

Weaknesses In Legal Protection for Victims of Human Trafficking Criminal Acts

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Abstract. *This study uses a normative legal approach, with a descriptive analytical research method. The results of the study concluded that: Weaknesses in legal protection for victims of human trafficking crimes even though the government has issued Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, it is very unfortunate that the law has not been able to be implemented effectively, due to several obstacles, namely non-legal factors including economic factors, poverty factors, low education factors and social and cultural factors; In providing legal protection to victims of human trafficking in the future, the Indonesian government must be fair in providing restitution and compensation, counseling services and medical services/assistance, legal assistance and provision of information and guaranteeing the fulfillment of the rights of victims of human trafficking, such as confidentiality of identity to the right to receive rehabilitation.*

Keywords: *Crime; Legal; Protection; Trafficking; Victims.*

1. Introduction

The crime of human trafficking is generally a violation of human dignity and dignity in the form of cruel treatment, and even slavery-like treatment. The perpetrator is accepted as the helplessness of the victim, who is trapped in a network that is very difficult to identify, so that it will be difficult to find a solution. The substance is the same, namely slavery, but the mode is more neat and planned. Historically, human trafficking can be said to be slavery and also violates human rights.¹ If during the time of slavery, humans were openly traded by kings or others to be made into concubines (servants) and concubines or kept wives, now humans are traded for certain interests, such as household servants to becoming commercial

¹Brian Septiadi Daud and Eko Sopoyono, "Implementation of Criminal Sanctions Against Perpetrators of Human Trafficking in Indonesia", Indonesian Legal Development Journal, Volume 1, Number 3, Year 2019 p. 353, url: <https://ejournal2.undip.ac.id/index.php/jphi/article/view/6168/3117>

sex workers.²

In some cases, poverty is the most important underlying cause of vulnerability and helplessness. Trafficking victims most often come from the poorest and most marginalized families or communities. Very poor families may also sell their daughters to traffickers to pay off debts or often for economic reasons. However, in recent years, trafficking victims are no longer just poor and uneducated people or it is not only absolute poverty (living below the poverty line) and lack of employment that drives women and girls into the hands of traffickers, but also relative poverty (income inequality, considering oneself poor compared to others and wanting to close the gap).³

The increasing number of crimes against persons (TPPO) generally originates from the increasing economic needs of the community which require them to migrate out of the region or even abroad. In addition, there are several motives that cause crimes against persons such as poverty, lack of employment opportunities, and worsening economic conditions.⁴

Research conducted by Safrida Yustarani stated that there are still many problems including human trafficking. Government efforts to eradicate human trafficking against Indonesian workers include issuing various legal instruments, conducting bilateral, regional, and multilateral cooperation, especially with destination countries for the placement of Indonesian workers, and working with non-governmental institutions. Government efforts to provide legal protection to Indonesian workers who are victims of human trafficking are by providing restitution and compensation, counseling services and medical services or assistance, legal assistance and providing information and ensuring the fulfillment of the rights of Indonesian workers who are victims of human trafficking, such as confidentiality of identity and the right to receive rehabilitation.⁵ Naufal Hasanuddin Djohan in his research stated that even though there are regulations such as the Palermo Protocol and Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, there are still around 40 million people affected by human trafficking in Indonesia, and 60 percent of them are women. Factors such as the commodification of women and patriarchal views of women play a role in this problem. In addition, this study noted the involvement

²Adon Nasrullah Jamaludin, 2016, Basics of Social Pathology, PustakaSetia, Bandung, p.227

³ I Made Sidia Wedasmara, "Human Trafficking", Yustitia Journal Vol 12 No 1 (2018) p. 8
url:<https://www.ojs.unr.ac.id/index.php/yustitia/article/view/173/132>,

⁴Lewister D Simarmata, et al. 2021. Criminal Liability in the Form of Restitution Payment by Perpetrators of Human Trafficking Crimes. RETENTUM JOURNAL, Vol 2, No 1.

⁵ Safrida Yustitarani, Legal Analysis of Legal Protection of Migrant Workers Victims of Human Trafficking by the Indonesian Government, Indonesian Legal Development Journal, Vol. 2, Number 2, 2020, Master of Law Study Program, Faculty of Law, Diponegoro University.

of technology in human trafficking, as seen on websites such as Pornhub.⁶From the studies above, it is very necessary to provide protection for victims of human trafficking crimes.

Various criminal laws and regulations have been established by the competent institution in order to realize the meaning of legal certainty. Legal certainty is not only stated in laws and regulations, but it is necessary to have a practical form of one aspect of the law. Law is not actually a goal, but an instrument that can be used to realize justice.⁷So in this case, it is necessary to improve the laws and regulations that are in accordance with the needs of the community so that they can be relevant to the problems that occur. Along with the development of population dynamics, the forms and motives of crime also continue to develop. One of them is the Crime of Human Trafficking (TPPO).

