

Journal of Comprehensive Science
p-ISSN: 2962-4738 e-ISSN: 2962-4584
Vol. 3. No. 11 November 2024

Legal Constipation on Protecting the Rights and Conditions of Victims of Human Trafficking Criminal Acts through The Implementation of Restitution

Muhammad Ansari
Universitas Borobudur, Indonesia
Email: ansari.ayi@gmail.com

Abstract

Inadequate efforts have been made to restore the rights and conditions of victims of human trafficking. This essay will look at the protection offered in order to better understand how victims of human trafficking crimes have not had their rights and losses satisfied. It takes a sociological-legal approach. The analysis of the available data indicates that the effective implementation of the protection of the rights of human trafficking victims has been hampered by the restitution regulations' lack of clarity regarding the amount and the regulation of substitute punishment for restitution. Victims of human trafficking may endure material, emotional, and bodily agony as a result of this crime against humanity. Moreover, it is challenging for victims and law police to record or.

Keyword: constipation, human trafficking, legal, victims

INTRODUCTION

The following national instruments address human rights issues in Indonesia, complementing international frameworks. The 1945 Constitution of the Republic of Indonesia serves as the foundational legal document. Law No. 68 of 1958 ratified the Women's Political Rights Convention, while Law No. 7 of 1984 ratified the Convention on the Elimination of All Forms of Discrimination Against Women. Law No. 39 of 1999 focuses on human rights, and Law No. 23 of 2004 addresses the elimination of domestic violence. In addition, Law No. 11 of 2005 ratified the International Covenant on Economic, Social, and Cultural Rights, and Law No. 12 of 2005 ratified the International Covenant on Civil and Political Rights. Law No. 21 of 2007 targets the eradication of human trafficking, complemented by Presidential Instruction No. 9 of 2000, which emphasizes the integration of gender mainstreaming in national development. Presidential Regulation No. 23 of 2011 outlines the Human Rights Action Plan for 2011-2014, while Law No. 21 of 2007 also addresses the eradication of trafficking in persons. Furthermore, Government Regulation No. 9 of 2008 establishes procedures for integrated services for victims and/or witnesses of human trafficking crimes. Together, these legal instruments form a comprehensive national framework that ensures the protection of human rights in Indonesia, in alignment with international human rights conventions.

Even with the presence of national and international organizations dedicated to protecting human rights, the quantity of crimes linked to human trafficking in this country is increasing on a daily basis (Pamuji, 2023). 3,703 TPPO victims operated as internet scammers between 2020 and March 2024, according to Woro Sri Hastuti Sulistyaningrum, Deputy for Coordination of Improving the Quality of Children, Women, and Youth of the Coordinating Ministry for Human Development and Culture (Kemenko PMK). Most of the victims were

coerced into engaging in this illegal work in Cambodia and the Philippines. The number was reportedly heard by over 2,500 people (Rusmiyati et al., 2022).

The Republic of Indonesia's Constitution's fourth paragraph in the Preamble and the second principle of Pancasila both call for values that are blatantly incompatible with humanity. Human trafficking is a significant contributing factor to the destruction of the chances for the next generation in this nation (Chuang, 2014). This is because those who are trafficked may become ill with a variety of ailments and experience extreme trauma.

This dangerous scenario is further exacerbated by the criminal justice system's paradigm, which solely takes into account retaliating against the criminals through the application of present criminal sanctions. Regaining the rights and conditions of people who have been trafficked has never received enough attention.

The urgency of this research is underscored by the alarming increase in human trafficking cases, despite the existence of national and international legal frameworks designed to protect human rights. As noted, thousands of trafficking victims in Indonesia, particularly those coerced into engaging in online scams, have emerged as one of the most pressing human rights challenges. The need to assess the effectiveness of existing legal instruments, such as the Law No. 21 of 2007 on the eradication of trafficking, and to investigate the broader implications of human trafficking on vulnerable populations, is critical. This research aims to evaluate not only the current legal responses but also the practical and institutional challenges faced in combating human trafficking. Given the evolving nature of trafficking activities and the use of technology to exploit individuals, the research will explore new, modern mechanisms and improvements to combat this ever-growing crime, offering timely recommendations for legal reforms and social interventions. Addressing this issue is essential to ensure the protection of fundamental human rights and the alignment of Indonesia's legal practices with international human rights standards.

