several opinions or theories presented by experts, will be discussed further in this section. This discussion does not intend to make a definite limit regarding the meaning of the law. Immanuel Kant explains that the meaning of the law is still difficult to find, considering the scope and types of fields that are the source of the discovery of the law is very broad.

Indonesian criminal law continues to operate predominantly under a retributive justice paradigm, which assumes that imposing punishment on offenders is the sole mechanism for fulfilling justice for both victims and society. Within this framework, justice is equated with retaliation against the perpetrator, while other dimensions of recovery such as addressing the needs of victims and restoring social harmony remain largely unacknowledged. Criminal law, which should serve as a means of combating crime, is instead built on a retributive mindset that emphasizes revenge and deterrence, making its repressive nature very dominant in law enforcement practices. This condition is reflected in the formal and procedural nature of the Indonesian criminal justice system, where law enforcement is more oriented towards punishing perpetrators and compliance with procedures, while the aspects of victim recovery and social balance are often neglected.⁷ This retributive-formalistic paradigm has given rise to various problems, such as prison overcapacity, a backlog of cases in the courts, and increased law enforcement costs that are not commensurate with the effectiveness of offender rehabilitation and post-sentence social reintegration. Thus, the Indonesian criminal justice system is considered to have not fully met the objectives of modern punishment, which should emphasize restoration, rehabilitation, and social reintegration.

The definition of "law (*hukum*)" according to Indonesian Dictionary is regulations or customs officially considered binding, confirmed by the authorities or the government, laws, regulations, etc.¹¹ Aimed to regulate the social life of the community, becoming benchmarks or rules related to certain natural events, decisions or considerations determined by the judge in court or verdict. Protection means protecting something from dangerous things, which can be interests or objects or goods. Protection also implies protection given by someone to someone who is weaker. Thus, legal protection can be interpreted as all government efforts to ensure legal certainty as a form of providing protection to its citizens so that their rights as citizens are not violated, and those who violate them will be subject to sanctions in accordance with applicable

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Legal protection aims to protect human rights that have been harmed by others to the community so that they can enjoy all the rights provided by law. In other words, it can also be explained that legal protection is a variety of legal measures that law enforcement officials must provide to provide a sense of security, both mindfully and physically from harassment and various threats from any party to society. Legal protection can also be defined as protection given to legal subjects in the form of legal instruments, both preventive and repressive in nature and both written and unwritten. Legal protection, in this case, can also be described as a description of the function of law, namely a concept in which the law can provide justice, order, certainty, benefit and peace.

Legal protection is the right of every citizen. On the other hand, legal protection is an obligation of the State itself. Therefore, a country must provide legal protection to its citizens, which in principle rests on and is based on the concept of recognition and protection of dignity as a human being. Recognition and protection of the suspect's rights as part of human rights without discrimination must always be upheld. Legal protection is all efforts to fulfil rights and provide assistance aimed at providing a sense of security to witnesses and/or victims and can be realized in the form of restitution, compensation, medical services and legal assistance. Based on the descriptions and opinions of the experts above, it can be concluded that legal protection is an act to protect everyone for acts that violate the law or violate the rights of others, which the government carries out through its law enforcement apparatus by using certain methods based on applicable laws or regulations, as an effort to fulfil the rights of every citizen, including for arbitrary acts committed by the authorities (the law enforcement apparatus itself).

Philipus M. Hadjon distinguished two kinds of means of legal protection based on their relation to legal protection for the people, namely:

1. Preventive Legal Protection Means. In this case, legal subjects are allowed to submit objections or opinions before a government decision takes a definitive form. The goal is to prevent disputes.
2. Repressive Legal Protection Means. It aims to resolve disputes. The handling of legal protection by the General Courts and Administrative Courts in Indonesia falls into this category of legal protection. The second principle that underlies the legal protection of governmental acts is the rule of law principle. The recognition and protection of human rights have the main place that can be attributed to the objectives of the rule of law.

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Legal protection is a narrowing of the meaning of protection which only includes protection by law.²³ The protection provided by law is related to the rights and obligations, which in this case, are owned by humans as legal subjects in interactions with fellow humans and their environment. Humans, as legal subjects, have the right and obligation to take legal action.²⁴ According to Setiono, legal protection is an action or effort to protect the community from arbitrary actions by the authorities who are not in accordance with the rule of law to create order and peace so that people can enjoy their dignity as humans.²⁵ Simanjutak further defined legal protection as all government efforts to ensure legal certainty in an effort to provide protection to its citizens so that their rights as citizens are not violated, and those who violate them will be subject to sanctions in accordance with applicable regulations.

Thus, legal protection shall contains the following elements :

- 1) There is protection from the government for its citizens;
- 2) Legal certainty guarantee;
- 3) Has a relation to the rights of citizens;
- 4) There are penalties for those who violate them.

In the end, it can be concluded that legal protection is all forms of efforts to protect human dignity and human rights in the field of law. According to the views of legal experts described above, legal protection provided to legal subjects can be in the form of a set of legal rules and through certain methods, both preventive and repressive in nature. This is a representation of the function of the law itself, which aims to provide justice, order, certainty, benefit and peace. For the author, the two theories of legal protection above are very suitable references in this legal research.

