

# JURIDICAL ANALYSIS OF PROTECTION OF VICTIM EXAMINATION IN THE PROCESS OF INVESTIGATION OF THE CRIME OF TRAFFICKING IN PERSONS TO REALIZE THE PROTECTION OF THE LAW AND HUMAN RIGHTS (RESEARCH STUDY OF BARELANG POLICE)

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## ABSTRACT

*This study aims to determine and analyze the protection of victims' examinations in the process of investigating criminal acts of trafficking in persons to realize legal and human rights protection (Case Study of Barelang Police). The research method used is normative juridical with a statutory approach. The results of the study indicate that the legal regulation of the criminal act of trafficking persons in Indonesia is adequate and good in law enforcement, eradication, and protection of witnesses and victims. Enforcement, eradication, and protection of perpetrators, victims, and witnesses have been contained in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. Implementation of forms of legal protection provided to victims of trafficking in persons directly and indirectly. The biggest obstacle in law enforcement of the criminal act of trafficking in persons, including this crime is organized crime so that the perpetrator has a backing, victims of crime and the public who know the crime of trafficking in persons are afraid to report to the authorities because of shame and fear of the threat of the perpetrator. As for the forms of solutions for victims of trafficking in persons, namely establishing an integrated service center, social protection houses, repatriating victims of trafficking in persons, and legal aid.*

**Keyword:** *Trafficking In Persons, Protection, Investigation, Crime.*

## 1. INTRODUCTION

Indonesia is a country that supports human rights. Human Rights are protected by law. Law Number 39 of 1999 Article 2 that the Republic of Indonesia recognizes and protects human rights and basic human freedoms that are inherent and inseparable, from protection, respect, happiness, and intelligence and justice. Human rights also have the right to protect children because children are the hope of parents and the State (Law Number 39 of 1999 Article 2 Concerning Human Rights).

The protection and respect for human rights in Indonesia is still a concern as can be seen from various human rights violations, including in the form of acts of violence, discrimination, and arbitrariness. The development that has been implemented also seems to be only oriented to physical development compared to human resource development (HR). Human resource development is still lagging behind compared to physical development (facilities and infrastructure), such as the uneven distribution of opportunities for education for the lower classes, resulting in many children dropping out of school, the cost of education is increasing from year to year, health services are not evenly distributed,

Trafficking in Persons is the act of recruiting, transporting, harboring, sending, transferring or receiving a person by means of threat of force, use of force, abduction, confinement, fraud, deception, abuse of power or position of vulnerability, debt bondage or payment or benefit, so as to obtain the consent of a person who has control

over another person, whether carried out within a country or between countries, for the purpose of exploitation or causing people to be exploited. Basically, almost all countries in the world experience the problem of human trafficking (trafficking in person), although to varying degrees. There are countries that become destination countries for human trafficking, transit countries or countries where human trafficking occurs, as experienced by Indonesia.

The problem of human trafficking is closely related to human dignity. With the increasing prevalence of trafficking in persons in various countries, including Indonesia and other developing countries, it has become the attention of all the international community, especially the United Nations (UN), as stated in the 2000 UN Protocol on preventing, eradicating and punishing the Crime of Trafficking in Persons, especially Women and Children (Palermo Protocol) which has been approved and signed by various countries including Indonesia.

The crime of trafficking in persons, especially women and children, has spread in the form of organized and unorganized crime networks. From several cases that were tried, it turned out that most of the trafficking in persons was carried out in an organized manner. The network of perpetrators of the crime of trafficking in persons has a range of operations not only between domestic regions but also between countries (Eliwanti, 2011:28). Indonesia's strategic location, and is a country where 2/3 of its area is an ocean bordering the Indian Ocean, Papua New Guinea, South China Sea, Singapore, Malaysia, the Philippines, and Australia, makes Indonesia have many advantages and disadvantages from these border areas. One of the national and international issues is human trafficking.

There is concern about the emergence of various forms of human manipulation and exploitation, especially against women and children as a result of the rampant crime of human trafficking, it is not without reason. Women and children should receive proper treatment and should not be exploited for certain purposes. Because, women and children are creations of God Almighty, their dignity and self-respect need to be protected and their right to live is guaranteed to grow and develop according to their nature and nature. Therefore, all forms of treatment that interfere with and destroy their basic rights in various forms of inhumane use and exploitation must be stopped immediately without exception. In the case of human trafficking, the position of women and children is helpless and weak, both physically and mentally,

Batam City with a population of 1,193,088 million people with more male population than female population. The average age of the workforce is 15 to 60 years. Not a few residents of Batam City who have a poor educational background so that many are unemployed and hope to get a decent job. This page is used by irresponsible people to invite and recruit residents who are not working by giving tempting promises. Of course this is attractive to the unemployed especially uneducated women and children.