Law Number 21 of 2007 concerning the "Eradication of Criminal Acts of Human Trafficking (PTPPO)" prohibits all types of actions, methods, or all forms of exploitation that may occur in the practice of human trafficking. Both those carried out between regions within the country or between countries, both individual and corporate perpetrators. Thus, human trafficking is a violation of Human Rights that treats victims merely as commodities to be bought, sold, sent, and resold. This phenomenon occurs throughout the world, continues to develop and change in its form and complexity, what remains is only the exploitative conditions placed on humans.⁸Nevertheless, we need to appreciate legal workers who intend to eradicate human trafficking activities. For example, Law Number. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking and Law Number. 14 of 2009 concerning the Ratification of the Protocol to prevent, prosecute, and punish Human Trafficking, especially Women and Children. These laws complement the United Nations (UN) convention to combat transnational organized crime.⁹

Human trafficking is a violation of human rights that treats victims merely as commodities to be bought, sold, transported, and resold. This phenomenon occurs throughout the world, continues to grow and change in its forms and complexities, but remains only the exploitative conditions placed upon human beings.¹⁰

Based on the background above, this research aims to identify and analyze weaknesses in legal protection for victims of human trafficking and legal

⁶ Naufal Hasanuddin Djohan, Recognizing the Effectiveness of the Elimination of Insider Trading in Realizing Legal Protection for Women in Indonesia, *Jurnal Progressive Law and Society*, Volume 1 Issue 1, 1-13, 2023.

⁷HM Syarifuddin. 2020. *Principles of Justice in Trying Corruption Cases*. Jakarta: Kencana. p. 40

⁸Farhana, Op.Cit, p.19.

⁹Ibid., p..229.

¹⁰Farhana, 2010, *Legal Aspects of Human Trafficking in Indonesia*, Sinar Grafika, Jakarta, p. 19

protection for victims of human trafficking in the future.

2. Research methods

This study uses a normative legal approach, with a descriptive analytical research method. The data used are primary and secondary data that will be analyzed qualitatively. The research problems are analyzed using Lawrence Friedman's legal system theory and the Theory of Social Reality Construction.

3. Results and Discussion

Human trafficking is a process of recruiting, sending, moving, placing or receiving a person with the intention of exploitation by using threats or use of violence or other forms of coercion, kidnapping, trickery, fraud, abuse of power, or vulnerable positions. The rules regarding the crime of human trafficking have been specifically regulated in Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking. The law aims to prevent and overcome the crime of human trafficking and protect victims of human trafficking.

In this case, the Criminal Procedure Code has not explicitly formulated provisions that are concrete or direct in terms of providing legal advisory assistance at every level of examination for victims. The Criminal Procedure Code only regulates the provision of legal advisory assistance to suspects or defendants for their defense, as regulated in Article 54 of the Criminal Procedure Code which reads: "For the purposes of defense, suspects/defendants have the right to receive legal assistance from one or more legal advisors during the time and at every level of examination, according to the procedures determined in this law."⁴⁴ The legal protection regulated in the Criminal Procedure Code for victims is only in the form of compensation through the consolidation of cases, and does not regulate other forms of legal protection. The absence of specific legal protection for victims of crime, especially victims of human trafficking, has led to injustice, because often the public prosecutor representing the victim only charges or the judge only gives a relatively light sentence to the perpetrator.

Forms of legal protection provided to victims of trafficking. Directly, it can be in the form of compensation in the form of restitution or compensation, and other victim rights such as confidentiality of identity, knowing the process and progress of the case they are undergoing, receiving personal protection both before and after the examination process, temporary housing until the case is completed, rehabilitation of the victim's physical and psychological health, legal advice, and assistance to the victim. Indirect legal protection is in the form of protection provided to victims and potential victims because it is contained in the law on human trafficking to provide imprisonment and fines for perpetrators of human trafficking.

