

Legal Protection For Illegal Indonesian Migrant Workers Victims Of Human Trafficking

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Abstract. Legal protection for victims of human trafficking has become a serious concern for the international community because human trafficking does not only occur in one area but has developed into an organized transnational crime. But what happens if the victims are illegal migrant workers who incidentally do not have official documents, considering that the number of illegal migrant workers who are victims of human trafficking abroad is currently increasingly dominating. The purpose of this study is to determine legal protection for illegal Indonesian migrant workers who are victims of trafficking in persons in connection with Law Number 21 of 2007. The author uses a normative juridical research method that uses secondary data and uses primary data only as support for secondary data. The results of this study indicate that Law Number 21 of 2007 concerning the Crime of Trafficking in Persons, hereinafter referred to as the TPPO Law, provides legal protection to illegal Indonesian migrant workers who are victims of human trafficking in the form of fulfilling their rights, including the right to rehabilitation, the right to integrated services, the right to be returned to Indonesia based on state costs, the right not to be arbitrarily deported, the right to assistance when dealing with laws in the destination country, the right to restitution, and other rights.

1. INTRODUCTION

Every citizen has the right to obtain decent and fair work for humanity in order to increase the welfare of his family. That's what is mandated in Article 27 paragraph 2 of the 1945 Constitution. It is further emphasized in Article 28I paragraph 4 of Law Number 39 of 1999 concerning Human Rights that "protection, promotion, upholding, fulfilling human rights is the responsibility of the state, especially government". The government of Indonesia is considered to have failed in providing protection and providing them with basic human rights (Djelantik, 2016; Yusitarani & Sa'adah, 2020). With the existence of a human rights charter that records world history about all the suffering and social inequalities for discriminatory actions, the Indonesian people respect and uphold and implement human rights in accordance with Pancasila as the nation's way of life.

In terms of basic human rights, getting a decent job is one part of that. However, along with the increasing development of the times, various reasons for the difficulty in finding a decent job have emerged, including the most dominant factor being poverty, changes in development orientation from agriculture to industry, the economic crisis, and the lack of employment opportunities in the country, which have resulted in an increasingly high unemployment rate. Various attempts have been made by the government to reduce the number of unemployed, one of which is to fill job opportunities abroad. Nuraeni (2015) Indonesia is one of the largest sending countries for Migrant Workers (migrant workers) in Asia. Sending Migrant Workers is generally done in various ways, both legal and illegal.

The public's interest in working abroad is also increasing in the hope of getting a job that pays big profits. We can see this based on data from the National Agency for Placement and Protection of Indonesian Workers (BNP2TKI), which initially in 2017 there were 36,743 departures of migrant workers from Indonesia. Then the data shows an increase in 2018, there were 37,045 people who had departed to various destination countries. This data does not include undocumented or illegal migrant workers, because the government, in this case BNP2TKI, does not yet have exact data on the recapitulation of the number of illegal migrant workers.

However, the increasing interest in working overseas has also created a new problem for the government, namely human trafficking. Due to low education, limited information, and in order to get a decent job, many prospective migrant workers are brave and tempted by the lure of big income that promises human trafficking syndicates that use illegal/non-procedural methods. Sibuea (2018) Trafficking in persons is one of the five biggest crimes in the world that must be addressed because of its impact not only on the economic aspect, but also on political, cultural and humanitarian aspects. Without realizing that this made him trapped into becoming a victim of human trafficking. trafficking in persons can be said to be a protection of rights and also protect human rights (Daud & Sopoyono, 2019).

IOM or the International Organization for Migration, explained that in 2014 previously Indonesia was in the first position in the world regarding victims of human trafficking with 7,193 identified victims. Of these, 82 percent are women who work abroad. the remaining 18 percent are men, the majority of whom experience exploitation when working as ship crew (ABK) to find fish or other laborers, or in oil palm plantations. Then in terms of areas where the crime of trafficking in persons (TPPO) occurred in Indonesia, the province of West Java ranks first with the number of victims reaching 2,151 people or representing more than 32.35 percent. The second position was Central Java with 909 people or 13.67 percent and the third position was Kalimantan with 732 people or 11 percent.

