

LEGAL PROTECTION FOR WOMEN AND CHILDREN AS VICTIMS OF HUMAN TRAFFICKING IN INDONESIA

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ABSTRACT

The background of this research is the existence of problems related to legal protection policies for women and children who are victims of human trafficking in Indonesia. 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, namely concerning the Eradication of the Crime of Human Trafficking. However, this law is found has not been able to reduce human trafficking in Indonesia. In addition, this law is considered to be ineffective in fulfilling the rights of victims in which the provision of protection to victims of human trafficking by the criminal law has not yet produced a clear pattern. This study aims to analyze the legal protection for women and children as victims of human trafficking in Indonesia. This research is a normative legal research (juridical normative) which uses a statute approach and a conceptual approach related to legal protection for women and children victims of human trafficking in Indonesia. The results of research are further associated to the values contained in Human Rights. Based on the description above, the problems found are as follows: The number of cases of human trafficking in Indonesia continues to increase; Legal protection efforts for women and children victims of human trafficking viewed from a human rights perspective in Indonesia have not been effective; The form of protection for victims of human trafficking by criminal law has not yet shown a clear pattern.

Keywords : Legal Protection, People Trafficking Crimes, Human Rights

INTRODUCTION

The crime of human trafficking always has a serious impact on victims and their families, society and the state (Andrevski & Lyneham, 2014). Various problems that arise as a result of human trafficking (Mangku, 2020) related to the condition of the country are countries that are destination for human trafficking, countries of transit or countries where human trafficking occurs (Lyneham, 2014). This is also as experienced by Indonesia. Children are the easiest and most vulnerable to human trafficking (Mahardika & Wicaksono, 2020). This puts them in a very high risk position, such as risks related to health (Purwendah, 2021), pressures and acts of violence both physically and mentally that can threaten their quality as the next generation of the Republic of Indonesia (Hafrida et al., 2018).

Human trafficking is actually a new form of slavery that occurs in modern times (Nazidah, 2021). This problem is based on the desire to have a cheap living but obtain big profits and cheap lives. In cases of human trafficking, especially women and children, it is like an iceberg phenomenon where there are much more cases that do not or have not yet revealed (Naibaho,

2011).

Based on the records of the Ministry of Foreign Affairs (Faissal, 2021) regarding data on victims of human trafficking handled by all representatives of the Republic of Indonesia Abroad during 2010, there were 35 people (Sulaksono, 2018). These cases came from the Indonesian Embassy in Doha, in Kuala Lumpur, the Indonesian Consulate for Kinabalu, for Penang, as well as the Indonesian Embassy in Singapore. Meanwhile in 2011, there were 33 people which then increased to 92 people in 2012 (Sutinah & Kinuthia, 2019).

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".

RESEARCH METHODS

This research is a juridical normative which is based on considerations to study the principles or rules (Soekanto, 2014). The legal rules reviewed in this study are the Criminal Procedure Code (KUHAP) 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 legal approach was used by the author 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 to 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.

RESULT AND DISCUSSION

Definition of Legal Protection

The existence of the law in society aims to integrate and coordinate interests that are usually in conflict with one another (Simbolon & Ablisar, 2018). Thus, the law must be able to integrate these interests so that the conflicts that exist in them can be minimized (Evingrum & Jamin, 2019). 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 (Purwanti, 2017). This discussion does not intend to make a definite limit regarding the meaning of law. This is based on Immanuel Kant who explains that the meaning or meaning of law is still difficult to find considering the scope and types of fields that are the source of the discovery of the law which is very broad (Antoni, 2020).

The definition of legal terminology in Indonesian according to KBBI is regulations or customs that are officially considered binding, confirmed by the authorities or the government, laws, regulations, etc (Natsir & Natsir, 2017). which aim to regulate the social life of the community, become benchmarks or rules related to certain natural events, decisions or considerations determined by the judge in court or verdict (Evingrum et al., 2020).

Protection means protecting something from things that are dangerous, can be interests or objects or goods. Protection also implies protection given by someone to someone who is weaker (Saragi et al., 2012). 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 regulations (Djanggih et al., 2018).

Legal protection aims to provide protection for human rights that have been harmed by others to the community so that they can enjoy all the rights provided by law (Novika et al., 2020). In other words, it can also be explained that legal protection is a variety of legal measures that must be provided by law enforcement officials to provide a sense of security, both mindfully and physically from harassment and various threats from any party to society (Raharjo, 2006).

