

## Legal Protection of Children and Women Victims of Trafficking Crimes

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### ARTICLE INFO

**Keywords:**

*Legal Protection;  
Crime;  
Human Trafficking;  
Victims*

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### ABSTRACT

As we know, in Indonesia the protection of human rights (HAM) is very concerning. This can be seen from the many human rights violations. Examples of human rights violations are discrimination and are acts of violence. Human trafficking is one of the human rights violations that occur in Indonesia. The data recorded that children and women are the groups most often victimized in cases of criminal acts. Victims of human trafficking are not only for things whose purpose is sexual exploitation such as prostitution, victims become exploitation in other forms such as forced servants or forced labor and slavery. There are many problems in the form of manipulation in this kind of exploitation, especially against children and women due to the many criminal acts in human trafficking. Children and women, who deserve proper treatment, instead become material for exploitation for various purposes in many specific respects. The rise of human trafficking cases in Indonesia is also evidence that the legal conditions for respect and protection of human rights, especially human trafficking in Indonesia, are still insufficient to protect them.

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**Jurnal Restorasi :Hukum dan Politik**

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### INTRODUCTION

Reducing crime in Indonesian society is not easy to do, especially now that Indonesia is just free from the crisis caused by the COVID-19 Virus. Although we can see that there has been a lot of progress in economic growth, there are still many problems and challenges that will follow. If we talk about the field of law, we can see how controversial issues occurred in its development. On the one hand, such as facilities, infrastructure, legal materials and legal apparatus development have improved a lot. However, on the other hand, this is not balanced with the increase in legal awareness, the quality of service in law, the professionalism of law officers, and the absence of certainty in legal justice which results in the enforcement of existing laws in Indonesia cannot be realized. The increase has not been accompanied by significant concrete steps and sincerity in the government and law enforcement officials in enforcing and implementing it. Overlapping and uncertain laws and interference in the judicial process make the legal crisis in Indonesia. This legal condition results in respect and protection of human rights in Indonesia is still very poor.

The international world noted that Indonesia is one of the countries with the most sources of activities in Human Trafficking. Data Annual Trafficking in Person Report from the US Department of State in The Trafficking Victims Protection Act of 2000 April 2001-March 2002, Indonesia is included in the Tier-32 category, which means countries that are less compliant in combating crime in human trafficking / trafficking in person.

There are also many news that inform through print and electronic media related to the rampant forms of manipulation and exploitation of children and women. For example, UNICEF (United Nations Children's Fund) estimates that more than 2.5 million children and women are involved in *human trafficking*. The United Nations estimates that in the last 30 years the social exploitation *and human trafficking of* children and women in Asia has reached 30 million victims.

In Indonesia for the period 2007-2010, data shows an increase in the handling by the National Police Headquarters in *human trafficking* cases (20.3% in 2007 and 61.9% in 2010). In the case of *human trafficking*, the position of children and women is very weak and helpless and even seems resigned when mistreated, both physically and mentally. *Human trafficking* is a criminal act that is inhumane, because it is very contrary to the nature and nature of children and women who are creations of God who must be protected in dignity and dignity.

## METHOD

The method used in this study is descriptive qualitative research research. Qualitative research is research that intends to understand phenomena about what is experienced by research subjects such as actions, behaviors, motivations and perceptions. This research method describes in words and language, in a special natural context and by utilizing various natural methods. This journal will contain data quotations to give an idea in presenting the report. This journal also uses normative legal research methods (normative juridical), namely research that refers to and leads to legal norms and principles and is sourced from library research and various laws and regulations related to the writing of this research.

## RESULTS AND DISCUSSION

### Legal Protection of Trafficking Victims

In the basis of human rights protection, protection of children and women is a manifestation of human rights to be free from slavery. This right is universal, applicable to every individual human being without distinction of sex, origin, age and religion. Therefore, the state is obliged to take care of it. Efforts in legal protection for children and women, one of which is by preventing and eradicating *human trafficking*, which is continuously carried out in order to maintain quality human resources. The quality of protecting children and women should have the same level / degree of protection for men and adults, because every individual has an equal position in the law (*equality before the law*).

For countries that make laws in it regarding the problem of victims in human trafficking crimes, then to be able to explain what is meant by victims in crimes basically based on UN General Assembly Resolution (RMU) No 40134 Yr 1985 No 1 which states victims of crime are people who, either individually or collectively, suffer losses due to acts that violate criminal law in force in a country, This includes regulations prohibiting abuse of power. Child and women's protection laws should be in accordance with existing humanitarian regulations, in order to avoid deviant behavior in the protection of children and women. The law will provide protection to children and women.

Victims in human trafficking in protection starting from a person can be interpreted as a victim of human trafficking. Legal protection of human trafficking victims begins with the process of investigation, proceedings, trials, social rehabilitation, to the process of repatriation of human trafficking victims. Legal protection of victims of human trafficking crimes must also be supported by protection by the community, legal aid, medical services and compensation. Conferences are also held to provide legal protection that also discusses matters related to tackling the increasing crime of *human trafficking*.