The majority of them are women who do not have documents or have lived beyond the limits of their residence permits so that they are categorized as Illegal Indonesian Migrant Workers. This situation increases their vulnerability to trafficking which results in forced labour, sexual abuse, slavery, kidnapping, murder, fraud, deprivation of wages, inhuman treatment and imprisonment. The issue of trafficking in persons or Human Trafficking has actually been around for a long time. Based on history, trade and slavery have existed since hundreds or even thousands of years ago which began with the subjugation of a group by another group, the most powerful group and has the power to dominate the weak group. The ownership of economic and political power is a source and opportunity for the development of slavery, as a result of conquest which is paid for with absolute devotion (Ginting, 2013).

Tuasikal, Wattimena, & Rehatta (2022) Poor economic conditions with unattractive income in Indonesia will be a reason to trigger mobility or movement of labour internationally. Trafficking in persons is a problem that is of serious concern and is widespread throughout the world. Until stronger efforts are made to identify and protect victims of trafficking in persons, it will remain difficult to provide reliable information about the economic activities that are most affected. According to ILO (International Labour Organization) estimates, 43 per cent of trafficking victims are exploited in the sexual business, while 32 per cent are in other forms of economic exploitation and 25 per cent in a combination of labour and sexual exploitation (Andreas, 2014).

The state is obliged to protect every Indonesian migrant worker, but neither in the preamble nor in all the articles contained in the law, there is not a single article that explains the protection of illegal or non-procedural migrant workers. In fact, these unprocedural migrant workers tend to originate from legal migrant workers who have run away from their employers. Actually, both legally and illegally, they both work abroad to fulfil their needs and are more vulnerable to human trafficking than procedural migrant workers. Legal policy is of course very important to do, especially in counteracting and enforcing the law in cases of trafficking in persons so that the law runs according to its functions and expectations (Putri & Arifin, 2019).

Legal protection for Indonesian illegal migrant workers when they become victims of human trafficking. Basically, protection for victims of trafficking in persons is regulated under Law Number 21 of 2007 concerning the Crime of Trafficking in Persons. This law is here to ensure the fair human rights of every Indonesian citizen where they are entitled to receive state protection from the crime of trafficking in persons. This includes illegal or non-procedural migrant workers whose position as citizens when they become victims of trafficking in persons, it is clear that the state needs to provide protection to them even though they are outside the territory of Indonesia. As mandated by article 54 paragraph 1 of Law Number 21 of 2007 which reads as follows: "In the event that a victim is abroad and requires legal protection as a result of the crime of trafficking in persons, the Government of the Republic of Indonesia through its representatives overseas is obliged to protect the personal and interests of the victim, and trying to return the victim to Indonesia at the expense of the state". The state also has other obligations contained in Article 19 (b) of Law Number 37 of 1999 concerning Foreign Relations which reads "Representatives of the Republic of Indonesia are obliged to provide shelter, protection and legal assistance to Indonesian citizens and legal entities abroad in accordance with national legislation as well as international law and custom".

Regardless of the state's obligations that have been regulated in such a way in the law, in reality legal protection for non-procedural migrant workers who are victims of human trafficking does not get maximum and limited treatment. This can be seen in the many cases of human trafficking against migrant workers that have been described previously, as well as in various grand policies or state policies that were made not to receive priority, even the state, in this case public officials, tend to use this opportunity to place migrant workers to commit corruption. The lack of treatment for the victims of these migrant workers has resulted in thousands of migrant workers who are both Indonesian citizens returning to their homeland in a state of severe disability and even death.

