

LEGAL ARRANGEMENT IN THE CRIMINAL ACT OF HUMAN TRAFFICKING

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ABSTRACT

Human trafficking is a violation against human rights as a form of slavery. This condition has encouraged the Government of Indonesia to protect human rights through legal arrangements with the issuance of Law Number 21 of 2007 on the Eradication of Human Trafficking. The study focused on the forms of human trafficking based on Law Number 21 of 2007 and policy in the prevention of human trafficking. The results indicated that the forms of human trafficking based on Law Number 21 Year 2007 are sexual exploitation (prostitution), child trafficking as workers and child trafficking through adoption. In response to this fact, the criminal law policy in handling human trafficking is contained in the KUHP, RKUHP 2015, and Law Number 39 of 1999 on Human Rights, Law Number 23 of 2002 on Child Protection and Law Number 21 of 2007 on the Criminal Act of Human Trafficking which contains all provisions concerning human trafficking.

Keywords: Human Trafficking, Legal Enforcement.

INTRODUCTION

The increase of human trafficking in some areas of ASEAN countries, especially Indonesia as the fourth largest population of the world, is highly triggered by the development of technology as operational basis of organized crime. This fact has encouraged the Government of Indonesia to arrange a more specific law with the issuance of Law Number 21 of 2007 Concerning the Eradication of Human Trafficking.

Victims of human trafficking are mostly children and women. This is related to the basic nature of women and children who have special characteristics that can be exploited which might facilitate the perpetrator of organized crime.

Efforts to optimize the implementation of causative law urgently require the role of various elements. Therefore, to prevent the greater increase of victims, the public must know and understand about the forms of human trafficking so that people are able to recognize it through patterns that are built dynamically by the perpetrator of organized crime.

RESEARCH METHOD

This type of research is empirical with a socio-legal approach. In this study using primary data (primary data) is data obtained directly in the field both in the form of interviews (interviews) and observation (observation) which includes, the behavior of law enforcement apparatus, reaction and public perception of communal conflict ever happened. Secondary data (secondary data) legal materials in the form of laws, research results, books and other literature". The tertiary data are encyclopedias and dictionaries, and then analyzed

qualitatively, by describing the material that has been obtained from the research with the framework of inductive thinking.

Theoretical Framework

According to Law Number 21 of 2007 on the Eradication of Human Trafficking, the meaning of human trafficking is:

The act of recruitment, transportation, shelter, transfer or acceptance of a person with threats of violence, the use of force, abduction, arrest, fraud and abuse of power or vulnerable positions, entrapment of money in order to obtain the consent of the person holding control over such the other person, whether committed within the state or between countries, for the purpose of exploitation or causing a person exploited.

Some of the main traits of trafficking are:

- There is a process of recruitment and transfer of human beings both across regions and countries;
- There are parties who benefit by utilizing women and children to undertake a work (paid or not), as an exploitative (economic or sexual) employment relationship, be it female workers, prostitution, manual labor or industry, forced marriage or other work;
- There are victims of either women or children whose feminine and childbirth are exploited economically and sexually, for the sake of certain parties by force, accompanied by threats or tricks or abductions. In this case, it also includes some victims who express consent in which it is understood that certain circumstances that cause the victims agree, for example because of the insistence of economic needs, pressure of power and so forth (Amiruddin and Asikin, 2004).

RESULTS AND DISCUSSION

1. Forms of Human Trafficking Based on Law Number 21 of 2007

Law Number 21 of 2007 Concerning the Eradication of Human Trafficking is a crystallization of various international agreements that have been adapted to the precipitation of moral values of Indonesian society manifested in Pancasila. In that regard, the discussion on the forms of human trafficking in Indonesia will be described in accordance with Law Number 21 of 2007. Article 1 paragraph (1) provide's the explanation of human trafficking as follows:

“The act of recruitment, transportation, shelter, transfer or acceptance of a person with threats of violence, the use of force, abduction, arrest, fraud and abuse of power or vulnerable positions, entrapment of money in order to obtain the consent of the person holding control over such the other person, whether committed within the state or between countries, for the purpose of exploitation or causing a person exploited.”