Based on Soerjono Soekanto's theory, a legal rule can be said to be effective if a

law has achieved the objective indicators in accordance with what was planned. There are indicators that must be met in determining the effectiveness of a law:¹¹

a. The existing regulations regarding certain areas of life are already quite systematic. Regulations regarding restitution have been stipulated in Government Regulation Number 7 of 2018 concerning Compensation, Restitution, and Compensation. In the Government Regulation, restitution is regulated in the second part of Article 19. In addition, restitution is also regulated in Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settling Applications and Granting Restitution and Compensation to Victims of Criminal Acts. Regulations regarding restitution are technically quite systematic, in PERMA Number 1 of 2022, starting from the application submission process to

b. Existing regulations regarding certain areas of life are quite synchronized, there is no conflict hierarchically and horizontally. Restitution in both Government Regulation Number 7 of 2018 and PERMA Number 1 of 2022 only regulates the scope of restitution that can be imposed in criminal acts of gross human rights violations, terrorism, human trafficking, racial and ethnic discrimination, criminal acts related to children,

c. Qualitatively and quantitatively, the regulations governing certain areas of life are sufficient. Regulations regarding restitution have indeed been regulated in several laws and regulations. However, in terms of restitution related to the Crime of Human Trafficking, it is still insufficient. This is because in the case of a criminal offense,

In addition to these factors, there are various obstacles that can affect the effectiveness of restitution as an effort to restore victims' losses, namely:

a. Legal Factors

According to Soekanto, legal substance is one of the indicators in law enforcement that cannot be separated from the application of sanctions. Based on Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking (PTPPO) in Article 50, the procedure for execution has been regulated. After the Prosecutor receives P-48 or the order to execute the court decision, there is an option for the defendant to pay restitution or not pay restitution and replace it with imprisonment.

The option as explained in Article 50 Paragraph (4) which provides an exception if the convict is unable to pay restitution, then it is replaced with a maximum of 1 (one) year in prison. So there is a weakness in the legal substance of Law Number 21 of 2007 which contradicts the nature of siding with victims who have suffered losses as stated in Article 48 Paragraph (1) which explains that every victim of

¹¹Soerjono Soekanto. 2014. Introduction to Legal Research. Jakarta: UI Press. PAGE 36

human trafficking or their heirs have the right to receive restitution.

b. Law Enforcement Factors

The lack of professionalism of law enforcement officers in carrying out their duties and authorities has a major influence on the effectiveness of law enforcement. Law enforcement officers in seeking recovery efforts are still considered ineffective, this can be seen based on the data obtained, namely that there are several decisions that at the prosecution stage have included a request for restitution, but in several first-level decisions it was not granted by the Panel of Judges.

In addition, there is still a lack of understanding from law enforcement officers regarding the concept of restitution. This is because law enforcement officers are still focused on the procedural law, namely on investigation, prosecution, and sentencing, in addition to the rights of victims that also need to be considered. In this case, the placement of victims seems to be outside the criminal law enforcement system, namely victims are needed only as witnesses in evidence, namely in providing information. In addition, the lack of human resources at LPSK 432 also affects the implementation of investigations related to the data collection of victims who will apply for restitution.

c. Legal Facilities Factors

Legal means or facilities for victims to obtain their restitution rights are the Witness and Victim Protection Agency (LPSK). As in Article 20 of PP Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, the application for restitution is submitted through LPSK. However, in this case, LPSK still does not contribute directly in assisting victims. This can be due to personal factors, namely the lack of commitment of LPSK and related parties in facilitating social assistance. In addition, limited human resources or other things result in the optimization of LPSK as a guardat the forefront of assisting and protecting Witnesses or Victims directly.¹²

d. Cultural Factors

Lack of public understanding of restitution affects the effectiveness of law enforcement for victims. The low legal awareness of the Indonesian people has resulted in some people who are victims feeling that the prison sentence imposed on the Defendant is sufficient. In fact, they can file for restitution which can restore their rights as victims that have been violated due to a criminal act.

In addition, there is an assumption that if the victim makes a claim for

¹²Dien Kalpika K. 2018. Effectiveness of Restitution Granting to Victims of Criminal Acts Based on Law Number 31 of 2014 Concerning Protection of Witnesses and Victims, *Jurnal Idea Hukum* Vol.4 No.1.

compensation, the compensation will still not be commensurate with the suffering they have experienced, so that some victims tend to be apathetic.

Meanwhile, in the theory of effectiveness according to Anthony Allot, there are several factors, namely:¹³

1) The purpose of the law that was made was not achieved.

In the case of Human Trafficking Crimes, restitution is listed in Article 48 of the TPPO Law, it can be seen based on the decisions that have been handed down that not all victims of Human Trafficking Crimes (TPPO) obtain the right to restitution as a form of recovery for the losses experienced. So in this case, the principles of Pancasila justice are not maximally effective in the application of restitution, because basically one victim and another in a TPPO case have the same right to receive recovery for their losses.

2) There is a disparity between the objectives of the law makers and the basic nature of society.

