



Aspects of Legal Protection by the State Against Victims of Child and Women Trade

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ABSTRACT

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Human Trafficking is a very complex problem and until now there is no proper solution to overcome it. This issue is very important because the majority of victims are underage girls who do not get their rights as a child. The purpose of trafficking in persons is for sexual exploitation, forced labor or other forms of exploitation. There is nothing honorable or fair about enslaving humans or trading them as objects of trade. The majority of the ways they get entangled are with the mode of debt bondage and fraud perpetrated by brokers. Not all girls experience the mechanism of trafficking in the same way. Of all the mechanisms that occur, at the stage of acceptance, sexual violence is experienced by many victims because girls under the age of 18 mostly work as female sex workers. International efforts to combat human trafficking include efforts to prevent human trafficking, rescue victims, and punish perpetrator. It is important to realize that people involved in human trafficking come not only from developing countries but also from developed countries and victims can come from all walks of life and gender. It is important to understand our role as individuals in preventing human trafficking by watching for any signs of suspicion and reporting suspicious activity to the regulatory authorities. We can also support the efforts of organizations and institutions fighting to combat trafficking in persons and assist those affected.

KEYWORDS:

Legal Protection, Trafficking in Persons, Children, Women

I. INTRODUCTION

Human trafficking, especially children and women, is a serious crime and is a transnational crime. The formulation of Transnational Crime is (1) An act as a crime and (2) Occurs between countries or across countries. From these two keywords it can be explained that transnational crime is a crime that occurs across countries, in the sense that an act can be categorized as a crime if a law is violated. So it could happen that an act that is formulated, designed, prepared, carried out in a country is not a crime, but when the proceeds of a crime are regulated, prepared across national borders to enter the jurisdiction of a different country then it is categorized as a transnational crime.¹

This crime continues to grow nationally and internationally. With the development and advancement of

technology, information, communication and transportation, the mode of crime is also developing, which in operation is often carried out behind closed doors and moves outside the law. The perpetrators of trafficking in persons (traffickers) quickly developed into cross-border syndicates with a deadly way of working. Trafficking in human beings is a fairly complex problem, both at the national and international levels, as well as a serious violation of human rights and is a form of exploitation of humans.

This practice involves depriving, transferring, or placing a person by using threats, violence, or other forms of coercion to obtain the person's consent, or giving a disproportionate or advantage to another person to obtain the person's consent to trade, exploit, or take advantage from him. The practice of trafficking in persons often involves women

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¹ Yudhya Prasetya, *Perdagangan Perempuan Dan Anak Sebagai Kejahatan Transnasional*, Jurnal Yustisia, 2021, Vol.1, No.2. h. 185 - 195

and children as victims, who are sold on the black market for sexual exploitation, forced labor or other forms of exploitation.²

This is known from the many experiences that were revealed from the victims and perpetrators of the crime of trafficking in persons who were exposed. Trafficking in persons, especially against women and children, has expanded in the form of crime networks, both organized and unorganized. This heinous crime even involved not only individuals but also state administrators who abused their authority and/or power. This network of traffickers also has a range of operations that is not only limited to domestic regions, but also extends to countries.³

The phenomenon of trafficking in women and children has long been developing in various countries, such as Saudi Arabia, Japan, Malaysia, Hong Kong, Taiwan, Singapore and including Indonesia. No country is immune from trafficking each year an estimated 600,000-800,000 men, women and children are trafficked internationally for the purpose of sexual exploitation.⁴

And trafficking in persons is one of the worst forms of treatment of violations of human dignity and worth. The crime of trafficking in persons, especially women and children, has expanded in the form of both organized and unorganized crime networks. The crime of trafficking in persons even involves not only individuals but also corporations and state administrators who abuse their authority and power.⁵

Constitutionally, the state is obliged to provide protection for its citizens. As emphasized in the Preamble to the 1945 Constitution, one of the objectives of forming the Government of the Republic of Indonesia is to protect the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare and educate the nation's life. The need for adequate legal protection for victims of crime is not only a national issue, but also an international one. Legal protection for the community is very important because people, both groups and individuals, can become victims of crime. This is part of the protection of the community, which can be realized in various forms, such as granting of

restitution and compensation, medical services, and legal assistance.⁶

Because acts of trafficking in persons involve a wide network of crimes, both organized and unorganized, efforts to prevent and eradicate the crime of trafficking in persons as well as to protect and recover victims need to be carried out seriously and comprehensively at the national, regional and international levels. Countries around the world must work together to overcome this problem, including by developing appropriate regulations and policies, increasing law enforcement cooperation between countries, and providing protection and assistance to victims.⁷

