

Legal Protection of Women as Victims of Trafficking under the Provisions of Law No. 12 of 2017

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Abstract

Asean Convention Against Trafficking In Persons, Especially Women and Children is a convention that has been ratified in Indonesia into Law Number 12 of 2017 containing opposition to trafficking in persons, especially women and children and an important role and duties of the state in order to fight against trafficking in persons. The protection of women as a victim of trafficking in persons is contained in Article 14 which contains 14 points of tasks that must be carried out by the state in protecting victims of trafficking in persons. Prevention of trafficking in persons that must be carried out by the state is contained in Article 11 which contains 5 points of preventive measures. The fact that happened in Indonesia, this regulation has not been realized and the benefits have not been felt by the peoples especially women who have been involved and being victims of trafficking in persons. New regulations that are in line with international law and protect the victims have not been made as a follow-up to this convention, and implementation and monitoring are still at a low level.

Keywords: *Trafficking, Trafficking in women, victim, legal protection*

INTRODUCTION

The 1945 Constitution as the basis of Indonesia's constitution has guaranteed that Indonesia is a state of law. The important thing in a state of law is the appreciation and commitment to uphold human rights and guarantees of all citizens along with their position in law, (Bambang Waluyo, 2014) and related to its purpose, according to Apeldoorn said that the law wants peace that is peace that is maintained by protecting certain human legal interests, honor, independence, soul, and property. From those who harm him, this is in line with Thomas Hobbes who considers the law as an important tool for the creation of a safe and peaceful society in the midst of wild people who like to prey on each other (Wibowo T. Tunardy, 2021).

Indonesia is a country with the majority of the population is women, today Indonesian women have progressed even to be equal to men as a result of a movement that began from

the idea initiated by R.A Kartini (Ristina Yudhanti, 2014), but the irony to date. Indonesian women are not yet completely free from being subjected to discrimination and crime, it is considered that women are weak creatures. Women are still placed in positions that must be controlled, exploited and enslaved.

The crime of trafficking in Indonesia is dominated by female and child victims. Most of the victims who are deceived into *trafficking* are due to factors of poverty and economic hardship, limitations of education and skills, and limited employment opportunities in their home areas. In addition, coupled with the value of patriarchy that places women and children as vulnerable parties to be violated, unbalanced relations between men and women, still high tendencies of marriage at a young age, victims of violence, are also the cause of trafficking of women. In addition to poverty, there are several other factors that are the reason women go from home to become victims of *trafficking* and involved in the world of prostitution, including the lack of parental attention, some traditional beliefs, and consumptive urban life. This phenomenon is more common in lower class communities, so the lack of income level becomes a factor in the rise of women trafficking (Sutinah, Karen Mwendu Kinuthia, 2019).

The laws and regulations that exist in Indonesia today do not adequately guarantee control over people trafficking. According to data from the Ministry of Women Empowerment and Child Protection, cases of trafficking in people, especially women and children in 2020 rose compared to 2019. In 2019 there were 216 cases and in 2020 it rose 62.5% to 351 cases. As cases of trafficking increased, the poverty rate in Indonesia also increased, from 9.22% (September, 2019) to 10.14% (March 2021) which put people who were previously in positions or poor groups to be very poor. (BPS, 2020). This has prompted concerns about the legal protections that women get as victims of trafficking and how the state's preventive role for trafficking in women.

Bis related to the above issues, then researchers are interested in discussing it through this study with the title "Legal Protection of Women as Victims of Trafficking under the Provisions of Law No. 12 of 2017". The formulation of the problem in this paper is show the legal protection of women as victims of trafficking according to Undang-Law No. 12 of 2017 and how preventive measures taken by the state against trafficking women based on the provisions of Law No. 12 of 2017.

DISCUSS AND ANALYSIS

Legal Protection of Women as Victims of Trafficking According to Undang-Law No. 12 of 2017

Trafficking in Indonesia continues to occur. As happened in February 2021, 286 koban exploits were secured by police from 15 arrested pimps. The victims are sold and have tariffs between 300 to 500 thousand rupiah through social media, according to police information, pimps looking for their victims by getting acquainted through social media (Anjani Nur Permatasari, 2021), that is, until now the case of trafficking is still not maximally can be handled in Indonesia. Trafficking in women, child trafficking, is a problem that is closely related to dignity and human dignity, so the state and society at large must be serious and take part in its handling. For this reason, the State of Indonesia feels the need to improve and complete the laws and regulations related to women's trafficking, this is realized by ratifying the ASEAN Convention Against *Trafficking in Persons, Especially Women and Children*

(ASEAN Convention Against Trafficking in Persons, Especially Women and Children) signed by the Government of Indonesia on November 21, 2015 in Kuala Lumpur, Malaysia. This Convention was later passed into national policy and became Law No. 12 of 2017.

