



Actualization of The Court's Role in Combating Human Trafficking

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ABSTRACT: Human trafficking is a transnational crime that continues to rise each year, attracting global attention due to its impact on human rights. According to the United Nations Office on Drugs and Crime (UNODC), human trafficking involves acts of violence, coercion, and exploitation that violate fundamental individual rights, particularly targeting women and children as the most vulnerable groups. In Indonesia, this issue is governed by Law No. 21 of 2007 concerning the Eradication of Human Trafficking Crimes and various regulations related to child protection. Human trafficking is regarded as a modern form of slavery that undermines human dignity and respect. Law enforcement against this crime requires an active role of the judiciary in delivering justice for victims who often suffer physical, mental, and socio-economic harm. The 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emphasizes the importance of recognizing, protecting, and restoring victims' rights, including those indirectly affected. The role of the judiciary includes applying the principles of utility, justice, and legal protection to reduce the incidence of human trafficking and ensure that victims receive adequate justice and protection.

Keywords: Human trafficking, Human rights, Exploitation, Victim protection, Law enforcement.

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1. Introduction

Human trafficking is a type of crime that continues to develop in Indonesia. Although provisions regulating this matter are already stipulated in Article 297 of the Indonesian Penal Code (KUHP), their effectiveness has yet to be fully realized. Bold observational measures by law enforcement officials are necessary to make our criminal justice system more humane. Arif Gosita (1993, p.11) states that Indonesia's criminal law system tends to focus on crimes from the perpetrator's perspective. He argues that neglecting the victim's perspective creates imbalance and insufficiency. After all, the elements causing crime would not exist without the presence of a victim.

Human Trafficking is a significant issue that has threatened humanity since the very existence of human life. One form of trafficking is human slavery, which occurred long before the issue of human trafficking evolved into its current state. Every act of slavery during that time was carried out without regard for an individual's right to live freely, clearly illustrating a violation of Human Rights (HR) (Meliana, 2021, p.125). Now, the practice of slavery has been modernized into the form of trafficking. According to Article 1 paragraph (1) of Law No. 21 of 2007 concerning the Eradication of Human Trafficking Crimes, human trafficking is defined as follows:

"The recruitment, transportation, transfer, harboring, or receipt of persons, using threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or exploitation of a position of vulnerability, or by giving or receiving payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."

Between the victim and the perpetrator lie two essential elements of a crime. This dynamic underscores the importance of studying victims in greater depth, particularly victims of human trafficking. Such studies

aim to identify effective methods to deter perpetrators from committing future crimes and serve as a prerequisite for a comprehensive understanding of criminal law. Thus far, victims are often represented by the state as the party bearing the consequences of a crime, with the state retaliating against the perpetrator through procedures established by law.

From the explanation above, there appears to be no significant difference between the definition of human trafficking as stated in Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (commonly known as the Palermo Protocol). Based on the background explanation above, the research aims to discuss the issue of how human trafficking can be considered a violation of human rights and what is the role of the judiciary in enforcing the law and delivering justice to victims of human trafficking.

2. Theoretical Overview of the Main Concepts

Human trafficking is one of the transnational crimes that has become a global concern due to its persistent increase in cases year after year. Several sources estimate that annually, approximately 700,000 to 4 million individuals worldwide fall victim to human trafficking. In Indonesia, according to a report from the International Organization for Migration (IOM), the number of human trafficking cases rose to 154 in 2020, with the majority of victims subjected to sexual exploitation. However, these figures only reflect cases that have surfaced; many others are believed to remain undetected.¹

According to the United Nations Office on Drugs and Crime (UNODC), human trafficking is defined as a form of crime against humanity involving the recruitment, transportation, transfer, harboring, or receipt of individuals through violence, coercion, and other malicious acts aimed at exploiting the victims (IOM Indonesia, 2006, p.7).