Trafficking in persons is a crime that undermines human dignity and has a detrimental impact on victims and society. Therefore, all parties must come together to eradicate this practice and protect victims from trafficking in persons. Women and children are the most numerous groups who are victims of human trafficking or trafficking. They are targeted because they are vulnerable and easily manipulated by criminals who seek to profit from their exploitation. However, it should be noted that not only women and children are victims of human trafficking, but also men and other adults.

Victims of human trafficking do not only sell for the purpose of sexual exploitation, but also for other forms of exploitation such as forced labour, sanctions or practices similar to policies. Traffickers carry out various actions such as transporting, moving, hiding, or accepting people for exploited purposes. They use threats of violence, use of force, kidnapping, forgery, fraud, attacks on power or certain positions, or provide payments or benefits to get the victim to obtain consent from someone who has control over the victim. Such treatment can also have a large psychological and social impact on victims, and can inhibit and eradicate trafficking in persons, as well as protect and rehabilitate victims, which are very important actions taken by the government and the international community.⁸

The definition of the crime of trafficking in persons is contained in article 2 paragraph 1 of Law no. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, which states:

² Handayani Nursamsi Anita, 2007, *Korban Tindak Pidana Perdagangan Orang (Kajian Viktimologi terhadap Korban Tindak Pidana Perdagangan Orang di Wilayah Hukum Polwil Banyumas*, Purwokerto: Tesis Pada Program Magister Hukum Unsoed, h. 78-79

³ Ahmad Syauf, *Perlindungan Hukum Terhadap Perempuan Dan Anak Korban Tindak Pidana Perdagangan Orang*, Jurnal Muwâzâh, Vol. 3, No. 2, Desember 2011, h.456-465

⁴ Fajar Purwawidada, 2015, *Perdagangan orang sebagai Tindak Kejahatan Transnasional*, diakses tanggal 3 Mei 2023

⁵ Dadang Abdullah, *Perlindungan Hukum Terhadap Korban Trafficking Anak Dan Perempuan*, Jurnal Al Adi, Vol. IX No 2, 2 Agustus 2017, h. 231-243

⁶ Arivia, *Catatan Perjalanan: Mengungkap Kisah - Kisah Perdagangan Perempuan dan Anak*. In Jurnal Perempuan 29th Edition: "Don't Buy, Don't Sell Indonesian Women and Children". Gadis (2004, October)

⁷ Dadang Abdullah, *Kebijakan Hukum Pidana dalam pencegahan dan penanggulangan Tindak Pidana Trafficking anak dan Perempuan study di Polwil Banyumas*, Tesis Pada Program pascasarjana Unsoed Purwokerto, 2010, h 1

⁸ Mariano Freitas Soares, *Perlindungan Hukum Terhadap Anak Korban Perdagangan Manusia (Human Trafficking) Berdasarkan Undang-Undang Nomor 23 Tahun 2002 Jo. Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak*. Karya Ilmiah pada Universitas Narotama Surabaya

"Anyone who recruits, transports, shelters, sends, transfers, or accepts someone with violence, kidnapping, confinement, forgery, fraud, abuse of power or position of vulnerability, debt bondage or gives payments or benefits even though obtaining the consent of the person holding the control over other people, for the purpose of exploiting said person within the territory of the Republic of Indonesia, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 120,000,000.00 (one hundred and two twenty million rupiah) and a maximum of IDR 600,000,000.00 (six hundred million rupiah)."

