



Enforcement and Protection of Human Rights Law (HAM) Against Human Trafficking Cases in Indonesia

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ABSTRACT

Law enforcement on human trafficking as part of human rights is linked to theories of substance, structure, legal culture and legal protection. Normative juridical is research originating from a statutory and case approach through secondary data with library value analyzed deductively qualitatively. Enforcement and legal protection of trafficking in persons in Decision Number 215/Pid.Sus/2021/PN.Idm relating to the substance that eradicates trafficking in persons in Law Number 21 of 2007, protecting people with Indonesian migrant work in Law Number 18 Years, and the Criminal Code. Legal structure Defendant I was imprisoned for a period of 4 years and Defendant II for 6 months, accompanied by a fine of Rp. 200,000,000.00, as well as restitution of Rp. 64,075,867.5. The police and the Victim Witness Protection Agency asked for information from the victim and the Indonesian Embassy in Turkey helped the victim return home to Indonesia. The legal culture lacks government oversight and victims are unaware of the threat of human trafficking, recruiting and exploiting victims to other countries for profit.

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1. Introduction

The state is an organization whose existence in a certain territory or region consists of the people, territory and sovereignty of the government (Yunita & Dewi, 2021). It is known that a country with a constitution is a dual form (Pelokilla, 2023) where Indonesian citizens pay attention to their constitutional rights consisting of Human Rights (HAM) (F. S. Putri & Suprobowati, 2022). The 1945 Constitution in Indonesia is a written constitution that has the highest legal role with the aim of building a strong performance framework for a country (Rafina & Yaman, 2024). Thus, the constitution is a rule whose position is very important in providing regulations for state administration, especially Indonesia. Not only as a form of legal

document but also as a manifestation of the aspirations and values of the Indonesian nation (Muhtar et al., 2023).

Human Rights (HAM) and the constitution have a close relationship as part of the foundation and pillars that complement and provide strength to each other (Simamora & Desiandri, 2024). Basically, the constitution is a regulation regarding norms related to the life of a country to safeguard the power of the state so that it cannot be misused and human rights (HAM) are not violated (Reygita et al., 2021).

Human Rights (HAM) are fundamental rights for all humans, of course as a blessing from God Almighty so that no one can challenge them (Palguna et al., 2021) has a universal nature that applies to all humans without taking into account elements of ethnicity, religion, race, the nature of male or female gender conditions, and levels of social status (Destoarezkya et al., 2024) then the need for protection, respect, of course defense (Wollah, 2023). Consists of rights regarding life, family, improving personal quality, justice, independence, freedom of communication, guaranteeing security and prosperity (Agustinningrum et al., 2023).

Problems regarding the form of protecting and upholding human rights (HAM), especially in providing a form of protection of constitutional rights for citizens. Therefore, it is desired to be regulated and as part of the constitution, namely the 1945 Constitution (Rosadi et al., 2024). The Constitution is not only tasked with providing guarantees or protection signs in written form, but is also obliged to provide guarantees of normative values as guidelines for judicial institutions to carry out their duties as representatives of Almighty God on earth (Muni, 2020).

Legal protection is providing things that protect honor and dignity. Statements regarding Human Rights (HAM) by subject elements which are legally based on legal provisions on various rules and regulations that provide protection for one thing from other things (Sukawantara et al., 2020). Human Rights (HAM) by protecting it legally can be said to be a form of legal enforcement to resolve or prevent problems in Human Rights (HAM) cases (Bambar, 2022). Efforts to enforce the law cannot be separated from respecting Human Rights (HAM) (Rufaidah & Prasetyoningsih, 2023). Law enforcement provides state assistance in enforcing the law and protecting human rights (Hadji et al., 2024).

Law enforcement in all countries can be said to be imperfect, the same goes for Indonesia because in Indonesia enforcing the law is certainly not done well and is still a cause for concern. The problem in enforcing the law tends to be the relationship between the expectations of *das sollen* and the reality of *das sein* (Dm et al., 2022).

According to the National Human Rights Commission (KOMNAS HAM), Indonesia is in the world's largest slavery zone which attacks the middle economic group. Victims of criminal acts of human trafficking are often experienced by Indonesian migrant workers. Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking has not been able to provide protection for the rights of restitution to victims as a whole, therefore it is important to provide recovery and guarantees so that the same thing does not happen. So far it has also been said that the guarantee of protecting the rights of victims is not yet fully based on Human Rights (HAM) provisions, but rather the criminal act of trafficking in persons is considered a labor issue as well as that of women and children. As a recommendation from the National Human Rights Commission (KOMNAS HAM) is to revise Law Number 21 of 2007 concerning

Eradication of the Crime of Human Trafficking and Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers (HAM, 2023).

