

LEGAL PROTECTION FOR VICTIMS OF HUMAN TRAFFICKING CRIMES

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Abstract: The law recognizes and protects the inherent dignity and value of every human being, starting from conception. Victims have the right to receive legal protection for a sense of security and comfort. Legal protection for victims of human trafficking is part of protection in society, which can be realized in various forms, for example by providing restitution, compensation, medical services, and/or legal assistance. However, it is necessary to pay attention again to the issue of victims' rights such as, in terms of health, comfort, and also peace both psychologically and physically, and prioritizing mental recovery so that victims can return with confidence in the community, and have the opportunity to continue living normally.

Keywords: Protection, Law, Victims, TPPO.

Introduction

Human trafficking is the denial of the essential position of humans as legal subjects. And causes cases of humanism that degrade the dignity of humans as social beings. Because human trafficking uses methods such as threats, coercion, kidnapping, fraud, cheating, lies and abuse of power and aims for prostitution, pornography, violence or exploitation, forced labor, slavery or similar practices. Human trafficking has a very wide network as a result of which it can be a threat to society, nation, and state and customs or rules of life that are based on respect for Human Rights (HAM).

The purpose of human trafficking is sexual exploitation, prostitution, forced labor or forced service slavery or the like and the removal of human organs. The number of human trafficking acts during the pandemic has actually increased. Any act of recruitment, transportation, shelter, transfer, or receipt of a person with threats, violence, kidnapping, fraud, abuse of power or vulnerable positions, debt bondage, or the provision of payments or benefits, is considered human trafficking, both domestically and abroad. The problem of human trafficking, especially targeting women and children, has recently returned to the headlines. Child trafficking is a modern form of human slavery and one of the most horrific crimes against humanity. Every country is making every effort to end human trafficking because they all share the same belief that human beings are God's most beautiful creation and deserve the highest respect and dignity.

The law recognizes and protects the dignity and value inherent in every human being, starting from conception (Fahlevi, 2015). A number of laws and regulations regarding legal protection for victims of criminal acts, especially human trafficking, have been created by the Indonesian government, both those related to labor migration and the human trafficking law itself, which are expected to provide protection for Indonesian citizens. The 1945 Constitution provides protection and equal rights for men and women to obtain guarantees and fulfillment of the right to live a decent, healthy, and dignified life. Therefore, the state, especially the government, can be responsible for the protection and fulfillment of these rights, as a form of

protection and fulfillment of human rights for its citizens. Law Number 21 of 2007 concerning the Eradication of Human Trafficking Crimes is an effort by the government to provide legal protection, both directly and indirectly, to victims and/or potential victims so that they do not become victims in the future.

Conflicts or disputes arise because of conditions that have caused them (antecedent conditions). These conditions, which are also the source of conflict, consist of three categories, namely communication, structure, and personal variables (Robbins, 1996). Therefore, the law must protect every effort that helps the maturity and progress of future generations of children. According to Law No. 23 of 2002 concerning Child Protection, the state, government, society, family, and parents are obliged to care for and protect children. Therefore, it is very important for all stakeholders to collaborate to ensure that the program to create healthy children can be implemented in 2015 by respecting the universal rights of children. Children have inherent self-esteem because God Almighty has given them this gift.

The crime of human trafficking is one object of crime that is increasingly developing in Indonesia. The material for regulating the article regarding this matter has been regulated in Article 297 of the Criminal Code, but so far its benefits have not been felt. There needs to be bold observational action by our law enforcers so that our criminal law becomes more humane. Arif Gosita, who is one of the criminal law experts, said that our criminal law system still tends to highlight a crime from the perspective of the perpetrator of the crime. According to him, there is something lacking and unbalanced if the victim's perspective is ignored. After all, the elements that cause the crime will not occur if there is no victim (Gosita, 1983).

Between the victim and the perpetrator are two elements of the crime. From this arena, the study of victims is so important to be targeted further, especially regarding victims of human trafficking. This is done to find the right potion to be used as an antidote to crime so that it does not cause further victims, and also as a prerequisite for fulfilling the study of criminal law as a whole. So far, victims have only been represented by the state as recipients of suffering, who will take revenge on the perpetrators who are embodied in the misery that has been regulated by laws and regulations. The victims here are not so popularly considered, because the focus of punishment is only given to the perpetrators, which indicates the end of the problem. Even though in the law of a perpetrator of crime, the victim does not necessarily feel willing and safe. Many victims still do not feel they have received justice and the return of their position in society due to the trauma they have received and the sharp psychological impact that makes it difficult to change. That is why the protection of victims of crime is so important. The increasingly organized crime of human trafficking makes it increasingly difficult for the government to provide protection for victims, because the crime has become transnational, structured and systematic.

Literature Review

1. Crime of Human Trafficking

Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking (PTPPO) Article 1 number 1 states the definition of human trafficking as follows: Human trafficking is the act of recruiting, harboring, sending, transferring, or receiving a person with the threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt trapping or giving payment or benefits, so as to obtain the consent of the person who has control over the other person, whether carried out within the country or between countries, for the purpose of exploitation or resulting in people being exploited. Meanwhile, the crime of human trafficking is stated in Article 1 number 2 of the

PTPPO Law, namely: "Any action or series of actions that meet the elements of a criminal act as determined in this Law."

