

Analysis of Regulations on Criminal Sanctions Trafficking Offenders Under National Criminal Law

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Abstract. *The act of trafficking is modern-day slavery that occurs both on a national and international scale, with various advances in information and communication technology and the transformation of new modes of human trafficking. The aim of this research is to analyze legal protection for victims of human trafficking according to national criminal law; and analyzing the application of criminal sanctions regulations against perpetrators of human trafficking as a transnational crime. This research uses normative juridical legal research methods. The results of this research are that legal protection for victims of criminal acts of human trafficking according to national criminal law is the right to receive physical assistance, the right to receive assistance in the form of solving problems, the right to regain their rights, the right to obtain recovery, the right to receive protection from threats, and the right to receive compensation from individual perpetrators, corporations and the government. With Law no. 18 of 2017, the protection for Indonesian migrant workers and for prospective Indonesian migrant workers who will work outside the country has become better, although with some notes of improvement, but this is in order to achieve guaranteed fulfillment of workers' rights in all activities before work, during work, and after working in legal, economic and social aspects.*

Keywords: *Analysis; Criminal; Human; Sanctions; Trafficking.*

1. Introduction

The crime of human trafficking uses new operandi patterns and has become the attention of the international community, because this crime has a very broad impact on society, which is why it is very important to study the sanctions that will be received by the perpetrators of this crime, and it is very direct contact with the lower strata of Indonesian society, and where it relates to the comfort and security of people's lives. The problem related to cross-border crime that is of concern to the world is the crime of human trafficking. Human trafficking is a form of modern human slavery, and this is clearly very bad and violates human dignity (in the general provisions of Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons). So cases

of criminal acts of human trafficking should not escape the serious attention of the Indonesian government.¹

Human trafficking predominantly occurs in the majority of women and children, this is a form of slavery that occurs in the modern era, and is also carried out using modern patterns, this is the result of the multidimensional crisis that is currently occurring in Indonesia. In various reports it has been stated that the crime of human trafficking is a serious problem in the world, and has even become a business area for the perpetrators of this crime. Every year it is estimated that as many as 2 (two) million people are trafficked, the majority of whom are women and children who are groups that are very vulnerable to becoming victims of human trafficking.²

The Witness and Victim Protection Agency (LPSK) released data from 2015 to June 2020, there were 704 victims of criminal acts of trafficking in persons (TPPO) who submitted applications for protection, these victims were 438 women and 266 male victims, and among them There were 147 victims who were still children, and 126 of them were women. Then, if you look at the domicile of TIP victims, the highest province is West Java with a figure of 28.98%, then DKI Jakarta with 14.77%, and NTT Province with 8.24%.³

One of the complicated problems of TIP is when illegal workers are sent by irresponsible individuals, resulting in a large number of workers who are not recorded by the government. Not all of the migrant workers who were sent home were in good condition, but many were in poor condition both physically and mentally. The government must continue to make efforts so that Indonesian workers can be given definite legal protection and guarantees wherever Indonesian workers are located. One of the efforts to overcome the problems mentioned above then made the Indonesian government issue a policy to protect Indonesian workers, namely the issuance of Minister of Manpower Regulation Number 18 of 2018 concerning Social Security for Indonesian Migrant Workers (PERMENAKER No. 18 of 2018) to minimize the existence of problems related to labor. Indonesian work.⁴

The act of trafficking is modern-day slavery that occurs both on a national and international scale, with various advances in information and communication technology and the transformation of new modes of human trafficking. Because of this and based on the data and facts that have been described, it can be clearly seen that cases of human trafficking are

¹ Paul Sinlaeloe, *Tindak Pidana Perdagangan Orang*, Setara Press, Malang, 2017, p. 6