Coercion in this context can include kidnapping, fraud, manipulation, and the abuse of power by exploiting the victim's ignorance. Victims are often initially promised money or employment in a foreign country, only to discover upon arrival that they have been sold, leading to exploitation and slavery. Women and children are the most vulnerable groups to fall victim to human trafficking crimes. The forms of human trafficking include sexual slavery and forced labor, where victims are deprived of their socio-economic rights, subjected to inhumane working conditions, and illegal organ trade. According to Gajic Veljanoski, human trafficking is an act that violates human rights, specifically the right to freedom, the right to protection, and freedom of movement. Moreover, as the majority of victims are women and children, this is also a crime that infringes upon the rights of women and children, which are integral parts of human rights. Every human being, particularly vulnerable groups such as women and children, must have their dignity and worth protected and their right to life guaranteed so they can grow and develop in accordance with their natural rights (Mansur, 2007, p.31)

Every individual, from the moment of birth, possesses human rights that are protected by the state and laws in their implementation. As stated in Article 20 paragraph (2) of the Human Rights Law and Article 28 paragraph (1), along with the enactment of the Law on Human Trafficking Crimes, it is stated that "*Human trafficking is a modern form of human slavery. It is also one of the worst forms of violation of human dignity and rights.*" Furthermore, Article 71 of the Human Rights Law emphasizes that "*The government is obligated and responsible to respect, protect, uphold, and promote human rights.*"

Legally, in Indonesia, human trafficking is classified as a criminal act regulated under Law No. 21 of 2007 on the Eradication of Human Trafficking. Additionally, the trafficking of children is addressed in Article 83 of Law No. 23 of 2002, Law No. 35 of 2014, and Law No. 17 of 2016 on Child Protection. The existence of binding legal regulations concerning human trafficking crimes responds to the threat of violating human dignity and rights. The violation of human rights through human trafficking means that it constitutes a form

¹ <https://geotimes.id/opini/tindak-perdagangan-manusia-dan-kaitan-dengan-pelanggaran-ham/>, diakses 21 Juni 2023

of severe human rights violation, as it involves the unlawful movement of people from one place to another. Humans, who inherently have equal dignity and worth in the eyes of God and the law, should not treat one another as objects or commodities to be bought and sold for any purpose. This is clear evidence of a human rights violation (Hamim & Rosenberg, 2003, p.12). Therefore, any action deliberately attempting to deprive individuals of their inherent human rights is a violation of human rights. Humans, by nature, are free and equal and should be treated with the same dignity and respect as others. It is unacceptable for any person to be treated as less than human. As such, we must collectively condemn and denounce all forms of exploitation, abuse, and slavery inflicted upon every individual.

3. Methodology

The research is normative legal research. Data used in the research are secondary data, which consisted of primary legal sources, secondary legal sources, and tertiary legal sources. The study focused on the research of legal norms of human trafficking as a violation of human rights and the impact on judiciary decisions that bring justice to the victims of human trafficking. The analysis is conducted using a qualitative approach. It analyzes the meaning of the human trafficking violation of human rights and how the court considered and made the decision that shall provide justice to the victims.

4. Discussion

4.1. The Role of the Court in Upholding the Law and Providing Justice for Victims of Human Trafficking Crimes

Crime victims are often associated with those who are vulnerable, whether physically, mentally, economically, politically, or socially. This is typically linked to children, the uneducated, the poor, those unfamiliar with the law, and those without protection. The condition and situation of the victim can provoke individuals or groups to commit crimes against them. The perpetrators recognize some crimes, while others, such as human trafficking, may go unnoticed by the victims themselves. Some victims of human trafficking are aware that they could fall victim to such crimes, such as Indonesian migrant workers. In contrast, others are unaware because they are deceived or enticed, leading to their exploitation.

According to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, issued in 1985 as UN Resolution No. 40/34 on November 29, 1985, which many countries have adopted, it is understood that a crime victim is someone, whether an individual or a group, who has suffered harm, whether physical injury, mental harm, emotional suffering, loss of property, or significant damage to their fundamental rights through actions or omissions defined in criminal law, including those prohibiting the abuse of power (Farhana, 2010, p.154). The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power also states that (Farhana, 2010, p.155):

"A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization".

The definition above can be interpreted as follows: A person can be considered a victim, regardless of whether the perpetrator is arrested, detained, brought to court, or punished, and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, when applicable, the victim's immediate family or dependents, as well as individuals who have suffered harm due to their intervention to help the victim in distress or to prevent further victimization.

