

State Responsibility in Protecting Students in Overseas Internship Programs from Human Trafficking: A Critical Analysis of Regulatory Gaps After the Ferienjob Case

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Abstract

This study aims to analyze state responsibility in protecting international internship students from human trafficking practices, particularly following the Ferienjob case involving thousands of Indonesian students. The research employs a normative juridical approach with analysis of legislation related to overseas citizen protection, the Merdeka Belajar Kampus Merdeka (MBKM) policy, and international legal instruments on human trafficking. The findings reveal significant regulatory gaps in the supervision of overseas internship programs, weak verification mechanisms for organizing institutions, and unclear division of responsibilities among central government, universities, and program organizers. The study concludes that the state has legal obligations to provide preventive protection through strict regulation of MBKM-based internship programs, strengthening risk-based supervision systems, and imposing firm sanctions against organizers proven to exploit students as victims of human trafficking.

INTRODUCTION

Indonesia is a country with a large population and ranks fourth globally in terms of total population. With such a large population, Indonesia also has a high number of students; in 2024, the number of students in Indonesia reached 53.14 million. Overseas internship programs have become an integral part of the transformation of higher education in Indonesia, particularly since the implementation of the *Merdeka Belajar Kampus Merdeka* (MBKM) policy, which encourages students to gain international work experience.¹ However, the 2024 “Ferienjob” case, which involved thousands of Indonesian students allegedly becoming victims of human trafficking in Germany, revealed critical gaps in the system for protecting citizens abroad.² This case demonstrates that internship programs, which are intended to provide educational value, can instead become a mode of labor exploitation through human trafficking schemes.

This issue becomes increasingly complex given that human trafficking conducted under the guise of internship programs has unique characteristics that distinguish it from conventional forms of trafficking. Victims often do not realize that they are being exploited because the programs are packaged as educational and legal initiatives, while practices in the field reveal elements of deception, forced labor, and economic exploitation.³ This situation is further exacerbated by weak government oversight of institutions organizing overseas internship programs and the lack of clarity regarding legal protection mechanisms for student participants.

Normatively, the state has a constitutional obligation to protect all citizens, including those outside its territorial jurisdiction, as mandated by Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia.⁴ This obligation is reinforced by Indonesia’s ratification of the Palermo Protocol through Law Number 14 of 2009 on the Ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons.⁵ Nevertheless, the implementation of protection for students participating in overseas

¹ Anthony Anggrawan et al., *Pendidikan Implementasi Program Merdeka Belajar–Kampus Merdeka (MBKM) Di Perguruan Tinggi* (Jambi: PT. Sonpedia Publishing Indonesia, 2023).

² Ambar, “Polisi Ungkap Guru Besar Universitas Jambi Menerima Rp48 Juta Dalam Kasus Perdagangan Orang Berkedok Magang Di Jerman,” *bbc.com*, 2024, <https://www.bbc.com/indonesia/articles/c72d5gx5jp7o>.

³ Priyanda Gultom, “Perlindungan Hukum Bagi Korban Tindak Pidana Perdagangan Orang” (Universitas HKBP Nommensen, 2025), <https://repository.uhn.ac.id/handle/123456789/12227>.

⁴ “Undang-Undang Dasar Negara Republik Indonesia Tahun 1945,” 1945.

⁵ Indonesia, “Pengesahan Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime” (2009).

internships still reveals a significant gap between legal norms and practices on the ground.

Several previous studies have examined aspects of state responsibility in protecting citizens from human trafficking. Rizky Dwi analyzed the role of Indonesian diplomatic missions in protecting Indonesian migrant workers who became victims of human trafficking in Malaysia, focusing on protection diplomacy mechanisms.⁶ Meanwhile, Panjaitan examined the implementation of the Palermo Protocol within Indonesia's legal system concerning the protection of trafficking victims but did not address the specific context of student internship programs.⁷ Anggraini (2023) discussed state responsibility from the perspective of international law toward victims of human trafficking, emphasizing the theoretical aspects of state responsibility without linking them to the MBKM framework.⁸ The identified research gap lies in the absence of a comprehensive study that specifically analyzes regulatory loopholes in MBKM-based overseas internship programs and the state's responsibility in preventing the exploitation of students as victims of human trafficking, particularly in the aftermath of the Ferienjob case, which underscores the urgency of this issue.