There is not yet optimal strong cooperation in responding and responding to challenges in the problem of criminal acts of human trafficking between institutional ministries, state administrators and government administrators, where institutional ministries, the ministry of foreign affairs, the ministry of migrant worker protection, police, prosecutors, judges and community organizations must be more work together well. The lack of synchronization in prevention at home and abroad is of course also different because not all Indonesian countries carry out bilateral cooperation with other countries. Apart from that, restitution for victims of criminal acts of human trafficking has not been achieved because those who were punished were not the main perpetrators (HAM, 2024). The role of the judge is to determine the enforcement of law and justice so that a fair decision is made based on substantive justice (Siahaan et al., 2023).

The problem of cases of trafficking in people from the category of evil forms of deviation violates the provisions of Human Rights (HAM). Human trafficking is also a transaction of selling or buying human beings (Sianipar et al., 2024) one example of a Human Rights (HAM) problem that is carried out in violation is the trafficking of people in Decree Number 215/Pid.Sus/2021/PN.Idm.

The research provides a background reference formulation that has been described previously so that it will describe legal enforcement and protection such as cases of trafficking in persons as part of Human Rights (HAM) provisions with the Decision in Number 215/Pid.Sus/2021/PN.Idm linked to the Theory of Substance , Structure and Legal Culture that occurs in Indonesia.

2. Method

Research as part of normative juridical legal research is so comprehensive that it consists of abstracting the nature of law and the consequences of norms with procedures that are relevant to research activities (Tan, 2021) namely the enforcement and protection of Human Rights (HAM) law against human trafficking cases in Indonesia with a qualitative nature based on legal norms, regulations, legislation and decisions in a court as well as the development of the order of life in society (Angraini et al., 2022).

Legal research is said to be juridical, emphasizing approaches that originate from legislation by revealing the paradigm of a statutory regulation it self (Zainuddin & Karina, 2023) and a case approach from the truth of an event in a case (Iaia, 2022). Using secondary data with existing data forms such as primary legal materials such as court decisions in Number 215/Pid.Sus/2021/PN.Idm and statutory regulations in Number 21 of 2007 regarding efforts to prevent and handle actions that cause exploitation people, Law Number 18 of 2017 concerning protecting people who work as Indonesian migrants and the Criminal Code (KUHP). Secondary legal materials discuss in depth primary legal materials because of the successful form of research which of course tertiary legal materials provide information related to primary and secondary legal materials (Benuf & Azhar, 2020).

Secondary data is the main source of research because it is data that supports improving the quality of research where secondary data sources are in the form of documents with indirect acquisition through literature (Disemadi, 2022) namely court decision Number

215/Pid.Sus/2021/PN.Idm.

That court decision Number 215/Pid.Sus/2021/PN.Idm is a case of human trafficking because the victims were Indonesian migrant workers, especially unprocedural ones. Because the average number of victims of criminal acts of human trafficking are Indonesian migrant workers. Unprocedural Indonesian migrant workers are Indonesian citizens who work abroad without carrying out procedures for placing Indonesian migrant workers correctly, such as providing wrong information, falsifying documents, manipulating data, incomplete documents, neglecting procedures for migrant worker placement mechanisms based on the provisions of laws and regulations. invitation. So pay attention to Defendants I and II being legally proven guilty of jointly taking Indonesian citizens (WNI) out of Indonesian territory to be exploited based on Article 4 Jo. Article 48 of Law Number 21 of 2007 concerning Eradication of the Criminal Act of Human Trafficking Jo. Article 55 paragraph 1 of the Criminal Code (KUHP) and Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) as well as related statutory regulations.

Expressing data in a bibliographic manner sourced from library materials (Bulolo, 2022) then the analysis uses qualitative deductive analysis to reach the stage of drawing conclusions in order to answer the research problem (Angraini & Absori, 2022).

3. Analysis and Results

3.1. The substance of law enforcement in cases of human rights (HAM) trafficking against people Decision Number 215/Pid.Sus/2021/PN.Idm relates to the Concept of Substance, Structure and Legal Culture

The basic law of the state is a constitution consisting of written and unwritten. As a written form of basic law (Septiani et al., 2021) the constitution states that Indonesia is a country with laws (Arliman, 2017) it means that all actions in administering a state with citizens must be based on the application of good and fair laws and regulations (Rais, 2022).

