

Legal Protection of Indonesian Citizens Who Are Victims of Human Trafficking in Myanmar

Vania Azalia 

Students of Faculty of Law, University of Kadiri, Indonesia

Mahfud Fahrazi * 

Lecture of Faculty of Law, University of Kadiri, Indonesia

Trinas Dewi Hariyana 

Lecture of Faculty of Law, University of Kadiri, Indonesia

(*) corresponding author, email: mahfud@uniska-kediri.ac.id

Submitted: 2 May 2024 | Reviewed: 30 May 2024 | Revised: 19 December 2024 | Accepted: 15 February 2025

Abstract

This research examines the legal protections available to Indonesian citizens who are victims of human trafficking in Myanmar, focusing on the alignment of Indonesia's domestic laws with international standards. Specifically, it scrutinizes the harmonization of legal protection for witnesses and victims of human trafficking under Act Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons with the protocols established by United Nations Convention against Transnational Organized Crime, particularly its supplement, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women, and Children. The study adopts a legal research methodology using a comparative law approach to analyze domestic and international legal frameworks. It investigates how well Act Number 21 of 2007 integrates the provisions of the UNTOC, noting areas of strong alignment and aspects that require further enhancement. The research finds that while Act Number 21 of 2007 is largely in sync with the UNTOC, it falls short in incorporating specific provisions for the special needs of trafficking victims, such as psychological support, housing, and rehabilitation services. The findings highlight significant steps taken by the Indonesian government to protect its citizens from human trafficking but also underscore the need for a more comprehensive approach that includes provisions for the unique needs of victims. The study advocates for amendments to the national legislation to fill these gaps and suggests a more robust framework for international cooperation to combat human trafficking in the region effectively.

Keywords: *human trafficking, legal protection, Myanmar.*



INTRODUCTION

The globalization phenomenon has brought about significant changes in how communities around the world interact, offering both benefits and challenges. A notable positive impact of globalization is the expansion of social networks across various nations, facilitating enhanced communication and cultural exchange among diverse populations. This network expansion has allowed people to connect, share ideas, and collaborate more readily than ever before, fostering global awareness and understanding.¹

However, this interconnectedness also presents significant risks, especially in terms of national security. As globalization deepens, both wealthy and developing nations find themselves increasingly vulnerable to transnational crimes, including cyber-attacks, human trafficking, and drug smuggling, which exploit these expanded networks. The improper use of social networks can serve as conduits for criminal activities, potentially jeopardizing the security of nations. This dual nature of globalization necessitates robust international cooperation and vigilant national strategies to harness its benefits while mitigating its risks effectively. Ensuring safe and secure usage of global networks is paramount in preserving the integrity and security of national borders in the globalized world.²

Transnational crime refers to criminal activities that occur in multiple countries or involve numerous countries in the planning, executing, and operating of criminal organizations, including the consequences of these crimes.³ The prompting factors behind transnational crime are the motivations of people and groups seeking to infiltrate a country without encountering border restrictions.⁴ Transnational crime,

¹ Yue Kuang, "Globalization of Media: Impacts and Implications in a Connected World," *Global Media Journal* 22, no. 70 (2024): 1–3, <https://doi.org/10.36648/1550-7521.22.70.448>.

² Evi Masrifatin Silvia, "Upaya Penanggulangan Kasus Perdagangan Dan Penyelundupan Manusia Sebagai Kejahatan Transnasional Terorganisir," *Inicio Legis* 1, no. 1 (October 12, 2020): 1–17, <https://doi.org/10.21107/il.v1i1.8821>.

³ Nikos Passas, "Cross-Border Crime and the Interface between Legal and Illegal Actors," *Security Journal* 16, no. 1 (January 2003): 19–37, <https://doi.org/10.1057/palgrave.sj.8340123>.

⁴ Johann Wagner, "The European Union's Model of Integrated Border Management: Preventing Transnational Threats, Cross-Border Crime and Irregular Migration in the Context of the EU's Security Policies and Strategies," *Commonwealth & Comparative Politics* 59, no. 4 (October 2, 2021): 424–48, <https://doi.org/10.1080/14662043.2021.1999650>.

as a broad notion, encompasses a diverse array of criminal acts such as human trafficking, corruption, money laundering, drug-related offenses, and terrorism.⁵

Human trafficking has shown an increase in occurrence in recent years, emerging as one of the prominent transnational crimes.⁶ According to data from the International Labor Organization, the global number of individuals who were victims of human trafficking amounted to 49.6 million. Out of the entire number, 27.6 million individuals are subjected to forced labor, while 22 million individuals are compelled into marriage. Out of the total of 27.6 million individuals who are victims of forced labor, approximately 17.3 million are obliged to work in the private sector. Furthermore, approximately 6.3 million individuals were purportedly subjected to coerced sexual labor. A further 3.9 million individuals were compelled to engage in forced labor under the control of government institutions.⁷

Human trafficking is a complex and multifaceted issue that varies significantly across different regions and cultures, making it difficult to pin down a single cause. However, certain root causes are commonly observed in various forms of trafficking worldwide. The primary driver behind this illicit trade is often the greed of criminals who profit enormously from exploiting vulnerable individuals. Economic pressures also play a critical role; in regions where poverty and lack of opportunity prevail, individuals may become more susceptible to trafficking schemes that promise better prospects. Additionally, political instability and transitional periods can disrupt social and legal structures, making it easier for trafficking networks to operate with impunity. Social and cultural factors also contribute to trafficking dynamics. In some cultures, deeply ingrained gender roles and discrimination can lead to the trafficking of women and children for various forms of exploitation. Understanding these

⁵ Asri Qhornelis Putri, “Tanggung Jawab Badan Hukum Pada Tindak Pidana Human Trafficking Berdasarkan United Nation Convention Against Transnational Organized Crime Terhadap Negara Indonesia Dan Malaysia,” *Jurnal Online Mahasiswa (JOM) Bidang Ilmu Hukum* 10, no. 1 (January 2023): 1–15.

