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## Legal Protection of Human Rights Against Victims of Trafficking in Persons

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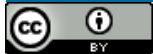
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### ABSTRACT

Human trafficking, according to Article 1 (1) of Law Number 21 of 2007 concerning Eradication of Crime Against Persons, is trafficking in persons as an act of obtaining, transferring, hiding, sending, transferring, or receiving someone with threats of violence, use . by force, kidnapping, imprisonment, forgery, fraud, abuse of power or weakness, bondage or for exploitation or creating people. All forms of trafficking in women and children are violations of human rights, children's rights and labour rights, which treat victims as usual goods bought, sold, shipped and resolved. Its constant complexity is simply the operating conditions it places on people. The protections offered to victims of human trafficking are restitution, compensation, rehabilitation and reintegration. Protection of victims is, in principle, intended to overcome the consequences felt by the victim due to the crime committed against the person concerned. The human right of trafficking in persons must b at the core of all efforts to prevent and combat trafficking in persons and to protect, assist and compensate

## INTRODUCTION

Everyone is born with human rights. Right These fundamental rights are the right to life, security, and independence from all forms of oppression. These rights are universal, and everyone should respect them (Iskandar & Nursiti, 2021). The correct bare man protects respected and protected goods in a manner of law, religion and Government, as stated in the Universal Declaration of Rights. Fundamental Man (UDHR), proclaimed by the Union Nations in 1948, is the right Fundamental Man is a crystallization from values of universal humanity that is not limited by space and time (Ruslan Renggong, Ruslan, & SH, 2021).

In Indonesia violation Right basic there are many human beings, ranging from minor norm violations to rights violations, essential large-scale human involvement that involves life and is criminal. one\_frequent problem\_happened relating to human rights is follow human criminal trafficking or commonly called *human trafficking*, which is something form dispatch, recruit, concealment, transfer or reception someone, with the method, threaten or do action violence or in form coercion others, like kidnapping, fraud, deception, and or abuse position and power or obtain *approve* from people in power over others with intents and purposes exploitation power, or position susceptible or give or accept payment or obtain a benefit for obtaining agreement from people in power over others, for aim exploitation (Takariawan & Putri, 2018).

Trafficking in persons based on article 1 number 1 of law Number 21 of 2007 concerning the Eradication of Human Crime Trafficking in Persons is the act of recruiting, transporting, harbouring, sending, transferring or receiving a person using threats of violence, using force, kidnapping, confinement, forgery, fraud, abuse of power or position of vulnerability, debt bondage or giving payments or benefits in order to obtain approval. From a person who has control over the other person, whether it is carried out within the country or between countries, for exploitation or causing people to be exploited ( Law Republic Indonesia Number 21 the year 2007 about Eradication follow Criminal Human Trafficking ).

Violations of human rights in the form of slavery are generally in the form of deprivation of one's freedom, which strong economic groups carry out against weaker economic groups. Women and children are the most vulnerable groups to become victims of human trafficking. Victims are trafficked not only for prostitution or other forms of sexual exploitation but also for other forms such as forced labour or forced services and slavery. Women and children have always been easy targets. Combined with the assessment of the image of women and children, who often look meek and helpless, has become a stigma and the sole motive for unscrupulous human traffickers. Victims deserve legal protection in accordance with the ideals of the Indonesian nation, namely that the state and Government must protect the nation and educate the nation's life and general welfare (Henny Nuraeny, 2022). The role and responsibility of the state are essential things in fulfilling its constitutional obligations towards human rights ( state responsibility ). The state must make laws regarding good law enforcement, carry out good law enforcement, create security and public order for everyone, and implement human rights by fulfilling the obligation to respect, protect, maintain and promote human rights, especially human rights. The human rights of women and children, as accepted by the Unitary State of the Republic of Indonesia, are bound by laws, other laws and regulations, and international human rights law.

## METHODS

The methodology used in this research is normative research, which uses a descriptive research type with juridical normative based on regulations and current regulations.