² Rachmad Syafaat, *Dagang Manusia*, Lappera Pusaka Utama, Jakarta, 2003, p. 1

³ Achmad Nasrudin Yahya dan Fabian Januarius Kuwado, Sejak 2015, 704 Korban TPPO Ajukan Perlindungan ke LPSK, https://nasional.kompas.com/read/2020/08/03/12400821/sejak-2015-704-korban-tppo-ajukan_perlindungan-ke-lpsk accessed on 10 Juny 2024

⁴ Hanifah, 2020, "Peran dan Tanggung Jawab Negara Dalam Perlindungan Hukum Tenaga Kerja Indonesia Yang Bermasalah di Luar Negeri", DE LEGA LATA: Jurnal Ilmu Hukum, Vol. 5 No. 1, p. 23.

increasingly worrying, especially with increasingly advanced technological support and various social media applications that are used as a bridge for perpetrators of human trafficking crimes in carrying out their actions. action against potential victims of criminal acts of human trafficking.

Previous research from Kadek Novi Darmayanti in a journal entitled *The Crime of Human Trafficking as a Transnational Crime*, found that even though there are laws and regulations governing the crime of human trafficking, in fact they are still less able to provide a sense of justice, security and comfort for victims of criminal acts. human trafficking. There is still a need for other legal protection for victims of criminal acts. Such as the right to receive physical assistance, the right to receive assistance in solving problems, the right to regain one's rights, the right to receive guidance and recovery, the right to receive protection from threats, and the right to receive compensation from both the perpetrator and the state and government. Heavier punishment for perpetrators is also an effort to create a sense of security and comfort for victims and also as a warning so that potential perpetrators can think twice before committing a crime.⁵

Other research from Ariella Gitta Sar in a journal entitled *Criminal Acts of Human Trafficking in View of National Law and International Law* found that regulations regarding human trafficking are contained in international instruments such as the Palermo Protocol while national regulations are contained in Law no. 21 of 2007 concerning Criminal Acts of Eradication. Indonesians do not allow buying and selling of human organs, however, if these organs can be used to save other human lives, for example by carrying out transplants, there will be more legal regulations governing the transplantation of human organs. The regulations regarding the trade in human organs in Indonesia are Law no. 21 of 2007 concerning Eradication of the Crime of Human Trafficking. Meanwhile, the form of protection for victims of criminal acts of human or person trafficking is by punishing the perpetrators and providing compliance for the victims in accordance with the Law.⁶

Based on the background description above, the aim of this research is to analyze legal protection for victims of human trafficking according to national criminal law; and analyzing the implementation of criminal sanctions regulations against perpetrators of human trafficking as a transnational crime.

⁵ Kadek Novi Darmayanti (et. al), *Tindak Pidana Perdagangan Orang (Human Trafficking) Sebagai Transnational Crime*, *Ganesh Law Review*, Vol. 4, Issue 2, 2022, p. 33-42

⁶ Ariella Gitta Sari (et. al), *Tindak Pidana Perdagangan Manusia Ditinjau Dari Hukum Nasional Dan Hukum Internasional*, *Jurnal Transparansi Hukum*, Vol. 4 No. 1, 2021, p. 1-16

2. Research methods

This research uses normative juridical legal research methods, the Statute Approach or statutory approach, and the Comparative Approach, or comparative approach.⁷ Normative judicial research means that research is carried out by examining all regulations and laws that are related to the object of research.

3. Results and Discussion

3.1. Legal Protection for Victims of Human Trafficking According to the National Criminal Law

The rise of criminal acts of human trafficking that occur in Indonesia, especially making women and children very vulnerable subjects as victims of these crimes, shows that the development of human trafficking in Indonesia must be a serious concern. The formulation of the 2000 Palermo Protocol by the UN shows that human trafficking in persons is a crime against humanity that must be stopped.⁸

As a follow-up to the formulation of the Palermo Protocol by the UN which is the result of the Palermo Convention, Indonesia is one of the countries that has ratified the Convention with the ratification of Law Number 21 of 2007 concerning the Crime of Trafficking in Persons.⁹ Apart from that, Indonesia also ratified Law no. 5 of 2009 concerning Ratification of the Palermo Convention. This provides the view that Indonesia has a serious response to human trafficking in persons that occurs in Indonesia. Whether the law is effective in minimizing crimes against humanity in Indonesia or not, if one examines the development of human trafficking cases that occur in Indonesia, it can be said that the law is not very effective in eradicating the crime in question. The weak function of institutions that have the authority to deal with these crimes is one of the factors causing the rise of human trafficking in person crimes in Indonesia.