⁶ Pallavi Gupta, “Transnational Human Trafficking: An Unsolved Issue,” *International Journal of Political Activism and Engagement* 6, no. 2 (April 1, 2019): 30–41, <https://doi.org/10.4018/IJPAE.2019040103>.

⁷ International Labour Organization, Walk Free Foundation, and International Organization for Migration, eds., *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, 1st ed. (Geneva: International Labour Office (ILO), Walk Free, and International Organization for Migration (IOM), 2022), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@ipecc/documents/publication/wcms_854733.pdf.

common factors is crucial for developing targeted strategies to combat trafficking effectively, recognizing that solutions must be tailored to fit the specific socio-economic and cultural contexts of each affected area.⁸

Human trafficking is a type of international criminal activity that poses a significant danger and threat to state security.⁹ One of the protocols of the United Nations Convention against Transnational Organized Crime (UNTOC) is the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. The Protocol offers a comprehensive understanding of trafficking in persons:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring, or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs”¹⁰

The definition of human trafficking can be found in Article 1, paragraph (1) of Act Number 21/2007 on the Eradication of the Crime of Trafficking in Persons. Law Number 21/2007 also regulates the legal protection of victims of human trafficking. One of the most essential things that is a requirement for a country is to ensure that victims have legal protection both throughout the case handling process and after the legal procedure of the case is concluded because legal protection is given to victims also to lessen risks to national security. The notion of national security policy consists of a sequence of decisions and actions crucial in protecting the country's core

⁸ Kevin Bales, “What Predicts Human Trafficking?,” *International Journal of Comparative and Applied Criminal Justice* 31, no. 2 (September 2007): 1, <https://doi.org/10.1080/01924036.2007.9678771>.

⁹ Duško Peulić, “Human Trafficking: A Threat to State Security and Human Security,” *БЕЗБЕДНОСТ ПЛОМБИЈА ГРАЂАНИН* 8, no. 1–2 (January 5, 2018), <https://doi.org/10.7251/BPG1701069P>.

¹⁰ United Nations, “United Nations Convention Against Transnational Organized Crime,” Pub. L. No. 55/25 (2000); United Nations, “Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children” (2000) Art.3(a). “Trafficking in persons” means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

values from external threats.¹¹ The victim's nation of origin does not solely carry out the protection of someone who is a victim of human trafficking. However, there has also been collaboration from relevant state parties who have signed the UNTOC.

The protection of victims of human trafficking has been regulated in UNTOC, in the Protocol to prevent, suppress, and punish trafficking in persons, especially women, and children, section 2, Protection of Victims of Trafficking in Persons, starting from Article 6 to Article 8. Meanwhile, in Indonesian legislation, it is regulated in Article 44 to Article 55 of Act Number 21/2007 on the Eradication of the Crime of Trafficking in Persons, which describes the sorts of protection that the Indonesian government should offer to victims and witnesses of human trafficking. The requirements contained in UNTOC act as a benchmark for states that have ratified the treaty when formulating their domestic legislation on criminal offenses. The provisions of UNTOC can serve as a foundation for domestic legislation against human trafficking and as a mechanism to unify diverse national laws and enact a complete range of measures encompassing prosecution, protection, and prevention.¹² The enactment of Act Number 21/2007 on the Eradication of the Crime of Trafficking in Persons acknowledges the significance of safeguarding the fundamental rights of all individuals. This legislation is founded upon both domestic and international commitments, which highlight the imperative to bring to justice those responsible for such offenses and to provide comprehensive care for victims of human trafficking. Therefore, countries that have ratified the UNTOC must ensure that their domestic law, precisely Act 21/2007, must be aligned with the UNTOC in terms of providing legal protection for victims of human trafficking.¹³

Based on the explanation above, the formulation of the problem in this study is how to harmonize legal protection for witnesses and victims of human trafficking based on the UNTOC with Act Number 21 of 2007 on the Eradication of Criminal Human

¹¹ Melvyn P. Leffler, "National Security," *The Journal of American History* 77, no. 1 (June 1990): 143, <https://doi.org/10.2307/2078646>.

¹² Janice G Raymond, "The New UN Trafficking Protocol," *Women's Studies International Forum* 25, no. 5 (September 2002): 491–502, [https://doi.org/10.1016/S0277-5395\(02\)00320-5](https://doi.org/10.1016/S0277-5395(02)00320-5).

¹³ Gabrielle Valentia Putri Sahetapy, Effe Baadila, and Josina Augusthina Yvonne Wattimena, "Pertanggung Jawaban Hukum Pelaku Trafficking in Person Berdasarkan Hukum Internasional Di Indonesia," *Sanisa: Jurnal Kreativitas Mahasiswa Hukum* 2, no. 1 (April 2022): 32–43.

Trafficking and how legal protection is provided for Indonesian citizens who are victims of human trafficking in Myanmar.

METHODOLOGY

This research utilizes a normative legal research methodology, incorporating both a statutory and a comparative approach to analyze the legal frameworks protecting Indonesian nationals who are victims of human trafficking in Myanmar. The statutory approach focuses on dissecting the legal provisions established by the United Nations Convention against Transnational Organized Crime (UNTOC) and evaluating their application and efficacy in safeguarding the rights of trafficked individuals. This includes a detailed examination of the specific protections offered under the convention, such as prevention measures, victim assistance, and mechanisms for international cooperation.

Concurrently, the comparative method is employed to analyze how these international standards align with domestic legislation, specifically Indonesia's Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons. This analysis seeks to identify both convergences and divergences between the international and national frameworks, providing a comprehensive overview of their effectiveness in combating human trafficking. This method also facilitates an understanding of the broader implications of legal safeguards, such as their impact on policy formulation and law enforcement practices.