Meanwhile, another understanding states that trafficking in persons is the act of withdrawing, transporting, harboring, sending, transferring, or receiving a person with threats of violence, use of force, kidnapping, confinement, forgery, fraud, seizing power or a vulnerable position, debt bondage, or giving payments. or benefits, so as to obtain the consent of the person who has control over the other person, whether carried out within the country or between countries, for the purpose of exploitation or causing people to be exploited.⁹

The definition of victims of crime can be found in the "declaration of basic principles of justice for victims of crime and abuse of power 1985" issued by the United Nations. According to the declaration, victims of crime are people or individuals who individually or collectively have suffered losses, either physically or mentally, emotional suffering, economic loss, or reduction of their human rights as a result of actions or omissions that violate the criminal law in force in UN member states, including laws against abuse of power.¹⁰ Based on UN General Assembly Resolution No. 49/166 defines trafficking by:

"Trafficking is the illicit and clandestine movement of persons across national and international borders, partly from developing countries and some countries with economies in transition, with the goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers, and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labor, false marriages, clandestine employment and false adoption of developing countries with

their changing economies, with the ultimate aim of forcing women and girls to work in areas of sexual and economic oppression and in conditions of exploitation for the benefit of agents, dealers and crime syndicates, as well as other illegal activities related to trafficking such as housemaids, fake marriages, illegal workers, and adoption)".

Trafficking has a wide and varied definition, but basically refers to trafficking in persons for the purpose of exploitation. Trafficking often occurs through organized or unorganized crime networks, and takes advantage of vulnerable people such as women and children. Trafficking often occurs internationally, crosses national borders, and involves many countries.¹¹

The purpose of the law is to provide protection to victims of trafficking in persons and eradicate the practice of trafficking in persons strictly. In this law, the act of trafficking in persons is considered a serious crime and is punishable by severe penalties for the perpetrators. In addition, the law also stipulates various preventive and protective measures that must be taken by the government and society to prevent trafficking in persons and provide assistance and protection to victims.

Human rights (HAM) are the responsibility and obligation of every country to guarantee and provide protection to every citizen. Violence against women and children is a serious health and social problem that must be seriously addressed by the state. Indonesia has committed to guaranteeing human rights for women through the ratification of the convention on the elimination of all forms of discrimination against women (CEDAW).¹²

In addition, Indonesia has also established various laws and policies to protect women and children from violence, such as law number 23 of 2004 concerning the elimination of domestic violence and law number 35 of 2014 concerning child protection. The state also has an obligation to provide access for victims of violence to get assistance and recovery as well as to prosecute and punish perpetrators of violence in accordance with applicable law.¹³

In an effort to protect citizens from the practice of trafficking in persons and exploitation, the Government of Indonesia continues to improve through various efforts to prevent, rehabilitate and reintegrate victims, develop legal norms and enforce laws that are carried out consistently and continuously. Commitment is also carried out in a more planned and integrated manner with efforts to overcome poverty, unemployment, lack of education and skills, lack of

⁹ Handayani Nursamsi Anita, 2007, *Korban Tindak Pidana Perdagangan Orang (Kajian Viktimologi terhadap Korban Tindak Pidana Perdagangan Orang di Wilayah Hukum Polwil Banyumas*, Purwokerto: Tesis Pada Program Magister Hukum Unsoed, h. 85

¹⁰ Abdullah Dadang, Op Cit, h.91

¹¹ Abdullah Dadang, Log Cit, h.101

¹² Muladi, 1987, *Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana*, Semarang: BP UNDIP. h. 110

¹³ Toule Elsa R.M., *Tindak Pidana Perdagangan Orang di Indonesia (Sebuah Catatan Kritis)*.h. 19

access to opportunities and information, as well as socio-cultural values that marginalize and subordinate women.

Recognizing the importance of women and children obtaining adequate legal protection, especially from various forms of trafficking in persons amidst the diminishing attitudes of tolerance and respect among fellow citizens, the writer is interested in examining: 1). How is the regulation of legal protection for victims of trafficking of children and women? and 2). What is the method or modus operandi for the perpetrators of the crime of trafficking in children and women.

II. METHODOLOGY

Normative legal research focuses on the analysis of arrangements, principles, and doctrines in a field of law that are written in nature such as laws and regulations, court decisions, and other legal documents. This research method aims to explore and dig up in-depth information about legal norms related to the problem to be studied. In this case, normative legal research can be used as a basis for determining arguments in a case or as a basis for making decisions in a legal policy.¹⁴

Deductive analysis techniques are also important techniques for determining prescriptive conclusions and recommendations based on research results. In deductive analysis, researchers can take existing premises within a predetermined legal framework and then use these premises to produce logical and accurate conclusions. By using this comprehensive approach, research can produce recommendations that are based on solid and accountable legal arguments, so that they can make a positive contribution to improving the legal system in Indonesia.¹⁵

