



## Analysis of the Implementation of Victim Protection Principles in Trafficking in Persons: A Case Study of Supreme Court Decisions of the Republic of Indonesia

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### ABSTRACT

Human Trafficking is a transnational crime that poses a serious challenge in Indonesia. Although Indonesia has enacted Law No. 21 of 2007 and ratified the Palermo Protocol through Law No. 14 of 2009, their implementation still shows significant shortcomings. This study analyzes victim protection principles in Indonesian TIP cases through normative-juridical analysis and case studies. Findings indicate the national legal approach is often repressive toward victims, failing to fully adopt a victim-centered approach. This study recommends strengthening law enforcement training and awareness, providing comprehensive protection for victims, and establishing an integrated institution for a more effective and just response to human trafficking.

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## INTRODUCTION

Human Trafficking is a transnational crime that troubles many countries, including Indonesia. This crime involves the movement of people across or within countries for the purpose of exploitation, whether sexual, forced labor, or other forms of exploitation. Human Trafficking is a complex issue that is difficult to eradicate because it involves organized networks, individual vulnerabilities, and weaknesses in legal and social systems.

Indonesia has enacted Law No. 21 of 2007 on the Eradication of Human Trafficking to address this issue comprehensively. However, the high number of Human Trafficking cases in Indonesia indicates a gap in the implementation of this law. The implementation of Human Trafficking regulations still shows ambiguities that can potentially hinder victim protection and law enforcement processes. Therefore, an in-depth study of the application of this Law through case studies of court decisions is important to ensure victim protection aligns with international principles and to identify gaps in its implementation. Based on this background, the research question for this study is: "How are the principles of victim protection in Human Trafficking implemented and interpreted in court decisions in Indonesia?".

## LITERATURE REVIEW

### *Human Trafficking and the Palermo Protocol*

Human Trafficking in the national legal context is regulated by Law No. 21 of 2007, which defines human trafficking as acts of recruitment, transportation, harboring, transfer, or receipt of persons by means of force, threat, deception, abuse of power, or a position of vulnerability, for the purpose of exploitation. The forms of exploitation include sexual exploitation, forced labor, slavery, organ harvesting, and other forms that degrade human dignity.

At the international level, the Palermo Protocol which Indonesia ratified through Law No. 14 of 2009 outlines the definition of human trafficking by emphasizing three main elements: (1) act, (2) means, and (3) purpose. These three elements must be met for an act to be categorized as Human Trafficking according to the Palermo Protocol. These acts, means, and purpose are a series of actions aimed at achieving exploitation, where there are parties being exploited for the benefit of others. Exploitation itself is an act with or without the consent of the victim that includes but is not limited to prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, physical, sexual, reproductive organ utilization, or unlawfully transferring or transplanting organs and/or body tissues or utilizing a person's energy or ability by another party to obtain material or immaterial gain.

Exploitation itself refers to acts with or without the victim's consent, including but not limited to prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, physical, sexual, or reproductive organ utilization, or unlawfully transferring or transplanting organs and/or body tissues or utilizing a person's energy or ability by another party to obtain material or immaterial gain.

### *Principle of Non-Criminalization of Victims*

One of the fundamental principles in the Palermo Protocol is the non-punishment principle, which is the prohibition against criminalizing victims of human trafficking for acts committed as a direct result of their exploitative situation. Although this principle has been accommodated in Article 18 of Law No. 21 of 2007, its implementation in the field has not been entirely consistent.

For instance, a Kompas investigative report (2021) noted a tendency for law enforcement officials to charge Human Trafficking victims, particularly women and children, with indecency articles in the Criminal Code, such as Articles 296 and 506. This occurs despite strong indications that these individuals were in an exploitative situation controlled by a third party. The Witness and Victim Protection Agency (LPSK) even stated that this repressive approach reflects a failure to understand the principle of victim protection as stipulated in international law. This indicates that a victim-centered approach must be the primary foundation in legal formulation and enforcement.

