

Research Article

Received: 25/05/2024; Accepted: 20/06/2024; Published: 30/06/2024

Human cultural tradition in human trafficking: Legal and cultural analysis in Indonesia

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Abstract

This paper explores the intricate interplay between legal frameworks and cultural norms regarding human trafficking in Indonesia. By examining the cultural dimensions inherent in the practice, it aims to provide a comprehensive understanding of the phenomenon. Through a multidisciplinary approach that integrates legal analysis and cultural studies, this research elucidates the ways in which traditional cultural practices intersect with contemporary legal structures, shaping the landscape of human trafficking in the Indonesian context. By identifying these intersections, the study seeks to contribute to ongoing efforts to combat human trafficking by fostering a nuanced understanding of its socio-cultural underpinnings.

Keywords: Human cultural tradition; human trafficking; legal; culture; Indonesia

1. Introduction

Human trafficking, a grave violation of human rights, remains a pressing global issue, with Indonesia emerging as a significant locus of concern. In addressing this multifaceted phenomenon, it is imperative to recognize the intricate relationship between legal frameworks and cultural practices that underpin it. This paper endeavors to delve into the cultural dimensions of human trafficking in Indonesia, shedding light on how traditional cultural norms intersect with contemporary legal mechanisms in shaping the landscape of exploitation and trafficking.

Various efforts to eradicate the crime of trafficking in persons (TPPO) have been established within the framework of statutory regulations, both at the national and international levels. At the national level, Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking in Indonesia is a major milestone in efforts to deal with this crime (Asafari, 2023).

This law shows the Indonesian government's strong commitment to protecting its citizens from the harmful practice of modern slavery. Apart from that, Indonesia also acts as a party involved in various international agreements that regulate TIP issues, such as the Palermo Protocol which is an integral part of the United Nations Convention Against Transnational Organized Crime.

Indonesia is also not free from the disturbing problem of TIP. Based on a report from the United States Ministry of Foreign Affairs, the Indonesian government has not been fully optimal in handling the issue of TIP. There has been an increase in TIP cases in the last three years in Indonesia, as revealed in a report published by Bareskrim POLRI. In 2021, the Indonesian government brought charges in 167 human trafficking cases and sentenced 178 people. This data reflects the need for

serious and sustained action from the Indonesian government to combat TIP, which poses a serious threat to human rights and national security. Coordination efforts between institutions, increasing public awareness, and strengthening legal regulations are the keys to effectively addressing this problem. (U.S. Department of State, 2023).

The Indonesian government has established various laws and regulations as part of its efforts to deal with the problem of the Crime of Human Trafficking (TPPO). This includes aspects such as punishment as regulated in the Criminal Code, as well as special laws such as Law Number 21 of 2007 concerning the Eradication of TIP and Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, known as the PSK Law. Indonesia's commitment to combating TIP is also reflected through the ratification of the Palermo Protocol, which is implemented in Law of the Republic of Indonesia Number 14 of 2009.

In the Law on Eradicating TIP, there is a concept of restitution as part of compensation to victims. Restitution, as defined in Article 1 paragraph (13) of Law Number 21 of 2007, is a payment that must be made by a TIP perpetrator in accordance with a court decision which has permanent legal force. The purpose of this restitution payment is to compensate for losses suffered by the victim or their heirs, both in the form of material and immaterial losses. Further implementation regarding restitution is regulated in Government Regulation Number 44 of 2008 concerning Providing Restitution, Compensation and Assistance to Witnesses and Victims.

2. Methods

Utilizing a qualitative research approach, this study draws upon legal analysis and cultural studies to investigate the phenomenon of human trafficking in Indonesia. Primary legal sources, including legislation, case law, and international legal instruments, are examined alongside ethnographic studies and cultural analyses to provide a holistic understanding of the issue. By triangulating data from diverse sources, this research aims to present a comprehensive analysis of the cultural and legal dynamics of human trafficking in Indonesia.

3. Discussion

Historically, slavery has developed since several thousand years ago, starting with the conquest of another group, a group that is strong and has power will dominate a weak group. Economic and political power became a source and opportunity for the development of slavery as a consequence of conquest paid for with absolute devotion (Nuraeny, 2011).

Human trafficking is a very evil crime that is experiencing the fastest growth in the world. Human trafficking is also one of the five biggest crimes in the world that must be tackled because the consequences it causes are not only related to economic aspects, but also involve political, cultural and humanitarian aspects. The five crimes are trafficking in illegal drugs (narcotics), illegal weapons trafficking, trafficking in people and rights and intellectual property and money laundering (Syafaat, 2003).

Human trafficking is a classic problem that occurs throughout time. We cannot refute the public view (*communis opinio*) that human trafficking is a form of modern slavery. Human trafficking is a very evil crime and is one of the fastest growing crimes in the world. Nowadays, human trafficking has also become one of the five biggest crimes in the world that must be tackled because of the consequences not only on economic aspects, but also political, cultural and humanitarian aspects (Ali, 2011).

There are two main factors causing the rise in human trafficking. In the cases that have been revealed, there are three things that can be known, namely: First; poverty, second; the number of residents and third; Patriarchal culture. Poverty is the most dominant factor in human trafficking. People who have a low standard of living can easily be persuaded to sell by giving them a job for a

better life. This situation is further strengthened by the country's large population and the difficulty of finding work, especially for women. This situation is exacerbated by the position of women in patriarchal culture who are always under pressure from the environment around them. Therefore, women are often the objects of human trafficking.