Based on this background, this study formulates the following research questions: first, what regulatory loopholes exist in the supervision of MBKM-based overseas internship programs that allow human trafficking practices to occur? Second, what is the legal responsibility of the state in protecting students participating in overseas internship programs from human trafficking practices? This study aims to critically analyze existing regulatory gaps and to formulate a comprehensive framework of state responsibility in protecting students from human trafficking exploitation within overseas internship programs.

⁶ Rizky Dwi Utami, "Perlindungan Hukum Pekerja Migran Indonesia Dalam Kasus Human Trafficking Oleh KJRI Johor Bahru Malaysia," *Lex LATA* 4, no. 2 (2022): 263-78, <https://doi.org/https://doi.org/10.28946/lexl.v4i2.1797>.

⁷ Ananda Chrisna D Panjaitan, "Harmonisasi Undang-Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang Dengan Protokol Palermo Dalam Perlindungan Perdagangan Orang Di Indonesia," *Jurnal Yustitia* 16, no. 1 (2022): 1-13, <https://doi.org/https://doi.org/10.62279/yustitia.v16i1.895>.

⁸ Firda Rachma Aryani and Andi Aina Ilmih, "Kejahatan Perdagangan Orang Dalam Perspektif Kejahatan Lintas Negara," *ALADALAH: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 4 (2024): 160-67, <https://doi.org/https://doi.org/10.59246/aladalah.v2i4.967>.

METHODS

This study employs a normative legal research method using a statutory approach and a conceptual approach.⁹ The statutory approach is applied by analyzing legislation governing the protection of citizens abroad, the MBKM policy, Law Number 21 of 2007 on the Eradication of the Crime of Human Trafficking, as well as international legal instruments related to human trafficking that have been ratified by Indonesia. The conceptual approach is used to examine the concept of state responsibility in international law, the concept of human trafficking, and the principles of citizen protection as developed in legal doctrine and state practice.

The legal materials used consist of primary legal materials in the form of national legislation, international treaties, and relevant court decisions, as well as secondary legal materials in the form of legal textbooks, academic journals, legal articles, and reports from international organizations addressing human trafficking and the protection of citizens. The collection of legal materials is conducted through library research, involving the inventory and categorization of legal materials based on their hierarchy and relevance to the research issues.¹⁰ The analysis of legal materials employs a qualitative analytical method with a descriptive-prescriptive technique, namely describing the applicable legal norms, identifying regulatory gaps and inconsistencies, and formulating legal prescriptions in the form of recommendations to improve the regulatory framework and protection mechanisms for students participating in overseas internship programs from human trafficking practices.

RESULTS AND DISCUSSION

1. State Responsibility in Addressing Human Trafficking Cases Involving Students Participating in Overseas Internships

The Ferienjob case, which involved thousands of Indonesian students, revealed the ineffectiveness of state protection mechanisms for citizens abroad, particularly within the context of MBKM-based internship programs. Although Indonesia has ratified the Palermo Protocol through Law Number 14 of 2009 and enacted Law Number 21 of 2007 on the Eradication of the Crime of Human Trafficking, the implementation of preventive protection measures still exhibits significant gaps. State responsibility in this context is not limited to repressive actions through criminal law enforcement but also includes

⁹ P. M. Marzuki, *Metode Penelitian Hukum* (Jakarta: Kencana Prenada Group, 2007).

