



Comparative Analysis of Legal Protection for Victims of Trafficking in Persons in Indonesia and Malaysia

Kenza Putri Sagita

Faculty of Law, Universitas Widyagama Malang, kenza18682@gmail.com

M. Ramadhana Alfarizi

Faculty of Law, Universitas Widyagama Malang, ramadhanaalfaris@yahoo.com

Abstract

This study aims to analyze the comparison of laws and legal protection for victims of human trafficking between Indonesia and Malaysia. The focus of the research is on the arrangement of legal protection in the two countries and their similarities and differences. The method used is normative research with a legislative, conceptual, and comparative approach. The results of the study show that both Indonesia and Malaysia have legal protections that include restitution, compensation, and rehabilitation for victims. However, there are differences in the type of crime, the threat of a fine, and the maximum prison rule. The advice given is the need to reform laws in Indonesia related to the protection of witnesses and victims, as has been done by Malaysia.

Keywords: Legal Protection, Crime Victims, Trafficking in Persons

INTRODUCTION

Legal protection for victims of criminal acts is based on the idea that the victim is the aggrieved party. The imbalance of protection between victims and perpetrators of crimes is a violation of the principle of equality before the law, so it is necessary to review the substance of the law. The concept of legal protection against victims includes the principles of benefit, justice, balance, and legal certainty. Efforts to obtain legal protection must harmonize the certainty, usefulness, and justice of the law, although these three values often contradict each other in practice.¹

The more complex the affairs of the community, the more complex the problems that arise, as sociologists often say. Economic, educational, and cultural problems can trigger immoral actions because they are less accessible to the public. Problems such as poverty, low education,

¹ Dikdik M. Arief Mansur, *Protection of Crime Victims Between Norms and Reality*, n.d.



and the role of local culture eroded by foreign cultures exacerbates the situation. The rapid development of crime has forced experts to formulate concepts to keep pace with increasingly complex crimes. Relying on laws and regulations to overcome this problem can maintain injustice. Provisions regarding the protection of victims of human trafficking in Indonesia are regulated in Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims (UU PSK), except stipulated otherwise in Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons (PTPPO Law) by Article 43.

In the concept of legal protection for victims of crime, "there are several legal principles that need to be considered, the principles in question are the principle of benefit, the principle of justice, the principle of legal balance and certainty. In line with the theory of legal protection, it should be understood that "the effort to obtain the legal protection desired by human beings is order and order between the basic values of law, namely the certainty, usefulness, and justice of the law, although in general in practice the three values are at odds, but must be pursued for the three values at the same time."²

The year 2007 concerning the Crime of Trafficking in Persons. Considering the many cases of human trafficking that are very attention-grabbing. Moreover, Indonesia Migrant Workers who work abroad such as Indonesian migrant workers in the informal such as House Maids (Domestic Helpers) often experience harassment, violence, and even torture. Meanwhile, in the formal sector, most of them occur to crew members (crew members). The role of the Government of Indonesia in protecting Indonesia's migrant workers should be by the current law. As stated in Article 54 Paragraph (1) of the Law on the Eradication of Criminal Acts Trafficking in Persons. However, the reality on the ground is that not all Indonesian migrant workers or Indonesian citizens who are victims of human trafficking can be returned by existing regulations. Considering the large number of Indonesia migrant workers abroad and the large number of Indonesia migrant workers who enter foreign countries without complete administrative evidence and correct procedures or not by the

² Satijipto Raharjo, *Law* (Bandung: PT. Citra Aditya Bakti, 2000).



recommendations of the law, the Representative of the State of Indonesia must make better efforts to protect Indonesia's migrant workers, both in the form of repatriation, rehabilitation and if they have to reach the legal channel. The same is true of Indonesian migrant workers in Johor Bahru, Malaysia. Where Human Trafficking is an activity of transnational crime that is increasingly rampant in modern times.³

The crime of trafficking in persons in Indonesia is regulated in the criminal provisions while in Malaysia it is regulated in Act 670 of the Malaysia Code of Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007. There are similarities and differences between the two rules, therefore the author is interested in researching the two rules to move towards a more progressive reform of criminal law, especially for the crime of trafficking in persons. Victims of human trafficking in Indonesia identified obstacles in its implementation, and assessing the government's compliance with related laws. This research also aims to examine the application of the principles of benefit, justice, balance, and legal certainty, as well as to develop policy recommendations to improve the legal protection system for victims. In addition, this research aims to increase public awareness of the importance of legal protection for victims of human trafficking and make academic contributions to the development of legal theories and practices related to victim protection.