Legal protection for victims of human trafficking is to protect the rights of every person who is a victim of a crime to obtain the same services and protection as provided by law and statutory regulations. Therefore, in every legal error that occurs to the victim and the consequences suffered by the victim, the victim has the right to obtain the assistance and protection needed in accordance with legal principles, namely the existence of equality before the law or what is often called the principle of equality before the law. Meanwhile, what is meant by assistance and security for victims is related to victims' human rights, for example the right to receive

⁷ Mukti Fajar ND dan Yulianto Ahmad, *Dualisme Penelitian Hukum*, Cetakan 1, PT. Raja Grafindo Persada, Yogyakarta, 2010, p. 28.

⁸ Deassy J.A. Hehanussa (et. al), Penanganan Tindak Pidana Perdagangan Orang Di Provinsi Maluku, *Jurnal Muara Ilmu Sosial, Humaniora, dan Seni*, Vol. 2, No. 1, 2017, p. 284-292

⁹ Gabrielle Valentia Putri Sahetapy (et. al), Pertanggung Jawaban Hukum Pelaku Trafficking In Person Berdasarkan Hukum Internasional Di Indonesia. *Sanisa: Jurnal Kreativitas Mahasiswa Hukum*, Vol. 2, No. 1, 2022, p. 32-43

physical assistance, the right to receive assistance in solving problems, the right to obtain their rights again, the right to receive guidance and recovery, the right to receive protection from threats, and the right to receive compensation from both the perpetrator and the state and government.¹⁰

In the Criminal Code, victims are only given legal protection in the form of compensation through a combination of problems and do not deal with other types of legal protection. Because legal protection for victims is not handled, crimes, in this case victims of human trafficking in particular, give rise to injustice because it is often the Public Prosecutor (JPU) who substitutes for the victim to file charges alone or the judge only gives relatively light sanctions against the perpetrator.

The essence of formulating the act of trafficking in persons as a criminal act with criminal sanctions in statutory regulations is to provide indirect protection to victims of criminal acts. Because if the perpetrator of a criminal act is given heavy sanctions, it is hoped that similar actions will not occur again or that the potential perpetrator will think twice before carrying out this action. Even though this is legal protection for victims of criminal acts of human trafficking, this punishment is not truly capable of providing a perfect sense of justice. Especially for victims who experience both physical and psychological suffering.¹¹

The protection that can be provided to victims is in the form of medical services and also psychological counseling. Apart from that, there is also the provision of shelter (safe house). The role of the state in creating social welfare, which is not limited to fulfilling the material needs of its people but also the most important thing is to fulfill a sense of security and comfort in their activities. With the existence of Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, legal protection for victims of criminal acts of human trafficking is increasingly gaining ground.

3.2. Implementation of Criminal Sanctions Regulations Against Perpetrators of Human Trafficking as a Transnational Crime

Human trafficking can be said to be a transnational crime or cross-border crime because this criminal activity is carried out from the country of origin of the human being trafficked to the country of destination of the trade, in other words, the human trafficking that occurs has crossed national borders related to criminal activity. said. Any action related to humanity or humanity, especially criminal activities related to violations against humans, is definitely related to

¹⁰ Ni Putu Rai Yuliantini dan Dewa Gede Sudika Mangku, "Legal Protection for Women Victims of Trafficking in Indonesia in an International Human Rights Perspective", *International Journal of Criminology and Sociology*, Vol. 9, 2020, p. 140.

