

# **CRIMINOLOGICAL ASPECTS THE CRIMINAL ACT OF HUMAN TRAFFICKING**

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## **ABSTRACT**

*Human trafficking occurs in various forms. In Indonesia, there is recognition that forms of exploitative labor in the informal sector, recruitment for the sex industry, slavery under the guise of marriage that previously existed and were accepted by society, considering the many cases that occurred in Indonesia, the question arises whether the government has anticipated these problems and what efforts have been and will be made. Indonesia also confirmed a protocol for preventing and prosecuting human trafficking, namely Law Number 14 of 2009. The ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women Against Transnational Organized Crime (Protocol to prevent, prosecute and punish Trafficking in Persons, Especially Women and Children, complements the UN Convention against Traditional Organized Crime). Trafficking in persons, especially women and children, is an act that is contrary to human dignity and violates human rights. The issues discussed are: What are the criminological aspects of the crime of human trafficking and what are the steps to prevent the crime of human trafficking. The type of research used is normative legal research, namely studying the problems faced in terms of the approach to legislation by conducting research that focuses on the normative approach to legal concepts. The results of this study conclude that the criminological aspect in the crime of human trafficking, Human trafficking, especially women and children, is an act that is contrary to human dignity and violates human rights so it must be eradicated. However, the problem of human trafficking in all its forms and types, both carried out by companies and individuals, is increasingly rampant in society and the steps to prevent the crime of human trafficking that need to be taken first, empowering the economy of rural communities, especially in areas that have been sources of Indonesian workers abroad. This village economic empowerment can be in the form of capital injections from the government for people who want to start sewing, making crafts, weaving, and other businesses.*

**Keywords:** *Criminology, Law Enforcement, Human Trafficking.*

## **1. INTRODUCTION**

Human trafficking, especially trafficking of women, occurs in various forms. In Indonesia, there is recognition that forms of exploitative labor in the informal sector, recruitment for the sex industry, slavery under the guise of marriage that previously existed and were accepted by society, considering the many cases that occurred in Indonesia, the question arises whether the government has anticipated these problems and what efforts have been and will be made. In Indonesia, the provisions regarding the prohibition of human trafficking are basically regulated in the Criminal Code (KUHP) Article 29 concerning Human Trafficking, namely: "Human trafficking and trafficking of underage boys are subject to a maximum imprisonment of six years". The provisions of the Criminal Code do not formulate a clear definition of human trafficking in law. In addition, Article 297 of the Criminal Code provides sanctions that are too light and not commensurate with the impact suffered by victims due to the crime of human trafficking and sexual exploitation. Indonesia also clearly affirmed a protocol for preventing and prosecuting human

trafficking, namely Law Number 14 of 2009. The ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women Against Transnational Organized Crime (Protocol to prevent, prosecute and punish trafficking in persons, especially women and children, complements the UN Convention against traditional organized crime). The spirit of the Palermo protocol is stated in Law Number 21 of 2007 and for the protection of victims and witnesses is also guided by Law Number 13 of 2006, unless otherwise specified in Law Number 21 of 2007. Protection of victims and witnesses based on Law Number 21 of 2007, is regulated from Article 43 to Article 55. Furthermore, through Article 60 to Article 63, the role of the community is accommodated to help prevent and handle victims of human trafficking. However, considering that human trafficking is a crime that operates secretly, therefore, the community and NGOs are socialized so that the community can participate in exposing this crime by providing information to the authorities and also seeing, witnessing or identifying the existence of human trafficking activities or things that can be suspected of leading to the occurrence of this crime.

## **2. RESEARCH METODOLOGY**

The method used in this study is the Type of Normative Legal Research, namely solving problems using a legal approach contained in the Legislation and studying the problem of children who commit crimes. With a statutory approach, a conceptual approach and an analytical approach. Sources of legal materials in this study Primary legal materials, which include legal regulations such as. Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and secondary legal materials in the form of books, magazines, research results that are related to the resolution of minor crimes committed by adolescents through mediation. To collect library data, systematic recording is carried out according to the topic or subject matter. After the data obtained is collected, the data is then processed and analyzed. Data processing and analysis techniques are carried out qualitatively.

## **3. LITERATUR REVIEW**

According to Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, Article 1 Paragraph (2) states that: "Criminal Acts of Human Trafficking are any action or series of actions that fulfill the elements of a criminal act as stipulated in this Law. Furthermore, Article 1 paragraph (1) states that human trafficking is: The act of recruiting, transporting, harboring, sending, transferring or receiving a person with the threat of violence, use of power, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt trapping or giving payment or benefits, so as to obtain the consent of the person in control or other person, whether carried out within the State or between States, for the purpose of exploitation or resulting in a person being exploited. Furthermore, Article 1 paragraph (2) states that: "Criminal Acts of Human Trafficking are any action or series of actions that fulfill the elements of a criminal act as stipulated in this Law."