### *Exploitation and the Relevance of Consent in the Context of Human Trafficking*

Article 3 of the Palermo Protocol emphasizes that human trafficking involves three main elements:

1. Act, refers to the activities of recruitment, transportation, transfer, harboring, or receipt of persons.
2. Means, refers to the use of force, threat, deception, abuse of power, or a position of vulnerability, or coercion.
3. Purpose, refers to the intent to exploit, including sexual exploitation, forced labor, slavery, and other acts that degrade human dignity.

One significant contribution of the Palermo Protocol is the affirmation that victim consent becomes irrelevant if the recruitment is carried out through deception, force, threat, or abuse of vulnerability. Thus, the approach to Human Trafficking must prioritize victim protection as a fundamental principle.

## **METHODOLOGY**

This research uses a normative-juridical approach, a method that focuses on studying written legal norms, both in the form of laws and regulations and relevant international legal instruments. In this context, Law No. 21 of 2007 concerning the Eradication of Human Trafficking (TPPO) is used as the primary object of normative study to evaluate its conformity with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), which has been ratified by Indonesia through Law No. 14 of 2009.

In addition, the Case Study approach is used to concretely analyze the implementation of legal norms in the field. This study examines several Indonesian court decisions related to Human Trafficking that reflect law enforcement practices, criminalization patterns, and treatment of victims. Thus, this method not only looks at textual conformity (in abstracto) but also its impact in the context of legal application (in concreto).

## RESEARCH RESULT

### *Evaluation of the Implementation of Victim Protection Principles*

The principle of victim protection is a crucial element in handling Human Trafficking (TPPO). This principle is also consistent with the victim-centered approach within the human rights framework and the Palermo Protocol, which emphasizes the importance of non-criminalization of victims and the right to effective remedies. In ideal practice, this principle demands that victims are not treated as perpetrators, receive comprehensive recovery, and are guaranteed security from intimidation or re-exploitation. However, the reality on the ground often does not align with this principle. To evaluate the extent to which the principle of victim protection is implemented in the justice system in Indonesia, this section presents five case studies that demonstrate examples of inconsistencies in victim protection based on court decisions listed on the official website of the Supreme Court.

#### *Case Study 1: Supreme Court Decision No. 2381 K/Pid.Sus/2024*

This case originated when Dimas asked the defendant, Dion, to find a woman for a threesome. The defendant then introduced Dimas to Rani, a woman who was eight months pregnant and experiencing financial difficulties. In this case, only Dion was charged, while Dimas who was the initiator and received the greatest benefit from the case was not legally processed. Formally, it can be understood that Dion might be considered to have met the element of exploitation using a vulnerable position. However, Dimas was the one who held full control over the situation here. Dimas was the one who gained the greatest profit from Rani's vulnerable position, which should have made him a legal subject and worthy of receiving the same punishment.

This decision indicates a weakness in the application of victim protection principles and a lack of legal efforts against the main perpetrator of exploitation. This case also reflects how law enforcement's focus often only targets intermediaries, not the main perpetrators who exploit victims' vulnerabilities for sexual or economic gain.

#### *Case Study 2: Supreme Court Decision No. 4803 K/Pid.Sus/2022*

This case involved Afra Afifah Hasti, who was trapped by her own boyfriend, Rusdi, into having sexual relations with a man named Rijal. Rusdi pressured Afra using a recording of her private video as a threat, exploiting their emotional closeness and Afra's vulnerability to comply with his will.

Furthermore, Rusdi's actions were always initiated by Rijal, who actively asked Rusdi to meet and have sexual intercourse with Afra. In this decision, only Rijal was sentenced to punishment, while Rusdi was not legally processed. However, Rusdi was involved in the process, even helping Rijal achieve his goal of exploitation.