Based on data from the Non-Governmental Organization Migrant Care, it was recorded that 62 Indonesian migrant workers were sentenced to death from 2005 to 2017 and according to the Ministry of Foreign Affairs, 142 Indonesian citizens were facing the death penalty worldwide in 2018. As well as several recent cases such as Adelina and Melinda who was tortured to death in Malaysia shows us once again that Trafficking in Persons against Indonesian Migrant Workers is a terrible crime against humanity and the worst form of treatment of violations of human dignity.

2. METHOD

The research used is analytical descriptive, namely analysing the object of research by describing the situation and circumstances, by presenting the data obtained as they are, which is then analysed which produces several conclusions. The approach used in this research is normative juridical, which is a research method that emphasizes the law studied as a norm or rules that serve as a guideline for life in society. In other words, the approach used is the statutory approach, which is done by examining the laws and regulations related to the legal issues being studied. The data collection technique used was by means of literature study. It is used for secondary data to obtain a theoretical basis, some opinions or writings from experts or authorities and also to obtain information in the form of formal provisions or data through official texts. The data that has been obtained is then analysed by the author qualitatively through interpretations known in legal science, among others grammatically, sociologically, and so on. Then a discussion is carried out in a systematic logical manner without using statistical formulas.

3. RESULTS AND DISCUSSION

In understanding the form of legal protection for Indonesian Migrant Workers, we must see that the Unitary State of the Republic of Indonesia cannot be separated as a legal state (*rechtsstaat*) that upholds "the rule of law" and a Pancasila state that aspires to justice in diversity as stated in the motto *Bhineka Tunggal Ika*. In this way, we will gain an understanding that placing human rights is one of the characteristics of the Indonesian state. Recognition of human rights carries the consequence that protection of these rights must be sought from all forms of crime without any discrimination, including his legal status as long as he is an Indonesian citizen, in particular the protection of the rights of citizens when they become victims of one of the most serious crimes in Indonesia. world (extra ordinary crime), namely the crime of human trafficking. And how terrible human trafficking is for mankind.

The physical and psychological suffering experienced by victims of TPPO has had an adverse impact on their ability to make a fresh start and to lead a stable social and economic life. So that there is no need for the author to discuss at length about the reasons for how important legal protection must be given to victims, moreover those who become victims of exploitation in this crime are illegal migrant workers or Indonesian citizens who work without going through the correct procedures (due of process of law) caught in the *modus operandi* of shipping fraud working overseas.

There are findings that Indonesia has actually criminalized trafficking in persons which is regulated in Article 297 of the Criminal Code which reads "Trafficking in women and trafficking in immature boys, is punishable by a maximum imprisonment of six years" (Solahudin, 2007). Trafficking in persons is a criminal act (*strafbaar feit*) which was originally spread within the territory of the Indonesian state, but is now increasingly developing into an organized transnational crime, it is necessary to renew commitment to combat it. As stated in Presidential Decree No. 88 of 2002 concerning the National Action Plan for the Elimination of Trafficking in Women and Children and a task force consisting of cross-sectoral members for its implementation. This national commitment is aimed not only at fighting the crime of trafficking in persons, but also at the root of the problem, namely poverty, lack of education and skills, lack of access, opportunity and limited information, as well as socio-cultural values.

Juridically, the legal protection for victims of human trafficking consists of 2 (two) legal instruments. that is, national and international legal instruments. One of Indonesia's positive legal instruments which is closely related to the formulation of this matter is Law Number 21 of 2007 concerning the Crime of Trafficking in Persons, which will be referred to as the TIP Law. However, to arrive at the main point of discussing legal protection for victims of trafficking in person which is linked to the Law on the Crime of Trafficking in Persons, a number of other legal instruments will be discussed first.