The definition of human trafficking has been developing until the establishment of the Protocol to Prevent, Suppress and Punish Human trafficking Especially Women and Children Supplementing the United Nations Convention against Transnational Organized Crime of 2000.

The forms of human trafficking seen from Law Number 21 of 2007 are mentioned in article 1 paragraph (1) which is reinforced in Article 1 paragraph (2) as a form of criminal offense. From the definition of human trafficking explained in Article 1 paragraph (1), the forms of human trafficking can be formulated as follows:

1.1 Form of Recruitment of Sexual Exploitation (Prostitution)

Article 1 of Law Number 21 of 2007 defines “recruitment” as an act which involves inviting, collecting, carrying or separating a person from his or her family or community. From this understanding, recruitment is carried out in various ways to engage victims and influence victims. In many cases, women and children are promised to work as migrant workers, domestic workers, restaurant workers, shopkeepers, or unskilled jobs but are then forced to work in the sex industry when they arrive at their destination. In other cases, some women know that they will enter the sex industry but they are deceived by working conditions and they are constrained under duress and are not allowed to refuse to work.

In general, women working in massage parlors in Indonesia can be asked to provide sex services to their customers. In the case of localization, other prostitution establishments, as well as prostitution in small stalls, when selected by a customer, the woman or girl must provide sex services with on-site payments, or outside, such as in hotels, parks and open spaces. It is a type of prostitution which encourages the recruitment of women and girls through the practice of human trafficking, since this is a great source of income for those involved in the recruitment, transportation and shelter processes of women and girls acquired for that purpose.

Article 1 paragraph 8 of Law Number 21 of 2007 describes sexual exploitation as all forms of exploitation of sexual organs or other organs of the victim for gaining benefit, but not limited to all activities of prostitution and fornication.

The Police of the Republic of Indonesia released the factors driving migration and trafficking in Indonesia which are:

- **Geographical Factors:** Archipelago and a number of space for the in and out of people; geographically located near to the states using the service of Indonesian Workers;
- **Economic Factors:** A prolonged economic crisis; state financial crisis; promising employment which defeats considerations and risks; the sending of Indonesian workers which is very helpful in restoring the national economy;
- **Socio-Cultural Factors:** Quality of human resources; language ability as a means of communication; post-colonized country; the understanding of customs and culture in the workplace; the increase of social class and pride for working abroad;
- **Security and Legal Factors:** Weak supervision of Indonesian employment agencies; legal scarcity; limited ability and equipment of the apparatus; weak coordination among related institutions; employer’s power that is beyond the scope of supervision;
- **Technological Factors:** Advances in transnational technology and information; overseas migrant workers agents who are not covered by supervision; competitive value of labor migrants with other country workers; Lack of diplomacy and promotion of Indonesia (NPCIA, 2004).

Based on the factors causing the above trafficking, it can be said that the Government of Indonesia has not been fully able to prevent and overcome the occurrence of trafficking for women and children.

1.2 Child Trafficking as Workers

In the case of children exploitation, the means used tend to harm the child, as understood by Law No. 35 of 2014 on the Amendment of Law No. 23 of 2002 on Child Protection in Article 1 verse 16, that violence is every act against the child which resulted in misery or physical, psychological, sexual, and/or neglect, including threats to unlawful acts, coercion or deprivation of liberty.

Based on the above mentioned points, child trafficking may be interpreted as any form of action and trial of actions involving recruitment, transportation both within and between countries, purchase, sale, delivery and acceptance of children by means of trickery, violence, or by engaging in debt for the purpose of coercion of domestic labor, sexual services, slavery, bondage labor, or any other conditions of slavery, whether the child is paid or not, in a community different from the community in which the child lived when the first fraud, violence, or debt incident happen.