¹⁰ J. Efendi and P. Rijadi, *Metode Penelitian Hukum Normatif Dan Empiris*, 2nd ed. (Depok: Prenada Media Group, 2022).

preventive obligations to ensure that all overseas internship programs undergo strict verification processes and do not contain indications of exploitation.

To qualify an act as human trafficking, Article 2 of Law Number 21 of 2007 requires the fulfillment of three cumulative elements: the act (recruitment, transportation, harboring, transfer, delivery, or receipt of persons), the means (threats of violence, deception, abuse of vulnerability, or debt bondage), and the purpose (exploitation). In the Ferienjob case, all three elements were fulfilled: students were recruited under the guise of an educational internship program (act), were in fact subjected to high fees and misleading information regarding working conditions (means), and were employed under exploitative conditions inconsistent with educational objectives (purpose).¹¹

The state's responsibility to protect citizens from human trafficking is derived from constitutional obligations as mandated by Article 28G paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution, as well as international obligations under the Palermo Protocol that Indonesia has ratified. However, in practice, ambiguity persists regarding institutional responsibility among the Ministry of Education, Culture, Research, and Technology, the Ministry of Foreign Affairs, and higher education institutions in supervising overseas internship programs. The absence of a clear coordination mechanism has resulted in weak early detection systems for internship programs with exploitative potential.¹²

The constitutional guarantee under Article 28D of the 1945 Constitution concerning the right to fair legal protection should be translated into concrete mechanisms for protecting students participating in overseas internships. Nevertheless, prior to the Ferienjob case, there were no specific regulations governing the verification and accreditation of overseas internship program providers. This regulatory vacuum allowed non-credible institutions to operate without adequate supervision, placing students in a vulnerable position as potential victims of human trafficking.

The principle of legal certainty articulated by Gustav Radbruch requires clear, consistent, and predictable legal rules. In the context of protecting students undertaking overseas internships, such legal certainty was notably absent. Prior to the issuance of Minister of Education, Culture, Research, and Technology Regulation Number 63 of 2024, there were no standardized criteria regarding the qualifications of sending institutions, cooperation agreement mechanisms, or minimum protection standards. This legal

¹¹ Heny Nuraeny, *Tindak Pidana Perdagangan Orang Dalam Perspektif Hak Asasi Manusia* (PT Raja Grafindo Persada, 2016).

¹² Fauzatul Ma'rufah Rohmanurmata, *Konsep Dasar Pendidikan Kewarganegaraan*, 1st ed. (CV AE Media Grafika, 2022).

uncertainty was exploited by unscrupulous organizers to operate exploitative schemes disguised as educational programs.¹³

Article 2 of Law Number 21 of 2007 explicitly criminalizes acts of human trafficking, with penalties ranging from three to fifteen years of imprisonment and fines of up to IDR 600,000,000. However, the application of this provision in the Ferienjob case encountered jurisdictional challenges, as most exploitative acts occurred within German territory. This situation highlights the need to strengthen bilateral cooperation in cross-border human trafficking law enforcement and to establish more effective extradition mechanisms. More importantly, the regulation remains predominantly repressive in nature and does not adequately address preventive measures, which should be prioritized to protect students before their departure.

In addition to Law Number 21 of 2007 on Human Trafficking, other regulations addressing trafficking-related offenses exist, including Law Number 1 of 1946 on Criminal Law Regulations, commonly known as the Indonesian Criminal Code (KUHP). An example is the provision on fraud under Article 378 of Law Number 1 of 1946, which states:

"Whoever, with the intent to unlawfully benefit himself or another person, by using a false name or false capacity, deceit, or a series of lies, induces another person to hand over property, to provide a loan, or to cancel a debt, shall be punished for fraud with a maximum imprisonment of four years."