¹¹ Ahmad Syauf, *Perlindungan Hukum Terhadap Perempuan Dan Anak Korban Tindak Pidana Perdagangan Orang, Muwazah*, Vol. 3, No. 2, 2011, p. 456-464

violations of human rights.¹² As previously explained regarding human trafficking by UNODC, article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in the UNESCO Migration Studies book also provides an explanation and emphasis regarding human trafficking, namely recruitment, sending, transfer, concealment or reception of persons where these actions involve a form of threat or coercion. Apart from that, there are also kidnappings, fraud, abuse of power where there is giving or receiving payments to people who have control over other people with the aim of exploitation.¹³

In Indonesia, the criminal act of human trafficking is regulated in Law Number 21 of 2007 concerning the Eradication of the Criminal Act of Human Trafficking.¹⁴ A trafficked person (trafficking victim) is someone recruited, brought, bought, sold, transferred, received or hidden. This is done in various ways, including threats, use of verbal and physical power, kidnapping, deception, exploiting a position of vulnerability (for example when someone has no other choice), isolation, drug addiction, and entrapment.

Considering that victims of human trafficking include children, the regulations, apart from Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, are also regulated in Law Number 23 of 2002 concerning Child Protection.¹⁵ Regarding factors that cause human trafficking, such as falsification of documents or information related to a person's personal data or identity, this is also prohibited by national law. In this regard, it is stated in Article 19 of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking.

Appropriate steps to minimize the occurrence of differences of opinion between countries in resolving transnational crimes such as human trafficking absolutely require the existence of a bilateral or multilateral agreement as a solution.¹⁶ Through agreements between countries, it can provide information and conditions that provide mutual benefits between one country and another, and can automatically narrow down the mode of transnational crime which is a problem for the global community. Indonesia's rare steps to anticipate the modus operandi of transnational criminal acts of trafficking in persons, Indonesia has created Law Number 1 of 2006

¹² Everd Scor Rider Daniel (et. al), Human Trafficking Di Nusa Tenggara Timur, *Share: Social Work Jurnal*, Vol. 7, No. 1, 2017, p. 111- 129

¹³ Maria Efiti Ayu dan Sherlu Ayuna Putri, Perdagangan Perempuan Dan Anak Serta Tindak Pidana Korupsi Sebagai Kejahatan Transnasional Terorganisir Berdasarkan Konvensi Palermo, *Jurnal Bina Mulia Hukum*, Vol. 3 No. 1, 2018, p. 61-72

¹⁴ Yulia Monita, Perlindungan Hukum Bagi Korban Tindak Pidana Perdagangan Orang dalam Perspektif Undang-Undang Nomor 21 Tahun 2007, *Inovatif*, Vol. 6 No. 2, 2013, p. 160-171

¹⁵ Nelsa Fadilla, Upaya Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Perdagangan Orang, *Jurnal Hukum dan Peradilan*, Vol. 5 No. 2, 2016, p. 181-194

¹⁶ Shidqi Noer Salsa. Mutual Legal Assistant Dalam Penyidikan Tindak Pidana Perdagangan Manusia Melalui Media Sosial Sebagai Kejahatan Terorganisasi Transnasional. *Jurnal Yuridis*, Vol. 8, No. 1, 2021. P. 1-22

concerning Reciprocal Agreements for Criminal Matters, this Law is proof of realization to fulfill the requirements of countries that have been removed from the blacklist of countries by high level of money laundering crimes. Therefore, it is natural that Indonesia needs to have a special law that regulates Mutual Legal Assistance.¹⁷ Currently, Indonesia is still under strict monitoring by the International Anti-Money Laundering Group (Financial Action Task Force on Money Laundering/ FATF).

