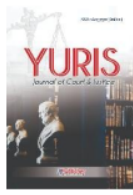


Legal Protection for Human Trafficking

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Legal Protection for Human Trafficking
A Case Study of Sidoarjo District Court Decision No.
889/PID.SUS/2018/PN.SDA

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ABSTRACT

The objective of this research is to determine the regulation of the human trafficking crime and analyze of the human trafficking crime in Decision No. 889/PID.SUS/2018/PN SDA. A criminal act or "strafbaar feit" is an act which regulated by law that is prohibited and punishable by crime. It means that this act can be an active act (doing something that is actually prohibited by law) or a passive act (not doing something that is actually required by law). The method used in this research is juridical normative method. Legal material source used in this research was library research. It conducted by reading, analyzing, studying, and identifying legal materials that are appropriate with the topic of this research, then implemented into this research. Legal material sources obtained from primary legal materials and secondary legal materials. Selecting appropriate legal materials aims to complete understanding of human trafficking crime. The legal material will be processed and analyzed qualitatively in order to explain the statement problems that are closely related to this research. The researchers can conclude that the act of a husband selling his wife to engage in deviant sex (threesome) still cannot be considered a criminal act of human trafficking. Based on the case described, before imposing sanctions, the judge must be more thorough and careful in implementing the law and pay attention to the conscience of the victim in order to realize the court as an institution that provides a sense of justice.

Keywords: Human Trafficking, Human Trafficking Regulation, Legal Protection

INTRODUCTION

The people did not understand about the criminal issue as a human problem in social phenomenon since they do not observe the problem from its true proportions dimensionally. Developments in increasing and decreasing the quality and quantity of crime in both rural and urban areas are relative and interactive. Developments inside and outside the exclusive human, affect the tendency and ability to commit criminal behavior. Furthermore, these humans affect their surroundings in the struggle to fulfill physical, mental and social needs, both positively and negatively.

Nowadays, human trafficking has recently emerged as a problem that has been much debated both regional and global levels and is known to be a form of contemporary slavery.¹ Actually, human trafficking is not a new thing, but this problem has surfaced and has become a concern not only for the Indonesian government, but has also become an international problem in recent years.

Human trafficking is a classic problem that always occurs throughout the time. Public perspective of human trafficking is a form of modern slavery that cannot be avoided. In addition, human trafficking is a bad action and one of the fastest growing crime in the world. Human trafficking is also one of the five biggest crimes in the world that must be tackled because of the consequences it causes not only in economic aspects, but also in political, cultural and humanitarian aspects.²

The reason for the occurrence of human trafficking crimes must be prevented and eradicated immediately because these crimes are not in accordance with human rights, besides that the risk of transmission of HIV/AIDS or other sexually transmitted diseases is very large. Victims are not given adequate health services. In addition, if victims are infected with HIV/AIDS, they will be more ostracized and considered inferior in society. In addition, if victims are returned to their country of origin, they will become targets for HIV/AIDS testing. Unfortunately, this is not mandatory for men. These situations are very dangerous because of the impact of inadequate regulations and policy interventions within a country. The lack of legal regulation in a country makes it difficult to catch perpetrators of human trafficking at the national and international levels. In addition, many victims did not receive their human rights in accordance with existing legal arrangements.

Based on empirical evidence, women and children are the most attractive group for perpetrators of human trafficking. The victims of human trafficking are not only for prostitution or exploitation purpose, such as forced labor, forced

¹ Simon Mackenzie, "Human Trafficking," in *Transnational Criminology* (Policy Press, 2020), 37–54, <https://academic.oup.com/policy-press-scholarship-online/book/37445/chapter/331606796>.

² Syed Raza Shah Gilani, Ilyas Khan, and Ashraf Ali, "Human Trafficking and International Legal Responses: The Case of Combating Human and Women Trafficking," *Pakistan Journal of Social Research* 04, no. 03 (September 30, 2022): 89–96, <https://pjsr.com.pk/ojs/index.php/PJSR/article/view/689/version/689>.

services, slavery and similar practices.³ The perpetrators of human trafficking crime recruit, transport, transfer, accept people for the purpose of trapping or taking advantage of the person in the practice of exploitation in all its forms with threats of violence, kidnapping, or giving payments or benefits in order to obtain approval from the person who has control over the victim.

Victims are the people who suffer the most and experience losses as a result of the crime. The losses suffered were material or immaterial and physical or spiritual.⁴ Therefore, the state is responsible for providing protection to its citizens so that they do not become victims or suffer from unlawful acts. In addition, it is imperative that all state authorities, the people and law enforcement officials are aware that it is necessary to protect people who have suffered, people whose rights have been violated, or have become victims of arbitrary and inhuman acts by other people.