Law Number 21 of 2007 also formulates the scope of the crime of human trafficking, namely:

- a. Any action or series of actions that meet the elements of a crime as stipulated in this law (Law Number 21 of 2007). In addition, Law Number 21 of 2007 also prohibits anyone who brings people into the territory of the Unitary State of the Republic of Indonesia (NKRI) to be exploited;
- b. Bringing Indonesian citizens (WNI) outside the territory of the NKRI for the purpose of exploitation;
- c. Adopting a child by promising something or giving something for the purpose of exploitation;
- d. Sending children into or out of the country in any way; and anyone who uses or takes advantage of victims of human trafficking by having sexual intercourse or molestation, employing victims for the purpose of exploitation or taking advantage;
- e. Anyone who provides and enters false information on state documents or other documents to facilitate human trafficking;
- f. Any person who gives false testimony, submits false evidence or false evidence, or unlawfully influences witnesses;
- g. Any person who physically attacks witnesses or officers in a TPPO trial; any person who prevents, obstructs, or directly or indirectly thwarts the investigation, prosecution and trial in the Court of a suspect, defendant, or witness in a TPPO case; any person who helps the TPPO perpetrator escape;
- h. Any person who provides the identity of a witness or victim when it should be kept confidential.

Method

A study cannot be said to be research if it does not have a research method (Koto & Faisal 2021). The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively (Koto, 2020). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Koto & Zainuddin 2022). In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach (Rahimah & Koto, 2022).

Result and Discussion

According to the 1945 Constitution Article 28D paragraph (2) and 28I paragraph (2) it is explained that everyone is guaranteed by the state to obtain all their rights, not to be discriminated against from anywhere, and to be equal in the eyes of the law. This is the same as the Human Rights guidelines which guarantee that everyone has the right to be protected and everyone has the right to freedom of life that cannot be taken away. Likewise, Law Number 31 of 2014 Article 5 explains the Protection of Witnesses and Victims, explaining that victims have the right to receive protection for their safety without any pressure and have the right to receive developments in information on the development of the case they are undergoing. In the court process, every victim has the right to receive an interpreter to accompany them and translate every decision along with information about the case they are experiencing.

From the various phases of the occurrence of human trafficking crimes, Indonesia has its own story to be thoroughly discussed in this discussion. Starting from criminalizing articles in the Criminal Code to ratifying international agreements related to prohibiting human trafficking. Apart from that, it turns out that Indonesia is a country that is the center of world attention, especially the United States, which cares about conducting surveys on criminal statistics in Indonesia.

Regarding the legal aspect of legal protection that can be carried out by the government, the most important and primary is through the use of the Criminal Code (KUHP). Although this legal product has not considered the interests of victims rather than perpetrators, there is at least one article that provides a clause related to protection for victims, namely in Article 14c paragraph 1 of the Criminal Code concerning civil compensation. The article reads "" in the order referred to in Article 14c except in the case of a fine being imposed, then together with the general condition that the person convicted will not commit a crime, the judge may make a special condition that the person convicted will compensate for the losses incurred due to the crime, all or part of it, which will be determined in the order determined in the order as well, which is less than the probationary period. " According to the article above, it raises an interpretation that the material contained in the Criminal Code has given little special attention to victims. According to Barda Nawawi, in positive criminal law, victim protection is more abstract protection or indirect protection, meaning that with the existence of various formulations of criminal acts in laws and regulations so far, it means that in essence there has been legal protection and human rights for victims (Arief, 1998).

Thus, the Criminal Code has not clearly and firmly determined provisions that concretely or directly provide legal protection for victims and also does not formulate the type of restitution (compensation) for victims and their families at the same time. Judges are only given an optional offer, so that the provisions are not imperative and compelling to provide protection according to the contents of the articles in the Criminal Code. In addition to legal protection from the Criminal Code, protection for victims can also be found in Law Number 13 of 2006 concerning Protection of Witnesses and Victims. Especially in Article 5 paragraph (1) which provides legitimacy for the protection of personal security, family and property, as well as being free from threats related to testimony that will be or has been given. Participate in the process of selecting and determining the form of protection and security support, providing information without pressure, getting an interpreter, being free from misleading questions, getting information about case developments and court decisions, getting a new identity and new residence, getting reimbursement for transportation costs according to needs, getting legal advice, getting temporary living costs assistance until the protection period ends.

Specifics regarding protection against human trafficking crimes are stated in Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking. Specifically in Article 43 paragraph (1) Compensation and medical and social rehabilitation and reintegration must be carried out by the state, especially for victims who experience physical, psychological, and social suffering due to the crime of human trafficking. Then the next article from Article 44, Article 47, Article 48, and Article 51 to Article 54 of Law Number 21 of 2007 which successively regulates the confidentiality of the victim's identity, the right to receive restitution or compensation, both related to property rights, costs during the legal process, both domestically and abroad, and the restitution must be included at the same time in the court's decision (Syamsuddin, 2011).

Legal protection for the crime of human trafficking experiences several obstacles. One of the obstacles faced by law enforcement officers is the reluctance of victims of human trafficking to report to law enforcement officers or the authorities when they have become victims of

human trafficking. This is because victims of human trafficking feel ashamed to report because then the community will know that they are victims of human trafficking so that their names will be tarnished in the environment around their place of residence.

Conclusion

Victims have the right to receive legal protection for a sense of security and comfort. Legal protection for victims of human trafficking is part of protection in society, which can be realized in various forms, for example by providing restitution, compensation, medical services, and/or legal assistance. However, it is necessary to pay attention again to the issue of victims' rights such as, in terms of health, comfort, and also peace both psychologically and physically, and prioritizing mental recovery so that victims can return with confidence in front of society, and have the opportunity to be able to continue living normally.

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