Based on data published by the Women and Children Protection Unit (PPA) of the Bareleng Police of Batam City in April 2022 regarding the case of trafficking in women and children, this occurred due to the economic squeeze in the midst of the COVID-19 pandemic. As the page of the case in Batam city, on Wednesday, January 19, 2022 and Tuesday, January 25, 2022, the perpetrators with the initials Z and Y, residents of Belian Behind the Padang were arrested, related to the case of trafficking in persons that has been reported by the PPA Unit Polresta Bareleng, that there are 11 women who are being accommodated in the Terong Island area, Behind Padang to be illegally employed in Malaysia. Suspects Z and Y are the ones who took care of the victims' departure. Starting from sheltering and dispatching to bringing together illegal migrant workers and tekongs in Malaysia.

Prior to the enactment of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons (State Gazette of the Republic of Indonesia Year 2007 No. 58, Supplement to the State Gazette of the Republic of Indonesia No. 4720) in April 2007, existing and applicable regulations were not sufficient to tackle the problem. trafficking in persons, in order to ensnare the perpetrators of trafficking in persons and fulfill a sense of justice for the protection of victims because of the applicable laws and regulations, namely Article 297 of the Criminal Code and Law Number 39 of 1999 concerning Human Rights (State Gazette of the Republic of Indonesia Year 1999 No. 165, Supplementary). State Gazette of the Republic of Indonesia No. 4720) relating to trafficking in persons and legal sanctions in Article 297 of the Criminal Code, the punishment is still light, namely the threat of 0-6 years in prison. After the enactment of Law Number 21 of 2007 concerning the Eradication of the Criminal Act of Trafficking in Persons in April 2007, which is a special regulation that regulates the criminal act of trafficking in persons, so that it can become a means of law enforcement, especially against the handling of trafficking in persons.

Based on that page, the author will choose the title "Juridical Analysis of Victim Examination Protection in the Investigation Process of Trafficking in Persons to Realize Legal and Human Rights Protection (Research Study of Bareleng Police)."

### **1.1 Formulation Of The Problem**

Based on the background of the problem, the problem can be formulated as follows:

1. What are the legal arrangements for the protection of the examination of victims in the process of investigating criminal acts of trafficking in persons to realize the protection of law and human rights?
2. How is the implementation of protection for the examination of victims in the process of investigating criminal acts of trafficking in persons to realize the protection of law and human rights?
3. What factors are the obstacles and solutions in protecting the examination of victims in the process of investigating criminal acts of trafficking in persons to realize the protection of Law and Human Rights (Barelang Police Research Study)?

## 2. METHODOLOGY

Normative law research uses normative case studies in the form of products of legal behavior, for example reviewing laws. The subject of the study is the law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. So that normative legal research focuses on an inventory of positive law, legal principles and doctrines, legal findings in cases in concreto, legal systems, synchronization levels, legal comparisons and legal history (Abdulkadir Muhammad, 2004:52).

Based on the explanation above, the writer decided to use the normative legal research method to research and write the discussion of this thesis as a legal research method. The use of normative research methods in research efforts and writing this thesis is based on the suitability of the theory with the research methods needed by the author.

### Data Sources and Data Collection Tools

Primary legal materials, namely all legal materials that have a legally binding position. Primary legal materials consist of statutory regulations related to research and secondary legal materials, namely in the form of materials or materials that are related and explain the problem of primary legal materials consisting of books and literature related to the protection of victims' examinations in the investigation process. the crime of trafficking in persons to realize legal and human rights protection.

### Data analysis

Data analysis is an important and decisive stage in a study. Data analysis is also a stage to find sources of problems and answers to research problems carried out (Soerjono Soekanto, 2008:251). There are two types of data analysis methods, namely qualitative and quantitative. Qualitative analysis is descriptive, data including words and pictures, obtained from interview transcripts, field notes, photos, video tapes, personal documents, and others. Quantitative analysis is to provide codes, numbers, measures and operational variables.

After the legal material has been collected, then an analysis is carried out to provide a final argument in the form of an answer to the research. The data analysis technique in this research is descriptive technique. descriptive technique is the researcher describes what is about an event or legal condition. Not only do it in a descriptive way and then do it in an evaluative way that will get views of the pros and cons. By looking at the composition of the law which consists of analogies, determination and Acontratio.

## 3. RESULTS AND DISCUSSION

1. Legal Arrangements for the Protection of Victim Examination in the Process of Investigating Criminal Acts of Combating Trafficking in Persons.

