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

Human Trafficking as a Violation of Human Rights: Legal and Policy Analysis

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Abstract. *Human trafficking is a form of transnational crime that continues to increase and poses a serious threat to human rights. Its modus operandi and driving factors include poverty, low education, gender inequality, weak law enforcement, and high demand for cheap labor. Its impact damages social structures, causes lasting trauma for victims, and worsens the state's image in protecting its citizens. Academic studies are needed to analyze the legal and policy dimensions, particularly regarding the effectiveness of Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons in its interaction with international instruments such as the Protocol to Prevent, Suppress, and Punish Trafficking in Persons. This analysis aims to assess the effectiveness of government policies in prevention, victim protection, and law enforcement, while identifying regulatory gaps and implementation challenges. The results of the study are expected to provide scientific contributions to the development of human rights law theory and practice in Indonesia, as well as encourage the reconstruction of more comprehensive policies based on the principles of justice, victim protection, and sustainable prevention.*

Keywords: *Human Rights; Human Trafficking; Transnational Crime.*

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1. Introduction

One form of transnational crime that continues to increase today is human trafficking, which demands international cooperation in prevention, law enforcement, and victim protection. Human trafficking has also become a public policy issue, serving as an indicator of a country's commitment to fulfilling its constitutional and international obligations to protect its citizens.

Human trafficking is the act of recruiting, transporting, harboring, sending, transferring or receiving a person by means of threats of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage or giving payments or benefits to obtain the consent of a person who has control over the other person, whether carried out within the country or between countries, for the purpose of exploitation or causing the person to be exploited.¹ Human trafficking is a practice that has existed since ancient times, including during the kingdom and colonial era, in the form of slavery. New forms of human trafficking have emerged, such as labor exploitation, the exploitation of women and children, and the sale of organs.

Southeast Asia is a region vulnerable to human trafficking, and Indonesia is one of them. The United Nations ranks Indonesia as the second-highest country for human trafficking.² Indonesia is labeled as a sender, receiver, and producer of these criminal acts.³ The modus operandi is increasingly complex, encompassing sexual exploitation, forced labor, child trafficking, and even forced marriage across borders. Data from international organizations indicates that human trafficking is a major global crisis, with an estimated 24.9 million victims of forced labor and sexual exploitation worldwide.⁴

Several other international organizations such as the Counter Trafficking Data Collaborative (CTDC) are the first global database on human trafficking that is publicly accessible for trends and victim profiles.⁵ The International Organization for Migration (IOM) and the United Nations Office on Drugs and Crime (UNODC) indicate that Indonesia is frequently a source, transit, and destination country for human trafficking. The main driving factors for human trafficking are poverty, low education, gender inequality, weak law enforcement, and high demand for cheap labor.

¹Law No.21 of 2007

²S. Edi Hardum, 2017, Human Trafficking under the guise of sending Indonesian Migrant Workers, Ar-Ruzz Media, Jogjakarta, p.72.

³idem

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Human trafficking is not just a criminal act, but a serious violation of human rights (HAM), especially the right to personal liberty, dignity, the right not to be enslaved and protection from exploitation, destroying social structures, causing physical and psychological harm in the form of long-term trauma for victims, and tarnishing the image of the state in protecting its citizens. Local communities, especially vulnerable groups such as women and children, need real protection through policies that support them.

Academic studies are needed to analyze the legal dimension, namely how national regulations, particularly Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, interact with international instruments such as the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, and assess the effectiveness of government policies in prevention, victim protection, and law enforcement. Furthermore, academic studies are needed to provide scientific contributions to the development of human rights law theory and practice in Indonesia.

Human trafficking Legal relevance is a test for states in fulfilling their constitutional and international obligations to protect human rights. Juridical analysis is crucial for identifying regulatory gaps and challenges in implementing existing laws. This study can encourage more comprehensive policy reform based on the principles of justice, victim protection, and sustainable prevention.