Based on the provisions of the ASEAN Convention Against Trafficking in Persons, especially Women and Children which has been passed into Law No. 12 of 2017, it is regulated in the efforts that must be made by Indonesia as a Country that ratifies the convention to carry out efforts effectively in protecting and helping victims of trafficking based on respect against human rights. There are 14 important points that are regulated as legal protection against women as victims of trafficking according to this law, namely:

1. States Parties shall establish national guidelines or procedures for identifying victims of trafficking, and as appropriate, may cooperate with relevant nongovernmental organizations, which provide assistance to victims.
2. If trafficking occurs in more than one country, the state party shall respect and recognize the results of identification of victims of trafficking carried out by the competent authorities of the receiving state.
3. Unless the victim states otherwise, the identification shall be submitted to the sending state without delay by the receiving state.
4. States Parties shall consider adopting legislation and other measures that permit victims of trafficking to live on its territory, temporarily or permanently, in certain cases. States Parties shall give due consideration to humanitarian factors and compassion for such purposes.
5. States Parties shall endeavour to maintain the physical safety of victims of trafficking while on their territory.
6. In certain cases and where possible in its domestic law, states are obliged to protect the privacy and identity of victims of trafficking, including, among other things, by conducting closed-door judicial proceedings.
7. States Parties shall, in accordance with domestic laws, rules, regulations and policies and in certain cases consider not punishing victims of criminal or administrative trafficking for acts contrary to the law committed by them, if such acts are directly related to acts of trafficking.
8. State parties shall unless detain a person who has been identified as a victim of trafficking by competent authorities in custody or correctional institution before, at the time, or after the civil, criminal, or administrative trial of trafficking.
9. States Parties shall communicate to identified victims of trafficking within reasonable time limits all information relating to the victim's right to protection, assistance and support in accordance with domestic law and this Convention.
10. States Parties shall, where applicable, provide care and support to victims of trafficking, including in certain cases, in cooperation with non-governmental organizations, other organizations, and other elements in civil society as follows:
 - a. Decent housing;
 - b. Guidance and information, in particular relating to their legal rights, in language that is understandable to victims of trafficking;
 - c. Health, psychological, and material assistance and;
 - d. Employment opportunities, education and training

11. State parties shall do their best to assist victims of trafficking in the reintegration into the communities of the sending state.
12. States Parties shall, in carrying out this article, pay attention to the age, gender and special needs of victims of trafficking, especially children.
13. States parties shall ensure that their domestic legal system contains measures that offer the possibility of obtaining compensation for losses suffered to victims of trafficking.
14. States Parties shall provide reasonable funds to be allocated, including, where applicable, establishing a national trust fund, for the care and support of victims of trafficking.

Based on the 14 important points above, it is very important to adjust and harmonize the existing and current national legal products with the contents of the ASEAN Convention above. Considering that Indonesia is still lacking in combating the criminal act of trafficking in persons. The 2007 Anti-Trafficking Act in use today still requires violence, fraud to ensure the occurrence of child sex trafficking crimes that result in the difficulty of investigating child sex trafficking cases.

Once the legal product has been established and has been endorsed by the state, the next stage in efforts to protect women as victims of trafficking is the application of these regulations to protect victims of trafficking. The application of regulations in protecting victims is expected to be implemented by looking at the losses suffered by victims. The implementation of regulations is carried out by central and local governments, collecting accurate data related to cases and identified victims, the number of ongoing legal processes, all efforts carried out with the principle to protect victims.

Preventive Measures taken by the State against Trafficking in Women Based on The Provisions of Undang Law No. 12 of 2017

Anyone has the potential to be a trafficker, even their own family, which is one of the factors that complicate the eradication and prevention of trafficking because the family has a big part in protecting family members.