Understanding the worst work for children according to Law No. 1 of 2000 on Ratification of ILO Convention No. 182 on the Prohibition and Immediate Action of the Elimination of the Worst Forms of Child Labor in Indonesia generally covers children who are physically and economically exploited which among others in the following form:

- Prostituted children,
- Children working in mining,
- Children working as pearl divers,
- Children working in the construction sector,
- Children working on jermal,
- Children working as waste pickers,
- Children involved in production and activities using explosives,
- Children working on the street,
- Children working as domestic helpers,
- Children working in home industry,
- Children working in plantations,
- Children working on logging, processing and transporting timber,
- Children working in industries and types of activities that use hazardous chemicals.

1.3 Child Trafficking through Adoption

The arrangement of adoption in Indonesia began in the Circular Letter of the Supreme Court Number 2 of 1973 and enhanced by SEMA RI Number 6 of 1983. It contained not only the direct appointment made between siblings and adoptive parents, but also the adoption of children who could be citizens of Indonesia which is not bound by marriage status and also regulate the procedure of adopting children, that:

“To adopt a child must first submit the application of ratification/appointment to the District Court where the child to be appointed is located. The form of the request may be oral and written submitted to the Registrar of the District Court. The application letter is filed and signed by the applicant himself or his attorney spiked with sufficient stamp and addressed to the chairman of the court whose jurisdiction covers the residence/domicile of the child to be adopted”.

Child adoption procedures are specifically undertaken to protect the rights of the adopted child and eliminate continuations and crimes such as child trafficking. The ignorance of this procedure raises the perception in the community that adopting child is easy, so that often the people adopt children outside the legal system that might be categorized as child trafficking. Often the adoption of a child will be a legal issue, as was the case of illegal adoption of Engeline Margriet Megawe (Angeline). Margriet Christina Megawe (Margareta) as adoptive mother does not register the adoption to the court. Margareta adopted Angeline while still with her husband, Douglas, an American citizen. Angeline who was born May 19, 2007, was adopted in 2007, when she was three days old.

Angeline’s adoption by Margareta was only a notarial deed. In the deed, it is written the recognition of adoption, not adoption. The adoption of the couple Rosidik and Hamidah from Banyuwangi, East Java was not valid, for the adoption deed becomes the basis for adoption. In Law Number 23 of 2002 Article 5, it is stated that:

“Any person adopting a child with a promise of something or giving something for exploitation shall be punished with imprisonment of a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp 20,000,000.00 (twenty million rupiahs) And at most Rp 600.000.000,00 (six hundred million rupiah).”

Based on the above provisions, adopting children should notice several legal procedures to avoid exploitation of children. The adoption through notarial deed does not give the force of law. It needs to be understood by the public at large to avoid exploitation of children. Additionally, the appointment which does not have the force of law does not give legal protection to the child.

1.4 Recruitment through Marriage and Order Bride

Usually, the practice of enslavement under the guise of marriage and bride order is done by foreign male men with Indonesian citizens. One of the operand modes of human trafficking is order bride which is a forced marriage where the marriage is arranged by the parents. The marriage becomes human trafficking in the event of exploitation both sexually and economically through fraud, misuse, detention of documents, so as not be able to escape from exploitation, and close access to information and communication with the family.

There are two forms of trading through marriage. First, marriage is used as a fraud to take the woman and bring another very foreign territory, but once arrived in the destination the woman is included in prostitution. Second, it is a marriage to include women into households to do domestic work that is very exploitative in form.

Early marriage is one of the triggers of human trafficking. This was stated by Linda Amalia Sari, S.IP, State Minister for Women Empowerment and Child Protection. The permissive mindset of early marriage culture in some areas is one of the “opportunities” used by traffickers of human trafficking, as women who engage in young marriage, psychologically and economically have a very high degree of horror to divorce, and here is the problem, where the

widowed women are the victims of human trafficking. The “innocence” and “misunderstanding” of the dangers that arise as a result of the “veiled forms” which often in the name of “working abroad at a much higher wage” is the originating factors of human trafficking.