Primary legal materials, including international conventions, resolutions, jurisprudence, treaties, and other authoritative legal documents, serve as the foundational sources for this study. These materials are crucial in establishing a legal baseline from which the statutory and comparative analyses are conducted. Through these approaches, the study aims to highlight areas where additional legal provisions may be necessary or where existing laws require reinforcement, thus contributing to the ongoing efforts to improve legal protections for trafficking victims at both national and international levels. This rigorous analysis not only aids

in advancing legal scholarship but also supports policymakers and stakeholders in enhancing the legal responses to human trafficking.

RESULT AND DISCUSSION

The Harmonization of Legal Protection for Witnesses and Victims of Human Trafficking in The United Nations Convention Against Transnational Organized Crime with Law Number 21/2007 on the Eradication of Trafficking in Persons

A. Legal Protection for Witnesses and Victims of Human Trafficking in The United Nations Convention Against Transnational Organized Crime

Human trafficking is an emerging problem rapidly growing in the 21st century.¹⁴ Today, income disparity between the affluent North and (relatively) impoverished South is still considerable, if not increasing, and people's aspirations to seek better opportunities have become more significant as information on life in other parts of the world is now more available than before due to the development of the mass media and internet.¹⁵

Globalization and opening national borders have led to greater international exchange of capital and goods and increased labor migration.¹⁶ The wealth disparities created by our globalized economy have fed increased intra- and transnational labor migration as livelihood options disappear in less wealthy countries and communities.¹⁷ As Anne Gallagher explains, trafficking lies at one end of the emigration continuum.¹⁸ Where the migration is for survival, that is, escape from economic, political, or social distress, as opposed to opportunity-seeking

¹⁴ "Interpol," 2009, <https://www.interpol.int/Public/THB>.

¹⁵ "Counter-Trafficking," International Organization for Migration, n.d., <https://www.iom.int/counter-trafficking>.

¹⁶ Hari KC Jenna L. Hennebry and Rosemary Kimani Dupius, *Linkages Between Trafficking, Smuggling, Labour and Migration Policy Regimes: Socioeconomic Implications for Women Migrant Workers* (Geneva: International Organization for Migration (IOM), 2024), <https://mena.iom.int/sites/g/files/tmzbdl686/files/documents/2024-08/pub2024-010-el-linkages-between-trafficking.pdf>.

¹⁷ See Bimal Ghosh, *The 2018 Global Migration Compact: A Major Breakthrough or an Opportunity Lost or Both?* (Switzerland: Palgrave Macmillan, 2021), <https://doi.org/10.1007/978-3-030-82863-9>; Mike Kaye, *The Migration-Trafficking Nexus: Combating Trafficking through the Protection of Migrants' Human Rights*, ed. Anti-Slavery International (London: Anti-Slavery International, 2003), https://www.antislavery.org/wp-content/uploads/2017/01/the_migration_trafficking_nexus_2003.pdf.

¹⁸ Anne T. Gallagher, *The International Law of Human Trafficking*, 1st ed. (Cambridge: Cambridge University Press, 2010), www.cambridge.org/9781107624559.

migration, merely a search for better job opportunities. Contrary to the popular, sensationalized image of trafficked persons as either kidnapped or coerced into leaving their homes, more often than not, the initial decision to migrate is a conscious one." Yet, the decision to uproot oneself, leave one's home, and migrate elsewhere cannot be explained as a straightforward "rational choice by persons who assess the costs and benefits of relocating"; instead, an understanding of this decision must account for "macro factors that encourage, induce or often, compel migration."¹⁹ "Push" factors are not created by the traffickers so much as this broader context, for example, globalization's economic impact. Traffickers, being opportunity-seeking by nature, simply take advantage of the resulting vulnerabilities to profit.²⁰

The United Nations Convention against Transnational Organized Crime (UNTOC), also known as the Palermo Convention, consists of three protocols. One of these protocols is the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. This protocol aims to promote standardization among nations in creating domestic criminal legislation that will improve the efficiency of international collaboration in investigating and prosecuting trafficking cases.²¹ Human trafficking has emerged as one of the fastest-growing transnational crimes. The growth of this activity is characterized by many groups joining the business. The majority of human trafficking activities take place across national borders. Human traffickers utilize an organized worldwide network to carry their victims across vast distances. The transportation of victims is not limited to nearby regions. Still, a significant number of individuals who fall victim to human trafficking are transported to far destinations, thus diminishing their chances of returning to their residences. Hence, an additional objective of this Protocol is to

¹⁹ Patrick A. Taran, "Human Rights of Migrants: Challenges of the New Decade," *International Migration* 38, no. 6 (January 2001): 12, <https://doi.org/10.1111/1468-2435.00141>.

²⁰ Mónica Méndez, "Globalization and Human Trafficking," in *International Encyclopedia of the Social & Behavioral Sciences* (Elsevier, 2015), 206–12, <https://doi.org/10.1016/B978-0-08-097086-8.64131-4>.

²¹ Neil Boister, *An Introduction to Transnational Criminal Law*, 1st ed. (Oxford, United Kingdom: Oxford University Press, 2012).

safeguard and offer assistance to those who have been subjected to trafficking by guaranteeing the complete observance of their fundamental human rights.²²

The protection of victims in UNTOC is listed in 3 articles. First, Article 6 of UNTOC mandates that all state parties maintain the confidentiality of victims' identities and facilitate their physical and psychological recovery. In addition, the convention also requires specialized assistance to meet the specific needs of victims and ensure that they are compensated for their losses. Article 7 addresses the status of trafficking victims in the receiving country. It emphasizes the need for parties to consider appropriate measures to secure the status of victims. This can be achieved by providing them with temporary or permanent residence in the territory.²³ When state parties provide security for the status of victims, they should consider basic humanitarian principles and considerations relating to mercy. Victims are given physical and legal protection and guaranteed to be returned to their areas of origin. Article 8 explicitly addresses the repatriation of trafficking victims. The process of returning trafficking victims to their home country requires cooperation between nations, facilitated by representatives from the victim's home country and the receiving country.²⁴

B. Legal Protection for Witnesses and Victims of Human Trafficking in Law Number 21/2007 on the Eradication of Trafficking in Persons

Satjipto Rahardjo asserts that legal protection safeguards the human rights infringed upon by others, ensuring that the community can fully exercise the rights bestowed upon them by the law.²⁵ Law Number 21/2007 was enacted to effectively address and eliminate instances of human trafficking, whether they occur within the country or across international borders. This legislation governs aspects related to the prevention and management of human trafficking cases, encompassing the

²² Louise Shelley, *Human Trafficking: A Global Perspective*, 1st ed. (Cambridge: Cambridge University Press, 2010), <https://doi.org/10.1017/CBO9780511760433>.