With regard to the issue of human trafficking that is occurring expansively in several parts of the world, the international community which is affiliated in various international organizations including the government of the Republic of Indonesia pays serious attention and makes international conventions as a legal umbrella for human trafficking that occurs across national boundaries. Conventions are also referred to as International Agreements or treaties which are included in one of the sources of formal law in Indonesia. The rules in the convention apply to countries that are members of international organizations as already mentioned in the introductory chapter, which have ratified the convention by making legal products or laws in accordance with the values in the convention. In terms of political relations between countries, we can see the correctness of the opinion

expressed by Mahfud (2012) "that law is a product of politics and vice versa, politics is a product of law".

Meanwhile, the convention as an instrument of international law in eradicating the practice of human trafficking in various countries is as follows:

- a. International Labour Organization (International Labour Organization): ILO Convention No 97 concerning Labour Migration, ILO Convention No 143 concerning Migrant Workers, ILO Convention No 118 regarding Equal Treatment.
- b. The UN conventions include: UN Convention against Transnational Organized Crime (Palermo Protocol), namely the Convention against Transnational Organized Crime or Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Protocol to Prevent, Suppress and Punish Human trafficking, especially Women and Children, the CAT (Convention Against Torture & others cruel, inhuman, or degrading punishment) Convention, the Trafficking Protocol Convention, namely the Convention on the Abolition of Slavery, institutions and practices such as slavery (with debt bondage) (Bonasahat, 2012).

Furthermore, international conventions which are important enough to provide legal protection for illegal migrant workers who are victims of human trafficking are conventions which are often called the MWC (Migrant Workers Convention). In full, the convention is named the International Convention On The Protection Of The Rights Of All Migrant Workers And Members Of Their Families (International Convention Regarding the Protection of the Rights of All Migrant Workers and Members of Their Families).

The convention issued by the United Nations in 1990 has been ratified by 35 countries and signed by the state of Indonesia on September 22, 2004, in New York. However, they have not ratified it yet, considering the size of the international treaty in the form of a convention based on the principle of prudence, if the ratification plan is to be carried out at the time of shooting, it is necessary to include an academic text containing the advantages/disadvantages/consequences of the ratification and its implicit implications for the Indonesian legal system, so that needs to be examined in more detail beforehand. In addition, the mechanism for ratification or ratification in Indonesia is subject to Law Number 24 of 2000 concerning International Treaties and to Law Number 10 of 2004 at that time. has now been amended by Law Number 12 of 2011 concerning Procedures for Establishing Legislation.

The meaning of Ratification in article 1 point 2 of the International Treaty Law is "a form of ratification, namely a legal act to bind oneself to an international agreement". So, it can be said that by ratifying it means that the Indonesian state is bound by an international treaty, this agreement applies as law for every country that agrees to it and must obey that law. So, in fact the right step at that time was that the Indonesian government only signed it first as a manifestation of the Indonesian government's seriousness in protecting the rights of migrant workers even though it did not immediately ratify this convention before first reviewing the contents of the rules contained therein. Some of the main articles related to Legal Protection of illegal migrant workers contained in the Convention on the protection of the rights of migrant workers and their families are as stated in Article 7 that "States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without any distinction of any kind such as sex, race, colour, language, religion or conviction, political or

other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.”

States Parties undertake, in accordance with international human rights instruments, to respect and ensure that all migrant workers and members of their families within their territory or subject to their jurisdiction enjoy the rights set forth in this Convention without distinction of any kind, such as sex, race, skin colour, language, religion or belief, political or other opinion, nationality, ethnic or social origin, citizenship, age, economic position, wealth, marital status, birth status or other status. Based on the provisions of Article 7 of the convention on migrant workers, it can be concluded that regardless of the status of work carried out by migrant workers, whether legal or illegal, they are still equally entitled to enjoy human rights and must obtain legal protection when working abroad.

No migrant worker or member of his family shall be enslaved or held in bondage. No migrant worker or member of his family shall be compelled to perform forced or compulsory labour. It is increasingly clear that the world community wants every migrant worker to be protected from all forms of crime that threaten their right to life while working in the destination country. It is hoped that with this convention migrant workers will be free from human trafficking which will make them exploited by their employers abroad.