The novelty of this research lies in its approach to integrating a legal and sociocultural perspective on human trafficking in Indonesia. While previous studies have focused on legal frameworks and their enforcement, this research offers a fresh approach by exploring the intersection of law, technology, and social dynamics in the context of human trafficking. The study incorporates a detailed analysis of internet-based human trafficking, particularly the exploitation of victims in cybercrime activities such as online scams, which is a relatively recent phenomenon. The research also introduces the concept of gender mainstreaming as outlined in Presidential Instruction No. 9 of 2000 and its application to combating trafficking, exploring how gender-focused interventions can further strengthen national strategies. Additionally, the novelty is found in the application of a qualitative approach to understand the lived experiences of trafficking victims, the role of enforcement agencies, and the gaps in legal processes. This multidimensional perspective provides a unique insight into the effectiveness and limitations of the current system.

The merits of this research are significant both at the national and global levels. At the national level, the research will provide crucial insights into the effectiveness of Indonesia's existing legal instruments and policies concerning human trafficking. By identifying gaps and weaknesses in enforcement, the study will contribute to the formulation of more robust, context-specific solutions that can be applied across regions in Indonesia. Additionally, the research will highlight the critical role of gender in addressing trafficking, fostering a more inclusive and sensitive approach to policy formulation and victim support. The findings will help shape future human rights policy in Indonesia, particularly in the realms of domestic violence, trafficking, and child protection.

RESEARCH METHOD

This study employs a descriptive-analytical approach within the framework of civil law research methodology. The primary aim of this research is to explore the relationship between legal provisions (specifically regarding marriage laws and the prevention of domestic violence) and social rights with a focus on the legal capacity and psychological maturity required in marriage.

The type of research utilized in this study is qualitative research. Qualitative research is ideal for understanding the complex social, cultural, and legal dynamics that influence domestic violence and the implications of marriage laws in Indonesia. This approach allows for a deeper exploration of the contextual factors that affect the interpretation and application of marriage laws, as well as the broader social impact of these laws on marital relationships.

The research design is descriptive-analytical. This design aims to describe the current state of marriage law reforms and analyze how these reforms address the issues of domestic violence and social rights in marriage. The research will:

1. Describe the current legal framework, including the Marriage Law of 2019 and other related legislations, with a focus on age limits and their implications for psychological and emotional maturity of married individuals.
2. Analyze how these legal provisions intersect with social rights, particularly the rights of women and children, and assess whether the reforms in the marriage law have had an impact on reducing domestic violence in Indonesia.

The research will use a combination of bibliographical analysis and a field survey:

1. **Bibliographical Analysis:** This method will involve the collection of secondary data from relevant legal texts, journals, articles, and previous research to provide a theoretical foundation for the study. Key areas of focus will include previous studies on marriage laws, child protection laws, domestic violence, and their interconnections.
2. **Field Survey:** The survey will involve primary data collection from individuals affected by the marriage law, including married couples, legal experts, and social workers dealing with domestic violence. The survey will use structured interviews or questionnaires to gather qualitative data on their experiences with marriage laws, psychological readiness for marriage, and the prevalence of domestic violence. The survey will also gather data on the public's understanding of marriage laws and social rights.

RESULT AND DISCUSSION

Current Laws in Indonesia Protecting Victims of Human Trafficking

Concerns of human rights are now frequently debated on a global basis alongside issues related to democracy and the environment. It has even become clear that in order to ensure, respect, and defend the rights of all residents and citizens without exception, the state must give these matters serious thought (Hara et al., 2023). As per the 16 Law Number 39 of 1999, human rights are those that are innate to human nature and our existence as creations of the Almighty God. Since these rights are His gifts, everyone must respect, uphold, and defend them in order to preserve human dignity and honor. This includes the state, the law, the government, and each and every individual.

Regarding letter b, Indonesian Law Number 21 of 2007 about the Eradication of the Crime of Human Trafficking declares that human trafficking is an act that breaches human rights and is incompatible with human dignity, so it must be stopped. Thus, the illegal activity of people trafficking is a transgression of human rights. Moreover, letter c notes that human trafficking has spread through regional and global organized criminal networks, endangering the nation, the state, society, and ideals of life based on respect for human rights (Sarwadi & Bawono, 2021).