The term Human Rights (HAM) emerged as part of history, the problem of Human Rights (HAM) exists not in political areas but in the practical conditions in a country, then Human Rights (HAM) are implemented well and the accountability of state administrators stems from on political will and political action (El-Muhtaj, 2015) or exist in real terms to achieve certain political goals (Wijaya et al., 2023) and political action (Hanafiah, 2020).

Trafficking in people is a sinister threat, of course it still occurs frequently and is growing (Esther et al., 2021) as part of Human Rights (HAM) which is not in accordance with human dignity (Darmayanti et al., 2022).

Decision Number 215/Pid.Sus/2021/PN.Idm in the matter of trafficking in persons was carried out by Defendant I namely brother Andi Supandi, and Defendant II namely brother Dairoh illegally sent Indonesian workers abroad. It started with Ismael Ibrahim Khaleel alias Ismail and Lies Herlinawati alias Lina Binti Ajat in November 2020 coming to the house of Defendants I and II to discuss work and procedures for recruiting and earning salaries, then Defendants I and II acted as sponsors looking for people who wanted to work abroad. Ismael Ibrahim Khaleel alias Ismail and Lies Herlinawati alias Lina Binti Ajat promised to give profits to Defendants I and II if they succeeded in bringing people to work with the stipulation that the worker's age was calculated if they were not yet 45 (forty five) years old, they were given a profit of 4 (four) million divided by each 2 (two) million each to Defendants I and II.

Defendants I and II do not have an official company for sending workers abroad but have a form of cooperation with employment agents in Turkey. Continued by Ismael Ibrahim and Lies Herlinawati, they explained that for 2 (two) weeks in Turkey, workers met with prospective employers and were paid a salary of 300 (three hundred) US Dollars, but if they did not find an employer they would be sent to Erbit, Iraq. Defendants I and II got 6 (six) workers, namely Ida Ayu, Nuryani, Asti Wendi, Anisa, Soleha, and Kushati. Ismail Ibrahim and Lies Herlinawati gave money to Defendants I and II amounting to Rp. 15,000,000.00 for workers who were dispatched as well as workers with different amounts of money. Defendants I and II explained that the workers received a salary of 300 (three hundred) to 350 (three hundred and fifty) US Dollars which would be given when the workers had worked before getting an employer. If they did not get an employer for 2 (two) weeks they would be sent to Erbit Iraq.

Ismael Ibrahim and Lies Herlinawati made passports while Defendants I and II did not know that the workers were leaving for Turkey using non worker visit visas and after leaving for Turkey they did not know the condition of the workers because they had been handled by Ismael Ibrahim and Lies Herlinawati. Including before leaving, the workers were accommodated in Dairoh and Supandi's house, who were moved to the Gading Nias and Kalibata apartments owned by Ismael Ibrahim and Lies Herlinawati.

Defendants I and II do not have a company that specializes in recruiting workers abroad and do not have permission from the government and Defendants I and II do not know whether Ismael Ibrahim and Lies Herlinawati have a licensed agency or not in recruiting workers abroad because Ibrahim and Lies Herlinawati are the ones who declare that the departure abroad is official. That the workers sent to Turkey did not receive training, insurance, work contracts and health checks. After arriving in Turkey, the workers were accommodated in Madam Randa's apartment as an agency in Turkey, then the workers were forced to leave for Erbil, Turkey with the threat that if they did not want to leave, they would be subject to a fine of 5,000 (five thousand) US Dollars.

While heading to Erbil, Turkey, as many as 10 (ten) workers refused to leave and fled to the Indonesian Embassy in Turkey because they did not receive a salary when working part time. Due to this, the workers were accommodated at the Indonesian Embassy in Turkey for 1 (one) month and then returned to Indonesia. After arriving in Indonesia, the workers were questioned by the Indonesian police, Institutions that protect against losses to witnesses and of course to victims (LPSK). Defendants I and II did not know that the government had banned sending informal sector workers to Middle Eastern countries since 2015.

As part of the legal relationship with society is law enforcement. In this case, law enforcement is an effort to overcome crime with penal means that use criminal law based on actions that should be criminal acts and sanctions against violators (M. Y. Putri, 2022).

In connection with law enforcement, all the actions carried out by Defendants I and II in participating in recruiting and sending Indonesian workers abroad were not in accordance with the implementation of statutory provisions with no legal protection for workers, including illegal workers. Defendant I and Defendant II, namely Andi Supandi alias Andi Bin Uum and Dairoh alias Isma Binti Rustadi, were sentenced to Article 4 in conjunction with Law Number 21 of 2007 in Article 48 which seeks to prevent and handle actions that cause exploitation of people in conjunction with the Criminal Code. (KUHP) in Article 55 paragraph 1 as well as based on Law Number 18 of 2017 in Article 81 concerning protecting people who work as migrants in Indonesia. Furthermore, Defendants I and II have clearly invited several people, namely Indonesian citizens, to go to other countries, thereby causing actions that exploited the victims.

