

Protection of Victims of Trafficking of Women and Children under the Age Reviewed from Law Number 21 of 2007 Concerning the Eradication of the Criminal Act of Trafficking in Persons

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Abstract: *Human trafficking is still one of the biggest threats in Indonesia because based on data from the Ministry of Social Affairs, there are still thousands of victims of women and minors each year. The purpose of this study is to determine the form of legal protection for victims of trafficking in women and minors according to Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons (PTPPO) and to determine the obstacles and obstacles in the effort to protect victims of trafficking in women and children in underage in Indonesia. This research is a normative juridical study, using a descriptive analytical approach. The results of the study are to determine the form of protection for victims of TIP, especially women and minors based on the PTPPO Law along with the obstacles or obstacles they face. Protection for victims provided by the PTPPO Law, namely the provision of restitution rights and other forms of fulfillment of rights. However, there are still obstacles and obstacles in the implementation of providing protection for victims of TPPO.*

Keywords: Human Trafficking, Protection, Victims, Women, Children

1. Introduction

In Indonesia, the problem of human trafficking (human trafficking) is still one of the major threats where every year nearly thousands of women and minors have to become victims of the Crime of Trafficking in Persons (TPPO). Trafficking in persons is an international problem, where almost every country in the world has a record of cases of trafficking in persons that occur in their country. Billions of dollars have been generated by sacrificing millions of victims of human trafficking. Boys and girls who should still enjoy "school" are forced to become middlemen, do forced labor, or are sold for sexual purposes. This is what happens to women and girls who are victims of trafficking in persons who will be exploited such as being forced to become domestic workers, prostitution or forced marriages.¹

Meanwhile for men, cases that often occur are trapped or in debt, then made slaves in mining areas, plantations, or other worst forms of labor. Trafficking in persons is a form of crime with low risk but high returns.²

The United Nations (UN) defines human trafficking as: the recruitment, transfer, transfer, storage, or reception of a person, by threat, or use of force, or other forms of coercion, kidnapping, fraud, cheating, abuse of power or vulnerable

position, giving or receive payment or benefit to obtain permission from a person who has authority over another person for the purpose of exploitation.³

The forms of trafficking of women and children are very diverse, but in general, to make identification easier, there are several forms or actions that can be categorized as follows:

- a) Adoption / adoption of children with procedures or sale and purchase to residents themselves / foreigners,
- b) Bride orders or requests from certain places to become contract wives,
- c) Involving children in the drug trafficking,
- d) Children who are employed in mining or plantations,
- e) Sexual exploitation of pedophilia,
- f) Pornography of women and children,
- g) Trafficking of women and children for forced labor,
- h) Employing women and children for begging work or begging on the streets, and
- i) Employing women and children in sex work or prostitution activities.⁴

Factors that cause Human Trafficking in Indonesia based on ILO research are related to political, social and macroeconomic conditions such as:

- a) Poverty;

¹ YohaneSuhardin, *Tinjauan Yuridis Mengenai Perdagangan Orang Dari Perspektif Hak Asasi Manusia*, Mimbar Hukum Volume 20, No. 3, Oktober 2008, hlm. 411-412.

² Mahrus Ali dan Bayu Aji Pranomo, *Perdagangan Orang: Dimensi, Instrumen Internasional Dan Pengaturannya di Indonesia*, (Bandung: PT Citra Aditya Bakti, 2011), hlm. 3

³ CahyaWulandari, Sonny S Wicaksono. *Tindak P Pidana Perdagangan Orang (Human Trafficking) Khususnya Terhadap Perempuan Anak : Suatu Permasalahandan Penanganannya di Kota Semarang*. Jurnal Yustisia Edisi 90. September-Desember 2014. hlm. 17.

⁴ CahyaWulandari, Sonny S Wicaksono. *Op.Cit.* hlm. 17.

- b) Limited access and job opportunities;
- c) Social Conflict and War;
- d) Domestic violence;
- e) Compliance with parents (who are economically depressed); and
- f) Weak law enforcement.⁵

The Crime of Trafficking in Persons (TPPO) can be categorized into a form of crime known as an organized crime, which was initially seen in the national context, but is no longer present. It is very clear that globalization, the phenomenon of economic liberalization, the rapid growth of communication technology and the opening of cross-border relations, have also opened up great opportunities for organized criminals to penetrate the international world, including through multinational corporations (multinational corporations).⁶Based on the agreement of ASEAN countries, TIP is one of the 8 transnational crimes, while according to the UN, TPPO is included in one of 29 transnational crimes.⁷