Forms of exploitation itself, such as sexual exploitation, forced labor, slavery or removal of bodily organs. There are 3 (three) models that can explain the methods used in human trafficking, including the following:

- 1) Act, namely what kind of action is carried out. For example, recruitment, transportation, transfer/delivery, harboring and reception.
- 2) Means, namely how the action is carried out. For example, by using threats or force, coercion, kidnapping, fraud, abuse of power and giving payments.
- 3) Purpose, namely why the action is carried out. For example, exploitation, prostitution of other people, forced labor, slavery or other similar acts as well as removal of bodily organs.

The causes of human trafficking that occur so far vary from one country to another. The existence of poor economic conditions in their home countries makes many people migrate to developed countries in search of better job opportunities. Things like this are often exploited by other actors, in this case criminals who sell people. Apart from that, lack of education and few job opportunities in the country of origin are also factors in human trafficking. Economic hardship, conflict, crime and social violence as well as natural disasters create situations of despair for millions of people and make them vulnerable to various forms of exploitation and slavery.¹⁸

In this criminal activity, there are actors who play an important role from the initial process to the final process, from the introduction process, recruitment, the process of facilitating human trafficking (illegal crossing), to the process of the individual being "bought" by another person. In the process, the state is not involved in this activity, but there are law enforcers and border officials who are corrupt in facilitating trade or these individuals do not pay attention and even ignore this activity, resulting in this criminal act occurring. Things like this can happen from the country of origin, transit country to destination country.

¹⁷ Alliya Yusticia Pramudya Wardani, Menelaah Potensi Mutual Legal Assistance Dalam Penegakan Hukum Di Indonesia, *Pramudya Wardani*, Vol. 3, No. 2, 2021, p. 542-551

¹⁸ Rizka Ari Satriani, Studi Tentang Perdagangan Manusia (Human Trafficking) Pada Remaja Putri Jenjang Sekolah Menengah Di Kota Surabaya, *Jurnal BK Unesa*. Vol. 4, No. 1, 2013, p. 67-78

Human trafficking can be said to be a crime against humans, so it is said to be a serious violation of human rights.¹⁹ Apart from that, in the process there are also violations of human dignity and physicality, the right to freedom and security of the human person, as well as discrimination against the human beings who are trafficked. There is organized crime that crosses national borders which occurs widely and systematically against the civilian population, so that human trafficking is said to be a transnational crime. In their activities, violence, rape, slavery and similar acts occurred. The existence of torture and inhumane treatment makes the crime of human trafficking an activity that violates human rights.

The act of trafficking in persons from Indonesia to other countries is still occurring to this day, as has been explained previously by the author, namely that human trafficking can be included as transnational crime because the activities that occur are characterized by acts of "buying and selling" of humans accompanied by with acts of violence that occur across national borders and activities like this are a violation of humanity.

4. Conclusion

Legal protection for victims of criminal acts of human trafficking according to national criminal law is the right to receive physical assistance, the right to receive assistance in the form of solving problems, the right to regain their rights, the right to obtain recovery, the right to receive protection from threats, and the right to receive compensation from individual perpetrators, corporations and the government. With Law no. 18 of 2017, the protection for Indonesian migrant workers and for prospective Indonesian migrant workers who will work outside the country has become better, although with some notes of improvement, but this is in order to achieve guaranteed fulfillment of workers' rights in all activities before work, during work, and after working in legal, economic and social aspects. Regarding the regulation of criminal sanctions against perpetrators of human trafficking as a crime that falls into the realm of organized transnationals, the perpetrators of human trafficking are in accordance with Law no. 21 of 2007 (UUPTPO) that the perpetrators are viewed from the subject of the crime of human trafficking.

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¹⁹ Mukti Fajar (et. al), Iktikad Tidak Baik dalam Pendaftaran dan Model Penegakan Hukum Merek di Indonesia, *Jurnal Hukum Ius Quia Iustum*, Vol. 25, No. 2, 2018, page 219- 236

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