Migrant workers and members of their families must have the right to obtain the choice of seeking the protection and assistance of consular or diplomatic officials from their country of origin or a country that represents the interests of that country, if the rights recognized in this Convention are violated. Specifically in the case of expulsion, the person concerned must be informed about this right immediately and officials from the State carrying out the expulsion must facilitate the implementation of this right. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit regarding their rights conferred by this Convention. With regard to the obligation of the state, both the country of destination, the country of transit, and the country of origin to inform and realize the rights listed in the Convention which are given to all migrant workers and members of their families without discrimination.

However, in reality the provisions of this article do not appear to be implemented by the state. Even in Indonesia, as the country of origin for sending migrant workers, they exchange opinions about which government agency has this obligation. Not infrequently also in various mass media and if you look back at the case that the author described earlier in chapter three, the state which is legally obligated to realize legal protection for all the rights of migrant workers, seems to give up hands when illegal migrant workers become victims of human trafficking because, the migrant worker undocumented and not listed in government databases.

If the state, in this case the government, continues to regard this crime as serious related to the practice of human trafficking, it continues to increase, so currently the level of human trafficking in Indonesia is still in the second highest position in the world. This international convention has clearly become a strong legal basis after being ratified by Law Number 6 of 2012, which orders the state to act fairly in protecting victims of trafficking in persons against migrant workers without debating their legal or illegal status.

Because when an International Agreement has been ratified by law, then based on article 87 of Law Number 12 of 2011 concerning the formation of statutory regulations, it automatically states that the law that has been ratified has been in effect since the date of promulgation and has binding legal force. as a positive legal device. Furthermore, the ASEAN International Organization has formulated a convention called the ACTIP Convention. This convention was signed by members of ASEAN

countries including Indonesia, in this case President Joko Widodo in Kuala Lumpur, Malaysia at the 27th ASEAN Summit on 21 November 2015 without direct ratification (Bill Academic Text, 2016).

However, at this time, the convention has been ratified by the Indonesian state with the issuance of Law Number 12 of 2017 concerning ratification of the Asean Convention Against Trafficking in Persons, Especially Women and Children (the Asean Convention Against Trafficking in Persons, Especially Women and Children) or abbreviated the ACTIP Convention. With the ratification of this Convention, it will become an effective legal framework in the ASEAN region to deal with human trafficking. Especially for the country of Indonesia, given the level of human trafficking in Indonesia is in the 2nd position in the world.

Of course, the ratification of this convention is also expected to be able to become a strong legal umbrella to increase legal protection and the effectiveness of solving the problem of human trafficking in illegal Indonesian migrant workers that occurs across national borders in all destination countries in the ASEAN region without significant differences in state regulations. Humans are social creatures who cannot live alone, so that humans are given reason and conscience to be able to live in society, nation and state. In social, national and state life, everyone has the same rights and obligations, especially equality before the law, without any differences or discrimination. The founding fathers of this country with the spirit of independence for all the people of Indonesia have understood that creating a just and prosperous society cannot only be carried out through a political revolution, but also a social revolution in order to correct the socio-economic structure that exists in society.

From the explanation of this opinion, it can be interpreted that the government's actions by providing opportunities to get jobs abroad as migrant workers is one of the political-social revolutions of each country which has a hardening relationship with each other. With a note, when the socio-economic conditions improve the welfare of each of its people, the state succeeds in realizing the theory of a welfare state law. On the other hand, when the social-political revolution is unable to provide welfare to its people, do not expect that the principles of justice that we aspire to together will be implemented as contained in the Pancasila philosophy (grundnorm), namely justice for all Indonesian people. In other words, socio-economic welfare will give birth to the ideals of justice Pancasila. In terms of following up on crimes of human trafficking that have occurred in migrant workers, it is appropriate for the state to provide legal protection that upholds the principle of justice. Thus, every Indonesian person feels truly protected when they become victims and face the law without needing to fear their status.