Data from the International Organization for Migration (IOM) recorded around 8,876 people who were victims of TIP in Indonesia during 2015 to 2017.⁸Based on data obtained from UNHCR in 2017, Indonesia is classified as a Tier-2 country, up from 2012 which is still ranked as Tier-3.⁹Meanwhile, based on the report, the United States Department of State issues an annual report on the situation of trafficking in persons around the world. The report, entitled "Trafficking in Person Report" contains an overview of the situation of each country regarding cases of trafficking in persons and how the country responds, so that from the cases and responses of these countries, the Tier 1 rating is assigned to countries that have successfully handled cases of trafficking in persons, Tier 2 is pinned on countries that have legal tools to combat trafficking in persons but are still not maximal, Tier 2 Watch-List are countries that have legal instruments but are considered failing to use in fighting trafficking in persons and the worst is Tier 3 for countries - states that are considered to have failed miserably in handling cases of trafficking in persons and lack the political will. Indonesia's position is still ranked Tier 2, which is that it has the legal tools to combat human trafficking but has limited capacity and the lack of seriousness of law enforcement and judicial officers to become the main elements in fighting human trafficking.¹⁰

Similar to the explanation given by the Director of Child Rehabilitation of the Ministry of Social Affairs, Cupsanto, stated that from 2016 to mid-2019, the number of victims of trafficking in persons reached 4,906 people. There is an increase in the number of cases with the highest victims aged children and toddlers every year.¹¹

While the data recorded by the Witness and Victim Protection Agency) there were 704 victims of TIP who applied for protection from 2015 to June 2020, of the total victims consisting of 438 women and 266 male victims, 147 female victims were underage. Based on the distribution of domicile of TIP victims, West Java province is in the top position with 28.98%, followed by DKI Jakarta 14.77% and NTT 8.24%, but this data does not fully describe the national map of victims because this is only based on requests who entered the LPSK.¹²

The state is an institution that has the legitimacy and legal instruments that enable it to implement the human rights principles contained in the Universal Declaration of Human Rights (hereinafter referred to as the Declaration of Human Rights). This responsibility basically exists because the state is formed precisely to ensure the implementation of human rights principles.¹³Specifically for TIP, the international community has a UN Protocol to prevent, prosecute and punish trafficking in persons, especially women and children (United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children) which was formulated in 2000 or known as the Palermo Protocol, which has been in effect since December 25, 2003. This protocol is complementary to the United Nations Convention against Transnational Organized Crime / UNCTOC (United Nations Convention against Transnational Organized Crime).¹⁴

Indonesia has succeeded in forming several laws including Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons (PTPPO) on 19 April 2007.¹⁵One of the objectives of the establishment of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons (PTPPO), in addition to punishing the perpetrators of TIP is also to legally protect witnesses and victims of TIP. The purpose of legal protection for witnesses and victims according to Law Number 13 of 2006 concerning Protection of Witnesses and Victims is regulated in Article 4 (currently

⁵ Ibid, hlm. 18.

⁶ Bambang Waluyo, *Kapita Selekta Tindak Pidana*, (Jakarta: Miswar, 2011) hlm. 40.

⁷ Ibid, hlm. 41.

⁸ Lalu Rahadian, "Human Trafficking, Sisi Kelam Industri Pariwisata?" <https://kabar24.bisnis.com/read/20190715/15/1124195/human-trafficking-sisi-kelam-industri-pariwisatadiaksestanggal> 14 Februari 2020, pukul 20.13 WIB.

⁹ US Department of State. 2007. Annual Trafficking in Person Report. <http://www.state.gov>. Diakses tanggal 12 September 2019, pukul 21.35 WIB.

¹⁰ Wahyu Susilo, "Memerangi Perdagangan Manusia Di Era Periode Kedua Pemerintahan Jokowi," <https://www.dw.com/id/memerangi-perdagangan-manusia-di-era-periode-kedua-pemerintahan-jokowi/a--49511878> diakses tanggal 14 Februari 2020, pukul 20.25 WIB.

¹¹ Maidina Reviani, "Sampai Pertengahan Tahun Ini, 4.096 Orang Indonesia Jadi Korban Mafia Perdagangan Manusia" <https://akurat.co/fokus/id-704217-read-sampai-pertengahan-tahun-ini-4906-orang-indonesia-jadi-korban-mafia-perdagangan-manusia>. diakses tanggal 15 Februari 2020, pukul 21.09 WIB.

¹² Achmad Nasrudin Yahya-Kompas, "LPSK Desak Pemerintah Alokasikan Anggaran Memadai Bagi Saksi dan Korban TPPO", <https://nasional.kompas.com/read/2020/08/03/19550711/lpsk-desak-pemerintah-alokasikan-anggaran-memadai-bagi-saksi-dan-korban-tppo?page=all>. Diakses tanggal 19 September 2020.

¹³ Maslihati Nur Hidayati, *Op Cit.*, hlm. 167

¹⁴ Ibid, hlm. 168

¹⁵ Bambang Waluyo, *Kapita Selekta Tindak Pidana*, (Jakarta: Miswar, 2011) hlm. 37-38.

Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims), that the protection of witnesses and victims is required in providing information in every criminal justice process.¹⁶

Protection of witnesses and victims includes physical and psychological protection. The norm of protection for witnesses and victims is measured from the level of threat apart from the reporting party, as well as from law enforcement officials, be it police, prosecutors, judges, lawyers, or journalists in print and electronic media covering a criminal event that has high resistance. There are two types of protection, namely protection for participants and non participants whistle blower. This form of protection is protection in the form of physical security protection and rewards or intensive (reward) for cooperation as evidenced by witnesses who are also perpetrators and law enforcers in dismantling a case.¹⁷

Protection of victims in general is essentially a protection of human rights. As stated by Separovic, The rights of victim are a component part of the concept of human rights. The human rights perspective provides insight into the concern for victims and ethical aspects and perfection of law enforcement officials, in the positive criminal law of the Criminal Code and the Criminal Procedure Code, several aspects of human rights in their principles have also been listed, including: legality, non-retroactivity, respect for human dignity, proportionality, equality before the law, fast, simple, and low cost trial, legal aid, compensation.¹⁸ The rights of victims of a crime are only slightly regulated in the Criminal Procedure Code and its implementing regulations. Prior to the reform era, the attention to victims was very small, but after the reformation, there were legislation regulating the rights and protection of victims, reporters and reporting witnesses, and even perpetrator witnesses who worked together.¹⁹

The protection of victims of trafficking crimes is not only based on proof of the crime, but rather on the rights of trafficking victims to get recovery from their social, physical and psychological conditions. Ideally, the return and recovery of the victim should also be seen that the victim has the right that has been harmed by the crime, or returns the victim to the original condition or what the victim expected before being trapped in trafficking.²⁰

According to Morse Jane, trafficking in persons for labor is a very big problem, "trafficking in persons for labor may not attract as much publicity as trafficking in persons for sex, but it is a huge problem".²¹

Empirically women and children are the groups that are the most victims of criminal acts of trafficking in persons, both for the purpose of prostitution or other forms of sexual exploitation, and also include other forms of exploitation such as forced labor or forced services, slavery, or practices similar to slavery.²² Barda Nawawi Arief stated, that legal protection means "not to make a victim of a crime" is to provide protection in the form of prevention of criminal acts.²³ Protection of witnesses and victims includes physical and psychological protection. The protection of victims of trafficking crimes is not only based on proof of the crime, but rather on the rights of trafficking victims to get recovery from their social, physical and psychological conditions. Ideally, the return and recovery of the victim should also be seen that the victim has the right that has been harmed by the crime, or returns the victim to the original condition or what the victim expected before being trapped in trafficking.²⁴

Based on the explanation in the aforementioned background, the authors are interested in raising the issue of protecting victims of trafficking in women and minors in terms of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.

2. Problem Identification / Problem Identification

Based on the background above, some formulations of the main problems will be discussed, namely:

- 1) What is the form of legal protection for victims of trafficking in women and minors according to Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons?
- 2) What are the obstacles and constraints in protecting victims of trafficking in women and minors in Indonesia?

3. Literature Review

Previous research aims to obtain comparison and reference material. In addition, to avoid the notion of similarities with this study. So in this literature review the researcher lists the results of previous research as follows:

1. Ayu Amalia Kusuma; THE EFFECTIVENESS OF CHILD PROTECTION LAWS IN RELATIONSHIP WITH THE LEGAL PROTECTION OF CHILDREN VICTIMS OF PERSONNEL TRAFFICKING IN INDONESIA; The results showed that children are one

¹⁶ Indonesia, Undang-Undang Nomor 31 Tahun 2014 tentang Perlindungan Saksidan Korban

¹⁷ Siswanto Sunarso, *Viktimologi dalam Sistem Peradilan Pidana*, Cetakan I (Jakarta: Sinar Grafika, 2012) hlm. IX.

¹⁸ C. Maya Indah S. *Perlindungan Korban Suatu Perspektif Viktimologi dan Kriminologi*, Cetakan I (Jakarta: Kencana Prenadamedia Group, 2014) hlm. 170-171.

¹⁹ Bambang Waluyo, *Penegakan Hukum Di Indonesia*, Cetakan I (Jakarta: Sinar Grafika, 2016) hlm. 20 (Selanjutnya disingkat Bambang Waluyo II)

²⁰ Elisatri Gultom dan Didik M. Arief Masyur, *Urgensi Perlindungan Korban Kejahatan "Antara Norma dan Realita"*, Bandung: FH UNPAD,

²¹ Morse Jane, *Forced Labor a Growing Problem Worldwide*, U.S. Officials, dalam <http://usinfo.state.gov>. Diakses 20 November 2019

²² Ditjend PP - Kumham RI, UU No. 21/2007, Paragraf ke-3 - Bagian Umum, *Loc. Cit.*,

²³ Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, Jakarta: Kencana, 2007, Hal. 61-24.