Although the Indonesian National Police has established a Directorate for Human Trafficking Crimes and a Human Trafficking Task Force pursuant to Presidential Regulation Number 49 of 2023, the effectiveness of these institutions in preventing the Ferienjob case remains questionable. While the Task Force is mandated to coordinate prevention and handling efforts as well as to supervise cross-border activities, no specific mechanism exists to verify the legitimacy of overseas internship programs prior to student departure. Monitoring at departure points continues to focus primarily on conventional trafficking patterns and has yet to effectively address concealed trafficking schemes embedded within official internship programs. These limitations indicate the need to expand the Task Force's mandate to include internship program verification or to establish a specialized task force involving the Ministry of Education, Immigration authorities, and the National Police.¹⁴

¹³ Fauzatul Ma'rufah Rohmanurmata, *Konsep Dasar Pendidikan Kewarganegaraan*, 1st ed. (CV AE Media Grafika, 2022).

¹⁴ Okky Cahyo Nugroho, "Tanggung Jawab Negara Dalam Penanganan Tindak Pidana Perdagangan Orang," *Jurnal Penelitian Hukum DE JURE* 18, no. 4 (2018).

In relation to the state's responsibility to protect students undertaking overseas internships and to prevent human trafficking cases, the Ministry of Higher Education, Science, and Technology of the Republic of Indonesia issued Minister of Education, Culture, Research, and Technology Regulation Number 63 of 2024 on the Implementation of Internships by Higher Education Institutions, Agencies, Legal Entities, and Universities.

This regulation provides more detailed provisions on student protection and rights, as stipulated in Articles 28 and 29. Article 28 paragraphs (1) and (2) of Ministerial Regulation Number 63 of 2024 state:

"Student Internship Participants are entitled to protection as stipulated in the Student Internship cooperation agreement as referred to in Article 15 paragraph (2) letter d."

"Higher education institutions, internship partner organizers, and sending institutions are obliged to provide the protection referred to in paragraph (1)."

Furthermore, Article 29 stipulates that such protection shall at a minimum include:

- a. Occupational safety and health facilities at the internship location;*
- b. Adequate accommodation facilities;*
- c. Accident, health, and life insurance;*
- d. Prevention of violence;*
- e. Handling of problems arising during the internship period;*
- f. Regulation of internship working hours in accordance with applicable laws and regulations; and*
- g. Allowances, including transportation costs, meal allowances, and internship incentives.*

The Results and Discussion section presents research findings and their scholarly analysis, explaining both the regulatory framework and empirical facts. The analysis is conducted in accordance with the chosen research approach and includes comparisons with findings from previous studies addressing similar topics. Ultimately, the research findings must be able to address and answer the research questions formulated in the introductory section.

2. State Measures to Protect Student Interns Who Become Victims of Human Trafficking

The concept of legal protection can be understood by examining the combined meanings of the terms "protection" and "law." According to the *Kamus Besar Bahasa Indonesia* (Great Dictionary of the Indonesian Language), protection refers to acts or

measures intended to safeguard someone, while law is defined as officially binding rules established and enforced by authorities or the government.¹⁵

Based on these definitions, legal protection may be understood as protective efforts undertaken by state administrators (the government) or authorities through the formulation and enforcement of laws and regulations. Furthermore, the *Legal Dictionary* defines legal protection as coercive rules that regulate human behavior within social life.¹⁶

Philipus M. Hadjon distinguishes between preventive legal protection, which provides citizens with opportunities to raise objections before a definitive government decision is made, and repressive legal protection, which involves access to judicial mechanisms to resolve disputes. In the context of student internships, preventive protection should be realized through strict verification systems for internship organizers and accessible complaint mechanisms prior to departure. Repressive protection, meanwhile, includes access to legal assistance, repatriation, rehabilitation, and criminal prosecution of perpetrators through criminal, civil (compensation), and administrative sanctions (such as revocation of institutional licenses). The failure of preventive protection in the Ferienjob case demonstrates that Indonesia's legal system remains overly focused on repressive measures without establishing adequate preventive infrastructure.¹⁷

Efforts to provide legal protection to student interns who become victims of human trafficking may take several forms, including:

- a. The provision of restitution and compensation;
- b. Counseling and medical assistance;
- c. Legal assistance and representation;
- d. Access to information; and other forms of support.¹⁸

With regard to the protection of victims of human trafficking, Law Number 21 of 2007 on the Eradication of the Crime of Human Trafficking provides protection for student interns who become victims, as regulated in Chapter III, consisting of Articles 21–25, which address forms of victim protection, and Chapter V, consisting of Articles 43–53, which regulate victims' rights.