²³ Kelly E. Hyland, "Protecting Human Victims of Trafficking: An American Framework," *Berkeley Journal of Gender, Law & Justice* 16, no. 1 (September 2001): 29, <https://doi.org/10.15779/Z387H1DK9S>.

²⁴ United Nations, United Nations Convention Against Transnational Organized Crime Art. 8.

²⁵ JH Sinaulan, "Perlindungan Hukum Terhadap Warga Masyarakat," *Ideas: Jurnal Pendidikan, Sosial Dan Budaya* 4, no. 1 (February 2018): 79–84.

punishment of traffickers, safeguarding of witnesses and victims, and fostering international collaboration in addressing instances of human trafficking. This is undertaken in an attempt to rehabilitate and equip a victim of human trafficking with the necessary skills and resources before reintegrating them into society.

Article 44 Law Number 21/2007 establishes the initial regulations for safeguarding victims' legal rights. This includes granting witnesses and victims the privilege to maintain the confidentiality of their identities. The principle of maintaining the confidentiality of one's identity is also applied to the immediate family members of the witness or victim up to the second degree of relation. Furthermore, both witnesses and victims have the right to access legal assistance. Muladi and Barda Nawawi Arief distinguish between two distinct forms of protection: the procedural rights model and the service model.²⁶ The procedural rights paradigm places a high importance on ensuring that victims are actively engaged in the criminal justice process. The service model prioritizes providing compensation, restitution, and efforts to restore the well-being of victims who experience trauma, fear, and sadness due to criminal activities. To effectively support victims, law enforcement needs a standardized framework.²⁷

Law Number 21/2007 outlines specific provisions regarding service models for victims of trafficking. These provisions are detailed in various articles, such as Article 45, paragraph (1). According to this article, each province and district/city must provide an exceptional service room at the local police station. This room aims to conduct investigations and examinations of witnesses and/or victims of human trafficking crimes, with the primary objective of protecting their safety. According to Article 47, the Indonesian National Police is responsible for providing security to witnesses or victims and their families if they face threats that jeopardize their safety, life, or property during the investigation process. Victims also have the right to compensation or restitution as a form of reparation and direct protection. Articles 48 to 50 contain provisions on the provision of restitution. Restitution serves several

²⁶ Muladi and Barda Nawawi, *Teori-Teori Dan Kebijakan Pidana*, 4th ed. (Bandung: Alumni, 2010).

²⁷ Farhana, *Aspek Hukum Perdagangan Orang Di Indonesia*, 1st ed. (Jakarta: Sinar Grafika, 2010), 170.

purposes, including alleviating the victim's suffering, reducing the punishment for the convicted person, facilitating rehabilitation, expediting the judicial process, and reducing the risk of threats or reprisals from the community. The implementation of reparations can pose challenges due to the overlap between Article 48 of Law Number 21/2007 and Law Number 31/2014 on Witness and Victim Protection. According to Article 48, victims must directly apply to the public prosecutor for compensation. The public prosecutor will then include the amount of loss suffered by the victim in the case and the charges. According to Law Number 31/2014, requests for restitution are submitted to the public prosecutor through LPSK.²⁸

Victim protection can also take the form of rehabilitation. The rehabilitation regulations are governed by Articles 51 to 53 of Law Number 21/2007. Rehabilitation includes both physical and social rehabilitation. Health rehabilitation involves restoring the physical and psychological aspects of a person's original condition. On the other hand, social rehabilitation is a systematic procedure that aims to restore and enhance a person's ability to fulfill their social roles and responsibilities within the community effectively.²⁹ Social rehabilitation is to regain the psychological well-being of those who have experienced trauma, enhance their social skills to effectively carry out their responsibilities, and navigate social relationships successfully.³⁰

Victims of trafficking should be provided with protection when they are being returned to their homes. Article 54 of Law Number 21/2007 governs the regulation of foreign nationals' status within the country. Social reintegration or repatriation refers to the process of bringing trafficking victims back together with their relatives or suitable caregivers who can offer protection and fulfill the victims' needs.³¹

²⁸ “Undang-Undang No. 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang” (n.d.).

²⁹ Sophie Namy et al., “Healing and Resilience After Trauma (HaRT) Yoga: Programming with Survivors of Human Trafficking in Uganda,” *Journal of Social Work Practice* 36, no. 1 (January 2, 2022): 87–100, <https://doi.org/10.1080/02650533.2021.1934819>.

³⁰ Elizabeth K. Hopper, “The Multimodal Social Ecological (MSE) Approach: A Trauma-Informed Framework for Supporting Trafficking Survivors’ Psychosocial Health,” in *Human Trafficking Is a Public Health Issue*, ed. Makini Chisolm-Straker and Hanni Stoklosa (Cham: Springer International Publishing, 2017), 153–83, https://doi.org/10.1007/978-3-319-47824-1_10.

³¹ Cholidah, Duflitama Astesa, and Intan Khoirun Nisa, “Social Reintegration of Victims of Human Trafficking in Indonesia,” *KnE Social Sciences*, January 5, 2024, <https://doi.org/10.18502/kss.v8i21.14817>.