## **4. RESULTS AND DISCUSSION**

There are several studies or sciences related to criminal acts, perpetrators, punishment, victims of criminal acts, prevention and so on. The terms victimology, criminology, etiology of crime, and others have also been known, all of which have their own meanings and scopes of study and character, but are mutually complementary. In Indonesia, in the practice of law enforcement, legal attention and protection include victims, legally their existence has been known since the issuance of Law Number 13 of 2006, although as a science it has been known for hundreds of years. According to legal experts who quoted Schafer's opinion, it was stated: "the development of attention to victims has begun since the Middle Ages. Attention to victims of crime is then the embryo of the birth of a new branch of

science known as victimology". (Atmasasmita, Romli: 2002: 7) This opinion is the same as that put forward by Arif Gosita that "the problem of victims is actually not a new problem, only because certain things are less noticed, even perpetuated". (Arif Gosita, 2009: 77)

Furthermore, Romli Atmasasmita, applied that in the Middle Ages, when primitive laws were still in force in the societies of nations in the world, personal reparation or a kind of compensation payment was established by someone who had committed a crime or an offender or his family against the victim who had been harmed as a result of the crime. Related to criminology which has been widely known. Regarding different opinions about victimology, some argue that it is a new branch of science, is part of criminology and some argue that it stands alone. In this regard, one expert argues:

So it can be accepted that the opinion rejects the existence of victimology that stands alone besides criminology. At the international symposium on victims held in Jerusalem in 1973, among other things, the conclusion was formulated that victimology can be formulated as a scientific study of victims, and that criminology has been enriched with a victimology orientation. (Arif Gosita, 2009: 77)

Of course the above opinion is not wrong, indeed criminology is a science that studies crime and criminals. Bonger as quoted by experts, defines criminology as "a science that aims to investigate the symptoms of crime as widely as possible". (Topo Santoso: 2006: 9) Therefore, it is seen and proven that there is a direct relationship between crime, criminals and victims of crime. In addition, criminology is also divided into several branches of science or studies, for example pure criminology and applied criminology (according to Bonger).

According to Sutherland, criminology is divided into main branches of science, namely legal sociology, criminal ethics, and penology. Expert studies related to victimology have been carried out several times. Previously, the emphasis was on the study of crime prevention and criminals (criminology). However, it was realized that this was not enough, so a study was also carried out on victims of crime (victims). In relation to the development of victimology studies, among others, it is necessary to observe the author's explanation below:

1. In preventing crime, the international community, especially criminology experts, is concerned about shifting the object of research no longer to people who commit crimes, but the object of research is starting to focus on the victim. This was pioneered by Benjamin Mendelsohn in 1937 by conducting research on the personality of crime victims. Likewise, in the UN Congress every five years regarding the prevention of Crime and the Treatment of Offender which began in 1955. (Adussalam: 2010: 1)
2. Similar to the explanation above, it was stated by, that in 1937 Benjamin Medelsohn conducted a study on the personality of the victim. Compared to studies on crime which at that time were widely carried out and were offender oriented, Mendelsohn's study can be said to be a new breakthrough, because with his research Mendelsohn tried to explain criminal acts from the perspective of the victim. (Widiartana G, 2009: 9)
3. The opinion of Chaerudi and Syarif Fadillah as quoted, scientifically states that Hans Von Hentig's work in a criminology journal entitled Remark on The Interaction of Perpetrator and Victim (1941) is the first step that presents a comprehensive analysis of the interaction between the perpetrator (who is the object of criminology study) and the victim (who is the object of victimology study). Furthermore, in 1949, Von Hentig in his writing The Criminal and His Victim focused more on the victims of crime. The relationship between the perpetrator and the victim (victim-offender relationship) was studied not only in from the aspect of the victim's suffering, but also examines how victims often trigger and cause crimes.

After the UN congress held every five years since 1955, it turned out that several international symposiums were held. The symposium was pioneered and sponsored by an organization called the International Society of Criminology as an international victimology organization formed in 1979 and based in Paris, France. According to the literature, there have been more than one symposium and congress on victimology. Several book authors, among others, explain the following:

The first symposium was held in 1973 in Jerusalem, Israel with the theme: The First International Symposium on Victimology. The second symposium was held in Dubrounick, Yugoslavia with the theme: Post Graduate Course on the Victim of Crime in the Criminal Justice System, and in 1979 a victimology organization was formed with the name: The World Society Criminology. Specifically, the problem of victimology was discussed in the sixth congress in Caracas in 1980 with the topic: Crime Abuse Of Power and in the seventh congress in 1985 in Milan with the topic: Victim of Crime, specifically it has accepted the resolution on the Declaration of Basic Principles of Justice for Victim of Crime and Abuse of Power and in the eighth congress in 1990 it gave birth to Protection of the Human Rights and Redress for Victims of Crime and Abuse Power. (Rena Yulia: 2010: 2)

To suppress or even eliminate the practice of migration of Indonesians, especially women, to become Indonesian Migrant Workers abroad, as well as to deter perpetrators of human trafficking under the guise of sending Indonesian Migrant Workers, there are steps that need to be taken first, empowering the economy of rural communities, especially in areas that have been sources of Indonesian Migrant Workers abroad. This village economic empowerment can take the form of capital injections from the government for people who want to become entrepreneurs in sewing, making crafts, weaving, and so on. The government must also be active in providing training and education for these entrepreneurs, including training the community to build cooperatives. Since early May 2015, the government has stopped sending Indonesian domestic workers (PRT) to 21 Middle Eastern countries. The reason is that many Indonesian migrant workers have become victims of violence in the 21 countries. The 21 countries are Algeria, Saudi Arabia, Bahrain, Iraq, Iran, Kuwait, Lebanon, Libya, Morocco, Mauritania, Egypt, Oman, Pakistan, Palestine, Qatar, South Sudan, Syria, Tunisia, UAE, Yemen, and Jordan.