²⁴ Elisatri Gultom dan Didik M. Arief Masyur, *Urgensi Perlindungan Korban Kejahatan "Antara Norma dan Realita"*, Bandung: FH UNPAD,

of the human resources who need guidance and protection in order to ensure complete, harmonious, and balanced physical, mental and social growth and development. As an implementation, the Government passed Law Number 23 of 2002 concerning Child Protection, which later changed some of its provisions to Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Based on empirical evidence, children and women are in a vulnerable position to become victims of trafficking in persons. So far, the provisions in the Child Protection Law concerning legal protection for child victims of trafficking in persons are adequate. The problem is that the availability of these regulations cannot be applied effectively in society. So that improvement is needed in terms of its application. Then it can be seen that the legal consequences for child victims of trafficking in persons are in the form of special protection which is carried out through efforts of supervision, protection, prevention, treatment and rehabilitation.

2. Sri YuliantiEkaPutri; ERADICATION OF CRIMINAL ACTIONS OF TRAFFICKING IN PERSONS ACCORDING TO LAW NUMBER 21 OF 2007 IN NORTH SULAWESI; The purpose of this research is to find out what forms of protection of trafficking in persons according to Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons and what are the factors of child trafficking and the role of the North Sulawesi Government in tackling child trafficking using normative legal research methods. With the results, namely: 1. Forms of Trafficking in Persons According to Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, namely: Trafficking of girls for various purposes as domestic helpers, sex workers, for the pornography industry on the pretext of being an advertising model, artist or singer, as a drug dealer, migrant worker, for immediate marriage to get offspring, infant trafficking in cases of infant trafficking, baby abduction, abduction of pregnant mothers, and others 2. Human Trafficking Factors, namely: a. Internal factors: individual factors, economic factors, family factors and educational factors; and b. External Factors: Environmental Factors and Weak Law Enforcement Factors. There are also other factors that influence child trafficking, including: a. Young Marriage Factor; and b. Social Factors & War.
3. Rosnawati, Mohd. Din and Mujibussalim; LEGAL SURE OF RESTITUTION OF VICTIMS OF TRAFFICKING IN PERSONNEL (TIP) BASED ON LAW NUMBER 21 YEAR 2007 (Research in the Legal Area of the Banda Aceh District Court); The purpose of conducting this research is to describe the problem of how legal certainty is to fulfill the restitution rights of TIP victims in the Banda Aceh District Court area. From the research results, it is found that Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons has guaranteed legal certainty for granting restitution rights for victims of TIP. However, the restitution rights of victims of TIP in the jurisdiction of the Banda Aceh District Court during 2012-2014 have not "reflected legal certainty". This can be seen from the decisions on TIP cases which have permanent legal

force. So far, this article has only been written and has not been implemented in reality.

4. Research Methods

4.1 Type of Research

Legal research is finding the truth of coherence, namely legal principles in accordance with legal norms and norms in the form of orders or prohibitions in accordance with legal principles. A person's actions are in accordance with legal norms (not only according to legal rules) or legal principles.²⁵This research is juridical normative, where the starting point is an analysis of laws and regulations regarding the protection of the rights of victims of human trafficking (trafficking in person).

The purpose of researched normative law is included in the type of research that wants to examine the synchronization of legislation. Synchronization of laws and regulations can be reviewed both vertically and horizontally. Penalaan vertically, meaning how hierarchical will be seen. Untukituseveral statutory principles must be used, namely:

- 1) The law is not retroactive;
- 2) The principle of Lex superior (lex superior derogate legiinferiori) the higher the law trumps the lower one;
- 3) The principle of Lexspecialis (lexspecialis derogate legigenerali) for laws that are specific in nature override those of a general nature;
- 4) The principle of Lex posterior (lex posterior derogate legi priori) of the law which was in effect later, overpowered the previous law;
- 5) The law cannot be contested.²⁶

Synchronization of statutory regulations will be examined horizontally, what is examined is the extent to which laws and regulations regulating the various fields have a consistent functional relationship. This research, besides obtaining complete and comprehensive data regarding the laws and regulations of a particular field, can also reveal the weaknesses that exist in the laws that govern certain fields.²⁷

4.2 Nature of Research

This research is descriptive. Descriptive research aims to provide data about the object of research, accurately describe the characteristics of an individual, condition, symptom or particular group, or determine the spread of a symptom, or to determine whether there is a relationship between a symptom and other symptoms in society.²⁸

4.3 Data Sources

In research, a data source is needed. Therefore, first as a

²⁵SoerjonoSoekanto, Pengantar Penelitian Hukum, (Jakarta: UI Press, 1986), hlm. 10.