III. DISCUSSION

1. Arrangements for Legal Protection for Victims of Trafficking in Children and Women

The problem of trafficking in persons is closely related to the protection of victims, who are basically people or individuals, groups or communities who have suffered losses directly as a result of their experiences as targets of crimes. Victims must receive adequate protection and rehabilitation, both socially and legally. The definition of Trafficking according to the Palermo Protocol is the recruitment, transportation, transfer, harboring or receipt of a person through the threat or use of force, abduction, deception, abuse of power or other positions of vulnerability, or the giving or receiving of payments or benefits to obtain the consent of the controlling person, with exploitation

purposes.¹⁶ The purpose of exploitation in trafficking can include sexual exploitation, slavery, forced labor, or the harvesting of organs. Therefore, trafficking is a violation of human rights and a serious crime that requires strict prevention and law enforcement measures.

Legal protection for victims of trafficking in persons is to protect the rights of everyone who is a victim of the crime of trafficking in persons to receive equal treatment and protection by law and law, therefore for any violations of law that have occurred to victims and the impact suffered by victims, then the victim has the right to receive the necessary assistance and protection in accordance with legal principles. Whereas what is meant by assistance and protection for victims is related to the basic rights of victims such as the right to get physical assistance, the right to get help solving problems, the right to get their rights back, the right to receive guidance and rehabilitation, the right to get protection from threats and the right to get compensation (restitution/compensation) from the perpetrator and the state.¹⁷

The Criminal Procedure Code only provides legal protection to victims in the form of compensation through a combination of cases, and does not regulate other forms of legal protection. The absence of special legal protection for victims of crime, especially victims of human trafficking, has resulted in injustice, because often the public prosecutor representing the victim only drops charges or the judge only gives relatively light sentences to the perpetrators.¹⁸

So legal protection for women and children is contained in Articles 351 to Article 355 of the Criminal Code, which are included in the provisions of these articles regarding persecution, for perpetrators of serious or light abuse they are threatened with imprisonment, Article 356 of the Criminal Code provides one third of the threats to abuse committed for people outside of their family members, several legal protection arrangements for victims of trafficking in children and women include:

- 1) Law number 21 of 2007 concerning the eradication of the criminal act of trafficking in persons, which provides protection for trafficking victims of children and women and provides sanctions for perpetrators.
- 2) Law number 35 of 2014 concerning child protection, which provides special protection for children as victims of trafficking.
- 3) Law number 23 of 2004 concerning the elimination of domestic violence, which

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Media Group, 2016), at 225

¹⁵ Windisen, *Fake News in the Time of COVID-19 in Indonesia : Criminal Law Issues*, Jurnal Kajian Pembaharuan Hukum, 2022,2:2, h.211

¹⁶ Ibid. h.l 102

¹⁷ Theo, 2003, "*Upaya Perlindungan Korban Kejahatan Melalui Lembaga Restitusi dan Kompensasi*", Media Hukum dan Keadilan Vol. II, No.9, Juni 2003., h. 123-145

¹⁸ Harkrisnowo, Harkristuti, 2002, "Urgensi Pengaturan Perlindungan Korban dan Saksi",Makalah disampaikan pada *Roundtable Discussion*, Jakarta.

provides protection for women who are victims of trafficking in the household.

- 4) Government regulation number 53 of 2010 concerning the implementation of law number 23 of 2002 concerning child protection, which provides guidance for related agencies and institutions in providing protection to victims of child trafficking.
- 5) Government regulation number 44 of 2016 concerning the handling of trafficking victims in the context of preventing and eradicating the crime of trafficking in persons, which provides guidelines for relevant agencies and institutions in handling trafficking victims.¹⁹

All of these regulations aim to provide legal protection and rehabilitation for trafficking victims, both children and women, and provide sanctions for perpetrators of criminal acts of trafficking in persons. Other articles that regulate the protection of criminal acts of trade include:

- a) Article 44: victims are given protection in the form of security, and emergency health services.
- b) Article 45: the victim is given the right to be returned to his place of origin.
- c) Article 46: the victim is given the right to obtain information regarding his rights and obligations while being a victim of the criminal act of trafficking in persons.
- d) Article 47: victims are given the right to receive counseling and psychological support.
- e) Article 48: the identity of the victim and witness giving testimony in the trial is kept confidential
- f) Article 49: protection of victims can be carried out by state or private institutions that have the authority and competence in providing protection to victims.
- g) Article 50: the victim is given the right to obtain compensation for the losses suffered as a result of the criminal act of trafficking in persons.
- h) Article 51: victims are given the right to receive social and economic rehabilitation.