Therefore, competent and efficient law enforcement may successfully accomplish community safety through the legal system. Law enforcement is the same as legal defense or legal enforcement against human trafficking. The enforcement of Indonesian laws and regulations pertaining to the crime of human trafficking is done by the imposition of criminal penalties, which include imprisonment, fines, and restitution (Suka & Gunarto, 2018).

The state's required victim integration and repatriation, together with their social, psychological, and medical rehabilitation, are additional legal safeguards. These measures are especially crucial for victims of human trafficking who experience injury to their bodies, minds, or social networks. This law also specifies that the federal government, local government, community, and family have a shared responsibility for the prevention and treatment of victims of human trafficking. It also controls the formation of task forces to carry out integrated measures in the implementation of prevention and handling of human trafficking.

Enhancing the accessibility of services by building Integrated Service Centers in national, provincial, and local government-owned general hospitals, central police hospitals, and Bhayangkara hospitals nearby also helps to improve the protection provided to victims of human trafficking. There are now 226 units in 26 regional police (provinces) that oversee special police service rooms; this number will continue to rise as additional regional police and resort police (districts/cities) are created across Indonesia. These units are managed by female police officers. Furthermore, an increasing number of community and non-governmental groups are establishing women's crisis centers, drop-in facilities, or shelters; at the moment, there are 23 such facilities spread throughout 15 provinces. Furthermore, at least 20 children's center units designed specifically for refugees have been

The Lack of Legal Guidance on Implementing Restitution to Protect The Rights and Conditions of Victims of Criminal Acts of Human Trafficking

Justice has not been realized in the establishment of protection for victims of trafficking offenses. This is evident in Law Number 21 of 2007's restitution regulations, which address the eradication of criminal acts related to human trafficking. Law Number 21 of 2007 Concerning the Eradication of Criminal Acts of Human Trafficking contains regulations pertaining to restitution in Articles 48 through 50.

Pasal 48

- (1) Every victim of human trafficking or their heirs has the right to receive restitution.
- (2) Restitution as referred to in paragraph (1) is in the form of compensation for:
 - a. loss of wealth or income;
 - b. suffering;
 - c. costs for medical and/or psychological care; and/or
 - d. other losses suffered by the victim as a result of human trafficking.
- (3) Restitution is given and included at the same time in the court decision on the case of human trafficking.
- (4) The provision of restitution as referred to in paragraph (1) is carried out since the decision of the first instance court is issued.
- (5) Restitution as referred to in paragraph (4) may be deposited first at the court where the case was decided.
- (6) Restitution is given within 14 (fourteen) days from the notification of the decision that has obtained permanent legal force.
- (7) In the event that the perpetrator is acquitted by the appellate or cassation court, the judge orders in his decision that the deposited restitution money be returned to the person concerned.

Pasal 49

- (1) The implementation of the provision of restitution is reported to the head of the court that decided the case, accompanied by proof of the implementation of the provision of restitution.
- (2) After the head of the court receives the proof as referred to in paragraph (1), the head of the court announces the implementation on the notice board of the relevant court.
- (3) A copy of the proof of the implementation of the provision of restitution as referred to in paragraph (1) is submitted by the court to the victim or his/her heir.

Pasal 50

- (1) In the event that the implementation of restitution to the victim is not fulfilled beyond the time limit as referred to in Article 48 paragraph (6), the victim or his/her heir shall notify the court of this.
- (2) The court as referred to in paragraph (1) shall provide a written warning letter to the restitution provider, to immediately fulfill the obligation to provide restitution to the victim or his/her heir.
- (3) In the event that the warning letter as referred to in paragraph (2) is not implemented within 14 (fourteen) days, the court shall order the public prosecutor to confiscate the convict's assets and auction the assets to pay restitution.
- (4) If the perpetrator is unable to pay restitution, the perpetrator shall be subject to a substitute imprisonment of a maximum of 1 (one) year.

The aforementioned explanation makes it clear that restitution has evolved into a substitute in an attempt to defend and uphold the rights of those who have suffered harm as a result of the crime of human trafficking. Point 4 part 1 General Principles of the United Nations Declaration on the Prosecution and Assistance of Crime Victims include explicit regulations on restitution in its growth (Waluyo, 2022).