Legal protection is part of the law enforcement process in the context of social defence. Therefore, human trafficking is closely related to the criminal code itself. both material criminal law and formal criminal law, because criminal legislation is essentially an "in abstracto" law which will be realized in "in concreto" law enforcement. on the implementation of legal protection for victims of trafficking in persons can be seen from 2 kinds of legal protection. First, it can be seen as legal protection so as not to become a victim of crime (preventive). Second, it can be interpreted as protection to obtain legal guarantees for suffering/losses when they have become victims of criminal acts, this guarantee can be in the form of the fairest possible punishment for traffickers or retribution (repressive in nature). In preventive legal protection, it is realized by the existence of legal arrangements that contain punishment as a form of prevention so that potential victims of TIP do not appear. Meanwhile, repressive forms of legal protection are given to victims by imposing penalties as

stipulated in existing laws, namely imprisonment, fines and restitution given by perpetrators to victims.

In Indonesia itself, legally what regulates legal protection for victims of human trafficking is Law Number 21 of 2007 concerning the Criminal Act of Trafficking in Persons, hereinafter referred to as the TPPO Law, while the legal basis governing the protection of migrant workers is Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, amendments to Law Number 39 of 2004 concerning the Protection and Placement of Indonesian Migrant Workers. It can be said, human trafficking that befalls migrant workers is the intersection between the civil (private) domain, namely labour law, and the criminal (public) realm, namely human trafficking. Where working abroad is a legal act that is regulated in accordance with the agreement between the employee and the employer mediated by the service provider. Meanwhile, fraud, violence, threats, and ensnaring with debt are criminal acts.

Law Number 21 of 2007 is an effort by the government to achieve community welfare (social welfare state), which in turn aims to provide protection to the community (social defence policy) (Rahmadani, 2016). With regard to the legal position of illegal migrant workers when they become victims of human trafficking, the TPPO Law explicitly states that what is meant by a victim is any person who experiences psychological, mental, physical, sexual, economic and/or social suffering, which is caused by crime of trafficking in persons (article 1 paragraph 3 of the TPPO Law). Everyone here refers to all Indonesian citizens without any discrimination, so that illegal migrant workers who are exposed to crimes of trafficking in persons can also be referred to as victims, who have the right to receive legal protection from the state.

The TPPO Law contains prohibitions and sanctions as a form of preventive legal protection to prevent victims of human trafficking by imposing punishments on perpetrators, this law also prohibits all forms of trafficking in persons by including several articles of punishment regulated from article 2 to article 8 and articles 19 to 27 related to other crimes related to trafficking in persons, even the punishment for perpetrators who are proven guilty according to Article 2 paragraph 1 of the TIP Law is punishable by imprisonment of at least 3 to 15 years plus a fine of IDR 120,000,000-IDR. 600,000,000, if the victim dies the penalty increases to life imprisonment plus a fine of Rp. 200,000,000-Rp. 5,000,000,000 according to article 7 paragraph 2 of the TPPO Law.

Because victims of human trafficking have suffered losses that have been directly disrupted both physically and psychologically as a result of their experiences as targets of crime, Law Number 21 of 2007 concerning the Crime of Trafficking in Persons provides repressive legal protection to victims by granting restitution. As stated in article 48 of Law No. 21 of 2007 concerning the Eradication of Trafficking in Persons.

The purpose of granting restitution based on Article 1 paragraph 13 of the TIP Restitution Law is the payment of compensation that is charged to the perpetrator based on a court decision that has permanent legal force for the material and/or immaterial losses suffered by the victim or his heirs. Related to the convict of trafficking in persons who are unable to pay restitution to the victim, they will be subject to imprisonment for a maximum of only one year and not more based on Article 50 paragraph 4 of the TPPO Law.