This decision highlights a legal failure to grasp the complexity of the structure in acts of exploitation, especially when perpetrators can exploit more personal relationships to pressure and intimidate victims. This case reflects the need for a more comprehensive legal approach in recognizing the involvement and responsibility of all parties in the chain of exploitation. It indicates that there

are still gaps in the evidentiary system and the interpretation of dominant roles, which result in key perpetrators escaping legal accountability.

***Case Study 3: Mataram District Court Decision No. 310/Pid.Sus/2020/PN Mtr***

This case involved three defendants, namely Puji Rahayu, Aulia Nur Alif, and Ferry Ferdiansyah, who recruited two underage girls, Maya and Novi, to work in Lombok. The two victims were promised decent jobs. However, upon arrival at the location, they were forced to work without receiving wages, prohibited from leaving the house, and even required to pay "compensation" if they asked to return home. This situation clearly reflects a form of labor exploitation as explicitly stated in Article 1 paragraph (1) of the TIP Law. Nevertheless, the majority of the panel of judges in their decision stated that exploitation in the legal sense was not proven, and acquitted all defendants of all charges. Only one dissenting judge firmly stated that exploitation had clearly occurred through practices of forced labor without wages, restriction of freedom, and financial threats imposed on the victims.

This decision highlights a serious problem in the legal interpretation of the meaning of exploitation, as well as a weak understanding of the vulnerability of child victims in the context of human trafficking. It also demonstrates the importance of deepening the victim's perspective in assessing whether an act meets the elements of Human Trafficking, especially when violations of basic rights are so clearly occurring.

***Case Study 4: Supreme Court Decision No. 4270 K/Pid.Sus/2024***

This case involved Hendra, the owner of Cafe Satria in Fakfak, along with two other women, who recruited a 17-year-old girl named Deria Julianti Hasan to work as a waitress. However, instead of working as agreed, Deria was exploited in disguised prostitution practices.

Deria was asked to sexually serve customers in exchange for a fee entirely given to the Cafe owner as profit and room rent. In this case, Deria's identity was also manipulated to make it seem as if she was 21 years old. Although no direct physical violence was found, the Supreme Court stated that sexual exploitation of a child had occurred through the abuse of the victim's vulnerable position.

This decision shows the correct application of principles in the TIP Law, especially regarding child exploitation. In its legal considerations, the Court also affirmed that a child's consent cannot be used as a justification for exploitation practices. This approach aligns with the non-criminalization principle for victims and prioritizes the best interest of the child. This case can serve as a positive example in the application of law that favors victim protection, especially for children, in situations of human trafficking and disguised exploitation.

***Case Study 5: Supreme Court Decision No. 7283 K/Pid.Sus/2024***

This case began in January 2022 when the Corruption Eradication Commission (KPK) uncovered the existence of a human cage facility at the private residence of the former Langkat Regent, Terbit Rencana Perangin-Angin. This facility was used to detain and exploit hundreds of people by force, under the guise of drug rehabilitation. The victims were forced to work without wages

in Terbit's oil palm plantations and also suffered physical torture and lived in inhumane conditions. Komnas HAM found at least 26 forms of violence experienced by the occupants of the cage, including the use of tools such as hammers and hot iron. On July 8, 2024, the Stabat District Court acquitted Terbit of the charges of human trafficking (TPPO) and acquitted him of all charges in decision 555/Pid.Sus/2023/PN Stb. The panel of judges also rejected the victim's request for restitution.

However, the Supreme Court (MA) overturned the acquittal through cassation decision No. 7283 K/Pid.Sus/2024 dated November 15, 2024, filed by the Public Prosecutor. The Supreme Court ultimately declared that Terbit was proven guilty of violating Article 2 paragraph (2) juncto Article 11 of Law No. 21 of 2007, and sentenced him to 4 years in prison and a fine of Rp200 million, subsidiary to 2 months imprisonment. Furthermore, the Supreme Court still rejected the restitution request for the victims, which drew considerable criticism from various parties as it was deemed to have ignored the victims' rights to recovery and justice.