2. Research Methods

This research is a normative legal study using a criminal law policy approach and a legislative approach. The analytical focus is directed at the formulation of criminal sanctions in regulations to eradicate human trafficking to test the significance of the deterrent effect and prevention of recurrence of criminal acts. Primary and secondary raw materials obtained through literature review were analyzed using analytical descriptive methods with the analytical tool of relative punishment theory (utilitarian/deterrence theory).

⁴Data from The Human Trafficking Institute.

⁵CTDC Global.

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3. Results and Discussion

3.1. How Is Human Trafficking Categorized As A Human Rights Violation From A National and International Legal Perspective?

Human trafficking is categorized as a human rights violation because it directly violates the fundamental human rights to freedom, dignity, and protection from exploitation. The government has established and regulated human trafficking in Law No. 21 of 2007, which classifies human trafficking as a serious criminal offense and a constitutional violation. However, this law has not yet reached legal subjects outside of Indonesia's jurisdiction, so the government ratified the UN Protocol to prevent, prosecute, and punish human trafficking.

A trafficking perpetrator is defined as a person who carries out or is involved in and agrees to the activities of recruiting, transporting, trading, sending, receiving or sheltering a person from one place to another for the purpose of making a profit.⁶ Victims of trafficking (trafficked people) are those who are recruited, taken, bought, sold, moved, received or hidden, as stated in the definition of trafficking in humans including children, whether the child consents or not for the purpose of exploitation which is defined as an act of oppression, blackmail and physical, sexual, energy and/or ability exploitation of a person by another party which is carried out in an arbitrary or fraudulent manner to gain greater profits for some parties.⁷

In the perspective of international law, it is regulated in the 2000 Palermo Protocol, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, which complements the ratification of the UN Convention on transnational organized crime which was ratified by Law No. 5 of 2009, so that the government has the space and opportunity to hold legal subjects outside the jurisdiction of Indonesia accountable.

The official definition of human trafficking is the recruitment, transportation, harboring, or receipt of people by means of threat, violence, deception, or abuse of a vulnerable position for the purpose of exploitation such as sexual exploitation, forced labor, slavery, and organ removal. It is also regulated in relevant international human rights instruments such as the Universal Declaration of Human Rights (1948) which guarantees the right to liberty and dignity, the

⁶S. Edi Hardum, 2017, *Human Trafficking under the guise of sending Indonesian Migrant Workers*, Ar-Ruzz Media, Jogjakarta, p.74-75.

⁷ibid

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International Covenant on Civil and Political Rights (1966) which prohibits slavery and forced labor, and the Convention on the Elimination of All Forms of Discrimination Against Women (1979) which protects women from exploitation. Human trafficking is seen as modern slavery which violates the principle of non-discrimination, the right to freedom of movement, and protection from exploitation.

National law stipulates in Article 28I paragraph (1) of the 1945 Constitution guarantees the right to be free from discriminatory treatment and the right to self-protection. It is also regulated in Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (TPPO) which stipulates human trafficking as a criminal act with the threat of severe penalties, regulates the protection of victims, including rehabilitation, restitution, and social reintegration. In relation to human rights, the Crime of Human Trafficking (TPPO) is categorized as a human rights violation because it robs the victim of their basic rights, such as freedom, security, and the right not to be enslaved. Violating the right to protection from exploitation which causes profound physical, psychological, social, and economic harm to the victim.

Human trafficking as a transnational crime and also a public policy issue that is an indicator of a country's commitment to fulfilling its constitutional obligations demanding international cooperation in prevention, law enforcement, and victim protection.

To what extent are national regulations effective in preventing and prosecuting human trafficking?

The effectiveness of national regulations, particularly Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (TPPO), and Law No. 5 of 2009 concerning the ratification of the United Nations Convention Against Transnational Organized Crime, is seen from the following dimensions:

Normative Dimension

- a. Law No. 21 of 2007 is quite comprehensive, covering the definition of human trafficking, severe criminal sanctions, victim protection (rehabilitation, restitution, social reintegration), and prevention mechanisms.
- b. Normatively, Law No. 21/2007 is in line with the Palermo Protocol and international human rights instruments, thus confirming Indonesia's commitment to participate in combating human trafficking.