According to Mardjono Reksodiputro (1987, p.96-97), the concept of victims also encompasses violations of human rights that stem from the unlawful abuse of economic power, such as violations of labor regulations, consumer fraud, and malpractices in trade by multinational corporations, as well as the unlawful abuse of public power, such as human rights violations and the misuse of authority by government officials. Muladi (2005, p.108) defines a victim as individuals or groups who have suffered harm, including

physical, mental, emotional, or economic loss, or a substantial disturbance to their fundamental rights, due to acts or commissions that violate criminal laws in each country, including abuse of power. According to Law No. 23 of 2004 on the Elimination of Domestic Violence, a victim is someone who experiences violence within the scope of a household. Meanwhile, Law No. 27 of 2004 on the Truth and Reconciliation Commission defines a victim as an individual or group who has suffered physical, mental, or emotional distress, economic loss, or the violation, reduction, or deprivation of their fundamental rights as a result of gross human rights violations. This also includes the victim's inheritance rights. In Law No. 13 of 2006 on the Protection of Witnesses and Victims, Article 1, paragraph 2 defines a victim as someone who suffers physical, mental, and/or economic loss caused by a criminal act.

The scope of crime victims covers three main aspects: who the victims are, what suffering or losses they have endured, and who is responsible or how the suffering and loss experienced by the victim can be restored (Farhana, 2010, p.158). Several legal principles also require attention in the concept of the court's role in upholding the law and providing justice for victims of human trafficking. In criminal law, legal principles must color both material criminal law, formal criminal law, and criminal enforcement law (Mansur, 2007, p.164). Human trafficking is one of the forms of modern-day slavery. It violates human dignity and integrity and touches upon broader humanistic concerns. Therefore, the legal policies adopted for law enforcement must be oriented towards the protection of human rights (HAM). This approach emphasizes ensuring that individuals' fundamental rights are safeguarded and that those responsible for such heinous acts are held accountable in a manner that respects the dignity and rights of the victims. Legal frameworks and enforcement mechanisms should prioritize the prevention of exploitation and provide victims with the necessary support and justice to recover and rebuild their lives (Nuraeny, 2013, p.83). Suppose law enforcement in human trafficking cases adopts a humanistic approach. In that case, the imposition of criminal sanctions for human trafficking should be viewed as a violation of human rights, a matter of humanity, and an act that causes suffering that affects valuable human life. The use of criminal sanctions in a humanistic manner does not imply that the penalties against human traffickers must align with civilized human values alone, but they must also raise awareness in perpetrators about respecting the values within societal life.

Therefore, criminal sanctions against human trafficking perpetrators need to be imposed in accordance with the principle of criminal responsibility, which is necessary to achieve the national development goals aspired to by Indonesian society within the law enforcement process. The focus of law enforcement in human trafficking cases differs from other criminal acts, which mainly emphasize imposing sanctions on the perpetrators. In human trafficking, more attention is given to the victims, as they often suffer not only physically but also psychologically and socially.

According to Article 1, Paragraph 3 of Law No. 21 of 2007, a victim is someone who suffers psychological, mental, physical, sexual, economic, and/or social harm as a result of human trafficking. Human trafficking directly threatens and violates the integrity of the victims, denying their humanity. In addition, protecting witnesses and victims in human trafficking cases with a focus on welfare and justice for them is a form of professionalism in law enforcement or best practices in tackling human trafficking. In many human trafficking cases, the victim-witness is often the only person who has experienced the entire sequence of events and, therefore, is the most important and accurate source of information. It is crucial to pay special attention to the behavior of law enforcement officers when they interact with victim-witnesses. The willingness of victims to report their cases to the police and cooperate throughout the criminal justice process will heavily depend on how law enforcement treats the victims, ensuring their safety and privacy and offering the possibility of victim assistance.

Several common elements can be identified in the definitions of victims mentioned above:

- a. The person who suffers.
- b. The suffering, which is physical, mental, or economic.
- c. The suffering caused by illegal acts.
- d. The act is committed by another party.

One form of legal protection for victims of human trafficking is restitution, as stipulated in Article 1, Paragraph 13 of Law No. 21 of 2007 concerning the Eradication of Human Trafficking. Restitution refers to the payment of compensation imposed on the perpetrator based on a legally binding court decision for the material and/or immaterial losses suffered by the victim or their heirs (Nawawi, 2007, p.61). Seen from the interests of the victim, the concept of compensation contains two benefits: to cover material losses and all expenses incurred and to provide emotional satisfaction to the victim. Meanwhile, from the perpetrator's perspective, the obligation to provide compensation is seen as a form of punishment that is imposed and felt as something concrete and directly related to the wrongdoing committed.