Repatriation occurs once the legal proceedings of the human trafficking case have concluded and the victim has been granted the rights they are entitled to.³² In this scenario, it is imperative to safeguard the repatriation of victims from any heightened risk or peril.³³ Furthermore, the Indonesian government would extend aid to foreign victims present in Indonesia by collaborating with the International Organization for Migration (IOM) and embassies in Indonesia to facilitate the repatriation of these victims to their respective home countries. The International Organization for Migration (IOM) carries out this task in collaboration with the Embassy located in the victim's country of origin. Foreign victims are provided temporary refuge or temporary residence permits and repatriation support.³⁴

C. Harmonization of Legal Protection for Witnesses and Victims of Human Trafficking in The United Nations Convention Against Transnational Organized Crime with Law Number 21/2007 on the Eradication of Trafficking in Persons

The regulation of the legal protection of witnesses and victims of human trafficking in Indonesia is contained in Law Number 21/2007 on the Eradication of the Crime of Trafficking in Persons. Also, it refers to Law Number 31/2014 on Witness and Victim Protection. The substance of Law Number 21/2007 must be under the provisions set out in UNTOC. The legal protection of victims of human trafficking regulated in Law Number 21/2007 has rules that are followed and rules that are not followed those regulated in UNTOC.

The measures of help and protection for victims of human trafficking in Law 21/2007 align with section 2 of the United Nations Convention against Transnational Organized Crime (UNTOC), which focuses on safeguarding victims of human trafficking. The regulations about the support and safeguarding of individuals who

³² Luke S Bearup, "Reintegration as an Emerging Vision of Justice for Victims of Human Trafficking," *International Migration* 54, no. 4 (August 2016): 164–76, <https://doi.org/10.1111/imig.12248>.

³³ Marie Segrave, "Order at the Border: The Repatriation of Victims of Trafficking," *Women's Studies International Forum* 32, no. 4 (July 2009): 251–60, <https://doi.org/10.1016/j.wsif.2009.05.006>.

³⁴ Zeleta Feba Haprifanyuna, Mohammad Iqbal, and Raditya Pandya Kusuma, "Penanggulangan Orang Asing Yang Menjadi Korban Perdagangan Orang Dan Penyeludupan Manusia Di Bidang Keimigrasian," *Jurnal Ilmiah Universitas Batanghari Jambi* 21, no. 3 (October 11, 2021): 1011–20, <https://doi.org/10.33087/jiubj.v21i3.1684>.

have been trafficked, as outlined in Article 6 of the United Nations Convention against Transnational Organized Crime (UNTOC), are governed by articles 35, article 36, article 37, and paragraphs 44 to 53 of Law Number 21/2007. The regulations regarding the status of victims of human trafficking in the state party mentioned in Article 7 of UNTOC are governed by Article 54, paragraph (2) of Law Number 21/2007. Article 54, paragraph (1) of Law Number 21/2007 regulates matters concerning the repatriation of trafficking victims, in addition to addressing their status. Law Number 21/2007 has successfully met and satisfied the requirements outlined in Article 6 through Article 8, which are expected to be fulfilled by state parties.

Nevertheless, several provisions in Law Number 21/2007 have not been met. Article 6 requires state parties to prioritize provisions based on age and gender. Law Number 21/2007's legal protection article provides basic rules for protecting victims without specifying any specific provisions relating to age and gender. Examples of laws encompassing the particular requirements of children or women include housing, education, and adequate care.

The Harmonization of Legal Protection for Witnesses and Victims of Human Trafficking in The United Nations Convention Against Transnational Organized Crime with Law Number 21/2007 on the Eradication of Trafficking in Persons

Human trafficking instances have a significant impact on the social structure of Indonesia. Human trafficking in both rural and urban regions in Indonesia is inevitably connected to worldwide trafficking networks. This situation also occurs abroad due to the presence of an international trafficking network, with the majority of victims being Indonesian residents. This phenomenon occurs due to a combination of different factors. Separovic identifies two main factors that contribute to the commission of a crime: (a) Personal factors, which encompass biological aspects like age, gender, and mental condition, as well as psychological traits such as aggression, impulsivity, and social isolation, and (b) Situational or

environmental factors, which include circumstances of conflict, location, and timing.³⁵

One of the primary causes of human trafficking is economic motives, which continue to be frequently cited as the key driving force behind this crime.³⁶ Financial considerations are crucial determinants that profoundly impact human existence. This is because individuals have limited economic capacity compared to the pressing requirements that must be met.³⁷ This gap is a crucial determinant for individuals to pursue alternative employment to meet their needs. Additionally, trafficking victims typically possess a limited educational background, often consisting of primary, junior high, or senior high school education, and in rare instances, they may have no formal education whatsoever. This facilitates the trafficking of victims by exploiting their poor knowledge or lack of skills. Additionally, individuals with a consumptive lifestyle may resort to any methods necessary to meet their demands and fulfill their goals.³⁸

The victims of this human trafficking case undoubtedly require protection, either from their home country or from the receiving country. Philipus M. Hadjon states that legal protection exists in two forms: (1) Preventive Legal Protection refers to the legal protection provided by the government to prevent violations before they occur proactively. (2) Repressive legal protection is to resolve conflicts effectively.³⁹ This issue is resolved by competent judicial bodies, both in an absolute and relative manner. Dispute resolution can be achieved through litigation and non-litigation

³⁵ Rahmat Hi Abdullah, "Tinjauan Viktimologis Terhadap Tindak Pidana Perdagangan Orang (Human Trafficking)," *Jurnal Yustika: Media Hukum Dan Keadilan* 22, no. 01 (October 30, 2019): 55–63, <https://doi.org/10.24123/yustika.v22i01.1958>.

³⁶ Elizabeth M. Wheaton, Edward J. Schauer, and Thomas V. Galli, "Economics of Human Trafficking," *International Migration* 48, no. 4 (August 2010): 114–41, <https://doi.org/10.1111/j.1468-2435.2009.00592.x>.

³⁷ Toman Omar Mahmoud and Christoph Trebesch, "The Economics of Human Trafficking and Labour Migration: Micro-Evidence from Eastern Europe," *Journal of Comparative Economics* 38, no. 2 (June 2010): 173–88, <https://doi.org/10.1016/j.jce.2010.02.001>.

³⁸ Abdullah, "Tinjauan Viktimologis Terhadap Tindak Pidana Perdagangan Orang (Human Trafficking)."