Indonesia is one of the largest immigrant workers in Asia, at 4.5 million immigrants and 70% are women. Based on data from the *Global Report on Trafficking in Persons*, for 2016 recorded 51% of the total victims of trafficking that occurred in the world were women. In this regard, women need to be prevented from becoming victims of trafficking or becoming victims repeatedly. Prevention efforts are not enough to simply provide economic opportunities or decent and adequate jobs in the destination country and country of origin. Prevention must be done thoroughly to overcome the vulnerability of women as a trigger for trafficking.

Indonesia already has rules related to the prevention of women's trafficking, namely; Presidential Decree No.88 of 2002 stipulates the establishment of the National Action Plan on the Elimination of Women and Children Trafficking (RAN-P3A Task Force), the establishment of the National Commission on Violence Against Women (Presidential Decree No.181 of 1998), and the National Commission on Human Rights (mandated by Law No.39 of 1999 on Human Rights). In addition, in accordance with the mandate of Article 58 of Law No.21 of 2007 stipulated by Government Regulation No.9 of 2008 on Procedures and Mechanisms of Integrated Service Centers for Witnesses and/or Victims of Trafficking In Persons, the establishment of Presidential Regulation of the Republic of Indonesia Number

69 of 2008 tentang Task Force on Prevention and Handling of Criminal Acts of Trafficking, as well as the establishment of Regulation of the Minister of State Empowerment of Women No.1 of 2009 on Minimum Service Standards of Integrated Services for Witnesses and/or Victims of Trafficking In Persons.

In the nature of the ASEAN Convention Against Trafficking in Persons, especially Women and Children which has been passed into Law No. 12 of 2017, it is affirmed that one of the objectives of this legal product is to effectively, prevent and eradicate trafficking of people, especially women and children, ensuring fair and effective punishment for traffickers. Next contained in Chapter III related to 5 important points that must be implemented effectively to maximize the prevention of women's trafficking, namely:

1. States Parties shall comprehensively establish policies, programmes and other measures to:
 - a. Prevent and eradicate trafficking; and
 - b. Protect victims of trafficking, especially women and children, from becoming repeated victims.
2. States Parties shall endeavour to take action in the form of research, information campaigns and mass media and social and economic initiatives to prevent and eradicate trafficking in persons.
3. Policies, programs and other measures established in accordance with this article shall, as appropriate, include cooperation with nongovernmental organizations, other relevant organizations, and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to reduce factors that make people, especially women and children, vulnerable to trafficking in persons, such as poverty, missed development, and opportunity gaps.
5. States Parties shall adopt or strengthen legislation or other measures, such as educational, social or cultured measures, including through bilateral and multilateral cooperation, to reduce the demand that triggers any form of exploitation of persons, including women and children, leading to trafficking.

In an effort to prevent trafficking in women, Indonesia is currently unable to realize the protection of female immigrant workers so that female workers are not charged anything beyond the official costs set by the Government. Law enforcement related to this is classified as ineffective, even though the collection of unofficial costs is what triggers various problems for women that can lead to trafficking. The agent will charge these fees to workers whose end female workers will have debts to the agency. This debt will then be utilized by the agency so that female workers stay and work.

On the other hand, the Government of Indonesia also prohibits the placement of Indonesian workers in several Middle Eastern and North African countries and the result of which is that workers choose to use the services of illegal recruiting agents (Anonymous, 2020). Plus, many workers including women, who are stationed abroad have no knowledge of their rights and responsibilities, they have no preparation whatsoever, do not participate in related trainings prior to departure.

In addition to the above efforts stipulated in Law No. 12 of 2017, prevention efforts are needed in the form of empowerment of women's potential individually and collectively.

Empowerment will help Indonesian women to be able to stand up to overcome and find solutions to problems that arise in the family and community. Broader empowerment will also address the main causes of marginalization and gender inequality issues in Indonesia.

Empowerment can be started by the provision of education and training for Indonesian women, guarantees, social protection, building a women-friendly migration system and promoting gender awareness campaigns among the public. Therefore, more broadly, the prevention of women's trafficking cannot only be carried out by the state. In accordance with the 5 important points of prevention as stipulated in Law No. 12 of 2017, in addition to the state, the wider community also has an important role in preventing women trafficking. Starting from parents, families, local communities, NGOs, government and nongovernmental agencies, to the wider community, the state and the international community need to have the same views and carry out their respective roles in efforts to prevent women trafficking and trafficking.