¹⁵ Herlin Wijayati, *Hukum Kewarganegaraan Dan Keimigrasian (Perkembangan Isu-Isu Terkini)*, 1st ed. (UB Press, 2022).

¹⁶ Herlin Wijayati, *Hukum Kewarganegaraan Dan Keimigrasian (Perkembangan Isu-Isu Terkini)*, 1st ed. (UB Press, 2022).

¹⁷ Herlin Wijayati, *Hukum Kewarganegaraan Dan Keimigrasian (Perkembangan Isu-Isu Terkini)*, 1st ed. (UB Press, 2022).

¹⁸ Dikdik M Arief Mansur and Elisatri Gultom, *Urgensi Pelindungan Korban Kejahatan Antara Norma Dan Realita* (Raja Grafindo Persada, 2007).

Articles 21–25 of the Human Trafficking Law stipulate various forms of protection, beginning from the investigation, prosecution, and examination stages before the court. Such protection is crucial to restoring the losses suffered by victims through legal assistance mechanisms, ranging from police procedures to judicial proceedings.

This protection is particularly important because victims of human trafficking often suffer significant harm, including physical and psychological injuries resulting from exploitation. These provisions ensure legal certainty regarding the role of law enforcement agencies, starting from investigation and inquiry by the police, arrest and detention, prosecution and examination by the public prosecutor, and ultimately judicial decisions rendered by judges.¹⁹

In addition to regulating legal protection mechanisms, Law Number 21 of 2007 also governs the rights of victims. As previously explained, victims are entitled to restitution and compensation, as stipulated in Article 48 paragraphs (1) and (2), which provide:

Paragraph (1):

“Every victim of the crime of human trafficking or their heirs are entitled to receive restitution.”

Paragraph (2):

“Restitution as referred to in paragraph (1) shall consist of compensation for:

- a. Loss of property or income;*
- b. Suffering;*
- c. Costs of medical and/or psychological treatment; and/or*
- d. Other losses suffered by the victim as a result of human trafficking.”²⁰*

Restitution and compensation are two distinct legal concepts. Restitution aims to restore the victim’s condition to the state prior to the occurrence of the crime and is provided by the perpetrator. When a criminal act causes harm, the perpetrator bears responsibility for compensating the victim, either financially or through other means.²¹

Compensation, on the other hand, is a concept in civil law that refers to damages awarded to a party who suffers loss due to an unlawful act or breach of contract (failure to fulfill agreed obligations resulting in harm).

Beyond restitution and compensation, victims of human trafficking are also entitled to counseling and medical assistance. To realize these rights, the government is obligated

¹⁹ Topo Santoso and Choky Risda Ramadhan, *Prapenuntutan Dan Perkembangan Di Indonesia* (PT Raja Grafindo Persada, 2019).

²⁰ H Haswandi, *Tanggung Jawab Perdata Pelaku Tindak Pidana Korupsi Dan Ahli Waris* (Kencana, 2023).

²¹ Namira Wulandari Nawawi, *Kompensasi Bagi Korban Tindak Pidana Perbandingan Tindak Pidana Pelanggaran Hak Asasi Manusia Yang Berat, Terorisme, Dan Kekerasan Seksual* (Karya Bakti Makmur, 2023).

to provide health rehabilitation services for victims who suffer physical or psychological harm, including access to trauma recovery centers managed by either governmental or community-based institutions.