According to the previous background of this research, the researcher is interested in discussing it more concretely in research on how to regulate the crime of human trafficking. The wider the development of sex deviation services (threesome), the writing of this research discusses one case regarding a husband who sold his wife, which case is currently being handled by the Sidoarjo District Court in Decision No. 889/PID.SUS/2018/PN.SDA. The objective of this research is to determine the regulation of the human trafficking crime and analyze of the human trafficking crime in Decision No. 889/PID.SUS/2018/PN SDA.

RESEARCH METHODOLOGY

The method used in this research is a juridical normative method which is the reference materials used are statutory regulations as the main material (primary legal materials) and secondary legal materials such as literature, law books, scientific papers, scientific articles discussing the enforcement of criminal law against the human trafficking crime according to Law No. 21/2007 and the application of criminal sanctions and the Criminal Code. According to Juli Nurani and Nuraini Kartika, juridical normative method is a research by raising an issue and describing it into a research by focusing on the application of existing rules as well as some existing norms in positive law.⁵ The research approach used is the statutory approach because it is used as a reference for solving the problems

³ Maayan Niezna, "Labour Exploitation in Human Trafficking Law," *Industrial Law Journal* 51, no. 2 (July 8, 2022): 500–504, <https://academic.oup.com/ilj/article/51/2/500/6584771>.

⁴ Rizki Yudha Bramantyo and Suwadi Suwadi, "Perdagangan Manusia Di Indonesia Sebagai Sebuah Masalah Penegakan Hukum," *Jurnal Mediasosian: Jurnal Ilmu Sosial dan Administrasi Negara* 3, no. 2 (November 29, 2019), <http://ojs.unik-kediri.ac.id/index.php/mediasosian/article/view/570>.

⁵ Nuraini Nurani, Juli & Kartika Sari, "The Copyright Infringement in Using Famous Artists Names as Fan-Fiction Novels' Characters: A Juridical Analysis, Based on Law No. 28/2014 Regarding of Copyrights," *Yuris-Journal of Court & justice* 1, no. 3 (2022): 10–24, <https://journal.jfpublisher.com/index.php/jcj/article/view/137/127>.

discussed in this research. Legal materials are collected through library research, it conducted by reading, analyzing, studying, and identifying legal materials that are in accordance with this research, then implemented into this research.⁶ Legal materials obtained from primary legal materials and secondary legal materials. Selecting appropriate legal materials aims to complete understanding of human trafficking crime. The legal material will be processed and analyzed qualitatively in order to explain the statement problems that are closely related to this research.

RESULT AND DISCUSSION

Actually, human trafficking is an organized crime or syndicate crime. This crime syndicate has a meaning as a criminal act carried out by a group of crimes that are systemized by a social structure with the ultimate goal of seeking profits derived from illegal actions. Some time ago this type of crime had not become a major social problem in several countries. However, recently organized crime has grown drastically along with economic development, becoming a problem that needs to be taken seriously because it disrupts national security and stability and has formed new alliances around the world.

It is undeniable that in human trafficking case is the most vulnerable are women and children. The provision of criminal sanctions for the human trafficking perpetrators is regulated in the Criminal Code (KUHP). In Article 297 states that trafficking in women and boys under the age of 16 (six) years is punishable by imprisonment.⁷

On the other hand, Indonesia has ratified the convention on the elimination of discrimination against women (CEDAW) is an international human rights agreement that specifically regulates women's rights by Law No. 7/1984. In Article 6 of CEDAW 1979 regulates that participating countries will take all appropriate actions including legislation to eradicate all forms of trafficking in women and exploitation of women's prostitution. Because of ratification of CEDAW in Law No. 7/1984, Indonesia is committed to regulating this issue of human trafficking in a law to prevent the widespread of human trafficking crime in Indonesian territory. Human trafficking crime has also had attention from the Human Rights (HAM) perspective in Article 20 Paragraph (1) and (2) of law No. 39/1999 on Human Rights states that slavery and servitude, slave trading, trafficking in women and all acts of any kind with a similar purpose are prohibited. Since the promulgation of Law No. 21/2007 concerning of human trafficking crime, it is increasingly clear how the attitude of the Indonesian government is towards these human trafficking cases.

⁶ Suratman & Dillah, P, *Metode Penelitian Hukum* (Bandung: Alfabeta, 2015).