Law Number 21 of 2007 Article 1 paragraph (1) states that trafficking in persons is as follows:

*"The act of recruiting, transporting, harboring, sending, transferring, or receiving a person by means of the threat of force, use of force, of abduction, of deception, of fraud, of deception, of the abuse of power or of a position of vulnerability, of debt bondage or of giving payments or benefits, so as to obtain the consent of the person who control over another person, whether carried out within a country or between countries, for the purpose of exploiting or causing people to be exploited."*

The threat of violence in Article 1 number (12) of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons is more detailed. Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons Article 1 number (12) states that the threat of violence is:

*"Every act against the law in the form of speech, writing, pictures, symbols, or body movements either with or without using means that cause fear or restrict a person's essential freedom."*

The abuse of power in Law No. 21 of 2007 concerning the eradication of the Crime of Trafficking in Persons is to exercise the power that is in him that is not in accordance with the purpose of the granting of such power or to

exercise it inconsistently with the regulations. The definition of exploiting the position of vulnerability is not explained in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons (Farhana, 2010:25).

"Trafficking in persons who can be punished with imprisonment for a maximum of 6 (six) years". Article 297 of the Criminal Code in Chapter XIV concerning crimes against decency mentioned above has elements of criminal acts, including:

- a. Trafficking of women;
- b. Trafficking of boys who are not old enough.

The provisions in this article are used to ensnare perpetrators of trafficking in women and boys who are not yet old enough to be sentenced to imprisonment for 6 (six) years. Based on the formulation in Article 297 of the Criminal Code, the following pages are identified:

- a. There is no affirmation of intentionality. In the sentence "trading in women and boys" trading is not an oversight, but an intentional one. According to Soedarto intentionally means wanting and knowing what to do. The person who commits an act intentionally intends the action besides knowing or being aware of what he is doing. Deliberately it can be deduced from the whole sentence, especially from the verb in the formulation of the relevant Indang law
- b. The element of being against the law is not explicitly stated, but implicitly this page can be identified with other terms, namely in the word "trade" the term against the law there are three positions, namely contrary to the law (Simons) contrary to the rights (subjektief recht) of others (Noyon) without authority or without rights; This page need not be against the law.

The law that specifically regulates the protection of witnesses and victims was born on August 11, 2006. Law Number 11 of 2006 concerning the Protection of Witnesses and Victims was ratified and enforced, although this Law must be accompanied by implementing regulations, the enactment of this Law This is enough to provide a breath of fresh air for efforts to protect witnesses and victims of crime.

Law Number 13 of 2006 was revised so as to give birth to Law Number 31 of 2014. The basis for consideration of the need for a law that regulates the protection of crime victims (and witnesses) to be clearly drawn up can be seen in the weighing section of this Law, which among other things states: law enforcers often have difficulty in seeking and finding clarity about criminal acts committed by perpetrators because they cannot present witnesses and/or victims due to physical or psychological threats from certain parties. Witnesses (victims) in a criminal court process occupy a key role in revealing a material truth. Article 184 paragraph (1) of the Criminal Procedure Code, witness statements are placed in the first order above other evidence in the form of expert testimony, letters, instructions, and statements of the defendant. The witness (victim) at the time of giving testimony, of course, must be accompanied by guarantees that the person concerned is free from fear before, during, and after giving testimony. This guarantee is important to be given to ensure that the information that will be given is truly pure, not the result of engineering, let alone the result of pressure from certain parties.

In dealing with the crime of Human Trafficking in Batam, there are several efforts taken by the Government of Indonesia. These include Internal Efforts which are divided into Local and National Efforts, as well as External Efforts. Based on these efforts, many have not realized and implemented this policy. In this policy, a strategy has been set on the prevention and handling of victims of Human Trafficking, including a budget for providing services to the victims, but with people's efforts not being maximized, coordination between the agencies responsible for handling this does not work well. This page shows the ineffectiveness of government policies in handling and preventing Human Trafficking.

The principles contained in Batam City Regional Regulation Number 5 of 2013 concerning Prevention and Handling of Victims of Trafficking in Persons can be found in Article 2 which states that the implementation of prevention and handling of victims of trafficking in persons is based on Pancasila and the 1945 Constitution of the Republic of Indonesia, with pay attention to the principles:

- a. Respect and recognition of human rights and dignity uphold the dignity of a human being
- b. Legal certainty; Emphasize the enforcement of the rule of law by law enforcers based on statutory regulations
- c. Proportionality; The principle that prioritizes rights and obligations for witnesses, victims, perpetrators and the government
- d. Non-discrimination The principle does not discriminate against victims of trafficking in persons, especially women and children, in terms of substance, legal process, and legal policies.
- e. Protection. The principle to provide a sense of security both physically, mentally, and socially.

Law Number 12 of 2022 concerning the Crime of Sexual Violence was ratified by President Joko Widodo and promulgated by Menkumham Yasonna H. Laoly in Jakarta on May 9, 2022. This law was placed in the State Gazette of the Republic of Indonesia of 2022 Number An explanation of Law 12 of 2022 concerning TPKS is placed in the Supplement to the State Gazette of the Republic of Indonesia Number 6792. So that everyone knows it.

