

Victimology Review of the Legal Protection of Victims of the Crime of Human Trafficking

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Abstract

The emergence of various problems in society and the victims or the victims of crime in particular (adults, children) is a problem for crime victims. Human trafficking is a modern trade that not only robs the victim of human rights but also makes a person vulnerable to acts of persecution or physical torture and forced labor. Women who are objectified as commercial sex workers, or in the labor sector who often receive inhumane treatment. Meanwhile, victims who are trafficked to be used as illegal labor with low wages and even many who become beggars occur in children. Preventive legal protection, namely prevention to reduce the risk of potential victims in the form of socializing the behavior of victims in responding to criminal acts of trafficking, people prefer to take non-litigation in order to obtain compensation. This includes the commitment of law enforcement officers who have not been based on the interests of the victims. An assessment of a good law can then sort through several approaches, including through the components that must be included in the legal system. Three components that must be included in the legal system are structural, substantive, and cultural components. The repressive form of legal protection has also referred to the rights of victims; a) asking the victim's identity, b) informing the victim about the concept of service, c) informing the victim that all services are free (non-cost), d) informing the client's rights. This should be criticized that it is an illogical thing which is the pockets of Indonesian workers and indicated the potential for criminal acts of trafficking in persons to occur, it is necessary to understand that the occurrence of criminal acts of trafficking in persons can occur during pre-placement, placement, and post-placement of Indonesian workers.

Keywords

Children; human trafficking; women



I. Introduction

The emergence of various problems in society and the victims or the victims of crime in particular (adults, children) is a problem for crime victims. Inadequate attention and service to victims of crime in a society is a sign of the absence of justice and the development of welfare in society. In the context of its implementation, it is necessary to have the basics of thought that support services for victims of crime.

Victims are parties who experience material or immaterial, physical or spiritual losses caused by an action taken by another person on someone who is felt to be weaker in order to achieve certain interests that are contrary to the law. Victims also have a crucial role in seeking the truth and in proving the law. As is the case with human trafficking cases.

Human trafficking activity is a modern trade that not only robs the victim of human rights but also makes a person vulnerable to acts of persecution or physical torture and forced labor. This results in psychological trauma, as well as disability and death. The interconnected network that has been formed by the perpetrators makes it difficult to eradicate this crime completely, by turning humans into trading commodities which is a violation of human rights.

Human trafficking has always existed and has various forms according to the situation and conditions, as is what happened in Indonesia. Women and children are the most vulnerable victims in this human trafficking situation. Women who are objectified as commercial sex workers, or in the labor sector who often receive inhumane treatment. Meanwhile, victims who are trafficked to be used as illegal labor with low wages and even many who become beggars occur in children. Actions such as exploitation and violence cause deep trauma and suffer psychological and mental harm to the victim.

Efforts to prevent and deal with human trafficking are based on noble values, national and international commitments to make early prevention efforts, take action against perpetrators, protect victims, and increase cooperation. For this reason, all the tools needed to realize this commitment are continuously pursued, completed, and perfected, both in terms of regulations to budgeting.

Based on various things that happened, that in terms of human trafficking with its various complexities, then in terms of eradicating of course not only the government or law enforcement (police) who play a role but cooperation from all parties is needed, both the relevant agencies, non-governmental organizations, and the community, to law enforcement officers who directly deal with various cases of trafficking in persons, so that it is expected to prevent or at least reduce the occurrence of crimes of trafficking in persons that occur in the community.

II. Review of Literature

Literature review is a critical review of what has been researched on a particular topic, it can be anything, whether from books, journal articles, or other sources (Octiva et al., 2021; Pandiangan, 2015; Pandiangan et al., 2022). Literature review originates or is sourced from relevant research. The condition is that the literature review must mention, explain, summarize, evaluate objectively, and clarify previous research (Asyraini et al., 2022; Pandiangan et al., 2018). In addition, it can also be defined as a critical and in-depth evaluation of previous research. The purpose of literature review is to obtain a theoretical basis that can support solving the problem being studied (Octiva, 2018; Pandiangan, 2018). The theory obtained is the first step so that researchers can better understand the problem being studied properly in accordance with the scientific framework of thinking (Pandiangan et al., 2021; Pandia et al., 2018; Tobing et al., 2018). Literature review we can do it in several ways, including compare, contrast, criticize, synthesize, and summarize (Octiva et al., 2018; Pandiangan, 2022).