³⁹ Philipus M Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia: Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi* (Surabaya: Peradaban, 2007).

methods. This legal protection is provided as a means of resolution rather than prevention.⁴⁰

The Myanmar authorities hampered the release of the victim because the victim was in an area of armed conflict. However, the Ministry of Foreign Affairs cooperated with various parties, including the Bali Process Regional Support Office (RSO) in Bangkok, the International Agency for Migration, and the International Justice Mission (IJM). In addition, the government also sent diplomatic notes to urge the Myanmar government to evacuate the victims.

Article 8, paragraph (1) of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (often referred to as the Palermo Protocol), mandates a clear duty for State Parties regarding the repatriation of trafficking victims. This provision ensures that a victim of trafficking who is a national or has permanent residence rights in a State Party at the time of their entry into the territory of the receiving State Party, is to be returned to their home country safely and without unnecessary or undue delay.

The clause underscores the responsibility of the victim's country of origin or permanent residence to facilitate a smooth and expedient return. This includes not only the logistical aspects of repatriation but also prioritizes the safety and dignity of the individual throughout the process. The stipulation of "without undue or unreasonable delay" highlights the urgency and efficiency required in handling such sensitive situations, reflecting an international consensus on the need for prompt action to mitigate the additional suffering of victims.

The provision also implicitly recognizes the complex challenges that can arise during the repatriation process. These can include legal hurdles, the victim's health and psychological state, and the potential risks of retribution or re-trafficking. Hence, the call for "due regard for the safety" of the victim is critical; it demands that State

⁴⁰ Amalia Rani and Anak Agung Ngurah Wirasila, "Perlindungan Hukum Terhadap Konsumen Akibat Persaingan Curang," *Kertha Semaya: Journal Ilmu Hukum* 4, no. 1 (2016): 3, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/13377>.

Parties implement protective measures and support systems to ensure that returning individuals do not face further harm or exploitation.

Moreover, this article emphasizes the collaborative nature of international efforts to combat human trafficking. It calls for cooperation between the originating and receiving States to ensure that repatriation processes are not only effective but also adhere to the principles of human rights and dignity. The seamless execution of these duties requires robust legal frameworks, efficient administrative procedures, and strong inter-state communication channels.

In essence, Article 8, paragraph (1) of the Palermo Protocol is a foundational component of the international legal architecture against human trafficking. It ensures that victims are returned to their home countries in a manner that is safe, dignified, and timely, thereby helping to restore their rights and providing an opportunity for recovery and reintegration into society. This provision not only aids in the direct protection of victims but also reinforces the global commitment to eradicating the scourge of human trafficking.⁴¹

According to this provision, the State Party from which the victim of trafficking originates or in which the person has the right to reside permanently when entering the territory of the receiving State Party shall facilitate and accept the return of the person promptly and without unnecessary delay and ensure his or her safety.

Upon arrival in Indonesia, victims of trafficking will be placed in the House of Protection and Trauma Center, where they will undergo comprehensive rehabilitation procedures. The rehabilitation process includes both physical and psychological recovery. According to Article 6, paragraph (3), victims of trafficking are entitled to physiological, psychological, and material assistance. The government has collaborated with the Ministry of Foreign Affairs and Social Affairs to implement this provision.

⁴¹ United Nations, Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children Art. 8, Par. (1).

The implementation of human trafficking prevention will be carried out through two distinct approaches that prioritize socialization and education, targeting particular demographic groups. The initial approach employed is to enhance coordination at the strategic level. This objective will be accomplished through the coordination and engagement of local government officials and regional task teams in the development of strategies to prevent and combat human trafficking. Furthermore, the oversight of human trafficking matters and the implementation of essential measures will be entrusted to local governments and task groups.

The second approach involves community socialization and education, implemented in partnership with universities, community organizations, and local government entities such as sub-district heads, village heads, community police officers, and village police officers. Minor local officials will directly engage with the community to disseminate information about human trafficking, encompassing definitions, methods, risks, and other pertinent material tailored to the specific circumstances in the field.

Furthermore, the emphasis will be placed on concentrating socialization and education in particular settings. The primary objectives are to focus on places with the most significant susceptibility of Indonesian Migrant Workers (PMI) to human trafficking. These regions encompass Java, East Nusa Tenggara, West Nusa Tenggara, North Sumatra, Lampung, West Kalimantan, and South Sulawesi. Preventive measures will also be implemented at PMI's entry and exit points, such as airports or seaports. The methods used for human trafficking are becoming more varied, with one example being the use of online frauds or social media to entice individuals with attractive job possibilities abroad. Hence, it is crucial to engage the Ministry of Communication and Information to impose limitations on internet platforms that are believed to facilitate human trafficking.⁴² The Presidential Regulation No. 19 of 2023 outlines the strategic strategy for preventing and

⁴² Kemenko PMK, "Pemerintah Kuatkan Sosialisasi Dan Edukasi Untuk Cegah Korban Kejahatan Perdagangan Orang," July 18, 2023, <https://www.kemenkopmk.go.id/pemerintah-kuatkan-sosialisasi-dan-edukasi-untuk-cegah-korban-kejahatan-perdagangan-orang>. Akses pada 7 Desember 2023 Pukul 22:01

addressing human trafficking. It focuses on the National Action Strategy for the Prevention and Handling of Trafficking in Persons for 2020-2024.

Ultimately, appreciating the true nature of the problem of human trafficking and its root causes will require overcoming deep-seated beliefs of the lesser value of “others” and acknowledging a more accurate picture of the Self and the role that the Self, or dominant group, plays not only in helping others but also in the exploitation of particular populations. Exposing and understanding dominant conceptions of the “other” is a necessary step in both generating the political will to eliminate human trafficking and developing effective measures to combat the practice. To successfully combat human trafficking, it is also essential to recognize and acknowledge all facets of the Self, including its responsibility in fostering or tolerating the conditions under which the Other can be exploited.⁴³

CONCLUSION

Based on the explanation above, it is known that the harmonization of legal protection provisions for Witnesses and Victims of Human Trafficking in the UN Convention and Act Number 21 of 2007 on the Eradication of Human Trafficking includes legal assistance, recognition of victims in the recipient country, and repatriation of victims of human trafficking. Overall, these two regulations are running well, but Act 21 of 2007 does not regulate in detail the age and gender of victims of human trafficking. For example, the Law on special needs does not regulate in detail how victims will receive assistance based on age and gender.