2. Criminal Law Policies on Human Trafficking

2.1 Provisions of International Law

The protection of derivative right of member states of the United Nations is in force by the issuance of The Universal Declaration of Human Rights in 1948. This became the forerunner of the protection of human rights in written law. Although previously numerous countries have recognized the basic human rights, including Indonesia in 1945 that has first recognized the rights through groundnorm Pancasila listed in the Preamble and Body of the Constitution of the Republic of Indonesia Year 1945. The existence of an official agreement internationally through the United Nations strengthens the protection of human rights in the world.

Based on these processes, in 1965, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is ratified by Law Number 7 of 1984 on the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (Convention on The Elimination of all Forms of Discrimination Against Women) (State Gazette of the Republic of Indonesia of 1984 Number 29, Supplement to the State Gazette of the Republic of Indonesia Number 3277).

The universal protection of the law for children through the 1989 Convention On The Rights of The Child was ratified by Presidential Decree Number 36 of 1996 and then more enforcement arrangements in Law No. 23 of 2002 on Child Protection (State Gazette of the Republic of Indonesia of 2002 Number 109, Supplement to the State Gazette of the Republic of Indonesia Number 4235).

2.2 Laws and Regulations in Indonesia

2.2.1 The Criminal Code: In the provisions of the Criminal Code, there are several articles that strictly and relevantly concerning human trafficking:

Article 297 of the Criminal Code: Trafficking unauthorized women and men is sentenced to prison for six years

Article 324 of the Criminal Code: Anyone at his own expense or any other person undertakes a slave trade or commits an act of slave trade or intentionally intervenes in that matter, directly or indirectly, is sentenced to twelve years imprisonment.

The regulation of human trafficking in the Criminal Code in Article 324 concerning the prohibition of slavery is substantially inadequate and irrelevant to technological-era developments. The Criminal Code can no longer reach the trade of people crossing the borders between countries (transnational).

2.2.2 Law Number 39 of 1999 on Human Rights

Law No. 39 of 1999 on Human Rights, known as *Undang-Undang Hak Asasi Manusia* (UUHAM), is a law adopted from the international provisions of The Universal Declaration of Human Rights (DUHAM) as well as the recognition of human rights protection as an implication of Pancasila and the 1945 Constitution of the Republic of Indonesia. The regulation on human trafficking is in the following articles:

Article 20

- No one shall be enslaved.
- Slavery, slave trade, woman trafficking, and any deeds of any kind with a similar purpose are prohibited.

Human trafficking is a form of human rights violation. It is regulated generally in the UUHAM of the above article. The general form in the UUHAM arrangement is then specifically stipulated in Law Number 21 of 2007 concerning the Eradication of Crime of Human Trafficking.

Fundamental principles of human rights, in accordance with the provisions of the UUHAM, are recognized and upheld which include human rights and fundamental freedoms which inherently should be protected, respected and enforced for the upgrading human dignity, welfare, happiness and intelligence as well as justice (Article 2).

The right to be upheld must be accompanied by legal protection in the form of Law or Regulation, that human rights are universal for all people and in all countries, but the practice of enforcing, promoting and protecting human rights in a country different from other countries.

2.2.3 Law Number 21 Year 2007 on the Criminal Act of Human Trafficking

As mentioned above, Law Number 21 of 2007 is a special criminal law (*lex specialist*) setting up the criminal act of human trafficking with consideration of trafficking as criminal offenses that have increased in the modern era in various recruitment patterns utilizing technological developments.

The regulation of the criminal code of human trafficking is set out in several articles, as well as the detailed forms of criminal acts of human trafficking. The chapters in the articles have adapted to some international provisions. Criminal law policy through special regulation (*special criminal law*) can be seen in the systematic article as follows:

- Chapter II Criminal Act of Human Trafficking Article 2 to Article 18.
- Chapter III other Criminal Acts Relating to the Criminal Act of Human Trafficking in article 19 to Article 27.
- Chapter IV Investigation, Claiming and Examination in Court on Articles 28 to 42.