2.1 Victimology

According to the Crime Dictionary, quoted by an expert Abdussalam, the victim is "a person who has suffered physical or mental suffering, lost property or resulted in death for acts or attempts of minor offenses committed by perpetrators of criminal acts and others". Here it is clear what is meant by "people who suffer physical suffering and so on" are victims of violations or criminal acts (Abdussalam, 2010:5).

Victimology tries to provide understanding, enlighten the problem of crime by studying the victims of crime, victimization process and its consequences in order to create policies and preventative measures and suppress crime effectively more responsible (Gosita, 1993:208).

According to Sunarso (2012:1): "Victimology comes from the Latin *victima* which means victim and *logos* which means knowledge. Terminologically, victimology means a study that studies victims, the causes of victims and the consequences of victims, which are human problems as a social reality."

Gosita (1993:38) states: "Victimology is a scientific knowledge/study that studies victimization (criminal) as a human problem which is a social reality. Victimology comes from the Latin word "*victima*" which means victim and "*logos*" which means scientific knowledge/study."

Victimology provides a better understanding of victims of crime as a result of human actions that cause mental, physical and social suffering. The aim is to provide an explanation of the real role of the victims and their relationship with the victims as well as to provide confidence and awareness that everyone has the right to know the dangers they face in relation to their environment, work, profession and others.

The benefits of victimology are basically related to three main things in studying the benefits of victim studies, namely:

1. Benefits related to efforts to defend the rights of victims and legal protection.
2. Benefits relating to the explanation of the role of the victim in a crime.
3. Benefits relating to efforts to prevent the occurrence of victims.

The benefits of this victimology can understand the position of the victim as the cause of crime and seek the truth.

Victimology also plays a role in respecting human rights, community members, and as citizens who have the same human rights and obligations and are in a balanced position in law and government.

2.2 Victim

Broadly, the definition of victim is defined not only victims who suffer directly, but indirect victims also experience suffering that can be classified as victims. What is meant by indirect victims here is like, the wife lost husbands, children who lost fathers, parents who lost children, and others. According to the Crime Dictionary quoted by Waluyo (2011:9):

"Victim is a person who has suffered suffering physical or mental suffering, loss of property or result in death for an act or attempt to violate lightly carried out by criminals and others."

Muladi, victims are people who both individually and collectively have suffered losses, including physical or mental harm, emotional, economic, or substantial disruption of their fundamental rights through acts or commissions that violate criminal law in each country, including abuse of power (Muladi, 2005:108).

Referring to the definitions of victims, it can be seen that the victims above can be seen that victims are basically not only individuals or groups who directly suffer as a result of actions that cause suffering losses for themselves or their group, even more broadly, it includes close family or direct dependents of the victim and people who have suffered losses when helping victims overcome their suffering or preventing victimization.

Furthermore, juridically, the definition of victim in Law Number 13 of 2006 concerning the protection of witnesses and victims, states that a victim is someone who has

suffered physical, mental, and/or economic loss caused by a criminal act. So what is meant by the victim is:

1. Everyone.
2. Experiencing physical, mental, and/or suffering.
3. Loss of time.
4. As a result of the crime.

From there it can be seen that the position of the victim and the perpetrator have a level of error. According to a legal scholar Mendelson, judging from the degree of guilt of the victim, they can be divided into 5 types, namely:

1. A completely innocent victim.
2. Victims who become victims because of their negligence.
3. The victim is as wrong as the perpetrator.
4. The victim is more guilty than the perpetrator.
5. The only victim is guilty.

Viewed from the perspective of the level of involvement of victims in the occurrence of crimes, Ezzat Abde Fattah mentions several typologies of victims, namely:

1. Non-participating victims are those who deny/ reject evil and criminals but do not participate in crime prevention.
2. Latent or predisposed victims are those who have certain characters tend to be victims of violations certain.
3. Provocative victims are those who cause crime or incitement to crime.

2.3 Criminal act of People-Trafficking

Trafficking in persons according to Article 1 Point 1 of the Law of the Republic of Indonesia Number 21 of 2007 concerning eradication of the crime of trafficking in persons, namely:

“Trafficking in persons is the act of recruiting, transporting, harboring, sending, transferring or receiving a person by means of the threat of force, use of force, abduction, confinement, fraud, deception, abuse of power or position of vulnerability, debt bondage or payment or benefit, so as to obtain consent. From a person who has control over another person, whether carried out within a country or between countries, for the purpose of exploitation or causing people to be exploited.”