For the protection of Indonesian citizens who are victims of human trafficking in Myanmar, the Government carries out prevention by increasing strategic cooperation with local and regional institutions. Socialization and education programs with the most minor regional infrastructure to educate about the definition, techniques, risks, and complexities of human trafficking. Repressive efforts are also carried out by the government, including involving the Indonesian

⁴³ Jonathan Todres, “Law, Otherness, and Human Trafficking,” *Santa Clara Law Review* 49, no. 3 (2009): 608.

Ministry of Foreign Affairs to act against human trafficking. The ministry repatriates' victims of human trafficking in Indonesia. Upon arrival in Indonesia, the victims are rehabilitated in shelters and trauma centers. The government must fully implement UNTOC in Act Number 21/2007 on legal protection for victims by including age and gender requirements for special needs. In addition, the government must educate the community about human trafficking, including remote villages, through socialization or initiatives to prevent human trafficking. This must be done because some people do not know about it. The community must filter online materials and social media and verify their accuracy.

REFERENCES

- Abdullah, Rahmat Hi. "Tinjauan Viktimologis terhadap Tindak Pidana Perdagangan Orang (Human Trafficking)." *Jurnal Yustika: Media Hukum dan Keadilan* 22, no. 01 (30 Oktober 2019): 55–63. <https://doi.org/10.24123/yustika.v22i01.1958>.
- Bales, Kevin. "What Predicts Human Trafficking?" *International Journal of Comparative and Applied Criminal Justice* 31, no. 2 (September 2007): 269–79. <https://doi.org/10.1080/01924036.2007.9678771>.
- Bearup, Luke S. "Reintegration as an Emerging Vision of Justice for Victims of Human Trafficking." *International Migration* 54, no. 4 (Agustus 2016): 164–76. <https://doi.org/10.1111/imig.12248>.
- Boister, Neil. *An Introduction to Transnational Criminal Law*. 1 ed. Oxford, United Kingdom: Oxford University Press, 2012.
- Cholidah, Duflitama Astesa, dan Intan Khoirun Nisa. "Social Reintegration of Victims of Human Trafficking in Indonesia." *KnE Social Sciences*, 5 Januari 2024. <https://doi.org/10.18502/kss.v8i21.14817>.
- Farhana. *Aspek Hukum Perdagangan Orang di Indonesia*. 1 ed. Jakarta: Sinar Grafika, 2010.
- Gallagher, Anne T. *The International Law of Human Trafficking*. 1 ed. Cambridge: Cambridge University Press, 2010. www.cambridge.org/9781107624559.
- Ghosh, Bimal. *The 2018 Global Migration Compact: A Major Breakthrough or an Opportunity Lost or Both?* Switzerland: Palgrave Macmillan, 2021. <https://doi.org/10.1007/978-3-030-82863-9>.
- Gupta, Pallavi. "Transnational Human Trafficking: An Unsolved Issue." *International Journal of Political Activism and Engagement* 6, no. 2 (1 April 2019): 30–41. <https://doi.org/10.4018/IJPAE.2019040103>.

- Hadjon, Philipus M. *Perlindungan Hukum Bagi Rakyat di Indonesia: Sebuah Studi tentang Prinsip-Prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi*. Surabaya: Peradaban, 2007.
- Haprifanyuna, Zeleta Feba, Mohammad Iqbal, dan Raditya Pandya Kusuma. "Penanggulangan Orang Asing yang Menjadi Korban Perdagangan Orang dan Penyeludupan Manusia di Bidang Keimigrasian." *Jurnal Ilmiah Universitas Batanghari Jambi* 21, no. 3 (11 Oktober 2021): 1011–20. <https://doi.org/10.33087/jjubj.v21i3.1684>.
- Hennebry, Hari KC Jenna L., dan Rosemary Kimani Dupius. *Linkages Between Trafficking, Smuggling, Labour and Migration Policy Regimes: Socioeconomic Implications for Women Migrant Workers*. Geneva: International Organization for Migration (IOM), 2024. <https://mena.iom.int/sites/g/files/tmzbd1686/files/documents/2024-08/pub2024-010-el-linkages-between-trafficking.pdf>.
- Hopper, Elizabeth K. "The Multimodal Social Ecological (MSE) Approach: A Trauma-Informed Framework for Supporting Trafficking Survivors' Psychosocial Health." Dalam *Human Trafficking Is a Public Health Issue*, disunting oleh Makini Chisolm-Straker dan Hanni Stoklosa, 153–83. Cham: Springer International Publishing, 2017. https://doi.org/10.1007/978-3-319-47824-1_10.
- Hyland, Kelly E. "Protecting Human Victims of Trafficking: An American Framework." *Berkeley Journal of Gender, Law & Justice* 16, no. 1 (September 2001): 29. <https://doi.org/10.15779/Z387H1DK9S>.
- International Labour Organization, Walk Free Foundation, dan International Organization for Migration, ed. *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*. 1 ed. Geneva: International Labour Office (ILO), Walk Free, and International Organization for Migration (IOM), 2022. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@ipecc/documents/publication/wcms_854733.pdf.
- International Organization for Migration. "Counter-Trafficking," t.t. <https://www.iom.int/counter-trafficking>.
- "Interpol," 2009. <https://www.interpol.int/Public/THB>.
- Kaye, Mike. *The Migration-Trafficking Nexus: Combating Trafficking through the Protection of Migrants' Human Rights*. Disunting oleh Anti-Slavery International. London: Anti-Slavery Internat, 2003. https://www.antislavery.org/wp-content/uploads/2017/01/the_migration_trafficking_nexus_2003.pdf.
- Kemenko PMK. "Pemerintah Kuatkan Sosialisasi dan Edukasi Untuk Cegah Korban Kejahatan Perdagangan Orang," 18 Juli 2023.