²⁶ Amirudin H. ZainalAsikin. *Pengantar Metode Penelitian Hukum*, Cetakan. 8 (Jakarta: Rajawali Pers, 2014) hlm. 128-129.

²⁷ *Ibid*, hlm. 129

²⁸ *Ibid*, hlm. 25

source of data only secondary data, which consists of primary legal materials, secondary legal materials and tertiary legal materials.

4.3.1 Primary Legal Materials

Primary Legal Materials are materials that have general binding strength or have binding strength for interested parties, consisting of: Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Amandemen Keempat,

- 1) Law Number 1 of 1946 concerning Criminal Law Regulations,
- 2) Law Number 8 of 1981 concerning Criminal Procedure Law,
- 3) Law Number 13 of 2006 concerning Protection of Witnesses and Victims,
- 4) Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons,
- 5) Law Number 11 of 2012 concerning the Child Criminal Justice System,
- 6) Law Number 35 of 2014 concerning Child Protection (Amendment to Law Number 23 of 2002 concerning Child Protection),
- 7) Government Regulation Number 44 of 2008 concerning Providing Compensation, Restitution, and Providing Assistance to Witnesses and Victims,

Bahan Hukum Sekunder

Legal materials that can provide an explanation for primary legal materials. Secondary legal materials include: a) Books in the field of law; b) The results of scientific work of scholars; c) Research results; d) Articles that have been published; and d) Opinions that have been published in the mass media, both print and electronic.

Tertiary Legal Materials

Legal materials that provide explanations for primary and secondary legal materials are the Big Indonesian Dictionary, legal dictionaries, and so on.

4.4 Data Collection Methods

The author uses the document study or literature study method by looking for binding legal materials as well as materials that provide an explanation of the binding legal material from the results of research or legal expert opinion by reading, understanding and looking for material related to the problem under study. . Data obtained through literature study, laws and regulations, court decisions are processed and analyzed based on qualitative methods.

4.5 Data Analysis Methods

In this study, the authors used a qualitative analysis with a statutory approach. In processing and analyzing these legal materials, one cannot escape from what is known in law. The interpretation has a hermeneutic character. Hermeneutics or interpretation means the process of changing something or a situation of ignorance into understanding.²⁹The steps that can be taken to analyze the data include:

- a) Finding the concepts contained in legal materials (conceptualization) which is done by providing an interpretation of the legal materials;
- b) Grouping similar or related concepts or regulations. The variables in this study are aspects of criminal law in cases of human trafficking that occur in Indonesia;
- c) Describe and describe the relationship between various variables or laws and regulations, then analyzed descriptively qualitatively to prescriptive.

5. Research Results

1. Forms of legal protection for victims of trafficking in women and children under age according to Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons

Satjipto Raharjo argues that legal protection is "Providing protection for human rights (HAM) that are harmed by others and that protection is given to the community so that all rights granted by law can be enjoyed. Legal protection theory is a theory related to providing services to the community. Roscoe Pound argues that law is a tool of social engineering (Law as Tool of Social Engineering). Roscoe Pound has an opinion regarding law that emphasizes law on discipline with his theory, namely: "Law as a tool of social engineering" (that law is a tool to reform or manipulate society). To be able to fulfill its role, Roscoe Pound then made a classification of the interests that must be protected by the law itself, namely the public interest (public interest), the interest of the community (social interest), and personal interests (private interest). The public interest which Pound equates with public law is the demands, demands, wills and expectations of individuals related to political life. It is in this context that Pound then defines interest as claims, wants, and desires and expectations from society.³⁰The charges here are aimed at the perpetrators of crime, while the needs, wishes and hopes are more directed at victims and witnesses of a crime / crime. As a witness and / or victim, one of the needs, desires and hopes that must be protected and fulfilled by the state as a right is legal protection which in its implementation will have more varied forms.

To get maximum protection, victims of crime have rights and obligations that must be considered, including:

- a) The victim received compensation for his suffering. The provision of compensation must be adjusted to the ability to compensate the perpetrator and the level of involvement of the victim in the crime.
- b) The victim refuses restitution in the interests of the perpetrator (doesn't want to be given restitution because he doesn't need it).
- c) The victim receives restitution / compensation for his heirs, if the victim dies because of a criminal act committed by the perpetrator.
- d) Victims receive guidance and rehabilitation.
- e) Victims get their property back.
- f) The victim receives protection from threats from the perpetrator if he reports a crime that has befallen him, and if he becomes a witness for a criminal act that has occurred.