### Legal Protection of Human Trafficking Victims in Indonesia

The Indonesian state has an obligation in the constitution to be able to provide protection to its citizens. In the Preamble of the 1945 Constitution, this is one of the objectives of the Government in the Unitary State of the Republic of Indonesia (NKRI) to protect and safeguard the people of Indonesia and promote general welfare within the Indonesian nation. Norms in Human Rights (HAM) state that the obligation of the state is to fulfill, respect and protect the human rights of every

citizen of the Indonesian nation. It is the responsibility of the state to ensure the realization of law enforcement. If there is a violation in terms of human rights, the state will not maintain the absence of enforcement in its law or even indirectly become part of a violation of human rights.

The principle of regulation that has the meaning of noble values that guarantee human rights to protect human dignity, develops following the demands of conscience in every human being. This is the basis of policies in protecting children and women. The foundations of child and women's protection are:

1. Philosophical Foundation, in this case Pancasila becomes the main basis of every activity from various fields of life in the nation, state and society
2. Ethical foundations, norms that aim to safeguard and protect the welfare of children and women based on Pancasila (social justice for all Indonesian people.)
3. The juridical basis, in the implementation of child and women protection must be based on the 1945 Constitution and various other applicable laws and regulations. The application of this juridical basis must be continuous whose application is integrated with each other regarding laws and regulations from other fields of law.

Protection of violence against children and women is a human right that must be obtained by every Indonesian citizen. Based on this, Psl 27 paragraph (1) of the 1945 Constitution states that all Indonesian citizens are equal in law and government with no exceptions. From the statement of the article states that there is no difference in the position of legal protection for all people of the State of Indonesia.

In accordance with the development of law and socio-politics in Indonesia, the government has issued a new law. Talking about human rights issues which at first Indonesia only relied on regulations in the provisions of the United Nations (UN), especially the Universal Declaration of Human Rights, now the Indonesian nation state has been proud of the existence of Law No. 39 of 1999 concerning Human Rights issues. According to Law Number 39 of 1999 concerning Human Rights, Article 1 states that human rights (HAM) are a set of rights that are essentially inherent in human existence as creatures of God Almighty and are gifts that must be upheld, glorified, respected and protected by law, government, state and every human being for the protection and honor of human dignity. Therefore, human rights can be understood to belong to God which is fundamental and inherent in every human being as his gift. Further laws have been created:

1. Law No. 21 of 2007, concerning the Eradication of Criminal Acts in *Human Trafficking*.
2. Law No. 14 of 2009, concerning the ratification of the Protocol on Punishing, Prosecuting and Preventing *Human Trafficking*, Especially Children and Women, this Law complements the Convention in the United Nations against Transnational Organized Crime
3. Law No. 12 of 2017, concerning the ratification of the ASEAN Convention against *Human Trafficking*, especially to children and women.

In a criminal case, the victim will certainly suffer losses (material and/or immaterial). Ironically, victims of crime are often the forgotten ones. According to Psl. 1 No. 3 of the Law on Combating Trafficking in Persons, victims can be understood as persons who suffer psychologically, spiritually, physically, sexually, economically, and/or socially as a result of trafficking crimes. G. Widiartana explained, based on the purpose of the perpetrator's actions, victims can be divided into two categories, including:

1. Direct victims are those who feel directly targeted or objectified by the attacker's actions.
2. Indirect victims are people who are not direct subjects of crime but still have to suffer.

As per the constitution, the state has an obligation to fight to protect its citizens. As affirmed in the Preamble to the Constitution of the Republic of Indonesia in 1945, one of its objectives is to establish a government of the Republic of Indonesia that is able to protect the entire Indonesian nation and all descendants of Indonesia, such as promoting general welfare and education in the life

of the nation. In terms of victims, women and children are the most vulnerable groups to become victims of trafficking-related crimes. Sometimes this trafficking not only involves sexual exploitation but is also used for other exploitative purposes, particularly forced labor and slavery. Therefore, it is very important to have legal protection for victims of human trafficking. Trafficking in persons is, of course, a serious violation of human rights, which is not only manifested in action, but also affects trafficking victims, particularly children and women.

Article 13 of Law No. 23 of 2002 concerning Child Protection explains that:

1. Every child currently in the custody of a parent, guardian or other party who has responsibility for care, is entitled to treatment and protection:
  - a. Discrimination
  - b. Exploitation, both economic and sexual;
  - c. Lanting;
  - d. Cruelty, violence and persecution;
  - e. Injustice and;
  - f. Other mistreatment
2. Regarding the event that parents, guardians or caregivers of children experience forms of treatment as referred to in paragraph (1), the perpetrators will be subject to severe punishment.

The limitation / definition of protection in Law No. 13 of 2006 is stated as all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and / or victims which must be carried out by the Witness and Victim Protection Agency or other institutions. There are two possible types of victim protection that can be used in *human trafficking* investigations, namely:

1. There is a program in the form of full protection for victims managed and supervised by the State Government.
2. The program will include support, safety and assistance provided based on cooperation between victim assistance agencies and investigators.

## CONCLUSION

In the case of *human trafficking*, the position of children and women is very weak and helpless and even seems resigned when mistreated, both physically and mentally. *Human trafficking* is a criminal act that is inhumane, because it is very contrary to the nature and nature of children and women who are creations of God who must be protected in dignity and dignity. As per the constitution, the state has an obligation to fight to protect its citizens. As affirmed in the Preamble to the 1945 Constitution of the Republic of Indonesia, one of its objectives is to establish a government of the Republic of Indonesia that is able to protect the entire Indonesian nation and all descendants of Indonesia, such as promoting general welfare and education. Indonesia has had Legislation No. 39 of 1999 concerning human rights issues.

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