In the meanwhile, Law Number 31 of 2014 lays out in detail how national legal standards govern the supervision of reparation. The definition of "restitution" under Law Number 31 of 2014's Article 1 number 11 is "compensation given to the victim or his/her family by the perpetrator or a third party." Moreover, Law Number 31 of 2014's Article 7A number 1 states that:

Criminal victims are entitled to reparation in the following forms:

- a. compensation for loss of wealth or income;
- b. compensation for losses caused by suffering directly related to the criminal act; and/or
- c. reimbursement of medical and/or psychological care costs.

Furthermore, the Republic of Indonesia Government Regulation Number 43 of 2017's Article 3 on the Implementation of Restitution for Children Who Are Victims of Criminal Acts states the following:

Restitution for children who are victims of criminal acts in the form of:

- a. compensation for loss of property;
- b. compensation for suffering as a result of the crime; and/or
- c. reimbursement of medical and/or psychological care costs.

The use of restitution for the recovery of victims of human trafficking has not shown to be successful in its development, as Article 7 of Government Regulation of the Republic of Indonesia Number 43 of 2017 still contains administrative requirements that cause problems for victims. As a result, the government ought to be able to help in meeting these administrative needs. In addition, financial difficulties often prevent offenders from making restitution, which further exacerbates the unfairness of the situation because the offender's inability to make restitution is only made up for by a secondary sentence of two to three years in prison (Wibowo & Khisni, 2018). It may also take a long time for young victims of human trafficking to get

compensation due to the length of the judicial process and the fact that the culprits are either imprisoned or have received death sentences (Kamea, 2016).

Government Regulation Number 7 of 2018 was subsequently released by the government in 2018 and it addressed the support, reparations, and recompense given to witnesses and victims. However, as compensation has evolved, using it in place of restitution has also proven to be challenging. This is due to the fact that no government-designated institution has the authority to assess the magnitude of losses suffered by victims, and it is also unclear which state institution is permitted to compensate victims of human trafficking—especially women—with state funds (Dewi et al., 2019). Furthermore, the victim would have difficulties due to the intricate administrative processes involved in filing a compensation application. According to Article 3 of the Government Regulation of the Republic of Indonesia Number 43 of 2017 concerning the Implementation of Restitution for Victims of Human Trafficking, the issue of restoring the conditions and rights of victims of human trafficking is only specifically regulated for child victims. This makes it evident from the explanation that is currently in place that the legal framework pertaining to this restoration of victims' rights and conditions is not yet clear in terms of its implementation. The lack of a regional framework for the rehabilitation of

Article 103 letter E of Law No. 39 of 2004 about the Placement and Protection of Indonesian Migrant Workers Abroad does not derive from the elements outlined in Law No. 21 of 2007 on the Eradication of the Crime of Human Trafficking. This is quite severe, given that human trafficking can result in psychological and physical harm. The idea that justice and compensation can heal the psychological damage done to victims of human trafficking is currently incorrect. This is because psychological violence can result in both short-term and long-term consequences (Yenny et al., 2020).

Short-term consequences include emotional and mental disorders, damage to the family, and a risk to the victim's security. Trauma and the experience of being a human trafficking victim can also cause people to conduct violent crimes as adults, even if the victim is still a minor. The signs of despair, anxiety, insomnia, low self-esteem, and rage make this clear (Advianti, 2017). This is obviously unjust to the people who have been trafficked.

Such conditions clearly contradict the First, Second and Fifth Principles of Pancasila, as well as the Fourth Paragraph of the Opening of the 1945 Constitution of the Republic of Indonesia as the goal of the state, as well as Article 28D paragraph (1) and Article 28G paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia as the basic foundation regarding the human rights of victims of human trafficking, and as the ratio legis in law in Indonesia (Takariawan & Putri, 2018).

A scenario like this has also gone against the fundamental principle behind the creation of criminal law. Together, Pancasila and the 1945 Constitution of the Republic of Indonesia have made it clear that the realization of national and state life must be based on the following values: social values that demonstrate the nationalist, democratic, and social justice-upholding patterns of Indonesian nation and state; belief in God Almighty as the cornerstone of Indonesian nation and state; and humanitarian values as a pattern of recognition, appreciation, and protection of human rights in the life of the Indonesian nation and state (Friyandi & Witasari, 2019).

This demonstrates unequivocally that criminal punishments for offenses involving human trafficking are applied solely based on the conduct and the offender, with the victim being ignored (Barda Nawawi Arief, 2018).