Basically, the ultimate goal of legal protection for the most important victims is the fulfilment of the rights of victims in a fair manner as aspired by Pancasila, namely justice for all Indonesian people. Referring to the TPPO law, justice should be prioritized, however, it is not enough to uphold justice alone, but also requires accountability from the perpetrators of crimes and from the state. Thus,

the perpetrators of the crime of trafficking in persons who were released from their responsibilities by the panel of judges due to the existence of rules that were different from the TPPO Law in the findings of the case of 152 Indonesian migrant workers which have been reviewed in chapter 3 previously did not repeat themselves. More or less disharmony of legislation is the responsibility of the state considering that the state has been negligent in formulating the basis for legal protection which collide with each other so that justice and welfare are not delivered to victims.

In the mechanism of legal protection for victims of human trafficking, including the procedure for filing restitution, the laws that regulate it tend to contradict each other, differ from each other, and overlap with one another. Regarding the regulation of restitution, there are at least 2 laws and regulations that regulate the provision of restitution to witnesses and victims of crime, namely Government Regulation Number 44 of 2008 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims, and Law Number 31 of 2014. Scope Restitution can be in the form of returning property, payment of compensation for loss or suffering, or compensation for certain actions. Meanwhile, in the Criminal Procedure Code regarding compensation, only real losses due to criminal acts are harmed. Weak power of coercion and execution of restitution executions. Law No. 13/2006 does not regulate coercive power to make payments and which institution executes the restitution.

Then what becomes a new problem in the human trafficking justice process experienced by migrant workers, both legal and illegal, is that there are still many judges and prosecutors who prosecute cases of human trafficking with work placement violations which of course categorize these actions into the civil realm, namely labour law as an example of case c. in the previous three chapters. It is true that from the perspective of civil law that to enter into a work agreement as long as he agrees, the work agreement is valid for them as long as the subjective and objective elements of the conditions for the validity of the agreement in Article 1320 of the Civil Code have been fulfilled. So that when there is a violation in the agreement, the violator is only subject to compensation as a form of sanction for his default. Likewise in Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, hereinafter referred to as the PPMI Law, when a Service Provider Company violates a migrant worker agreement, such as carrying out a ban.

Several articles of the Law on the Protection of Indonesian Migrant Workers are different or completely inconsistent with the Law on TPPO, in which the Law on TPPO clearly regulates when the placement of migrant workers is carried out by means of fraud, threats, violence, and debt bondage, causing Migrant workers are exploited, so this is included in the realm of the crime of trafficking in persons.

As an example of the disharmony of the two laws, namely the rules regarding the prohibition of falsifying or filling in document information such as identity when sending or placing Indonesian migrant workers abroad, the two laws regulate the threat of different sanctions, Article 15 of the TPPO Law with Article 87. The PPMI Law regulates that if a crime is committed by a corporation, it will be punished with imprisonment and a fine as well as revocation of certain rights, while in Article 87 of the PPMI Law, corporations may only be subject to fines and administrative sanctions.

Thus, from all of the description above, we can see that the disharmony of legal instruments creates contradictions and polarizes the views of law enforcement. The polarization of the views of law enforcers in implementing legal protection for illegal migrant workers who are victims of the criminal act of trafficking in persons results in decisions that are not suitable for the legal protection of victims. The polarization of this view will not give law enforcers space to have a clear view. They

are always trapped in thoughts that eventually lead to controversy over injustice. Even though the clear thinking of law enforcers is very important to see the real situation of the problem.