This law is a comprehensive legal product, as it not only prosecutes human trafficking as a form of human rights violations, but also provides for the full assistance to the victims and community participation in the prevention and handling of cases. This invitation is also a reflection of international standards.

The development of human trafficking, especially women and children, through the Decree of the People's Consultative Assembly Number VI/MPR/2002 on Recommendation on

the Report of the Implementation of the Decision of the People's Consultative Assembly of the Republic of Indonesia at the 2002 Annual Session of the People's Consultative Assembly, has recommended to the President of Indonesia to address human trafficking, especially women and children, through the drafting of national laws and regulations, ratification, international conventions and continuing efforts to prevent and combat human trafficking, especially women and children.

The criminal acts of human trafficking, particularly women and children, have been widespread in the form of organized and disorganized criminal networks. Unfortunately, the involvement not only refers to individuals but also corporations and state administrators who abuse their authority and power and have a range of operations not only between domestic territories, but also between countries and is a transnational crime.

CONCLUSIONS

Forms of human trafficking based on Law Number 21 of 2007 are: first, The process of recruitment of sexual exploitation (prostitution) done through giving influence to the victims and the community and society by offering profitable work at the destination, then making attachment to the victim, so that the victim does the ways beyond the agreement and cannot return easily to the place of origin; second, child trafficking as workers by utilizing the physical and psychological limitations of children to meet the labor force; third, child trafficking through adoption by utilizing the limitations of original parental knowledge, only fulfilling certain conditions which have not guaranteed legal certainty, such as by only using notary deed without court decision; fourth, recruitment through marriage and order bride used as a fraud to take women and bring to other areas of very foreign and marriage to include women into households to do domestic work in a very exploitative form, as well as forced marriage where the marriage is arranged by parents.

The criminal law policy in handling human trafficking is contained in several provisions, as the manifestation of international law which is then ratified and adapted into national law, namely The Universal Declaration of Human Rights (CEDAW), Convention on the Rights of the Child. In addition, in the provisions of national law, it is contained in general and special criminal law. The general criminal law policy is the Criminal Code with a narrow regulation in Article 237 and Article 324, but then RKUHP 2015 provides an extension of the arrangement by linking also with several actions that lead to human trafficking, ranging from Article 395 to Article 567. In special criminal law, Law No. 23 of 2002 on Child Protection Article 68 and Article 83 and more specifically (lex specialist) Law Number 21 of 2007 on The criminal act of Human Trafficking which contains all provisions concerning human trafficking.

RECOMMENDATION

Forms of acts that lead to human trafficking are increasingly varied by utilizing technological developments that facilitate criminal organizations to achieve their objectives. To prevent the flow needs comprehensive efforts, including strengthening law enforcement structures by utilizing technological advances in synergy and coordination with institutions related, enhancing responsible oversight by placing law enforcement personnel in areas or vulnerable areas to recruitment goals, and optimizing non-governmental organizations as well as institutions concerned in combating human trafficking. Besides preventive efforts should be done

through counseling, awareness or education to the wider community, especially vulnerable areas to be victims, such as rural areas. Harmonization of various institutions as well as the community can optimize efforts in eradicating human trafficking.

The criminal law policy on combating human trafficking has been formulated in several statutory provisions, both general and special. In the Criminal Code there are limitations to the regulation, so that RKUHP 2015 which is a future criminal law has regulated a wider criminal act of human trafficking in the crimes against humanity. The specific criminal law policy has also provided clear regulation, so that in relation to the legal substance of the eradication of crime the person has fulfilled the sense of certainty. It can also be a legal discovery (interpretation or refinement of the law) in the absence of unclear rules. In criminal law, criminal law policy is not only on law enforcement or penal efforts, but also non penal efforts that emphasize the prevention of crime.

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