Legal protection can also be defined as a protection given to legal subjects in the form of legal instruments, both preventive and repressive in nature and both written and unwritten (Salamah, 2018). 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 for the state itself (Atmasasmita, 2003). Therefore, it is obligatory for a country to 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 (Amelia et al., 2019). 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 fulfill 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 (Farhana, 2018).

Satjipto Raharjo argues that legal protection also means providing protection to human rights (HAM) that are harmed by others. This protection is given to the community so that they can enjoy all the rights provided by law (Raharjo, 2000). According to him, the nature and purpose of law is to provide protection (protection) to the community which must be realized in the form of legal certainty. Legal protection can be in the form of preventive and repressive actions.

Some opinions quoted from several experts regarding legal protection are as follows:

1. Setiono explained that legal protection is an act or effort to protect people from arbitrary actions by the authorities who are not in accordance with the rule of law and aim to create order and peace so that it is possible for people to enjoy their dignity as humans (Setiono, 2004).
2. Muchsin defined legal protection as an activity to protect individuals by harmonizing the relationship of values or principles that are incarnated in attitudes and actions in creating order in social life among humans.
3. According to Hetty Hasanah, legal protection is any effort that can guarantee legal certainty so that legal protection can be provided to the parties concerned or who take legal action.

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 (Mayasari, 2017), which is carried out by the government through its law enforcement apparatus by using certain methods based on applicable laws or regulations as an effort to fulfill the rights of every citizen, including for arbitrary acts committed by the authorities (the law enforcement apparatus itself). A protection is said as legal protection if the following elements are met:

1. There is protection from the government towards its citizens.
2. Guarantee legal certainty.
3. Related to citizens' rights.
4. There are penalties for those who violate them.

Philipus M. Hadjon distinguished two kinds of means of legal protection based on their relation

to legal protection for the people, namely:

- a. Preventive Legal Protection Means. Legal subjects in this case are given the opportunity to submit objections or opinions before a government decision takes a definitive form. The goal is to prevent disputes.
- b. Repressive Legal Protection Means. This 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 legal protection of governmental acts is the rule of law principle. Regarding to the recognition and protection of human rights, it has the main place which can be attributed to the objectives of the rule of law.

On the other hand, Muchsin distinguishes legal protection into two parts as follows:

- a. Preventive Legal Protection. This is provided by the government with the aim of preventing the violation before it occurs. This protection is contained in statutory regulations with the intention of preventing a violation and providing signs or limitations in carrying out an obligation.
- b. Repressive Legal Protection. This is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties that are given when a dispute has occurred or an offense has been committed.

Legal protection is a narrowing of the meaning of protection which only includes protection by law (Kosandi et al., 2017). 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 (Surtees, 2008).

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 (Setiono, 2004).

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, protection can be said to be legal protection if it contains the following elements: (Simanjutak, 2011)

- a. There is protection from the government for its citizens;
- b. Legal certainty guarantee;
- c. Has a relation to the rights of citizens;
- d. 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 as references in this legal research.

Overview of the Equality before the Law Theory

Indonesia is a country based on law as it is defined in the 1945 Constitution, Indonesia is a *rechtsstaat*. 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), which states that: All citizens together with their position 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 as adopted by Article 27 paragraph (1) of the Amendment to the 1945 Constitution is the basis of protection for citizens so that they are treated equally before the law and government. In other words, that all people should be treated equally before the law. Equality before the law is one of the most important principles in modern law which is 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 is a manifestation of 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 (Li, 2018).

The principle of rule of law teaches that communication and social interaction consisting of various elements of the community interact and transact to achieve common goals and ideals. Whereas the order of life and communication between individuals in a community refers to the agreed rules of the game and is used as a reference and reference for the parties in conducting relationships and legal actions. On the basis of this concept, there is no arbitrariness carried out by law enforcers or justice seekers, resulting in a civil society in which individuals as people or citizens have the same and equal position before the law (Feingold, 2005).

The principle of equality before the law is a guarantee for achieving justice (law) with parties involved in the law enforcement process. Legal protection guarantees are implied in the principle of equality before the law, namely guarantees that not only get the same treatment, but also guarantees that will bring logical consequences that the law will not give privileges to other legal subjects. If this happened, it would be violating the principle of equality before the law and could encourage discrimination before the law.