In this case, we can see the purpose of Article 48 of the TPPO Law regarding the right to restitution of TPPO Victims which can be requested by both the Victim and their Heirs. However, some groups in society are apathetic towards restitution. This is because there is an assumption that if restitution is imposed on the Defendant, it still cannot fully recover the losses he experienced. This of course also makes Pancasila as the basis for the value of justice less than optimal. Every TPPO Victim should understand the essence of justice, which has rights between fellow human beings in the same circumstances, especially in punishing perpetrators who have violated the law. The essence of justice in this case is that basically restitution is a form of responsibility of the Perpetrator to the Victim, the amount of which is adjusted to the Victim's losses, both materially and immaterially.

3) Lack of supporting instruments for the law.

The existence of supporters of the Law has a major influence on its implementation. The regulation regarding restitution in TPPO cases is only regulated in Article 48 of the TPPO Law which only explains that victims have the right to restitution that can be requested. Then supported by Government Regulation Number 8 of 2018 concerning Compensation, Restitution, and Compensation and PERMA Number 1 of 2022 concerning Procedures for Settling Applications and Providing Compensation to Victims of Criminal Acts. However, both instruments only explain the mechanism for granting restitution and resolving restitution applications. So a supporting instrument is needed that emphasizes the urgency of imposing restitution so that the values of Pancasila

¹³Anthony Allot. 1981. The Effectiveness of Law. University Law Review. Vol 15, No 2.

justice can be fully implemented and can be applied effectively.

In order to be effective, the ideal decision in fulfilling the right to restitution for victims of human trafficking crimes (TPPO) is based on the following principles:

1) The Principle of An Effective Remedy

Based on Article 8 of the Universal Declaration of Human Rights (UDHR), everyone has the right to an effective remedy by a competent national court for any act that violates the fundamental rights granted to him/her by the constitution or law. This means that everyone has the right to receive a guarantee of an effective remedy determined by a court or competent authority for acts that violate his/her rights. So in the case of TPPO that results in losses to the Victim, the national court is expected to be able to fight for the Victim's recovery in the consideration of the Panel of Judges based on applicable law.

2) The principles of reparation for victims are compensation, restitution and rehabilitation.

Based on the TPPO cases that occurred, the Panel of Judges' considerations were less than optimal in fulfilling the right to restitution to Victims of Human Trafficking (TPPO), where as a result of the Defendant's crimes the Victims experienced many losses, both material and immaterial. Thus, it is necessary to have a principle of reparation for victims, namely compensation, restitution, and rehabilitation which are optimally accommodated in the Judge's decision. So that state efforts are still needed to guarantee the possibility for Victims to be able to claim restitution or recovery of losses that have been experienced, such as providing compensation because basically the state has a responsibility in implementing minimizing TPPO as a crime that threatens human rights.

3) The principle of legal protection through the judicial and/or administrative system.

Based on the Constitution Article 28 G, it is emphasized that the state is obliged to provide legal protection for its citizens. One form of legal protection for victims, Indonesia provides punishment for perpetrators of crimes through criminal justice. In the application of legal protection for cases of Human Trafficking (TPPO), it has emphasized the criminal penalties applied, namely as stated in Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (PTPPO). However, the form of legal protection applied by the judicial body is different. In substance, it has indeed carried out the order of the Law by punishing the Defendant, but not all decisions related to the Crime of Human Trafficking apply restitution to restore the rights of victims that have been violated. So that legal protection still does not meet the value of justice to be able to protect each country, because there is still inequality or unequal treatment between one citizen and another, where both experience losses, both material and immaterial.

Weaknesses in legal protection for victims of human trafficking crimes, even though the government has issued Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, it is very unfortunate that the law has not been able to be implemented effectively, due to several obstacles, namely non-legal factors including economic factors, poverty factors, low education factors and social and cultural factors.

In providing legal protection to victims of human trafficking in the future, the Indonesian government must be fair in providing restitution and compensation, counseling services and medical services/assistance, legal assistance and provision of information as well as guaranteeing the fulfillment of the rights of victims of human trafficking, such as confidentiality of identity and the right to receive rehabilitation.

4. Conclusion

Based on the description above, it can be concluded that legal protection for victims of human trafficking that has been applied in cases of Human Trafficking, when viewed in terms of its effectiveness, is still less effective in fulfilling the value of Pancasila justice because not all losses experienced by victims can be recovered. This is caused by several factors such as legal factors, law enforcement factors, legal means and facilities. Weaknesses in legal protection for victims of human trafficking, although the government has issued Law No. 21 of 2007 concerning the Eradication of Human Trafficking, it is very unfortunate that the law has not been able to be implemented effectively, due to several obstacles, namely non-juridical factors including economic factors, poverty factors, low education factors and social and cultural factors.

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