This case highlights the challenges in law enforcement against major Human Trafficking perpetrators, especially when the perpetrators hold positions of power and political influence. The Supreme Court's decision to overturn the acquittal also indicates a correction of errors at the first instance level. Finally, the relatively light sentence and the denial of restitution reflect the continued weakness in victim protection and the lack of application of restorative justice principles in the criminal justice system in Indonesia.

### ***Comparative Study: Victim Protection from the Philippine Perspective***

The Philippines is one of the ASEAN countries that stands out in terms of Human Trafficking victim protection. Since 2016, the Philippines has maintained its Tier 1 status in the U.S. Department of State's Trafficking in Persons (TIP) Report. This achievement demonstrates the Philippines' commitment to upholding the law and providing comprehensive recovery for Human Trafficking victims, not only through prosecuting perpetrators but also through a comprehensive support system.

The Philippines has developed a legal system capable of prosecuting all perpetrators in the Human Trafficking chain, and placing victims under comprehensive protection through the IACAT institution. The following table presents a comparison of victim protection, referring to Philippine legal provisions, based on the discussion of the five case studies previously discussed:

Table 1. Victim Protection from the Philippine Perspective

No.	Case	Country	Victim Protection	Is it Consistent with the Palermo Protocol?
1	Dion (Threesome Intermediary)	Indonesia	No significant protection found for Rani, despite being in difficult economic	Not fully. Only the intermediary perpetrator was punished; the main perpetrator

No.	Case	Country	Victim Protection	Is it Consistent with the Palermo Protocol?
			conditions & pregnant.	was not charged; and the victim was not rehabilitated.
		Filipina	Rani is considered a victim of economic & sexual exploitation; received medical, psychological, shelter, & legal assistance from the Inter-Agency Council Against Trafficking (IACAT).	Yes. All perpetrators are charged; victims are protected and rehabilitated.
2	Rijal & Rusdi (Sexual Exploitation)	Indonesia	The victim only received restitution; there was no comprehensive rehabilitation.	No. Rusdi, who threatened to spread the video, was not legally prosecuted.
		Filipina	The victim (Afra Afifah) received full protection (shelter, counseling, legal aid, & rehabilitation) from the Inter-Agency Council Against Trafficking (IACAT).	Yes. All perpetrators are charged; victims are protected and rehabilitated.
3	Puji, Aulia & Ferry (Exploitation of minors through forced labor without wages, and restriction of freedom.)	Indonesia	Weak. Victims did not receive justice, were not recognized as human trafficking victims.	Not consistent. Elements of exploitation & child victim vulnerability were ignored, contradicting the Palermo Protocol principles.
		Filipina	Strong. In the Philippines, the Department of Social Welfare and Development (DSWD) provides rehabilitation and protection programs	Consistent. Philippine law explicitly adopts the principles of the Palermo Protocol.

No.	Case	Country	Victim Protection	Is it Consistent with the Palermo Protocol?
			to victims. Additionally, the Department of Foreign Affairs (DFA) provides counseling and shelter for victims.	
4	Hendra (case of exploitation of minors by falsifying identity and modus operandi of child exploitation in entertainment)	Indonesia	Yes. Deria was recognized as a "victim" and Hendra had to pay restitution of IDR 4 million to Deria. This is a form of compensation to the victim, although the amount is very minimal and disproportionate to the physical, mental, and social harm suffered by the victim. In addition, the decision did not state whether the victim received psychosocial services or assistance from LPSK, etc.	Partially consistent with the Palermo Protocol, especially in victim recognition and perpetrator punishment. However, it is not fully consistent because victim recovery is minimal and not detailed in the decision.
		Filipina	Strong and Comprehensive. Victims will receive rehabilitation, social reintegration, medical, psychological, and legal assistance. Protection from the Department of Social Welfare and Development (DSWD) and non-government organizations (NGOs).	Yes, very consistent. Philippine law fully adopts the principles of the Palermo Protocol.