- i) Article 52: the victim is given the right to apply for a temporary residence permit or permanent residence permit in Indonesia.
- j) Article 53: the victim is given the right to get reimbursement for transportation, lodging and other costs needed to provide information in court.

The importance of providing adequate legal protection for victims of crime. Many countries, including Indonesia, have taken steps to strengthen the protection of victims of crime. One of them is through policies and regulations that aim to accommodate victims' rights and provide them with access to justice.

The UN Declaration on the human rights of victims of crime and abuse of power in 1985 is one of the important documents in this right. This declaration states that victims of crime are entitled to adequate protection and fair access to the criminal justice system. In addition, this declaration also establishes basic principles in providing protection and rehabilitation for victims, and states the state's obligation to strengthen international cooperation in fighting crime.²⁰

Indonesia itself issued several policies and regulations to strengthen the protection of victims of crime such as law number 13 of 2006 concerning the protection of witnesses and victims and law number 31 of 2014 concerning victim protection. Through this policy, victims of crime are given the right to protection, recovery, and compensation for the losses they have suffered. In addition, victims also have the right to receive information about their rights and receive legal assistance. Article 45 Law no. 21 of 2007 stipulates that in processing trafficking cases law enforcement must pay attention to the safety, security and rights of victims. Law enforcers must also maintain the confidentiality of the identities of victims and their families, and not exploit victims for any purpose.

In addition, articles 47 to 53 of Law no. 21 of 2007 also regulates procedures and mechanisms for protecting victims, including protecting victims' identities, supervising and monitoring victims, as well as regulating victims' statements in settlement. In this case the victims of trafficking are children. Based on the regulations on child protection, it also provides special protection for child victims of trafficking, such as the right to be treated in a way that does not harm and does not degrade them, as well as the right to receive recovery and rehabilitation according to the child's needs.

As stated by Arif Gosita quoted by Anita Hadayani Nursamsi, several rights that need to be considered in providing protection to victims include:²¹

¹⁹ Mintarsih Farhana Mimin, *Upaya Perlindungan Korban Terhadap Perdagangan Perempuan (Trafficking) Di Indonesia*. Jurnal Mimbar Ilmiah Hukum Universitas Islam Indonesia, 2016.h. 34

²⁰ Ifrani, *Disharmoni Pengaturan Tata Kelola Kawasan Hutan Di Indonesia*, Jurnal Hukum Al-Adl Volume VII Nomor 14 Juli Desember 2015. h 29

²¹ Yulia Rena, *Viktimologi, Perlindungan Hukum Terhadap Korban Kejahatan*, Yogyakarta, Graha Ilmu.h 130

- 1) The right to obtain protection, both physically and psychologically, as well as the right to obtain legal assistance and health.
- 2) The right to obtain information about their rights and ongoing legal processes.
- 3) The right to participate in legal processes, such as giving testimony and submitting requests.
- 4) The right to obtain compensation or compensation for losses suffered as a result of a criminal act.
- 5) The right to get protection from destruction, abuse, or threats made by the perpetrator or related people.

Protection of witnesses and victims is an important part of a fair and just criminal justice system. This is important so that they feel safe and are not afraid to testify in court, so that they can assist legal justice and ensure that perpetrators of crimes can be punished according to applicable law.

Protection of victims of crime is an important part of protecting society as a whole. Victims of crime often experience losses and trauma as a result of the crimes they experience, therefore they need help and support in overcoming these impacts.²²

One of the protections for victims of crime is to provide compensation. Restitution is giving compensation by the perpetrator of the crime to the victim in the form of money or replacement of goods lost or damaged as a result of the crime. While the assessment is to provide compensation by the state or parties responsible for the security and safety of the community to victims in the form of money or health services or psychosocial services.²³

In addition, victims of crime also need medical services and legal assistance to assist them in recovering from the trauma caused by the crimes they have experienced and granting their right to justice. Medical services can include health care, medical examinations, and psychological therapy, while legal aid can assist victims in obtaining their rights in the criminal justice system. By providing adequate protection to victims of crime, it can help victims recover and prevent them from becoming victims of more serious crimes in the future. In addition, protection for victims of crime can also help create a safer society and avoid crime.