The author conducted research in writing using descriptive-analytical methods in the form of library research).

The author authorizes secondary data as a normative research method that seeks and uses library materials as references, such as books. Scientific writings and scientific journals, human rights books, and studies of human rights legislation.

## RESULTS AND DISCUSSION

### Legal Instruments for Trafficking in Persons

Human trafficking is a global phenomenon that occurs in most countries in the world, with varying degrees of difficulty. This phenomenon is not just an ordinary social phenomenon but has become a violation of law and human rights. Trafficking in persons has dire consequences for victims, their families, communities and countries. The situation in each country, namely countries of destination, transit or source of trade, is similar to that experienced in Indonesia. This places victims in a high-risk position, such as stress due to physical and mental violence related to health, which will threaten the quality of the next generation of the Unitary State of the Republic of Indonesia. Indonesia is one of the countries in Southeast Asia which is very vulnerable to becoming a transit and centre for victims of trafficking people; not a few Indonesian children and women are exploited for forced labour and sex trafficking (Iskandar & Nursiti, 2021).

Trafficking in persons ( *Human Trafficking* ) based on Article 1 point 1 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons is defined as confinement, forgery, fraud, abuse of power or position of vulnerability, debt bondage or giving payments or benefits, to obtain approval from a person who has control over the other person, whether done within the country or between countries, for exploitation or causing people to be exploited ” ( Act Republic Indonesia Number 21 the year 2007 about Eradication follow Criminal Trade ).

Bloomsbury's reference calls *Human Trafficking* with the term *Trafficking in Person*, which is defined as " *The illegal practice of finding and using human beings for unpaid often awesome work in situations their circumstance prevent them from living* ” (Fadilla, 2016)

The legal instruments for the criminal act of trafficking in persons can be found in the Constitution of the Republic of Indonesia, which generally stipulates that Indonesian citizens are entitled to these matters in Articles 20, 21 and 28B(2). The 1945 Constitution of the Republic of Indonesia is also the basis for enacting Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. Prior to the enactment of Law Number 21 of 2007, the Criminal Code had previously regulated trafficking in persons contained

in Articles 297 and Article 324, which read (Fadilla, 2016) :

Article 297 Criminal Code:

"Trafficking in women and trafficking in boys who are not yet adults is punishable by a maximum imprisonment of six years."

Article 324 of the Criminal Code:

"Anyone who, at his own expense or the expense of another person, runs the slave trade or commits an act of the slave trade or deliberately participates directly or indirectly in one of the acts mentioned above shall be punished by a maximum imprisonment of twelve years."

Law Number 21 of 2007, concerning the Crime of Trafficking in Persons apart from being formed under Article 20, Article 21 and Article 28B paragraph (2), was also inspired by Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women ( *Convention on The Elimination of all Forms of Discrimination Against Women* ) and the 2000 UN Protocol on Preventing, Eradicating and Punishing the Crime of Trafficking in Persons, especially Women and Children ( Palermo Protocol ) which the Government of Indonesia has signed.

Apart from that, other legal instruments that also regulate Trafficking in Persons can be seen in the:

Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which are regulated in Article 59, Article 68, and Article 76 F;

Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights;

Law Number 1 of 2000 concerning Ratification of the ILO Convention No. 182 regarding prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (Article 3 letter a);

TAP MPR Number XVII concerning Human Rights (HAM)

Government Regulation Number 9 of 2008 concerning Procedures for Integrated Service Mechanisms for Witnesses and Victims of Trafficking in Persons;

Presidential Regulation of the Republic of Indonesia Number 69 of 2008 concerning the Task Force for the Prevention and Handling of the Crime of Trafficking in Persons whose enactment revokes and declares no longer valid Presidential Decree Number

88 of 2002 concerning the National Action Plan for the Elimination of *Trafficking in Women and Children*.