However, many parties consider that the policy does not solve the problem if it is not followed by efforts to revive the economy of the community, especially pockets of Indonesian migrant workers. In fact, the General Chairperson of the Indonesian Migrant Workers Association (APJATI), Ayub Basalamah, stated that every month at least 10,000 illegal Indonesian domestic workers are sent abroad through individual channels. According to Ayub, the policy to stop sending Indonesian migrant workers to 21 countries actually encourages the sending of illegal Indonesian domestic workers. Second, the government continues to campaign about the importance of the community, especially women, not to marry at a young age. At least, women must marry at least 24 years old and men at least 27 years old. And, most importantly, law enforcement must punish parents who allow their daughters to be married to wealthy men. Parents like this must be ensnared by Law Number 23 of 2002 concerning Child Protection.

Third, strict law enforcement. The National Police must firmly implement Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking Law Number 39 of 2004 concerning the Determination and Protection of Indonesian Migrant Workers Abroad or the Law in Lieu of this Law which is currently being discussed in revision in the DPR.

The sanctions stipulated in Law Number 21 of 2007 are quite strict. Article paragraph (1) states:

Any person who recruits, transports, shelters, sends, transfers, or receives a person with the threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt trapping or giving payment or benefits even though they have obtained the consent of a person who has control over another person, for the purpose of exploiting the person in the territory of the Republic of Indonesia, shall be punished with imprisonment of at least three years and a maximum of fifteen years and a fine of at least one hundred and twenty million rupiah and a maximum of six hundred million rupiah.

Article 3 of Law Number 21 of 2007 states that:

Any person who brings a person into the territory of the Republic of Indonesia with the intention of exploiting him/her in the territory of the Republic of Indonesia or exploiting him/her in other countries is punished with a minimum of three years and a maximum of fifteen years in prison and a fine of at least one hundred and twenty million rupiah and a maximum of six hundred million rupiah.

Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking is a progressive law. The reason is, (1) this law uses a minimum principle, namely a minimum sentence of three years in prison. (2) This law regulates the involvement of the community in eradicating the crime of human trafficking (Article 60). (3) This law also discusses international cooperation in eradicating the crime of human trafficking (Article 59).

In addition to implementing Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, the police must implement other related laws such as Law Number 39 of 2004 concerning the Determination and Protection of Indonesian Migrant Workers (TKI) Abroad, Law Number 23 of 2002 concerning Child Protection, Law Number 39 of 1999 concerning Human Rights and Law Number 7 of 1984 concerning the Ratification of Women's Convention. Fourth, the Ministry of Manpower (Kemnaker) and the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI) must continue to take a firm stance against rogue PPTKIS. If it has been revoked, do not give another permit. The names of PPTKIS whose permits have been revoked must also be announced and advertised in the mass media, if necessary. So far, the names of rogue PPTKIS whose permits have been revoked have only been written by their initials.

According to the author's sources in the Ministry of Manpower and BNP2TKI, this was done to provide an opportunity for the PPTKIS concerned to negotiate with certain parties in the Ministry of Manpower. Fifth, serving prospective Indonesian workers (CTKI) and Indonesian workers who are still different abroad online. Services like this can prevent fraud of CTKI abroad, both as Indonesian workers working in the formal sector and Indonesian workers working in the domestic worker sector (domestic workers-PRT). As stated by the Director General of Manpower Placement Development, Ministry of Manpower, Hery Sudarmanto, (Herry Sudarmanto, 2016: 65) to prevent fraud of CTKI abroad both as TKI working in the formal sector and Indonesian workers working in the domestic worker sector (domestic workers-PRT), the government will immediately conduct recruitment through an online system. With an online system, all Indonesian people can know for sure in the country of name what workers are needed, what the requirements are, and so on. Prospective Indonesian Migrant Workers will no longer be lied to by brokers, such as being enticed to work in a European country, when they are about to leave they are sent to a Middle Eastern country. That is what has been happening all this time. And we are trying to eradicate this with an online system.

## 5. CONCLUSION

The criminological aspect of human trafficking, especially women and children, is an act that is contrary to human dignity and violates human rights so it must be eradicated. However, the problem of human trafficking in all forms and types, whether carried out by companies or individuals, is increasingly rampant in society. Meanwhile, the steps to prevent human trafficking that need to be taken first, empowering the economy of rural communities, especially in areas that have been sources of Indonesian Migrant Workers abroad. This village economic empowerment can be in the form of capital injections from the government for people who want to become entrepreneurs. The government must also actively provide training and education for these entrepreneurs, including training the community to build cooperatives.

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