The substance contained in Articles 43 to 53 of the Law on the Eradication of the Criminal Act of Trafficking in Persons has paid special attention to the protection of the crime of trafficking in persons, which regulates provisions regarding the protection of victims in the crime of trafficking in persons. Regarding the provisions regarding the protection

of witnesses and victims in the crime of trafficking in persons, it is carried out by providing several special provisions regarding the protection of victims.²⁴

Such as the case of victims to obtain information about their rights, the rights of victims to gain access to health and rehabilitation services, as well as the rights of victims to receive protection and recovery from trauma as a result of the crime of trafficking in persons. This regulation aims to provide protection and assistance to victims of the criminal act of trafficking in persons, both in terms of physical and psychological security. In addition, this program also aims to assist victims in obtaining recovery and return to their place of origin.²⁵

The procedural rights model is a model that provides rights or procedures to victims of crime in the legal process. In this model, victims are given the right to be involved in the process of resolving cases, such as the right to provide information, the right to be present in disputes, and the right to obtain information about the progress of cases. This is expected to provide legal certainty and justice for victims. Whereas in the service model, the government is considered to have the responsibility to provide adequate services for victims of crime both in terms of physical and mental health rights, education, and social rehabilitation. This model emphasizes the importance of the government's role in helping victims to recover and return to contribute to society after experiencing trauma as a result of a crime.

Both models have the same goal, which is to provide legal protection and recovery for crime victims. However, the approach used in each model is different, so that the role of the victim in the legal process and the responsibility of the government in providing services are also different. Victims of crime need adequate attention and services from those who control them, because the crimes they experience can have a negative impact on the physical and mental health of victims, and can have a negative impact on the physical and mental health of victims and can have an impact on their quality of life and well-being..

Adequate services can help victims recover physically and psychologically, as well as provide the legal certainty and justice they desire. Services for victims of crime can also prevent secondary trauma and prevent victims from becoming repeat victims. Therefore, it is important for the state and society to provide adequate attention and services to victims.

Services to victims are activities carried out by parties involved in the criminal justice system and other parties who are responsible for dealing with victims of crime. The purpose of victim services is to provide support and

²² Yulia Rena, *ibid*,h. 90

²³ Yulia Rena, *ibid*,h. 91

²⁴ Barda Nawawi, "Perindungan Korban Kejahatan Dalam Proses Peradilan Pidana", Artikel Dalam Jurnal *Hukum Pidana dan Kriminologi*, 1998, Vol. 1., No. 2

²⁵ Soares Mariano Freitas, *Log Cit.* h. 45

assistance to victims of crime in recovering and reducing the suffering caused by the victimization they have experienced.

Activities in victim services can include providing information to victims about their rights, ongoing legal processes, and other sources of assistance available to them. In addition, examination actions such as medical or forensic examinations can also be carried out in order to help collect evidence and strengthen ongoing criminal cases. Individual intervention can also be carried out in order to assist victims in recovering from the trauma caused by the victimization they experienced. This can include providing health services, psychological therapy, and other social support that can assist victims in coping with the psychological and emotional effects of the crimes they have experienced.

By providing adequate services to victims, it is hoped that victims will feel heard and valued and get the support and assistance they need in dealing with the victimization they experience. In addition, victim services can also help increase victims' participation in the criminal justice process and create a criminal justice system that is more responsive to the needs of victims of crime.

2. The method or modus operandi of the perpetrators of the crime of trafficking in children and women

The "forced innocence" stereotype that assumes that victims of trafficking in persons are always victims of physical violence or imprisonment is too simplistic and does not reflect the more complex realities of the actual situation of trafficking in persons. Many traffickers use the tactics of arrest and deception to gain the trust of victims and build initial cooperation with them, so that victims are willing to go abroad or accept job offers that are not what they expected.

Therefore, legal and social protection for victims of human trafficking needs to consider all types of preparation tactics used by traffickers, not just physical violence or mere confinement. Many people who are victims of human trafficking initially depart as irregular migrants in the hope of better financial returns in the destination country. However, they later become victims when they are ensnared by human trafficking syndicates who use them for exploitative purposes.