Restitution is more focused on the perpetrator's responsibility for the consequences of the crime, with the primary aim of addressing all the losses experienced by the victim. The benchmark for determining the amount of compensation depends on the social status of both the perpetrator and the victim. The difference between compensation and restitution is as follows: compensation arises from the victim's request and is paid by society or reflects the responsibility of the state or society ("the responsibility of the society"), while restitution is more criminal in nature, stemming from a criminal court ruling and is paid by the convicted perpetrator, representing the perpetrator's personal responsibility (Mansur, 2007, p.167).

In addition to restitution, victims of human trafficking are entitled to rehabilitation, as stated in Article 1, Paragraph 14 of Law Number 21 of 2007 on the Eradication of Human Trafficking. This law defines rehabilitation as the recovery of physical, psychological, and social conditions, enabling victims to resume their roles properly within their families and communities. The process of filing for restitution begins when the victim reports their case to the Indonesian National Police, and the investigation is handled in conjunction with the criminal offense. The prosecutor informs the victim of their right to claim restitution and then submits the amount of losses suffered by the victim due to human trafficking alongside the prosecution's demands. This mechanism does not eliminate the victim's right to file their own claim for damages. Article 47 of Law Number 21 of 2007 mandates that throughout the legal process, from investigation to court verdict, witnesses and/or victims and their families are entitled to protection from the police. The implementation of this law, particularly concerning the protection of witnesses and victims of human trafficking, is reinforced by Government Regulation of the Republic of Indonesia Number 9 of 2008 on the Procedures and Mechanisms for Integrated Services for Witnesses and/or Victims of Human Trafficking.

Proper and respectful treatment of victims, grounded in the acknowledgment of their dignity, is an essential element in developing effective measures to combat human trafficking. Concretely, this means avoiding, as much as possible, the risk of trafficking victims being treated as suspects or defendants in the crimes that have affected them. On a broader level, it is equally important to treat victims humanely, recognizing and respecting their rights as dignified human beings, including the right to provide and receive information, the right to understand and be understood, and the right to protection throughout the criminal justice process. All of these must be placed within the context of Indonesia's criminal justice system and the public interest (criminal law), which includes the disclosure of material truth, law enforcement, and justice.

5. Synopsis of the Main Research Outcomes

Human trafficking is a violation of human rights due to the exploitation, forced labor, violence, and abusive treatment experienced by victims. This crime is often regarded as a modern form of slavery, which is why human trafficking is classified as a severe human rights violation. Any inhumane acts that degrade a person's dignity and worth constitute a violation of the fundamental rights inherent to every human being.

The judiciary plays a critical role in upholding the law and providing justice for victims of human trafficking. In addition to imposing prison sentences on perpetrators, courts also uphold the rights of victims as stipulated in Law Number 21 of 2007 on the Eradication of Human Trafficking. These rights include restitution, as mandated in the court's ruling, rehabilitation to restore physical, psychological, and social well-being and the protection of the victim's identity confidentiality.

6. Conclusions

Public Prosecutors are advised to pay more attention to the rights of victims by thoroughly examining case files to ensure that investigators have fulfilled the victims' rights during the investigation process. Prosecutors are encouraged to take a proactive role in coordinating with investigators to develop guidelines that focus on the protection of victims' rights in the preparation of examination reports. The Panel of Judges is encouraged to innovate in their rulings. Although from the judge's perspective, the prosecution's demand is considered equivalent to a verdict as a legal product evaluating all the facts presented during the trial, judges are expected to issue rulings that exceed the prosecution's demands if these demands are deemed insufficient to meet the community's sense of justice, particularly for the victims. Such an approach is acceptable as differences in the sentencing opinion do not carry direct legal implications, even though the rulings must still reference and consider the prosecution's demands).

7. Limitations, Implications, and Further Directions of Research

The researchers believe that the study will inspire further research that will provide more in-depth findings and recommendations for the development of human trafficking law

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