As a result, they were given a prison sentence for a period of 4 years and 6 months, of course, as well as a fine for both of them amounting to Rp. 200,000,000.00 provided that he is unable to pay, he must be replaced by imprisonment for a period of 1 month.

Based on Lawrence Meir Friedman's theory, statutory regulations are part of the substance of written and unwritten legal rules and decisions implemented by those who regulate them or those who are given the rules (Suyatno, 2019). In enforcing Human Rights (HAM) law, criminal acts, namely trading and buying and selling against people, are determined by Decree Number 215/Pid.Sus/2021/PN.Idm relating to statutory regulations in Number 21 of 2007 regarding efforts to prevent and handle actions that cause exploitation of people, statutory regulations Number 18 of 2017 concerning protecting people who work as migrants in Indonesia, and the Criminal Code (KUHP). The statutory regulations stated above include punitive sanctions in imposing crimes carried out by a judge for the act of trafficking in persons, with the punishment for the perpetrator being minimum or maximum and the victim having the right to compensation, restitution and restitution.

The legal structure is related to institutions and jurisdictions that provide safeguards to ensure that law enforcement is carried out as it should (Pramusti & Mahanani, 2023). It seems that the overall implementation of preventing the eradication of human trafficking cannot be carried out optimally because in this case human trafficking still occurs. The problem with the decision in Number 215/Pid.Sus/2021/PN.Idm is that the law enforcement agency, namely the Judge through the Indramayu District Court, has sentenced Defendants I and II to prison for 4 years and 6 months respectively followed by a fine of Rp. 200,000,000.00 and payment for restitution amounting to Rp. 64,075,867.5. It is also stated that within 14 days after the decision it remains legally binding. The Prosecutor's will also provides a note that if you do not make payment as compensation, you must confiscate the property that ended up being auctioned as restitution and if it is discovered that the property is not there, you must also replace the prison with a period of 1 month. Then non judicial law enforcement officers the police, the institution that protects witnesses and victims of losses suffered (LPSK) have asked the victim for information to follow up on the handling and the Indonesian Embassy Office in Turkey has assisted the victim's return to Indonesia.

Legal culture is based on organic customs related to the whole and social values and attitudes (Odhy, 2020). The public's attitude towards compliance with the applicable laws and regulations has not been properly adhered to. There are factors that influence the problem of human trafficking cases, especially the victims who receive job offers are people who really need work to meet their living needs and the range of job opportunities is limited. The level of public awareness is still low because there are still some workers or victims who migrate to get work abroad and do not pay attention to how dangerous trafficking is to people by committing fraud or entrapment. The lack of supervision from the government also resulted in Defendants I and II succeeding in recruiting by moving or sending victims to locations in other countries who abused the use of the victim's abilities to obtain certain uses.

3.2. Legal protection of human rights (HAM) for victims of trafficking cases against people Decision in Number 1588/Pid.B/2017/PN.MKs. what happened in Indonesia

Regulations in protecting Human Rights (HAM) have a primary place and are the goal of a legal state and are very much needed in Indonesia (Loa et al., 2024). So that the Indonesian state actually recognizes the existence of Human Rights (HAM) (D. W. D. Putri, 2022). The implementation of matters relating to Human Rights (HAM) in a country is guided by the framework of a constitution and is related to a way of life (Zaini, 2020).

Legislative Regulations in Number 21 of 2007 regarding efforts to prevent and handle actions that cause exploitation of people, Legislative Regulations in Number 18 of 2017 regarding protecting people who work as Indonesian migrants, and including the Criminal Code (KUHP). This regulation is proof that the government is providing protection to migrant workers. Victims are given forms of protection for trafficking in persons, namely by providing restitution, compensation, providing counseling and assistance in medical matters, legal assistance, providing information, guaranteeing the rights of victims which of course also keeps their identity secret, as well as rehabilitation of victims (Yusitarani & Sa'adah, 2020).