METHOD

The research method used in this analysis is the normative juridical method, which is also known as doctrinal law research. This method prioritizes approaching the problem through applicable laws and regulations as well as theories that are relevant or related to the topic to be discussed. In this type of legal research, law is conceptualized as what is written in laws and regulations (Law in Books) or as a norm that becomes a benchmark for human behavior that is considered appropriate and appropriate.

³ Chahyo Nugroho Okky, "State Responsibility in Handling the Crime of Trafficking in Persons," *Journal of Legal Research Ministry of Law and Human Rights of the Republic of Indonesia*, 2018, 543.



The data analysis technique in this method includes the process of arranging the order of data, organizing it into patterns, categories, and basic units of description. This process distinguishes between data organization and data interpretation. Data organization involves organizing data into an orderly pattern, while data interpretation gives significant meaning to the data, explains the description pattern, and looks for relationships between the various dimensions of the description. Data analysis in this study is a formal effort to find a theme and formulate a hypothesis (idea) based on the data that has been collected. This includes efforts to provide meaning and support to themes and hypotheses that emerge from the data. Thus, data analysis in normative juridical research is a complex process that involves organizing and sorting data into basic patterns, categories, and units of description so that relevant themes can be found and working hypotheses can be formulated based on existing data. This process is essential to provide a deep understanding of the legal issues being researched and to draw conclusions supported by empirical data.⁴

RESULTS AND DISCUSSION

Legal protection for victims of criminal acts is based on the idea that the victim is the most disadvantaged party in a crime. Imbalance Protection between victims and perpetrators of crimes is a violation of the principle of equality before the law. Therefore, a review of the substance is needed by existing laws to ensure that victims get equal and fair protection.

A. The Concept of Legal Protection for Victims

The concept of legal protection for victims includes several important principles, namely the principles of benefit, justice, balance, and legal certainty. Efforts to obtain effective legal protection must harmonize these three values, although often in practice, these three values contradict each other. The importance of the principle of benefits is to ensure that the protection provided brings real benefits to the victim. The principle of justice ensures that victims are treated fairly and compensated appropriately. The principle of balance seeks to balance the rights of the

⁴ Roni Hanitijo Soemitro, *Legal Research Methodology and Jurymetry* (Jakarta: GhaliaIndonesia, 1988).



victim with the rights of the perpetrator, while the principle of legal certainty ensures that there are clear and consistent rules that victims can rely on in seeking protection.

B. The Complexity of Social Problems and Crime

The more complex the affairs of the community, the more complex the problems that arise. Economic, educational, and cultural problems can trigger immoral actions because they are less accessible to the public. Problems such as poverty, low education, and the role of local culture eroded by foreign cultures exacerbate the situation. The rapid development of crime has forced experts to formulate concepts to compensate for crimes that are getting more complicated. Relying on laws and regulations alone to address this problem can perpetuate injustice, as written laws are often unable to anticipate all the social dynamics that develop. Provisions regarding the protection of victims of human trafficking in Indonesia are regulated in Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims (PSK Law) unless otherwise specified in Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons (PTPPO Law) by Article 43. The law regulates various aspects of protection, including legal, medical, and psychological assistance for victims.⁵

Human trafficking cases in Indonesia are often linked to migrant workers, especially those working abroad. Informal sector Indonesian migrant workers such as domestic helpers often experience harassment, violence, and even torture. Meanwhile, in the formal sector, many cases occurred to ship crew (ABK). The role of the Government of Indonesia in protecting Indonesia's migrant workers should be by the applicable law, as stated in Article 54 Paragraph (1) of the Law on the Eradication of Trafficking in Persons. The government is expected to provide adequate protection and take strict action against human traffickers to ensure the safety and welfare of Indonesia's migrant workers.

⁵ "Amendments to Law Number 13 of 2006 Concerning the Protection of Witnesses and Victims," 2006.



CONCLUSION

Cooperation between the government, law enforcement agencies, and the wider community is urgently needed to create a safe and fair environment for victims of crime. In doing so, we can not only provide proper protection for victims but also prevent the recurrence of similar crimes in the future. This collective effort is an important step toward the creation of a fairer and more humane legal system for all parties. The suggestion from this study is that the government needs to strengthen the legal framework and law enforcement related to the protection of victims of human trafficking, as well as increase the capacity of law enforcement officials through continuous training. In addition, better empowerment and protection for migrant workers, especially in the informal sector, is needed through responsive consular services and emergency assistance. Public awareness and education campaigns on the dangers of human trafficking and the rights of victims must also be improved. Coordination between government agencies, non-governmental organizations, and the international community needs to be strengthened, along with the provision of comprehensive recovery services for victims. Periodic monitoring and evaluation of victim protection policies and programs must be carried out to ensure the effectiveness and adjustment of policies on an ongoing basis.

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