No.	Case	Country	Victim Protection	Is it Consistent with the Palermo Protocol?
5	Terbit Rencana Perangin Angin (Human Cages)	Indonesia	Weak. The Supreme Court recognized the victims but denied restitution. No clear information on rehabilitation or state compensation. Protection remains minimal, especially for victims of systemic forced labor.	Not fully consistent. While there is victim recognition and perpetrator punishment, the sentence is too light, and the denial of restitution contradicts the principle of victim justice in the Palermo Protocol.
		Filipina	Strong. Victims will receive protection from the Department of Social Welfare and Development (DSWD), including rehabilitation, medical, legal, and psychosocial assistance.	Yes, very consistent. The Philippines adopts the principles of the Palermo Protocol holistically, including victim recovery and restitution as a right.

The Philippines provides a concrete example of how the addition of specialized institutions can enhance the effectiveness of law enforcement in providing victim protection in Human Trafficking cases. In this study, the Philippines is presented solely as a comparative country that has demonstrated good practices in implementing victim protection principles, in line with the spirit of the Palermo Protocol.

## DISCUSSION

The case studies analyzed reveal a significant disparity in the implementation of victim protection principles within Indonesia's legal system, particularly when contrasted with the spirit of the Palermo Protocol. Despite national legislation and international ratification, the prevailing legal approach often remains repressive towards victims, failing to fully adopt a victim-centered perspective in court decisions. This is evident in instances where key perpetrators evade accountability, victim consent is misinterpreted, or comprehensive rehabilitation and restitution are inadequately addressed, thus hindering

effective victim protection and highlighting a critical gap between legal frameworks and their practical application.

## **CONCLUSIONS AND RECOMMENDATIONS**

### ***Conclusions***

The evaluation of Law No. 21 of 2007 on the Eradication of Human Trafficking (TPPO) indicates that although Indonesia has ratified the Palermo Protocol, the implementation of national law still contains various significant weaknesses, particularly in the aspect of victim protection. Through the analyzed case studies, it is evident that the legal approach in Indonesia is often repressive towards victims and has not fully adopted a victim-centered approach. The principle that victim consent is irrelevant in the context of exploitation has also not been well internalized in judicial practice.

Therefore, concrete steps are needed to strengthen the legal protection of victims, establish more stringent regulations for key perpetrators, and form an integrated national institution oriented towards victim protection. Thus, the handling of Human Trafficking in Indonesia can proceed more effectively, justly, and humanely, in line with international commitments.

### ***Recommendations***

1. Strengthening Education and Training for Law Enforcement Officials. Intensive training is needed for law enforcement officials to be able to identify main perpetrators and intermediaries, as well as understand forms of exploitation without physical violence.
2. Optimizing Oversight of Human Trafficking Routes. The government must increase oversight of both domestic and international Human Trafficking routes, and strengthen inter-state cooperation to prevent this crime.
3. Enhancing Protection and Rehabilitation for Human Trafficking Victims. Access to rehabilitation and protection services for victims must be improved, including social, psychological, and legal support.
4. Strengthening Public Awareness. Education programs to increase public vigilance, especially in remote areas prone to Human Trafficking.
5. Establishment of an Integrated National Institution. Similar to IACAT in the Philippines, an integrated institution should be available for the prevention and response to Human Trafficking cases.

## **ADVANCED RESEARCH**

This study, while offering valuable insights into the application of victim protection principles, is inherently limited by its reliance solely on publicly available court decisions. Future research could enhance understanding by incorporating qualitative data through in-depth interviews with judges, prosecutors, law enforcement officials, and victims to explore their perspectives on the implementation challenges. Additionally, a broader quantitative analysis encompassing a larger sample of court decisions or comparative studies with other countries implementing diverse victim protection models could further enrich the discourse and identify more generalized patterns in human trafficking case management.

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