From the perspective of legal substance, the inclusion of restorative justice provisions in the Criminal Procedure Code Bill is intended to create a comprehensive and integrated legal framework. This framework is expected to serve as a unifying legal foundation that standardizes the principles, procedures, and criteria for applying restorative justice across all phases of the criminal process, spanning from investigation to trial. By doing so, it ensures consistency, legal certainty, and a coherent approach to restorative justice throughout the criminal justice system. Normatively, the Criminal Procedure Code Bill needs to emphasize that restorative justice is not only an alternative mechanism for resolving cases, but also the goal of the criminal justice system, namely victim recovery, perpetrator accountability, and social restoration. Synchronization with

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the 2023 Criminal Code is also a strategic necessity so that restorative justice is in line with the new paradigm of Indonesian punishment, which is oriented towards conflict resolution and restoration of social order, rather than mere retribution.

Then, from a legal structure perspective, the effectiveness of restorative justice is practically determined by the strength of the law enforcement structure. In an integrated judicial system, the Criminal Procedure Code Bill must emphasize the functions and responsibilities of each institution. The police act as the main gatekeeper, the prosecutor's office as the *dominus litis*, and the court as the quality controller that assesses the substantive validity of restorative justice agreements. Inter-agency coordination is a structural prerequisite that cannot be ignored, because the effectiveness of restorative justice is highly dependent on the integration of the system and the alignment of authority between law enforcement agencies. Without strong coordination, the application of restorative justice has the potential to cause procedural inconsistencies, overlapping authority, and even abuse of discretion.

Meanwhile, the legal culture factor is a key element that determines the success and sustainability of restorative justice. The legal paradigm that is still oriented towards retributive justice often leads officials and the public to view restorative justice as a form of “early pardon” or impunity. Therefore, legal culture reform must be directed towards the internalization of the *pro victima et societatis* paradigm, namely law enforcement that places victims and the interests of society at the center of recovery, rather than merely punishing perpetrators. This effort requires public legal literacy and communication strategies that explain that restorative justice is not “out-of-court settlement,” but a formal process that involves perpetrator accountability, victim recovery, and social reconstruction instruments that strengthen substantive justice.

The success of restorative justice is not only determined by norms and institutional structures, but also by social readiness and community participation in understanding and supporting the recovery process. This view is in line with the results of the researcher's interview with Yunny Nuryanthi, a prosecutor at the Bandung District Attorney's Office, who stated that restorative justice cannot be said to be effective without community involvement because there is a risk that the perpetrator will experience rejection in their community as there is no guarantee that similar criminal acts will not occur again. Therefore, community involvement is not merely a complement to the procedure, but is part of fulfilling the principle of restorative justice.

Indonesia is a country based on law as it is defined in the 1945 Constitution, Indonesia is a *rechstsstaat*. This is evidenced by the provisions in the preamble, torso, and explanation of the 1945 Constitution. In the Amendment to the 1945 Constitution, the theory of equality before the law is included in Article 27 paragraph (1). It states that, “All citizens together with their position

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in law and government, it is obligatory to uphold the law and government without exception. This is the recognition and guarantee of equal rights for all citizens in law and government. The theory and concept of equality before the law, adopted by Article 27 paragraph (1) of the 1945 Constitution, is the basis of protection for citizens so that they are treated equally before the law and government. In other words, all people should be treated equally before the law. Equality before the law is one of the most important principles in modern law, one of the pillars of the Rule of Law doctrine. This doctrine has spread to various developing countries, one of which is Indonesia. The principle of equality before the law manifests the rule of law (*rechtstaat*) so that there must be equal treatment for everyone before the law (*gelijkheid van ieder voor de wet*). Thus, the inherent element implies equal justice under the law and obtains the same justice before the law.

The formulation (determination) of the act of human trafficking as a criminal act (with criminal sanctions) in statutory regulations is essentially the provision of indirect protection to victims of crime, one of which is through a court decision on the incident. The assumption is that the higher the number of criminal threats imposed, the more the perpetrators deterred from committing the crime of human trafficking.

4. Conclusion

Criminal acts related to human trafficking are a form of extraordinary crime because they undermine the dignity of humans as creatures of God Almighty. It is a form of human rights violation. The State must be serious in addressing the various causes and backgrounds of this crime, starting with law enforcement, socialization, and legal efforts to protect the interests of victims against the crime of human trafficking, which refers to the values of human rights. The direction of criminal procedure law reform in Indonesia shows a significant paradigm shift from an orientation toward retributive justice to restorative justice, that is, from a punishment system that emphasizes retribution to a punishment system that emphasizes victim recovery, perpetrator responsibility, and social reconciliation. This reform marks a transformation of values in the Indonesian criminal justice system that is in line with the spirit of the 2023 Criminal Code, which places punishment as a means to resolve conflicts, restore social balance, and create a sense of public security.

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