⁷ Syugiarto Syugiarto, "Penanggulangan Human Trafficking Di Indonesia," *Jurnal ADMINISTRATOR* 4, no. 1 (June 6, 2022): 11–22, <https://stiapembangunanpalu.ac.id/jurnal/index.php/ADMINISTRATOR/article/view/43>.

The criminal charges imposed on the perpetrators were not only imprisonment but also fines, as well as the victims receiving proper treatment and receiving legal protection by the government starting from the regional level to providing assistance to victims who were abroad. Human trafficking does not only occur among Indonesian citizens who are sent abroad, but there are also foreigners who are sold and treated as slaves by employing them as commercial sex workers. Because of this case, in Article 3 of the human trafficking law provides for a punishment that is not light for the perpetrators.

There are several cases of human trafficking in Indonesia, one of which is the illegal sending of female workers abroad. There are several elements regarding the existence of these illegal actions as regulated in Article 3 of the Criminal Act on Human Trafficking (UU TPPO), such following below:

1. There are acts of recruitment, transportation, storage, delivery and transfer;
2. Acceptance someone used threats of violence, force, kidnapping, and confinement;
3. Falsification, fraud, abuse of power or a position of vulnerability, debt bondage or giving payments or benefits so as to obtain the consent of the person who holds control over the person;
4. Committed within a country, for the purpose of exploitation or resulting in the exploitation of persons.

The average problem faced by female workers abroad is that they are sent illegally or legally but then they are deceived by the sending company or their agents. The mode of deception is to hold the documents of female workers on the grounds of repayment of debts due to costs incurred (debt entrapment). Another mode is sending women workers who do not comply with their residence permits. There are also cases in which female workers do not get jobs according to the original agreement, for example they are promised a job in a restaurant, but then they are sold to be employed as commercial sex workers. According to the Law on Human Trafficking (UU TPPO) has provided strict rules against perpetrators in the form of imprisonment and fines that are quite heavy, however sending workers abroad in this mode continues. The most inhumane case that occurred was the sale of babies abroad by kidnapping, who were then given fake documents to be sold abroad or to be adopted by foreigners. As stipulated in Article 6 of the Law on Human Trafficking (UU TPPO), it has provided strict rules for the perpetrators.⁸

The provisions regarding human trafficking crime are regulated in the law of human trafficking (UU TPPO). In point c the consideration section of law No. 21/2007, it stated that human trafficking crime which experienced by women and children, is a contrary act to human dignity and violates human rights, therefore it

⁸ Safrida Yusitarani, "Analisis Yuridis Perlindungan Hukum Tenaga Migran Korban Perdagangan Manusia Oleh Pemerintah Indonesia," *Jurnal Pembangunan Hukum Indonesia* 2, no. 1 (January 10, 2020): 24–37, <https://ejournal2.undip.ac.id/index.php/jphi/article/view/7208>.

must be eradicated. In addition, it is emphasized in point e, it indicated that human trafficking has expanded in the form of organized and unorganized crime networks, both inter-state and domestic and becomes a threat to society, nation, state, and life norms based on the respect for human rights. Another basis for the formation of human trafficking law is the desire to prevent and overcome the human trafficking crime based on noble values, national and international commitments to take early prevention efforts, take action against perpetrators, protect victims and increased cooperation.

This case stated that the defendant abused his wife (witness and victim) for the purpose of exploiting her by influencing her for economic reasons so that the victim obtained the consent of the victim and the victim agreed to do this. Therefore, the accused must be declared legally and convincingly proven to have committed the crime as charged. During the examination of the defendant at trial, no reasons for forgiveness or justification were found. According to the law, the defendant is capable of being responsible and must be found guilty and sentenced to a sentence commensurate with his actions. In this case, the defendant was subject to lawful arrest and detention, then the period of arrest and detention must be deducted in full from the sentence imposed.

After understanding the case above, the judge decided that the case based on human trafficking law was very inappropriate because the perpetrator and victim were still in a marital bond or were still legally husband and wife. According to the researcher's perspective, the judge should decide the case by using law No. 23/2004 Article 8 concerning the Elimination of Domestic Violence (UU PKDRT).

CONCLUSION

The act of a husband selling his wife to have deviant sex (threesome) still cannot be considered a human trafficking crime, by imposing a sentence on the defendant with imprisonment for 4 (four) years, 6 (six) months and a fine of IDR. 120,000,000.00 (one hundred and twenty million rupiah) is very heavy between the victim and the perpetrator who still have a husband and wife bond and if the husband is sentenced to a crime with these provisions, it is very burdensome for the husband and wife because the husband will not be able to pay a fine, then the wife and their children are not sufficient for daily life.

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