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- c. Law No. 5 of 2009, completes the ratification of the UN convention so that the government has the space and opportunity to hold legal subjects outside the legal territory of Indonesia accountable.

Implementation Dimension

The implementation of Law No. 21 of 2007 and Law No. 5 of 2009, although quite comprehensive and having several advantages, also has weaknesses, including:

Excess:

- a. It is a legal basis for law enforcement officers to prosecute perpetrators with high criminal penalties.
- b. Opening space for cooperation between agencies (National Agency for the Protection and Placement of Indonesian Migrant Workers (BNP2TKI), Police, Ministry of Social Affairs, Non-Governmental Organizations (NGOs)).
- c. Providing legitimacy for victim protection, including rehabilitation services.

Weakness:

- a. Law enforcement is still weak, many cases do not reach court or end with light sentences.
- b. Coordination between agencies is less effective, and there is often overlapping authority.
- c. Victim protection is not optimal, access to restitution and social reintegration is still limited.
- d. Structural factors, poverty, labor migration, low public knowledge about human trafficking and weak supervision in border areas make prevention difficult.

Evaluation of Effectiveness

The effectiveness of Law No. 21 of 2007 and Law No. 5 of 2009 has normatively met international standards and provided a strong legal basis. However, in practice, implementation still faces significant obstacles, particularly in terms of law enforcement, victim protection, and root-cause prevention. The main

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challenges in implementation are limited resources, low public awareness and knowledge about human trafficking, and the transnational nature of human trafficking networks.

3.2. What Are The Obstacles To Implementing Government Policies In Enforcing The Law Against Perpetrators Of Human Trafficking?

Although there is a fairly strong legal basis through Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking and Law No. 5 of 2009 concerning ratification, there are several obstacles to the implementation of government policies in enforcing the law against perpetrators of human trafficking in Indonesia which can be seen from several aspects as follows:

Law Enforcement Obstacles

- a. Weak coordination between agencies or institutions. The police, prosecutors, courts, and victim protection agencies often work separately, resulting in inconsistent case handling.⁸
- b. Suboptimal penalties. Although Law No. 21 of 2007 stipulates severe penalties, in practice, many court decisions are less severe, thus failing to act as a deterrent.
- c. Limited capacity of law enforcement officers. Law enforcement officials' technical understanding of human trafficking methods remains limited, particularly in border and remote areas.⁹
- d. Corruption and conflicts of interest. The involvement of certain officials or officers who actually protect human trafficking networks.

Structural and Social Constraints¹⁰

- a. Education, poverty and unemployment, weak economic conditions make people vulnerable to being recruited by human trafficking networks.

⁸Paul Sinlaeloe, 2024, *Human Trafficking: A Study of the Crime of Human Trafficking*, Andi, Yogyakarta;

⁹ibid

¹⁰H. Bahran, SH, MH et al., 2021, *Human Trafficking from the Perspective of Law, History, Politics, Religion, and Film*, Zahir Publishing, Yogyakarta;

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- b. Labor migration, weak supervision of the distribution of labor abroad opens up opportunities for exploitation.
- c. Due to lack of public awareness, many residents are unaware that they or those around them are victims of human trafficking.
- d. The transnational nature of crime, human trafficking networks involve countries, so handling requires international cooperation which is often slow.

The Supreme Court issued a fairly progressive policy focusing on victim recovery through restitution in the implementation of Law No. 21 of 2007. However, obstacles faced by officials (capacity, integrity, coordination) and obstacles faced by victims (access, stigma, trauma) made the implementation of the policy less than optimal.¹¹

Obstacles to the implementation of the Supreme Court's (MA) policy in TPPO (Human Trafficking Crime) cases are seen from two sides: law enforcement officers and trafficking victims.

Obstacles from the side of law enforcement officials;

- a. Limited technical understanding

Many judges and officials do not fully understand the complex *modus operandi* of human trafficking (e.g. online recruitment, fake documents, cross-border routes).

- b. A light sentence

Although Law No. 21 of 2007 provides for the threat of severe criminal penalties, in practice many court decisions are lower than the prosecutor's demands, so they do not have a deterrent effect.