International Provisions against the prohibition of trafficking in persons (*human trafficking*) include the *Universal Declaration of Human Rights*; the *International Covenant on Civil and Political Rights*; the *International Covenant on Economic, Social, and Cultural Rights*; *Conventions on the Right of The Child and Its Optional relevant protocols*; *Conventions Concerning The Prohibition and Immediate action for the elimination of The Worst Forums of Child Labor (ILO No. 182)*; *Conventions on The Elimination of All Forms of Discrimination Against Women*; *United Nations Protocols to Suppress, Prevent and Punish Trafficking in Against Transnational organized crime*; *SARC Convention in Combating Trafficking in Woman and Children for prostitution*; *Protocols Against The Smuggling of Migrants by Land, Sea and Air*.

### **Legal Protection for Victims of Trafficking in Persons**

Protection of women and children from all attempts of unlawful exploitation is, in essence, a form of protection of human rights which are inherent human rights given by God and cannot be reduced. Every form of trafficking in women and children violates human rights (HAM), children's rights and labour rights, which treat victims as mere commodities that are bought, sold, shipped and resold. This worldwide phenomenon continues to develop and change in form and complexity; the only thing remains the exploitative conditions it places on humans (Sulthan, 2018). Leach human rights concept Levin (human rights activist) has two primary meanings. First of all, rights that cannot be divided or revoked are human rights, these rights are moral rights derived from the dignity of every person, and these rights are designed to guarantee the dignity and worth of every person. Second, there are legal rights from forming laws promulgated following the process of forming the laws of society itself, domestically and internationally. Within the framework of protecting human rights, protecting women and children is essentially the embodiment of the right to life and freedom from slavery or slavery. These human rights are eternal and universal, meaning they apply to everyone, regardless of origin,

gender, religion and age, and therefore every country is obliged to uphold them without exception.

That several factors are widely cited as causes of *human trafficking*. These include poverty, low levels of education, the role of women in the family, status and power, the role of children in the family, labour, and early marriage. The position of women is not equal to that of men, both in the family and in various strategic fields (Wulandari & Wicaksono, 2014). In the criminal act of trafficking in persons, several stages take place. Start by recruiting survivors. Sometimes the perpetrator promises convenience and benefits for the victim or the victim's family. Perpetrators can even offer monetary loans, encouraging victims to be recruited as labourers according to the perpetrator's wishes. Therefore, the perpetrators recruited people who were financially incapacitated, physically fit but mentally weak, and had low levels of education. By this standard, perpetrators can easily be lured or threatened with bait. The next stage is sending the victims to the shelter, where they will be collected as they receive supplies. The resettlement phase of the shelter is actually to regulate where and how victims will be resettled to the destination area. One or more agents will work (Suhardin, 2008).

Article 28 I (4), (5) of the 1945 Constitution defines the concept of state human rights responsibilities: "Protection, promotion, enforcement and realization of human rights are the responsibility of the state, especially the Government. Maintenance and protection of human rights following the principle of supremacy of law. Democracy, the implementation of human rights, is guaranteed, regulated and stipulated by statutory regulations. Given the importance of human rights and the tendency for various problems to increase in society, the nuances of human rights affect the integrity of the Government because they involve domestic and foreign interests, so the implementation of human rights needs to be thoughtfully implemented.

The criminal act of trafficking in persons limits the victim's freedom and rights. Article 1 of Law Number 39 of 1999 concerning Human Rights regulates the right to personal freedom, which states that "no one may be enslaved or enslaved". Article 2 states that "service or servitude, slave trading, trafficking in women, and all acts with the same purpose are prohibited". The state must assist in

restoring the victim's psychological state to its original state. Of the various assistance needs for victims, the state is obliged to provide facilities, especially providing facilities, and especially providing housing for them during the recovery period. In addition, the state provides educational facilities to improve their skills, including formal education and training to improve their abilities<sup>14</sup>. The state is also responsible for representing victims in the persecution of traffickers. NGOs also have a role in providing legal assistance to victims of trafficking in persons.