- <https://www.kemenkopmk.go.id/pemerintah-kuatkan-sosialisasi-dan-edukasi-untuk-cegah-korban-kejahatan-perdagangan-orang>.
- Kuang, Yue. "Globalization of Media: Impacts and Implications in a Connected World." *Global Media Journal* 22, no. 70 (2024): 1–3. <https://doi.org/10.36648/1550-7521.22.70.448>.
- Leffler, Melvyn P. "National Security." *The Journal of American History* 77, no. 1 (Juni 1990): 143. <https://doi.org/10.2307/2078646>.
- Mahmoud, Toman Omar, dan Christoph Trebesch. "The Economics of Human Trafficking and Labour Migration: Micro-Evidence from Eastern Europe." *Journal of Comparative Economics* 38, no. 2 (Juni 2010): 173–88. <https://doi.org/10.1016/j.jce.2010.02.001>.
- Méndez, Mónica. "Globalization and Human Trafficking." Dalam *International Encyclopedia of the Social & Behavioral Sciences*, 206–12. Elsevier, 2015. <https://doi.org/10.1016/B978-0-08-097086-8.64131-4>.
- Muladi, dan Barda Nawawi. *Teori-Teori dan Kebijakan Pidana*. 4 ed. Bandung: Alumni, 2010.
- Namy, Sophie, Catherine Carlson, Kelsey Morgan, Violet Nkwanzu, dan Jessica Neese. "Healing and Resilience After Trauma (HaRT) Yoga: Programming with Survivors of Human Trafficking in Uganda." *Journal of Social Work Practice* 36, no. 1 (2 Januari 2022): 87–100. <https://doi.org/10.1080/02650533.2021.1934819>.
- Passas, Nikos. "Cross-Border Crime and the Interface between Legal and Illegal Actors." *Security Journal* 16, no. 1 (Januari 2003): 19–37. <https://doi.org/10.1057/palgrave.sj.8340123>.
- Peulić, Duško. "Human Trafficking: A Threat to State Security and Human Security." *БЕЗБЈЕДНОСТ ПОЛИЦИЈА ГРАЂАНИ* 8, no. 1–2 (5 Januari 2018). <https://doi.org/10.7251/BPG1701069P>.
- Putri, Asri Qhornelis. "Tanggung Jawab Badan Hukum pada Tindak Pidana Human Trafficking berdasarkan United Nation Convention Against Transnational Organized Crime terhadap Negara Indonesia dan Malaysia." *Jurnal Online Mahasiswa (JOM) Bidang Ilmu Hukum* 10, no. 1 (Januari 2023): 1–15.
- Rani, Amalia, dan Anak Agung Ngurah Wirasila. "Perlindungan Hukum terhadap Konsumen Akibat Persaingan Curang." *Kertha Semaya: Journal Ilmu Hukum* 4, no. 1 (2016). <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/13377>.
- Raymond, Janice G. "The New UN Trafficking Protocol." *Women's Studies International Forum* 25, no. 5 (September 2002): 491–502. [https://doi.org/10.1016/S0277-5395\(02\)00320-5](https://doi.org/10.1016/S0277-5395(02)00320-5).
- Sahetapy, Gabrielle Valentia Putri, Effe Baadila, dan Josina Augusthina Yvonne Wattimena. "Pertanggung Jawaban Hukum Pelaku Trafficking in Person

- Berdasarkan Hukum Internasional di Indonesia.” *Sanisa: Jurnal Kreativitas Mahasiswa Hukum* 2, no. 1 (April 2022): 32–43.
- Segrave, Marie. “Order at the Border: The Repatriation of Victims of Trafficking.” *Women’s Studies International Forum* 32, no. 4 (Juli 2009): 251–60. <https://doi.org/10.1016/j.wsif.2009.05.006>.
- Shelley, Louise. *Human Trafficking: A Global Perspective*. 1 ed. Cambridge: Cambridge University Press, 2010. <https://doi.org/10.1017/CBO9780511760433>.
- Silvia, Evi Masrifatin. “Upaya Penanggulangan Kasus Perdagangan dan Penyelundupan Manusia Sebagai Kejahatan Transnasional Terorganisir.” *Inicio Legis* 1, no. 1 (12 Oktober 2020): 1–17. <https://doi.org/10.21107/il.v1i1.8821>.
- Sinaulan, JH. “Perlindungan Hukum terhadap Warga Masyarakat.” *Ideas: Jurnal Pendidikan, Sosial dan Budaya* 4, no. 1 (Februari 2018): 79–84.
- Taran, Patrick A. “Human Rights of Migrants: Challenges of the New Decade.” *International Migration* 38, no. 6 (Januari 2001): 7–51. <https://doi.org/10.1111/1468-2435.00141>.
- Todres, Jonathan. “Law, Otherness, and Human Trafficking.” *Santa Clara Law Review* 49, no. 3 (2009): 605–70.
- Undang-undang No. 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang (t.t.).
- United Nations. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (2000).
- — —. United Nations Convention Against Transnational Organized Crime, Pub. L. No. 55/25 (2000).
- Wagner, Johann. “The European Union’s Model of Integrated Border Management: Preventing Transnational Threats, Cross-Border Crime and Irregular Migration in the Context of the EU’s Security Policies and Strategies.” *Commonwealth & Comparative Politics* 59, no. 4 (2 Oktober 2021): 424–48. <https://doi.org/10.1080/14662043.2021.1999650>.
- Wheaton, Elizabeth M., Edward J. Schauer, dan Thomas V. Galli. “Economics of Human Trafficking.” *International Migration* 48, no. 4 (Agustus 2010): 114–41. <https://doi.org/10.1111/j.1468-2435.2009.00592.x>.