In many cases victims become trapped in debt bondage due to the high costs of getting out of their country of origin or paying for smuggling services. They are then forced to work in inhumane conditions or even forced into prostitution without their own permission. Some victims even experienced physical, psychological or sexual violence. This condition is very concerning and demands firmer action from the government and the international community to eradicate human trafficking and protect victims. Preventive actions such as providing education and raising awareness of the

dangers of human trafficking are also very important to prevent cases like this from happening in the future.

This is because many victims do not have the opportunity to report their cases to the police or are afraid to report cases that happened to them. Based on the information obtained, there are at least seven modus operandi that are most frequently found, namely:²⁶

1. Exploitation of Migrant Workers. TKW/TKI who are promised jobs as informal workers such as housemaids, shop assistants, factory workers, or restaurant servers. Then sent and received by agents in the destination country. In that country victims are employed like slaves, do not get their rights as workers such as salary and rest time, are not allowed to leave the workplace coupled with physical, psychological or sexual abuse.
2. Exploitation of prostitution. Prospective workers who were promised to work as informal workers such as housemaids, restaurant servers, babysitters and so on, turned out to be prostituted both inside and outside the country. The victim is defrauded, entangled in debt, forced to serve a number of men and is prevented from leaving the brothel before paying a large amount of money that is considered owed to the pimp, so the victim cannot do anything about it.
3. Forced labor. Adult men and children are offered jobs on plantations, lumber mills, or as construction workers abroad, and are promised high salaries and mess facilities provided by the company. Arriving at the work location, it turned out that the victim was forced to work without adequate pay and rest, was prevented from leaving the workplace and did not get a decent place to live.
4. Training or training. Children who are sent abroad for reasons of training are then forced to work in hotels, restaurants, on fishing boats and jermals without pay and sufficient rest time. The victim was deceived on the grounds that she was a cultural ambassador, but in fact she was later prostituted or forced to become an erotic dancer.
5. Kidnapping. Teenage girls are kidnapped on their way home from school and then

²⁶ International Organization for Migration (IOM), *Penegakan Hukum dan Perlindungan Korban Dalam Penanganan Tindak Pidana Perdagangan Orang*. 2009.h.16

drugged and transferred to be prostituted. Anesthesia that often occurs on adult women, usually on public vehicles.

6. Order Bride. The victim was promised to be married off to a foreign national but then her husband used her to help in the household or even prostituted her.
7. Contract marriage. The victim was in contract marriage and exploited by her husband as prostitution.

Indonesia was once in the international spotlight, when the American government in its annual report on trafficking in persons (2002), placed Indonesia in Tier III or countries that did not meet the minimum standards for handling trafficking in persons and did not make significant efforts to respond.²⁷

Trafficking in persons is like an iceberg phenomenon, considering that the actual data is far greater than what is reported. Human trafficking is a global problem whose activities are based on the principle of high profit low risk.²⁸ The phenomenon of human trafficking, especially women and children or known as Trafficking is not a new thing today. Trafficking in the eighth edition of the Black's Law Dictionary is to trade or deal in goods, illicit drugs or other contraband.²⁹

Trafficking in human beings is interpreted as a phenomenon of moving people or groups of people from one place to another, who are then burdened with debt for the costs of the immigration process. This is indeed an obstacle in efforts to help victims of human trafficking, migrant smuggling is often an entry point for traffickers to use victims in sexual exploitation or forced labor. They are often caught in difficult situations and cannot escape.

Therefore, there is a need for better efforts to search for and protect victims of human trafficking, trauma in complex migration situations. This requires close cooperation and coordination between various agencies, including government agencies, international agencies, and civil society organizations. In addition, there is also a need to increase public awareness and understanding of the dangers of human trafficking and ways to prevent it.

Indonesia the UN protocol on Trafficking was adopted in the National Action Plan (RAN) for the Elimination of Trafficking in Women and Children. RAN which was strengthened in the form of RI Presidential Decree Number 88 of 2002, stated that trafficking of women and children is all acts of traffickers that contain one or another act of appeasement between regions and between countries,

transfer of hands, departure to shelters, and temporary shelters or at destinations, women and child. By means of threats, use of verbal and physical force, kidnapping, safekeeping, trickery, taking advantage of positional vulnerability (e.g. when a person has no other choice), isolation, drug dependence, debt trapping, giving or receiving payments or benefits.