The Government's national policy involves all levels of society in preventing the criminal act of trafficking in persons based on 58 Law no. 21 of 2007 and Presidential Decree Number 69 of 2008, which obliges the central Government and the Government itself to form and make the Task Force effective and ensure the Eradication of the criminal act of trafficking in persons. This regulation clarifies the previously amended regulations by Presidential Decree Number 88 of 2002 to strengthen tasks and functions, institutional and organizational structures and strengthen work mechanisms through coordination between groups at the central, provincial and district/city levels. The tasks of this working group are: 1) to coordinate efforts to prevent and overcome the crime of trafficking in persons; 2) promote outreach, training and cooperation at the national and international levels; 3) supervise the progress of the implementation of victim protection which includes rehabilitation, repatriation and social reintegration; 4) supervision of the enforcement process; 5) report and evaluate.

The protections offered to victims of human trafficking are restitution, compensation, rehabilitation and reintegration. Protection of victims, in principle, is intended to overcome the consequences felt by victims as a result of crimes committed against those concerned. The human rights of trafficking persons must be at the heart of all efforts to prevent and combat trafficking in persons and to protect, assist and compensate.

Compensation includes the restoration of property or payment for damage or loss suffered. The state compensates because the perpetrators cannot provide what should be their full responsibility. Compensation is compensation given to the victim or family by the perpetrator or a third party in the form of returning property, paying compensation for loss

or grief, or reimbursing the costs of specific actions. Every country, in its national legal system, must guarantee measures to protect victims of human trafficking in order to receive compensation for the losses suffered. Providing compensation and restitution to victims of human trafficking is not easy. Although many laws and regulations govern the right to compensation and repatriation of victims (textual law), its application in this area (applicable law) faces many obstacles for law enforcement officials. This makes it more difficult for trafficking victims to obtain compensation and redress.

Following Article 1, Number 13 Law Number 21 of 2007, refunds for compensation submitted to the perpetrator or defendant are based on a court decision with the permanent legal force for the suffering of tangible and intangible property. Loss of victims or heirs.

In practice, compensation is often not following the victim's circumstances, and the compensation given does not adjust to the size of the difference so that justice does not bring victims. The compensation that victims or their heirs should receive may not work as it should. Protection for victims of human trafficking regulated in Law Number 21 of 2007 concerning TIP regulates the protection of witnesses and victims.

**Sulistya et al. Eviningrum, "Developing a Human Rights-Based Legal Protection Model for Victims of Child Trafficking in Indonesia," Atlantis Press Volume 358 (2019), p. 81.**

Articles 43 to 53 of Law Number 21 of 2007 regulate the protection of witnesses and victims in human trafficking. The rights that witnesses can obtain for victims of trafficking in persons, in general, are as follows: the victim has the right to receive compensation for what happened to them, but even so, the victim also has the right not to receive this compensation for any reason. If the victim dies, compensation is given to his heirs. Victims also have the right to receive rehabilitation and coaching. Victims have the right to get what is already theirs, previously confiscated due to the human trafficking incident. Victims can also refuse to testify to provide information for fear of endangering themselves. Victims can be accompanied by legal advisors and use their legal remedies. In addition to these rights, victims are entitled to receive rights in the form of identity

confidentiality, restitution, and the right to health, social rehabilitation, return and reintegration. (Anggi Rizkita Herda and Ridwan Arifin, 2019)

According to the principle of restitution integral, restitution is an attempt to return the victim to their original state before the crime was committed, even though it is known that the victim cannot return to their original state. Country. This principle emphasizes that victim recovery forms must be as complete as possible and cover various aspects of the consequences of a crime. Victims regain their freedom, legal rights, social status, family life and citizenship, housing, work and property through repatriation.

Victims of trafficking in persons must be given two rights, namely:

1. The right to the personal loss of the victim

This compensation is given if the victim has a disability or loses his physical and mental sacrifices, residence, and property. If the victim suffers a loss, all medical, rehabilitation, psychological care, transportation and accommodation costs must be reimbursed fairly by the perpetrator's court decision.