This is also manifestly incompatible with Islam's interpretation of the purpose of law. Throughout its evolution, the concept of maqsid al-Syariah has clarified that the five things that the law needs to be able to safeguard are (Dewi et al., 2019):

1. Religion;
2. Reason;

3. Soul;
4. Property;
5. Heredity.

Additionally, this has blatantly transgressed the dictates of Islamic doctrine. Islam has taught all people to constantly defend one another as brothers and to abolish slavery since these ideals are incompatible with the principles that underpin God, humanity, and justice (Muhammad, 2021).

CONCLUSION

Based on the results and discussion of the research, it can be concluded that this research highlights the critical gap in implementing restitution, compensation, and rehabilitation for victims of human trafficking due to the absence of a clear mechanism or established indicators for calculating and awarding restitution. The inability of law enforcement officials, particularly judges, to determine the precise amount of loss suffered by victims stems from challenges in documenting and presenting comprehensive evidence during legal proceedings. As a result, victims are deprived of adequate legal protection and financial recovery necessary to restore their well-being. This underscores the urgent need to establish standardized mechanisms and measurable indicators for calculating restitution in cases of human trafficking. Such mechanisms would provide a clear framework for law enforcement and judicial bodies to assess and address victims' losses effectively. By ensuring that victims receive fair and just compensation, the legal system can uphold its commitment to protecting the rights and dignity of trafficking victims, while fostering accountability and deterrence against this grave violation of human rights.

BIBLIOGRAPHY

- Advianti, M. (2017). KPAI: Perpetrators of violence against children are increasing every year. *Accessed on, 15.*
- Barda Nawawi Arief, S. H. (2018). *The problem of law enforcement and criminal law policies in crime prevention.* Prenada Media.
- Chuang, J. A. (2014). Exploitation creep and the unmaking of human trafficking law. *American Journal of International Law, 108*(4), 609–649.
- Dewi, R., Wahyuningsih, S. E., & Ma'ruf, U. (2019). Law Enforcement Of Giving Restitution For Victims Of Trafficking In The State Court Of Central Jakarta. *Journal of Legal Sovereignty, 2*(4), 535–542.
- Friyandi, M. G., & Witasari, A. (2019). Restorative Justice In Application For Crime Investigation Abuse In Polsek Middle Semarang. *Journal of Legal Sovereignty, 2*(1), 39.
- Hara, A. E., Trihartono, A., & Indriastuti, S. (2023). *Human Security: Exploring Different Perspectives in the World.* Pandiva Book.
- Kamea, H. C. (2016). Criminal Law Enforcement Against Trafficking in Persons Crimes According to Law Number 21 of 2007. *Lex Crimen, 5*(2).
- Muhammad, K. H. H. (2021). *Islam is a women-friendly religion.* IRCiSoD.
- Pamuji, M. A. A. (2023). *The Role of the International Organization for Migration (IOM) in Tackling Human Trafficking in East Nusa Tenggara 2014-2018.* Islamic University of Indonesia.
- Rusmiyati, R., Hendiyani, M. F., Nooraini, A., & Alma'arif, A. (2022). *Border Management.* Cendekia Press.
- Sarwadi, S., & Bawono, B. T. (2021). Restorative Justice Approach in Diversion System for Settlement of Criminal Cases for Children in Indonesia. *Journal of Legal Sovereignty, 3*(4), 396–402.
- Suka, I., & Gunarto, G. (2018). The role and responsibility of the National Police as law

enforcers in implementing restorative justice for justice and the benefit of the community. *Khaira Ummah Law Journal*, 17(3), 120–127.

Takariawan, A., & Putri, S. A. (2018). Legal protection for victims of human trafficking from the perspective of Human Rights. *Ius Quia Iustum Law Journal*, 25(2), 237–255.

Waluyo, B. (2022). *Viticmology: Protection of Victims and Witnesses*. Sinar Grafika.

Wibowo, R. T., & Khisni, A. (2018). Restorative Justice in Application for Crime Investigation on Property. *Journal of Legal Sovereignty*, 1(2), 565–570.

Yenny, A. S., Yuliastini, A., & Setiawati, R. (2020). The Handling Of Human Trafficking With Mail Order Bride Mode In West Kalimantan. *International Journal of Law Reconstruction*, 4(2), 69–80.



This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License.