According to Wijers and Lap-Chew, trafficking in persons, especially trafficking in women and children, does not only occur within the country, but can also be sent abroad, and trafficking in persons is not only limited to prostitution and slavery, but in all forms of exploitation.

The series of actions that fall within the scope of the criminal act of trafficking in persons are as follows:

1. Every action is in accordance with the elements of crime in the law of the Republic of Indonesia Number 21 of 2007 concerning the eradication of the crime of trafficking in persons.
2. Every person who enters Indonesia and intends to be exploited or shipped overseas in Indonesia.
3. Every effort to bring Indonesian citizens from Indonesia is meant to be exploited outside of Indonesia.
4. Any action that raises a child with a promise something for the purpose of being exploited.
5. The act of sending a child out of Indonesia is intended to be exploited outside Indonesia.

6. Abuse of power that leads to criminal acts trafficking in persons.

Based on the definition of the crime of trafficking in persons described above, it can be seen that there are 3 elements to be categorized as a crime of trafficking in persons, namely:

1. There are elements of action, namely recruitment, shelter, transportation, transfer, delivery, receipt.
2. There are means and ways to control the victims, namely: by means of threats, coercion, violence, fraud, abuse of power, give or take payment or profit.
3. There is a purpose to exploit victims such as prostitution, forced labour, slavery, organ harvesting.

The perpetrator is everyone who has done the action criminal acts as regulated in the Republic Act Indonesia Number 21 of 2007 concerning eradication of the crime of trafficking in persons, as for the division of actors as follows (Sinlaeoe, 2014):

1. Individual, every individual who commits together or individually, directly or indirectly commits the crime of trafficking in persons.
2. Corporations, groups of people and/or assets that well organized legal entity or not incorporated.
3. Organized groups, groups of three people or more, whose existence at a certain time for commit the crime of trafficking in persons once or more with the aim of obtaining financial benefits from the result of his actions.
4. Government administration, namely government officials who wrongly use his power to do or facilitate the crime of trafficking in persons.

III. Result and Discussion

3.1 Forms of Legal Protection for Victims of Human Trafficking from a Victimology Perspective

Preventive legal protection is prevention to reduce the risk of potential victims in the form of socialization, including:

1. Counseling at massage parlors, karaoke places, and service companies for Indonesian workers on a regular basis.
2. Inspection of identity cards for someone who is not old enough to work, to prevent the occurrence of criminal acts of trafficking in persons. The form of protection provided is more comprehensive that the protection is not only preventive but also preventive. Preventive forms of legal protection are in the form of socialization to schools and to residents, both through empowering family welfare and village officials. Repressive legal protection, in the form of various forms of handling or legal protection in accordance with the needs of victims of trafficking in persons.

On the other hand, the technical handling of victims of criminal acts of trafficking in persons is carried out, among others:

1. Asking the identity of the victim.
2. Inform the victim about the service concept.
3. Notify the victim that all services free (non-cost).
4. Notify the client's rights.

The repressive form of legal protection has also referred to the rights of victims of the criminal act of trafficking in persons as regulated in Law Number 21 of 2007 concerning the eradication of the crime of trafficking in persons, including: the right of confidentiality to the identity of victims of the crime of trafficking in persons and their families to the second degree (Article 44), the right to receive protection from threats that

endanger themselves, their lives and/or their property (Article 47), the right to receive restitution (Article 48), the right to obtain health rehabilitation, social rehabilitation, repatriation and social reintegration from the government (Article 51). In terms of health rehabilitation, apart from having psychologists, they have also collaborated with hospitals, while in terms of repatriation of victims, social services are assisted. This is because it has not been budgeted or there is no budget for the last two years. The implementation of social rehabilitation for victims is provided with working capital and skills from the social service, including education or schooling from the social service through the program. Including the rights of victims as stipulated in Law Number 31 of 2014, providing legal protection in the form of victims' rights as contained in Article 5 paragraph (1), Article 6 and Article 7 A of Law Number 31 of 2014.

It is also seen that the behavior of the victim in responding to the criminal act of trafficking in persons prefers non-litigation to obtain compensation. This includes the commitment of law enforcement officers who have not been based on the interests of the victims. This can be seen in the absence of information regarding the release of the convict, as well as the restitution of the victim. Based on this, the implementation of the third victimology objective has not been maximally achieved.