²⁹ *Ibid*, hlm. 163

³⁰ Khazanah. *Roscoe Pound*. Padjadjaran Jurnall Ilmu Hukum. Vol. 1 No. 2 Tahun 2014. hlm 416-417

- g) The victim received legal advisory assistance
- h) The victim has the right to use legal remedies.

According to the Criminal Procedure Code there are three legal rights that enable victims of crime to use them in the criminal justice process, namely:

- a) The right to object to the termination of investigation and prosecution
- b) Victims' rights to report and become witnesses
- c) The right to claim compensation.³¹

Legal protection for victims of criminal acts of Human Trafficking is increasingly gaining a place with the passing of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking. Provisions regarding victim protection are specifically regulated in Article 43 to Article 53, Article 43 of Law Number 21 of 2007 concerning the Eradication of TIP regulates "Provisions regarding the protection of witnesses and victims in human trafficking crimes are implemented based on Law Number 13 of 2006 concerning protection of witnesses and victims unless stipulated otherwise in this Law."

Meanwhile, protection of victims according to the Law on the Eradication of the Crime of Trafficking in Persons, apart from criminalizing the perpetrators, is also manifested in the fulfillment of rights, including:

- a) Right to confidentiality of victim's identity. This is regulated in article 44 paragraph (1) of UUPTPO. And the right to keep this identity secret is also given to the victim's family to the second degree, if the victim receives physical or psychological threats from outside in connection with the victim's testimony (Article 44 paragraph (2) of the Law on the Eradication of the Crime of Trafficking in Persons).
- b) The right to obtain restitution. This is regulated in article 48 paragraph (1) of the Law on the Eradication of the Crime of Trafficking in Persons. Restitution according to article 1 point 13 UUPTPO is "payment of compensation charged to the perpetrator based on a court decision or a judge who has permanent legal force for material and immaterial losses suffered by victims or their heirs". Based on PP. 3 of 2002, restitution is compensation given to the victim or his family from the perpetrator or a third party, it can be in the form of returning property, payment of compensation for loss or suffering, or compensation for costs for certain actions.
- c) The right to health, social rehabilitation, return and reintegration Rehabilitation is one of the concrete steps taken to repair something that has been deviated or damaged. Rehabilitation measures for victims of trafficking in persons are carried out so that the victim's condition can be recovered physically and psychologically, so that the victim can return to life in the community as before. Based on UUPTPO Article 51 paragraph (1), victims of the criminal act of trafficking in persons have the right to receive health, social, repatriation and social reintegration from the

government if the victim experiences physical or psychological suffering as a result of the trafficking act.

In the TIP Eradication Law it is also explained that every victim has the right to get restitution (in Article 48 paragraph 1), is the form of restitution as stated in Article 48 paragraph 2, namely in the form of compensation for :

- a) Loss of wealth or income;
- b) Suffering;
- c) Costs for medical and / or psychological treatment; and / or
- d) Other losses suffered by the victim as a result of trafficking in persons.³²

With the passage of the PTTPO Law, it directly provides protection to witnesses and victims of TIP or to their heirs, namely by giving greater attention to the suffering experienced by victims as a result of TIP in the form of restitution rights. The right of restitution given to victims of TIP is compensation for victims and also regulates the rights of victims to medical and social rehabilitation, repatriation and reintegration that must be carried out by the state, especially for those who experience physical, psychological and social suffering. Restitution is the payment of compensation charged to the perpetrator based on a court decision which is legally binding for material and / or immaterial losses suffered by the victim or his heirs.³³

The technical implementation of the provision of restitution has also been regulated in Law No. 21 of 2007 concerning the Eradication of TIP, namely :

- a) Article 48 paragraph (3): "The restitution is granted and included at the same time in the court ruling regarding the criminal case of trafficking in persons."
- b) Article 48 paragraph (4): "The granting of restitution as referred to in paragraph (1) shall be carried out since the decision of the court of first instance is passed."
- c) Article 48 paragraph (5): "Restitution as referred to in paragraph (4) can be deposited in advance at the court where the case was decided."
- d) Article 48 paragraph (6): "The restitution shall be granted within 14 (fourteen) days from the notification of the decision which has obtained permanent legal force."³⁴

Based on the sound of each paragraph in Article 48 of the PTTPO Law above and if read more carefully, it is very clear regarding the provision of restitution for victims, it can be ascertained that legal protection guarantees for victims, but in reality on the ground many court decisions do not prioritize the rights of TTPO victims. Previous research conducted in the jurisdiction of the Banda Aceh District Court during 2012 to 2014 gave results that the right to restitution for victims of TIP did not reflect legal certainty, this can be seen from the 3 decisions on TIP cases that have

³¹ CahyaWulandari. "TindakPidanaPerdagangan Orang (Human Trafficking) KhususnyaTerhadapPerempuanAnak :SuatuPermasalahandanPenangannya di Kota Semarang". YustisiaEdisi 90 September-Desember 2014- FH UniveristasNegeri Semarang

³² UU No.21/2007, Bab V-PerlindunganSaksidanKorban, Pasal 48., Loc.cit

³³ Rosnawati, Mohd. Din, Mujibussalim., "KepastianHukumHakRestitusiTerhadapKorbanTindakPidanaPerdagangan Orang (TPPO) BerdasarkanUndang-UndangNomor 21 Tahun 2007 (Penelitian di Wilayah HukumPengadilanNegeri Banda Aceh)", JurnalIlmuHukumPascasarjanaUniversitasSyiah Kuala Volume 4, No.1 Februari 2016.