- c. Limitations of technical guidelines

The Supreme Court has published a Pocket Book on Restitution for Human Trafficking Cases (2026), but its implementation is still limited because not all judges and officials are trained to use it.

¹¹The Supreme Court of the Republic of Indonesia in collaboration with ASEAN-ACT & AIPJ3, 2026, Pocket Book of Restitution in TPPO Cases, Supreme Court of the Republic of Indonesia, Jakarta;



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d. Corruption and conflict of interest

There are cases where authorities actually protect human trafficking networks, making it difficult to consistently implement the Supreme Court's policy.

e. Inter-agency coordination

The Supreme Court relies on evidence and charges from the police and prosecutors. If coordination is weak, court decisions will be less than optimal.

Obstacles from the Victim's Side

a. Access to restitution is limited

Although the Supreme Court has regulated the restitution mechanism, many victims do not know their rights or have difficulty applying due to complicated procedures.

b. Social stigma

Victims are often considered “guilty” or “ashamed” and are therefore reluctant to testify in court.

c. Lack of legal assistance

Not all victims receive adequate legal or psychological assistance, so their testimony is weak in court.

d. Administrative difficulties

Many victims do not have complete identity documents (e.g. illegal migrant workers), making it difficult to access formal legal mechanisms.

e. Trauma and fear

Victims are often afraid of the perpetrator or network, so they are reluctant to continue the legal process even though the Supreme Court has provided protection.

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The biggest obstacle does not lie in the absence of regulations but rather in the effectiveness of implementation, institutional coordination, and victim protection in law enforcement practices.

3.3. What Strategies Can Be Used To Reconstruct Policies To Strengthen Human Rights Protection and Prevent Human Trafficking Practices In Indonesia?

Policy strategies to strengthen human rights protection and prevent human trafficking in Indonesia can be reconstructed through a multi-level approach, including legal, institutional, social, and international. The following framework can be used as a reference:

Legal and Regulatory Strategy

- a. Regulatory harmonization. By aligning Law No. 21 of 2007 with the Women and Children Protection Law, the Employment Law, and the Labor Migration Law to avoid overlap.
- b. Strengthening criminal and civil sanctions. This includes ensuring that penalties for perpetrators are truly deterrent and expanding restitution mechanisms for victims.
- c. Regional regulations (Perda). By encouraging local governments, especially in areas prone to human trafficking (border areas, mining areas, migration areas), to create more contextual local regulations.

Institutional Strategy

- a. Cross-institutional coordination. Establish an integrated task force involving the police, prosecutors, the Ministry of Social Affairs, the Ministry of Manpower, and non-governmental organizations (NGOs).
- b. Increasing the capacity of officers. Conducting specialized training on human trafficking methods, human rights-based investigations, and victim protection.
- c. Digital monitoring systems. Using technology to track the movements of migrant workers and detect potential human trafficking.
- d. Public awareness campaigns. Educating the public about the dangers of human trafficking, especially in villages with high migration rates.

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International Strategy

- a. Bilateral and multilateral cooperation. Strengthening coordination with destination countries for Indonesian migrant workers (Malaysia, Singapore, and the Middle East) for prevention and repatriation of victims.
- b. Implementation of the Palermo Protocol. Ensuring Indonesia's active participation in international forums and reporting on progress in addressing human trafficking.
- c. Intelligence exchange. Establishing a shared information system between countries to track human trafficking networks.

4. Conclusion

Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking and Law No. 5 of 2009 concerning the ratification of the UN Convention against Transnational Organized Crime comprehensively provide protection to victims and provide penalties to perpetrators with criminal penalties and provide restitution and rehabilitation rights to victims to provide a deterrent effect to perpetrators. However, this does not bring changes to human trafficking which still occurs frequently so that policy reconstruction is needed by emphasizing the integration of strong regulations, solid institutions, and active international cooperation. With this approach, Indonesia not only prosecutes perpetrators, but also prevents root causes such as poverty, unsafe migration, and weak public awareness about human trafficking.

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