The concept of equality before the law has been introduced into the constitution as the highest form of recognition in the statutory regulatory system in the country. This principle defines equality before the law applies to the same case (criminal act). However, there is usually no equal treatment in reality which causes the rights of individuals to obtain justice (access to justice) being neglected. For example, is the different treatment in the criminal act of corruption which causes the neglect of individual freedom?

The principle of equality before the law must always be upheld for the sake of the rule of law and the judicial system itself. It is an obligation that a rule of law state is required to guarantee human rights for its citizens and there should not be a case that immediately imposes a sentence in order to enforce the law by violating this principle. Giving punishment (judgment) outside the existing rules or system is something that must be avoided.

Policy for the Protection of Children and Women from Violence

Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking which is included in the context of national law, is in Article 1 number 1 in which it explains the meaning of Trafficking, namely: Human trafficking is the act of recruitment, transportation, holding, sending, transferring or receiving a person with threats of violence, the use of force, kidnapping, confinement, forgery, fraud and abuse of power or vulnerable position, entrapment of money or providing payment or benefits (Yuliantini, 2021), so as to obtain the consent of the person who has control over the other person, whether it is done within the State or between countries for

the purpose of exploitation or making people exploited (Yenny et al., 2018).

Legal protection for victims of human trafficking has a meaning of protecting the rights of every person who is a victim of human trafficking, so that they receive equal treatment and protection by law and legislation. For every violation of the law that has occurred against the victim and the impact suffered by the victim, the victim has the right to receive the necessary assistance and protection in accordance with legal principles (Sigmon, 2008). Meanwhile, what is meant by assistance and protection for victims is related to the human rights of victims such as the right to get physical assistance, assistance in solving problems, regaining their rights, receiving guidance and rehabilitation, obtaining protection from threats and the right to obtain compensation (restitution/compensation) (Mashdurohatun & Rasia, 2017).

The Criminal Procedure Code only provides legal protection to victims in the form of compensation through a combination of cases and does not regulate other forms of legal protection (Itasari, 2020). The failure to regulate legal protection for crime victims, especially victims of human trafficking, has created injustice. This injustice occurs because often the Attorney General who represents the victim only imposes charges or the judge only gives relatively light sentences to the perpetrators. Protection of victims of human trafficking can include protection that are abstract (indirect) or concrete (direct). Abstract protection is a form of protection that can only be enjoyed or felt emotionally (psychologically), such as satisfaction, while concrete protection is basically a form of protection that can be enjoyed in real terms, such as gifts that are tangible or material or non-material. This material gift can be in the form of compensation or restitution and exemption from living expenses or education. Providing protection of a non-material can be in the form of freedom from threats and from news that degrading humanity.

Protection of victims of human trafficking can be carried out through law, including administrative, civil and criminal law. Determination of the criminal act of human trafficking and efforts to overcome it by law are carried out through various stages. Today it can be said that the provision of protection to crime victims by criminal law has not yet shown a clear pattern (Muladi, 1992). 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, it will make the perpetrators increasingly deterred from committing the crime of human trafficking.

Children protection principles:

1. Children cannot fend for themselves; namely that children cannot protect their own rights considering that many parties must be involved in their lives where the state and society are the parties most needed by them.
2. The best interest of the child; so that child protection can be implemented properly, this principle must be used. This is because many children who are victims of trafficking due to their ignorance, developmental age, etc.
3. Life circle approach: child protection refers to the understanding that their protection must start early and continuously. The fetus in the womb needs to be protected with nutrition, primary health care and other health protection, as well as educational protection which will be the capital in his future life.

The protection policy against women's violence is a human right that must be obtained. Article 27 paragraph (1) of the 1945 Constitution stipulates that every citizen together with his/her position is equal in law and government without exception. The article's statement shows that there is no difference in the position of legal protection for all citizens.

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. This is a form of human rights

violation. The state must be serious in taking steps to address the various causes and backgrounds of the occurrence of this crime, starting from law enforcement, socialization, and legal efforts in protecting the interests of victims against the crime of human trafficking which refers to the values contained in human rights.

Law Number 21 of 2007 has provided regulations regarding the provision of protection for victims of human trafficking, both directly and indirectly, including the provision of restitution related to legal protection provided by the state for women and children as victims of the human trafficking crime. However, regardless all legal regulations, the provision of protection for victims of human trafficking by criminal law in the reality still does not provide a clear pattern.

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