³⁴ Op.cit

permanent legal force, which in amar the verdict does not mention restitution for victims of TIP.³⁵

It turns out that this also happened to 4 decisions on TIP cases in the jurisdiction of West Java in the 2018 period which are listed in the following table:

Table of Some Examples of Judges' Decisions in TIP Cases in the Legal Area of the West Java Court

NO	No Case Register	The Prosecutor's Indictment	Sentence	Information
1	300/Pid.B/2016/PN.Cjr	Criminal threats Article 10 and Article 11 of Law No. 21 of 2007	Imprisonment for 3 (three) years and 6 (six) months and a fine of Rp. 120,000,000	There is no mention of any Restitution
2	178/Pid.B/2018/PN Cjr	Criminal threat Article 2 paragraph (1) and Article 11 of Law No. 21 of 2007	2 (two) years imprisonment and a fine of Rp. 200,000,000	There is no mention of any Restitution
3	8/Pid.B/2018/PN Cjr	Criminal threat Article 11 of Law No. 21 of 2007	Imprisonment for 3 (three) years and 6 (six) months and a fine of Rp. 120,000,000	There is no mention of any Restitution
4	9/Pid.B/2018/PN Cjr	Criminal threat Article 2 paragraph (1) of Law No. 21 of 2007	Imprisonment for 3 (three) years and 6 (six) months and a fine of Rp. 120,000,000	There is no mention of any Restitution

The jurisdiction of the West Java Court was chosen as the place to be used as material for this research because victims who live in West Java have the highest percentage. From the 4 district court decisions, it is clear that every decision made by the Panel of Judges still prioritizes the punishment of TIP perpetrators and it is very rare to see the impact it has on the victim, so that the three do not mention any restitution for the victim. The demands given by the prosecutor regarding the length of imprisonment on average all have a tendency to charge only 1 article and 1 law only, the demands of 1 and / or more articles in 1 law will also apply the minimum limit of statutory provisions, that way also the fines imposed apply a minimum limit. Even though in giving charges to perpetrators of TIP, it is better if they are charged with several articles and laws that are interrelated, so that the demands are maximized so that the resulting decisions are very effective and reflect justice.

2. Barriers and Constraints in Efforts to Protect Victims of Trafficking in Women and Underage Children in Indonesia

The PTPPO law is heavily influenced by other components, namely the law enforcement process and the role occupant. Apart from that, the most important element in legal protection for victims of TIP is which form of protection is the most effective in helping victims of trafficking in persons under age. Article 48 of the PTPPO Law explains that the provision of restitution for victims, however, is rarely given to victims. The inhibiting factor in granting restitution rights to victims of TIP are:

- Lack of initiative by law enforcement officials in asking for the fulfillment of victims' rights in the form of material and immaterial restitution rights at each stage of handling TIP cases
- The absence of clear and firm implementing regulations for the PTPPO Law on the process of implementing the mechanism for granting restitution
- Lack of legal awareness of TIP victims and family and community participation so it is difficult for law enforcement officials to fight for the restitution rights of TIP victims.³⁶

The criminal sanctions given to the perpetrators who have been legally proven and aware of carrying out TIP are only given light sentences of an average of 3-4 years with the heaviest only 8 years. Until now, law enforcement is still considered very poor. Because it does not provide a deterrent effect for the perpetrator.

Several factors that cause weak law enforcement, such as the lack of perpetrators being punished and the light sentences imposed, are caused by: lack of information from victims; the perpetrator is outside the country; the victim withdraws the claim because of pressure or training from either personal or corporate / PPTKIS; and the intervention of the elements who play. Meanwhile, the factor causing the sentence was not maximal was because the articles / provisions imposed were not the law on trafficking in persons but other laws such as the Criminal Code or Manpower. This is due to, among other things: differences in perceptions among law enforcement officers, police, prosecutors, judges; lack of understanding of the Law on Trafficking in Persons by some law enforcers themselves; and there are people involved.³⁷