3.2 Factors Inhibiting the Implementation of Legal Protection for Victims of the Crime of Human Trafficking in Victimology Perspective

The assessment of a good law can then sort through several approaches, including through the components that must be included in the legal system. According to Lawrence Meir Friedman, three components that must be included in the legal system are structural, substantive, and cultural components (Hendriana, 2016:34). The inhibiting factors in the implementation of legal protection for victims of the criminal act of trafficking in persons, with reference to the above theory, are as follows:

a. Structural Component

Weaknesses in structural components hinder the implementation of legal protection for victims of the trafficking in persons crime. First, the commitment of law enforcement officials is still not maximal in resolving cases of the trafficking in persons. Second, the government's lack of commitment in funding, where the budget for victims of the trafficking in persons crime has not been available or has not been budgeted for for the past 2 years. Third, a) Lack of service personnel with a psychologist background; b) Lack of improvement in human resources through training of service officers, so that the competent officers in handling services are not optimally competent. Fourth, the lack of a post-facilitation or post-handling empowerment budget. Even though coordination with related agencies is a solution to this problem, this indirectly shows the lack of government commitment, both regional and central governments, in allocating budgets for victims of the trafficking in persons crime, as well as in improving human resources.

In fact, optimizing case disclosure and law enforcement are the rights of victims of the human trafficking crime. The non-disclosure of the criminal act of trafficking in persons, of course, resulted in the identification of the victim, so that he did not receive legal protection. This shows that there are no cases of trafficking in persons.

It becomes a logical thing, if the success of a preventive legal protection brings its own positive impact, namely preventing a crime of trafficking in persons, so that consequently there are no cases of criminal acts of trafficking in Persons that occur, are revealed or reported. However, this should be criticized that it is an illogical thing which is the pockets of Indonesian migrant workers and indicates the potential for the occurrence of

criminal acts of trafficking in persons. Indonesian work this is certainly an advantage and at the same time a weakness in the aspect of the legal structure component, where preventive legal protection is not balanced with repressive legal protection, namely in the form of handling victims as well as disclosing cases and law enforcement against perpetrators.

b. Substantive Component

There are still some substantive weaknesses. First, Law Number 31 of 2014 is the result of the renewal of the previous law, Law Number 13 of 2006. There have been changes, however, Government Regulation Number 44 of 2008 concerning the Provision of compensation, restitution and assistance has not been revoked and updated. Second, Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning child protection does not specifically mention how the protection is children who are victims of trafficking in persons (Fadila, 2015:191-192).

c. Cultural Component

Based on the second purpose of victimization, namely to explain the causes for victimization. Through the study of victimology, it will be seen that the emergence of victims is not absolutely caused by the fault of the perpetrators of the crime, but can also be caused by the mistakes of the victims from a mild level to full fault on the part of the victim. With regard to victims of the crime of trafficking in persons, it was found that there were types of victims who played a role or influenced the occurrence of the crime of trafficking in persons, resulting in him becoming a victim. The explanation is as follows:

a) Victims Due to Negligence or Victims with Minor Mistakes

Referring to the typology of victims from Mandelsohn, this type is referred to as "the victim with minor guilt and the victim due to his ignorance". The occurrence of victims of the criminal act of trafficking in persons is due to negligence or minor mistakes from the victim which have fatal consequences.

b) Pretend Victim

Referring to the typology of victims from Mandelsohn this type is referred to as "the simulating victim", which Mandelshon exemplifies those who claim to be victims for certain interests.

IV. Conclusion

The following are the conclusions in this study:

Three components that must be included in the legal system are structural, substantive, and cultural components. The repressive form of legal protection has also referred to the rights of victims; a) asking the victim's identity, b) informing the victim about the concept of service, c) informing the victim that all services are free (non-cost), d) informing the client's rights. This should be criticized that it is an illogical thing which is the pockets of Indonesian workers and indicated the potential for criminal acts of trafficking in persons to occur, it is necessary to understand that the occurrence of criminal acts of trafficking in persons can occur during pre-placement, placement, and post-placement of Indonesian workers.

The following are suggestions in this research:

1. There is supervision in the implementation of protection for women and children in order to reduce the amount of violence for women, especially children.

2. The community and non-governmental organizations are more focused on handling and assisting women and children, as well as supervising and increasing preventive efforts such as carrying out routine and periodic socialization.

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