Article 4 in conjunction with Law Number 21 of 2007 in Article 48 regarding efforts to prevent and handle actions that cause exploitation of people in conjunction with the Criminal Code (KUHP) in Article 55 paragraph 1 and based on Law Number 18 of 2017 in Article 81 concerning protecting people who work as migrants in Indonesia. Defendant I was imprisoned for a term of 4 years, while Defendant II served a term of 6 months, followed by compensation for losses amounting to Rp. 200,000,000.00 and payment for restitution amounting to Rp. 64,075,867.5. Note that if you do not make payment as compensation, the property must be confiscated for auction as restitution and if it is discovered that the property is not there, you must also replace the confinement for a period of 1 month. Then non judicial law enforcement officers, the police, the institution that protects witnesses and victims of losses suffered (LPSK) have asked the victim for information to follow up on the handling and the Indonesian Embassy Office in Turkey has assisted the victim's return to Indonesia.

Victims who receive strengthened legal protection from trafficking in persons as not a crime are stated in the Decision in Number 1588/Pid.B/2017/PN.MKs in the provisions of statutory regulations in Number 21 of 2007 regarding efforts to prevent and handle the actions that cause exploitation of people and legal regulations in Number 18 of 2017 concerning protecting people who work as migrants in Indonesia. From these two regulations there is the same substance regarding Human Rights (HAM) such as vulnerability to trade in buying and selling people and providing guarantees for the protection of the rights of people who work as migrants. Victims must receive justice without discrimination based on background, guarantee welfare and security by receiving rehabilitation, social reintegration and decent working conditions while abroad. Law enforcement regulations for human rights violators by stipulating sanctions for people trafficking perpetrators and those who violate the rights of migrant workers. Regarding international cooperation in upholding Human Rights (HAM), working together to eradicate trafficking in persons and with certainty in protecting the rights of people who work as migrants. Thus the government must protect in its efforts human rights (HAM) (Valentino et al., 2024).

From a conceptual perspective, the laws and regulations implemented are good, although there are no previous efforts to protect prospective migrant workers because the initial departure was not carried out in accordance with the procedures which resulted in non-payment of salaries and health insurance as well as clear work contracts. The government must carry out supervision, especially if there are indications of placement of migrant workers so that it can plan to protect human rights (HAM) based on justice for victims of trafficking in persons and migrant workers. Of course there must also be a presentation regarding education regarding the rights, impacts and assistance received. regarding the distribution of workers without permission.

4. Conclusion

The problem with Decision Number 215/Pid.Sus/2021/PN.Idm is that enforcement and protection are legally connected. The theory of Lawrence Meir Friedman's opinion is that the structure of the law states that it is known that trafficking in people cannot be eradicated optimally because it is still occurring towards people. Part of the legal substance in upholding Human Rights (HAM) law is contained in statutory regulations in Number 21 of 2007 regarding efforts to prevent and handle actions that cause exploitation of people and statutory regulations in Number 18 of 2017 to protect people who work as migrants in Indonesia, and the Criminal Code (KUHP). Defendant I was sentenced to 4 years in prison while Defendant II was sentenced to 6 months, including a fine of Rp. 200,000,000.00, as well as restitution of Rp. 64,075,867.5. A note of non payment will result in the confiscation and auction of the property and if there is no property, the prisoner must be replaced for a period of 1 month.

The victim's right to restitution has been obtained by including restitution in the decision in addition to imposing a sentence on the perpetrator so that justice is reflected. True justice for victims of criminal acts of human trafficking must be able to provide compensation for the losses experienced. Restitution is a victim's right as stipulated in Article 48 of Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking.

The police, the institution that protects losses suffered by witnesses and victims of trafficking in persons (LPSK) asked for information from the victim and the Indonesian Embassy in Turkey assisted in the victim's return to Indonesia. Victims migrate to get work abroad without understanding the suspicious nature of human trafficking. Then, in terms of legal culture, poor government supervision also resulted in Defendants I and II succeeding in committing fraud in recruiting, transferring, sending and exploiting victims to locations in other countries in order to utilize the victim's abilities for the purpose of making a profit.

In efforts to enforce and protect victims of human trafficking, namely migrant workers, from the effectiveness of state responsibility, the role of institutions such as the Witness and Victim Protection Agency (LPSK), the Indonesian Embassy Office (KBRI) in Turkey, and the police. There is involvement in helping to accommodate and repatriate victims to Indonesia by the Indonesian Embassy Office (KBRI) in Turkey, restitution facilities by assisting with calculations by the Witness and Victim Protection Agency (LPSK) as the institution that protects victim witnesses, especially in criminal acts of human trafficking and strengthening human rights. Human Rights (HAM) in handling exploitation, and the police conducted an investigation after the victim arrived in Indonesia. This is a form of providing enforcement and protection assistance as an effort to ensure security and respect citizens' rights.

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