In the journal Criminal Law Policy in tackling the crime of human trafficking (Human Trafficking). Law enforcement in Indonesia itself does not always run smoothly. There are several factors that influence it, including the legal factors themselves, law enforcement factors, facilities or facilities factors, community factors, and cultural factors. Legal reform has a very strong relationship with politics, therefore the criminal law policy formulation in dealing with the criminal act of trafficking in persons is in the process of making it until its institutionalization is carried out by political institutions, which are institutions that have power in society.³⁸

The obstacles were not only from victims and their families but also from law enforcement officials. Families are often reluctant to share their problems for various reasons. Fear of certain persons as a trafficking syndicate. Of these various efforts, the key to making these efforts is related to the criminal justice system in Indonesia (Criminal Justice System), namely, among others, culture, government policies, especially legislation (legal substance), law

³⁵ Rosnawati, dkk., hal. 5., Op. Cit

³⁶ *Ibid*

³⁷ Abdul Rahman, Putri Ayu Nurmawati, "Kebijakan Hukum Terhadap Tindak Pidana Perdagangan Orang", Seminar Nasional Hukum Universitas Negeri Semarang Volume 4 Nomor 1 Tahun 2018, 1-24.

³⁸ *Ibid*

enforcement officials (legal structure).³⁹

In the research conducted by BurdinHambali in his journal "Handling the Crime of Trafficking in Persons" it is explained that the obstacles or obstacles experienced by the police as investigators of TIP cases in West Java are as follows:

- a) TIP is carried out with a disconnected network pattern, limited police resources, disintegration of police data related to victims and perpetrators of TIP, disintegration of population and immigration data, span of control, control and partiality of handling between law enforcement officers and the community. The police find it difficult when the crime scene (violence and abuse) is outside the country which requires the police to cooperate with other agencies abroad.
- b) Limited resources of the police are also an obstacle in handling the crime of trafficking in persons, both related to personnel and the budget. The number of investigator personnel who have TIP specialists and have a bachelor's background is still very limited.
- c) Another obstacle is related to an integrated database that does not yet exist, both between regional units and between Headquarters and regions, even though the characteristics of this TIP crime are cross-regional and even cross-country. The disintegration of police data regarding victims and perpetrators with limited budgets complicates the handling of trafficking in women. Data related to women who were returned to West Java from areas outside West Java related to the criminal act of trafficking in persons was not known by the Police in the ranks of the West Java Regional Police. If anything is known, that knowledge is obtained from traditional information between Polres, which generally occurs in cases of "attention".⁴⁰

Meanwhile, as stipulated in the provisions of Law No.13 of 2006 Article 60 paragraph (1), stipulates that the community plays a role in helping efforts to prevent and handle victims of trafficking in persons, while the participation of the community as referred to in paragraph (1) is realized by the act of providing information and / or reporting the existence of a crime of trafficking in persons to law enforcement or the authorities, or taking part in dealing with victims of the crime of trafficking in persons.⁴¹

Prevention and handling of victims of trafficking in persons, as regulated in Article 61 of Law Number 21 of 2007, states that the Government is obliged to open the widest possible access to public participation, both nationally and internationally in accordance with the provisions of laws, laws and international customs. applicable. In terms of carrying out the participation as referred to in Article 60 and Article 61, the public has the right to obtain legal protection.⁴²

³⁹ *Ibid*

⁴⁰ BurdinHambali, "Penanganan Tindak Pidana Perdagangan Orang", Pusat Penelitian dan Pengembangan Polri, Jurnal Litbang POLRI. IISN : 114-3813E-ISSN:2684-7191.

⁴¹ UU No. 21/2007, Pasal 60., *Loc. cit.*

⁴² *Ibid.*, UU No. 21/2007, Pasal 62.

6. Conclusion

- 1) Legal protection for women and children is contained in Article 351 to Article 355 of the Criminal Code. Legal protection for victims of trafficking is increasingly gaining its place with the passing of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, the passing of this law which is an attempt to tackle, prevent and protect victims from TIP. One form of legal protection for victims described in the PTTPO Law is the right of victims to receive restitution. Based on data obtained from 4 district court decisions in the West Java jurisdiction regarding TIP, there is no mention in the ruling for restitution for victims, this shows the lack of attention of law enforcers in protecting victims, the verdict only mentions imprisonment and fines.
- 2) This reflects the lack of maximum efforts by law enforcers in providing protection to victims. Some of the factors that influence the ineffectiveness of the application of these laws include the legal factors themselves, law enforcement factors, facilities or facilities factors, community factors, and cultural factors. Legal reform has a very strong relationship with politics, therefore the criminal law policy reformulation in dealing with the criminal act of trafficking in persons is in the process of making it until its institutionalization is carried out by political institutions, which are institutions that have power in society, with the aim of preventing obstacles and problems regarding enforcement. law regarding this problem can be resolved for the sake of establishing law enforcement and public order in the country of Indonesia.

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