Criminal acts of trafficking are regulated in the Criminal Code in book II Article 295 paragraph (1) numbers 1 and 2, Article 295 paragraph (2), Article 296, Article 297, Article 298 paragraph (1), (2) and Article 506. Article 297 of the Criminal Code expressly prohibits and threatens the trafficking of women and boys stating that "*Trafficking of women and trafficking of boys who are not old enough, is threatened with a maximum criminal period of six years*". Article 298 paragraph (1) of the Criminal Code states that in the case of prosecution based on one crime in articles 281, 284, 290 and 297 the revocation of rights under article 35 No.1-5 can be declared. Furthermore, in Article 298 paragraph (2) of the Criminal Code states that if the guilty commits one of the crimes under article 261, 297 in doing his livelihood, then the right to do the livelihood can be revoked.

Article 2 of Law No. 21 of 2007 states that "*Any person who undertakes the recruitment, transport, shelter, delivery, transfer, or acceptance of a person with the threat of violence, use of force, kidnapping, captivity, forgery, fraud, abuse of power or vulnerable position, debt bonding or giving payment or benefits despite obtaining the consent of the person in control of another person, for the purpose of exploiting the person in the territory of the Republic of Indonesia, convicted with a prison sentence of at least 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp 120,000,000.00 (one hundred and twenty million rupiah) and at most Rp 600,000. 000.00 (six hundred million rupiah)*".

CLOSURE

Conclusion

The Legal Protection of women victims of trafficking is contained in Chapter IV of Article 14 of the ASEAN Kovensi Against Trafficking in People, especially Women and Children which has been passed into Law No. 12 of 2017. There it is explained that the protection of women victims of trafficking includes 14 important points, which include: The State is obliged to establish a combination to identify victims, the state must respect and recognize the results of victim identification carried out by other countries, the state is obliged to maintain the safety of victims while on their territory, must protect the privacy and identity of victims, the State is obliged to respect and recognize the results of victim identification carried out by other countries, the state is obliged to maintain the safety of victims while on its territory, must protect the privacy and identity of victims, the State is

obliged to respect and recognize the results of victim identification carried out by other countries, the state is obliged to maintain the safety of victims while on their territory, must protect the privacy and identity of victims, the State is obliged to respect and recognize the results of victim identification carried out by working with non-governmental organizations, other organizations, civil society to support victims, as well as proper housing, bimbingan related to their legal rights, bantuan health, psychological, material, employment, education and training The state is obliged to help victims to return to society, must ensure victims are compensated, must provide funds to be allocated in care and support to victims. State-Action Against Women Trafficking is contained in Chapter III Article 11 of the ASEAN Koveni Against Trafficking in People Especially Women and Children which has been passed into Law No. 12 of 2017. It is stipulated that steps to be taken in preventing the trafficking of women include: States shall establish policies, comprehensive programs to prevent and eradicate trafficking, protect victims especially women and children from becoming repeated victims, conducting research and campaigns to prevent and eradicate trafficking, cooperate with nongovernmental organizations and civil society, strengthen cooperation to prevent and eradicate trafficking. reduce poverty, miss development and opportunity gaps, and strengthen legislation, educational measures to reduce all forms of triggers that lead to exploitation that lead to trafficking in persons.

Suggestion

The protection of women as victims of trafficking that has been regulated in Law No. 12 of 2017 has not been fully realized in Indonesia. Many workers, women, children and men, are still targeted for exploitation and trafficking. So it is necessary to establish regulations that are detailed, paying attention to the facts on the ground in order to get information related to losses and injustices experienced by victims. The principles in the ASEAN convention, can be combined with international law and the results of research conducted by the Indonesian government, then established a clear, unified regulation, which protects the rights of victims of trafficking. The precautions contained in Law No. 12 of 2017 are still not implemented in Indonesia. The reality found on the ground is that many workers can get out of Indonesia without the provision of knowledge about what rights and obligations they have, illegal agents are still present among prospective workers who are complicated by the system and information of the competent authorities, when they do not have the right knowledge and information then illegal agents are the way they will take by owing agents, This debt is the seed of acts of exploitation and trafficking that are very likely to occur in the future. Supervision from the Indonesian government is still weak, our workers in people's countries are not necessarily respected human rights as a result of the absence of clear regulations and supervision from the government. So in addition to the regulations that need to be established, Supervision is equally important to ensure the human rights of Indonesian workers can be respected even in other countries, there must be an official supervision team in each destination country of Indonesian workers.

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