The crime of trafficking in persons is a serious crime against humanity that is urgent in nature. This is due to the following reasons:³⁰

1. Trafficking in persons is considered the "most profitable industry" compared to other organized crimes, such as trafficking of drugs and arms. This concerns humans who are treated as "commodities" that can be recycled. That is, victims are exploited, tortured and treated inhumanely repeatedly to increase the perpetrator's profit.
2. Trafficking in persons is "modern day slavery," meaning that perpetrators prey on those who are in a vulnerable position who are economically, physically or emotionally weak. The perpetrator uses modern ways to treat humans like slaves.
3. Trafficking in persons is a violation of "human rights". Victims are not given their basic human rights, such as the right to freedom of movement, the right to a decent standard of living including enough food, clothing and shelter, the right to a standard of living for health and personal welfare.
4. Trafficking in persons is an organized crime that is carried out either in conventional ways through persuasion of sponsors to modern methods, for example through advertisements in print or electronic media. Perpetrators organize crimes by building a network from the region/country of origin of the victim to the region/country of destination.

Protection of victims is basically an inseparable part of human rights issues, and the rights of victims themselves are an inseparable part of the concept of human rights. Therefore, if these human rights have been threatened or disturbed, it is necessary to guarantee legal protection for victims. Within the framework of protecting human rights, in essence, the protection of women and children is one

²⁷ Laporan Tahunan yang dikeluarkan oleh Pemerintah Amerika Serikat, Kantor untuk memonitor dan memerangi Perdagangan Orang. Departement of State Office to Monitor and Combat Trafficking in Persons in June 5, 2002. <http://www.state.gov/g/tip/rls/tiprpt/2002/10680.htm>

²⁸ <http://www.kabarbisnis.com/read/2817137>, *Kasus Perdagangan Manusia Semakin Memprihatinkan*, diakses 4 Januari 2023

²⁹ Henry Campbell Black, *Black's Law Dictionary*, Eight Edition, West Publishing Company., St. Paul Min, 1979, h. 1534

³⁰ Gandhi Lopian dan Hetty A. Geru, *Trafficking Perempuan dan Anak (Penanggulangan Komprehensif, Studi Kasus : Sulawesi Utara)*, Convention Watch Universitas Indonesia, Jakarta, 2010, h 65.

manifestation of the right to live, the right to be free from slavery or slavery. This human right is eternal and universal, meaning that it applies to everyone without discriminating against origin, gender, religion, and age so that every country is obliged to uphold it without exception.

Based on existing provisions, one of the rights of victims of the Crime of Trafficking in Persons is the right to obtain restitution, which states that restitution is payment of compensation that is charged to the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or expert. his heir. This means that restitution is more directed to the perpetrator's responsibility for the consequences caused by the crime committed by the perpetrator. The main goal is to overcome all the losses suffered by the victim.

Efforts to tackle and eradicate the rampant trafficking of women and children is the time when various components of society are working together to find solutions and overcome them. Efforts to protect the law against women and children, one of which is through the prevention and eradication of human trafficking, need to be continuously carried out in order to maintain quality human resources. The quality of protection for women and children should have the same degree/level as protection for adults and men, because everyone has the same position before the law (equality before the law).

IV. CONCLUSION

Protection for victims of trafficking in persons can take the form of abstract and concrete protection. Abstract protection can provide emotional satisfaction for victims, such as a sense of justice and protection from damage or worry. Meanwhile, concrete protection can be provided in the form of material and non-material assistance, such as compensation or restitution, recovery of living expenses or education, restrictions from threats and protection from limited publications. This concrete protection aims to help victims restart their lives after experiencing a traumatic experience.

The mode of human trafficking that often occurs involves accountability by agents in various ways, either through propaganda or in more abusive ways such as violence, intimidation, deception, kidnapping, to debt bondage and the use of power. The aim is to profit from the work or activities carried out by the victim, which is often carried out under inhumane or conditions of work similar to conditions. Therefore, the mode of human trafficking that actually occurs is a very serious form of human exploitation and must be stopped firmly.

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