2. The right to lose value for the work or services of the victim. This compensation is given if the victim is forced to work, but the wages received are not commensurate with what was done, so in this case, the creator is obliged by order of the judge to pay for the loss of the labour expended. Consumed. to the victim. To measure the amount of compensation paid by the perpetrator to the victim can be measured in two ways, namely: based on the amount of compensation for the victim's services at work for the perpetrator or suspect of trafficking in persons; this commitment somewhat depends on where the victim works and what the minimum wage the worker receives. Apart from looking at the amount of service provided to the victim, it can also be based on the minimum overtime wage; if the victim is forced to continue working, this compensation is returned to the working hours the victim has worked. To determine how much compensation or damages to be paid to the perpetrator, the judge should contact the Efforts and Human Resources department to provide information on how much the perpetrator should pay the victim based on hours worked on the premises. The victim is at work.

Suppose the victim of trafficking in persons works as a prostitute. In that case, the compensation is not deducted from working time. However, the compensation is considered to belong to the victim, which must be higher than the victim's compensation. Who are not sex workers because the victims are workers? Sport is not only physically dangerous but also physically and mentally. The Trafficking in Persons Law defines that the mechanism for repatriating victims of trafficking in persons is that victims or their heirs are entitled to restitution. The restitution clause is included in the TIP court decision and maintains the award of compensation from 14 after the first permanent court decision.

## CONCLUSION

Based on the above analysis and discussion, this article concludes that human rights must be respected and protected by law, religion and Government, as stated in the Universal Declaration of Human Rights (UDHR), which the United Nations proclaimed in 1948, Human Rights Humans are the crystallization of universal human values that are not limited by space and time.

One of the problems that often occur related to human rights is the crime of trafficking in persons or commonly called human trafficking, which is a form of sending, recruiting, hiding, transferring or receiving someone employing threatening or carrying out acts of violence or in other forms of coercion, such as kidnapping, fraud, deception, and abuse of position and power or obtaining approval from a person in power over another person with the intent and purpose of exploiting power, or a vulnerable position or giving or receiving payments or obtaining benefits to obtain approval from a person in power over another person, for the purpose exploitation.

Trafficking in persons under article 1 number 1 of law Number 21 of 2007 concerning the Eradication of Criminal Acts in Persons is Trafficking in Persons is the act of recruiting, transporting, harbouring, sending, transferring, or receiving a person with threats of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or position of vulnerability, debt bondage or giving payments or benefits, to obtain approval from the person who has control over the other person, whether carried out within the country

or between countries, for exploitation or causing people to be exploited. The state is obliged to make laws on good law enforcement, implement good law enforcement, create security and public order for everyone, and implement human rights by fulfilling the obligations to respect, protect, maintain and promote human rights, especially women's rights, ladies and children.

This places victims in a high-risk position, such as stress due to physical and mental violence related to health, which will threaten the quality of the next generation of the Unitary State of the Republic of Indonesia. Indonesia is one of the countries in Southeast Asia which is very vulnerable to becoming a transit and centre for victims of trafficking people; not a few Indonesian children and women are exploited for forced labour and sex trafficking.

Legal Protection for Victims of Trafficking in Persons Protection for women and children from all attempts of unlawful exploitation is essentially a form of protection for human rights which are inherent human rights given by God and cannot be reduced. Every form of trafficking in women and children violates human rights (HAM), children's rights and labour rights, which treat victims as mere commodities that are bought, sold, shipped and resold.

Maintenance and protection of human rights following the principle of supremacy of law. Democracy, the implementation of human rights, is guaranteed, regulated and stipulated by statutory regulations. Given the importance of human rights and the tendency for various problems to increase in society, the nuances of human rights affect the integrity of the Government because they involve domestic and foreign interests, so the implementation of human rights needs to be thoughtfully implemented.

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