4. CONCLUSION

The Government of the Republic of Indonesia supports legal protection for illegal Indonesian migrant workers who are victims of human trafficking by ratifying national and international law instruments. The international conventions that have been ratified include: International Labour Conventions (ILO), UN Conventions, and ASEAN Conventions. Furthermore, Indonesia's positive legal instrument, namely Law Number 21 of 2007 concerning the Crime of Trafficking in Persons, provides legal protection for illegal Indonesian migrant workers who are victims of human trafficking in the form of fulfilling their rights, including the right to rehabilitation, the right to integrated services, the right to be returned to Indonesia using state funds. The right not to be deported arbitrarily, the right to assistance when dealing with the law in the destination country, the right to restitution, and other rights. Further arrangements regarding the implementation of restitution are regulated in Law Number 31 of 2014 concerning the Protection of Witnesses and Victims which was later found to be disharmony with the TIP Law, causing legal uncertainty.

REFERENCES

- Beate Andreas, Beate. (2014). *Kerja Paksa dan Perdagangan Orang*. Jakarta: International Labour Organization.
- Bonasahat, Albert. (2012). *Briefing Jurnalis Catatan Akhir Tahun Perlindungan Pekerja Migran*. Jakarta: ILO.
- Daud, B. S., & Sopoyono, E. (2019). Penerapan sanksi pidana terhadap pelaku perdagangan manusia (human trafficking) di Indonesia. *Jurnal Pembangunan Hukum Indonesia*, 1(3), 352-365.
- Ginting, Sonafita, D.J. (2013). *Kebijakan Hukum Pidana dalam Menanggulangi Tindak Pidana perdagangan Orang*, Medan: Fakultas Hukum Universitas Sumatera Utara.
- MD, Mahfud. (2012). *Politik Hukum Indonesia*. Jakarta: Raja Grafindo Persada.
- Naskah akademik RUU 2016 Tentang *Pengesahan Konvensi ACTIP*, Kementerian Hukum dan HAM.
- Nuraeny, H. (2015). Pengiriman Tenaga Kerja Migran Sebagai Salah Satu Bentuk Perbudakan Modern dari Tindak Pidana Perdagangan Orang. *Jurnal Hukum dan Peradilan*, 4(3), 501-518.
- Rahmadani, C. (2016). Kebijakan Hukum Pidana Terhadap Perlindungan Hukum Bagi Korban Tindak Pidana Perdagangan Orang (Human Trafficking). *Jurnal Hukum Uniski*, 5(1), 99-113.
- Sibuea, D. T. (2018). Pemberantasan Perdagangan Orang Melalui Instrumen Hukum Nasional Dan Hukum Internasional DI Indonesia. *JCH (Jurnal Cendekia Hukum)*, 3(2), 228-240.
- Solahudin. (2007). *Kitab Undang-Undang Hukum Pidana & Kitab Undang-Undang Hukum Acara Pidana*. Jakarta: Visimedia, Jakarta.
- Tuasikal, I. G., Wattimena, J. A. Y., & Rehatta, V. J. (2022). Perlindungan Hukum Terhadap Tenaga Kerja Indonesia Yang Mengalami Human Trafficking. *TATOHI: Jurnal Ilmu Hukum*, 2(2), 141-148.
- Putri, A. R. H., & Arifin, R. (2019). Perlindungan Hukum Bagi Korban Tindak Pidana Perdagangan Orang di Indonesia (Legal Protection for Victims of Human Trafficking Crimes in Indonesia). *Res Judicata*, 2(1), 170-185.
- Yusitarani, S. (2020). Analisis Yuridis Perlindungan Hukum Tenaga Migran Korban Perdagangan Manusia Oleh Pemerintah Indonesia. *Jurnal Pembangunan Hukum Indonesia*, 2(1), 24-37.
- Undang-Undang Nomor 39 tahun 2004 Tentang *Perlindungan dan Penempatan Tenaga Kerja Indonesia*.
- Undang- Undang Nomor 21 Tahun 2007 Tentang *Tindak Pidana Perdagangan Orang*

Undang-Undang Nomor 31 Tahun 2014 Tentang *Perlindungan Saksi dan Korban* perubahan atas Undang-Undang Nomor 13 tahun 2006
Undang-Undang Nomor 18 Tahun 2017 Tentang *Perlindungan Pekerja Migran Indonesia*.