The forms of human trafficking that occur in one country with another country have different characteristics, but in general the forms include: sexual exploitation, forced labor, domestic slavery, illegal inter-country adoption of children, debt bondage, mail-order brides and trafficking. human body organs (Ali, 2011). In its development, they were sent to Malaysia using passports and visit or tourist visas to work there. The absence of work visas has resulted in many of them being exploited in the form of passport detention, low wages, confinement, and even inhumane treatment. When the visit visa has expired, the TKI becomes illegal because of overstaying and this makes them vulnerable to exploitation. (Yuwono, 2005).

As technology and transportation between countries develops, it is possible to increase human trafficking across national borders. Cases that arise may be difficult to resolve. To overcome this problem, effective and efficient legislation is needed in the context of preventing and enforcing the law against cases of human trafficking, especially those that cross Indonesia's territorial borders.

The findings of this study reveal the complex interplay between cultural traditions and legal frameworks in facilitating or inhibiting human trafficking in Indonesia. Traditional practices such as debt bondage, arranged marriage, and labor migration are identified as contributing factors to the vulnerability of individuals to trafficking. Moreover, cultural attitudes towards gender, sexuality, and hierarchy intersect with legal structures, influencing the prevalence and perception of trafficking within Indonesian society. However, the analysis also highlights instances where cultural norms serve as protective factors, fostering resilience and resistance against exploitation.

Human trafficking, as a modern manifestation of human slavery, is one of the most serious human rights violations. The increasingly widespread problem of human trafficking, especially in developing countries such as Indonesia, has attracted widespread attention from various parties, including the Indonesian government, the international community, and organizations such as the United Nations (UN). Empirical data shows that women and children are the groups most vulnerable to becoming victims of human trafficking. They are not only exploited for sexual purposes, but also experience various other forms of exploitation, such as forced labor, forced service, slavery, and other similar practices. Human trafficking, especially involving women and children, is increasingly involved in organized and unorganized criminal networks.

Victims of human trafficking often experience various forms of exploitation, either with or without their consent. Exploitation can involve practices such as prostitution, forced labor, slavery, oppression, extortion, physical and sexual exploitation, as well as illegal acts such as the removal or transplantation of organs and/or body tissue. Additionally, victims of human trafficking are often subjected to unlawful violence, threatening their lives, physical integrity, and psychological well-being. Threats of violence are also often used to maintain control or create fear in the victim.

TPPO, or the Crime of Trafficking in Persons, refers to every action or series of actions that meet the criteria that have been determined as criminal acts in Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Trafficking in Persons (UU Eradication of TPPO). Meanwhile, regarding restitution, Article 35 in Law Number 13 of 2006 provides a clear definition of restitution, which is a form of compensation given to the victim or their family by the perpetrator of the crime or a third party. Restitution can take the form of returning property, paying compensation for loss or suffering, and reimbursement of costs for certain actions. The principle underlying restitution is the Principle of Restoration in Its Original Condition (*restitutio in integrum*), which refers to efforts to return the victim to the condition before the crime occurred, although in practice it is not always possible to achieve this original condition. Restitution should include restoration of as many aspects

as possible related to the consequences of the crime, including restoration of legal rights, social status, family life, citizenship, residence, employment, and assets.

In many countries, the concept of restitution is also applied to compensate crime victims for the suffering they have experienced. Victims and their families have the right to receive compensation that is fair and commensurate with the losses they have suffered, which may include the return of property, payment for damage or loss, compensation for costs incurred as a result of the crime, provision of services, and rights to recovery.

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Furthermore, Article 1365 of the Civil Code gives individuals who experience losses due to the actions of others who violate the law the right to claim compensation. If the loss is caused by a criminal act, the individual can obtain compensation through the criminal legal process, which combines the claim for compensation with a criminal case in accordance with what is regulated in the Criminal Procedure Code (KUHAP).

Indonesia also provides more opportunities for victims of criminal acts to obtain wider compensation through Law Number 13 of 2006 concerning Protection of Witnesses and Victims, which was later amended by Law Number 31 of 2014 concerning Amendments to Law Number 13 2006 concerning Witness and Victim Protection. As time goes by, the forms and modes of trafficking become more complex, many models and forms of trafficking are used to ensure the trafficking mission is successful. This cannot be denied because it has become a phenomenon that has mushroomed in various parts of the world, including Indonesia. Domestic helpers who work both outside and within Indonesia are subjected to working conditions under coercion, restraint and are not allowed to refuse to work. They work long hours, unpaid wages (Shofwan, 2009). This is what has become a law to reduce the risks of human sales culture. Because this practice is a forbidden culture, even today every human being has the right to freedom.

4. Conclusions

In conclusion, this paper underscores the importance of recognizing the intertwined nature of cultural traditions and legal systems in understanding and addressing human trafficking in Indonesia. By elucidating the complex dynamics at play, this research contributes to efforts aimed at devising more effective strategies for prevention, protection, and prosecution. It calls for a holistic approach that acknowledges and engages with local cultural contexts while upholding universal human rights principles in combating human trafficking.

Trafficking in persons (TPPO) shows that the implementation of restitution in TPPO law enforcement is influenced by several factors, both internal and external. First, internal factors which include the wishes and participation of victims or witnesses of TIP have a major influence on the

judge's decision to accommodate restitution. Requests for restitution submitted by victims are often the main consideration for judges in making decisions.

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