Victims of human trafficking are also entitled to legal assistance to protect and represent their rights during legal proceedings, both in court (litigation) and outside court (non-litigation). This assistance is particularly crucial in criminal proceedings, starting from the reporting of the offense through to the issuance of a court verdict.

Furthermore, victims must be provided with information regarding their condition and the legal processes they are undergoing, and such information must also be accessible to their families. This right is stipulated in Article 36 paragraph (1) of the Human Trafficking Law, which states:

"During the investigation, prosecution, and examination before the court, victims are entitled to receive information regarding the progress of the case involving them."

In addition to the protections outlined above, victims of human trafficking must be repatriated to their place of residence, and the state bears responsibility for the rescue and repatriation of victims, whether from within or outside the country. The handling and repatriation of human trafficking victims are funded through the State Budget (APBN), Regional Budgets (APBD), and other lawful sources, as regulated under Minister of Social Affairs Regulation Number 8 of 2023 on the Handling of Victims of Human Trafficking and Indonesian Migrant Workers in Distress.

CONCLUSION

This study identifies two principal findings regarding state responsibility in protecting students participating in overseas internship programs from human trafficking practices. First, it reveals significant regulatory gaps in the supervision of MBKM-based overseas internship programs that have enabled human trafficking to occur. These gaps include: (a) the absence of strict verification and accreditation mechanisms for overseas internship providers prior to the enactment of Minister of Education, Culture, Research, and Technology Regulation Number 63 of 2024; (b) ambiguity in the allocation of supervisory responsibilities among the Ministry of Education, the Ministry of Foreign Affairs, higher education institutions, and sending agencies; (c) weaknesses in early detection mechanisms by the Human Trafficking Task Force in identifying trafficking schemes concealed within formally recognized internship programs; and (d) the lack of firm sanctions and periodic audits to ensure compliance with student protection standards in host countries, despite the establishment of minimum protection requirements under Regulation Number 63 of 2024.

Second, the legal responsibility of the state to protect students in overseas internship programs derives from constitutional obligations under Articles 28G and 28D of the 1945 Constitution, as well as international obligations arising from the Palermo Protocol, ratified through Law Number 14 of 2009. This responsibility operates across two interrelated dimensions: (a) a preventive dimension, encompassing the establishment of institutional verification systems, mandatory pre-departure orientation, stringent accreditation procedures, the placement of education attachés in host countries, and the creation of a blacklist mechanism targeting exploitative institutions; and (b) a repressive dimension, involving access to legal assistance, victim repatriation and rehabilitation, and the enforcement of criminal, civil, and administrative sanctions against perpetrators, both domestically and transnationally, through strengthened bilateral cooperation. The Ferienjob case demonstrates that the failure of preventive mechanisms resulted in thousands of students becoming victims, underscoring the urgent need to prioritize the development of robust preventive protection infrastructures.

Based on these findings, this study proposes several policy recommendations: (1) the establishment of an independent accreditation body or the strengthening of the Human Trafficking Task Force with a specific mandate to conduct accreditation, periodic audits, and inspections of overseas internship programs; (2) the revision of Ministerial Regulation Number 63 of 2024 to incorporate strict administrative sanctions, including the revocation of operational licenses for institutions that violate student protection standards; (3) the creation of an integrated national registry and blacklist system for sending institutions, coordinated across relevant ministries; (4) the enhancement of bilateral cooperation with major host countries to ensure legal protection for Indonesian students and access to effective dispute resolution mechanisms; and (5) the mandatory implementation of comprehensive pre-departure orientation programs addressing students' rights, indicators of human trafficking, and reporting procedures. This study contributes to the literature by offering a critical analytical framework for identifying regulatory gaps in MBKM-based internship programs and by articulating a comprehensive model of state responsibility to prevent the exploitation of students as victims of human trafficking in the context of the globalized higher education landscape.

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