## 2. Implementation of Victim Examination Protection in the Investigation Process of the Eradication of Trafficking in Persons.

Talking about legal protection for children and women, legal protection can be interpreted as an effort to protect the law against various freedoms and human rights of children and women, various interests related to the welfare of children and women (Barda Nawawi Arief, 1997:67).

Legal protection for victims of trafficking in persons is obtained from the pre-trial process, the course of the trial, and after the completion of the trial. This legal protection is given so that the victim feels calm and safe without fear of becoming a victim again. Legal protection for victims of trafficking in persons must be in accordance with what is meant in Law No. 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons and victims are also entitled to legal protection in accordance with other laws and regulations.

## 3. Barrier factors and solutions for Victim Examination Protection in the Investigation Process of the Eradication of Trafficking in Persons.

Various impacts that arise in the Criminal Act of Trafficking in Persons, show that at the implementation level there are still blockages or failure of the law enforcement process. The obstacles that occur are not only caused at the formulation stage, but can occur at the application or judicial stages. At the formulation stage, the regulation of the Criminal Act of Trafficking in Persons has been enacted since 2007, but the implementation of Law Number 21 of 2007 is still not optimal. This law only regulates the main points of the Crime of Trafficking in Persons, Meanwhile, at the implementation stage, which assigned law enforcement to prevent trafficking in persons, it had run optimally, namely Creating a Special Task Force for the Prevention of Criminal Acts of Trafficking in Persons. In the execution stage, the government and local governments are mandated and required by law to enforce the law, from prevention to prosecution, but the main obstacle is the ability of the regions to provide funds for the prevention and prosecution of the Crime of Trafficking in Persons. dilemma, especially if there are victims who must be helped and rescued immediately (Henny Nuraeny, 2013:349).

The forms of direct or concrete fulfillment of victims' rights to victims of trafficking in persons, among others:

- a. Integrated Service Center  
In Government Regulation of the Republic of Indonesia Number 9 of 2008 concerning Procedures and Mechanisms for Integrated Services for Witnesses and/or Victims of the Crime of Trafficking in Persons
- b. Social Protection House;  
The Ministry of Social Affairs, through the Directorate of Child Social Services, seeks to realize children's welfare through various programs and policies towards the maintenance of children's social welfare and services for child welfare problems.
- c. Repatriation of Victims of Human Trafficking  
Services for victims of trafficking in persons are also provided by the Indonesian Migrant Worker Protection Agency (BP2MI), especially for migrant workers with problems in the form of assistance in repatriating transportation and shelter in transit (debarkation) areas.
- d. Legal Aid  
Victims of trafficking in persons are also provided with legal assistance and legal assistance in relation to their problems and positions

## 4. CONCLUSIONS

From the discussion above, the writer draws several conclusions:

1. The legal arrangements for the criminal act of trafficking in persons in Indonesia are regulated in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, and in the Regional Regulation (Perda) of Batam City Number 5 of 2013 Regarding Prevention and Handling of Victims of Trafficking in Persons, as well as Law number 12 of 2022 concerning criminal acts of sexual violence. (TPKS)
2. Implementation of forms of legal protection provided to victims of trafficking in persons directly and indirectly. Direct compensation can be in the form of compensation in the form of restitution or compensation, and the rights of victims. Indirect legal protection is in the form of protection given to victims and potential

victims because it is contained in the law on trafficking in persons to provide imprisonment and fines for perpetrators of trafficking in persons.

3. The biggest obstacle in law enforcement of the criminal act of trafficking in persons, including this crime is an organized crime so that the perpetrator has a backing and if you want to eradicate this crime completely and the victims of crime and the public who know the crime of trafficking in persons are afraid to report to the authorities because of shame and fear by perpetrator's threat. As for the forms of solutions for victims of trafficking in persons, namely establishing an integrated service center, social protection houses, repatriating victims of trafficking in persons, legal aid.

## 5. SUGGESTION

Based on the results of these studies, the following suggestions can be submitted:

1. Legal guarantees are needed for the implementation of the Criminal Act of Trafficking in Persons, especially children and women by the authorities so that all legal arrangements regarding the criminal act of trafficking in persons can be carried out properly and do not deviate.
2. Supervision and firm action are needed from the government in dealing with the factors that cause the occurrence of criminal acts of trafficking in persons, especially child trafficking in Indonesia, namely Internal Factors and External Factors. Internal factors which include: individual factors, economic factors, family factors and education factors as well as external factors. External factors, namely: environmental factors, young marriage factors, the absence of gender equality factors, law enforcement factors
3. The participation of every element of society is required in fulfilling legal protection efforts against victims of the crime of trafficking in persons.

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