

THE ANALYSIS OF CRIMINAL LIABILITY FOR CRIMES PERPETRATORS OF THE CRIME OF HUMAN TRAFFICKING

Dharma Saputra

Legal Studies, Faculty of Law, University of Bandar Lampung, Indonesia
Corresponding author e-mail: Dharma_saputaaa @ gmail.com

ABSTRACT - *trafficking has long been a national and international issue for many nations in the world, including countries Indonesia. Trafficking secretly operates and move unlawfully. Traffickers have evolved quickly into transnational syndicates and are very subtle in trapping their victims, but have exploited them ruthlessly in various ways so that the victim becomes powerless to release. Research problems that will be discussed in this paper is the factor of crime in human trafficking, criminal liability against the perpetrators of the crime of human trafficking and efforts to prevent the crime of human trafficking. This research used normative juridical and empirical research method using secondary and primary data, library and field studies, and the were analyzed qualitatively. Data collection and processing procedures, after the data were analyzed by means of structured juridical analysis done by sorting or delivering notions of data that has been arranged systematically aiming at providing a general overview o answer the problem based on the results of the research.*

Based on the results of research and discussion, factors of the crime of human trafficking were rapid but uneven economic growth, poverty, family disintegration, migration, lack of education and information, culture, insentivity and gender inequality, bad influences of war and official corruption and collaboration. Criminal responsibility of the perpetrators of the crime of human trafficking is a form of The Judge consideration of legal facts revealed in the court, where the defendant is legally and convincingly to have committed the crime of human trafficking, as stated in the indictment that violated Article 2 paragraph (1) The Law No. 21 of 2007 on the Eradication of Human trafficking. In addition, in dropping the weight and severity of criminal sanctions to the defendant, the judges ruled against NURUL ISTIQOMAH binti Suparni imprisonment with 3 (three) years of imprisonment and a fine of Rp.120.000.000, - (one hundred and twenty million dollars) provided that if fines are not paid, it is replaced by confinement for 4(Four) months. Efforts to prevent human trafficking crime prevention (preventive) including the increase of education, dissemination of information, and the increase of surveillance is a very important factor. While enforcement efforts (repression) is the prosecution to perpetrators of the crime of human trafficking, according to the authority held by the authorities (police force, prosecutors and the courts), but considering the human trafficking is a crime that operates silently, to the general public, community institutions and NGOs, that they should take active part in uncovering this crime by providing information to the authorities if they see, witness or indicate the trafficking activities or things that can allegedly lead to the occurrence of the crime. Thus, it is expected that the Indonesian government should immediately establish minimum standards to eradicate human trafficking so that seriousness through extra measures of the government in dealing with cases of human trafficking, it is certain that it could minimize the occurrence of human trafficking in both the national and international levels. There should be improvements in trial performance, the prosecution and punishment of cases of human trafficking, including those involving women and children as victims. Checking back in the Memorandum of Understanding with the countries which became the destination of human trafficking to include the protection of victims and it is expected by the Act No. 21 of 2007 on the Eradication of Human trafficking implemented and properly applied especially to law enforcement officials, the police officers, prosecutors and the judge so that the parties involved as perpetrators and victims can be done in a fair legal process

keywords: Crime , Trafficking , Human Trafficking, Localization

1. INTRODUCTION

Slavery and the slave trade is a form of the first violation of human rights, the crime recognized internationally, even though it is just the subject of an international comprehensive treaty when in 1926 slavery convention was adopted. Traditional forms of slavery and trafficking were almost stopped, but other forms of slavery still exist such as bondage (servitude), labor (forced labor) and human trafficking especially women and children. Prohibition of slavery can also be found almost in the general of human rights instrument such as in Article 4 of The Universal Declaration of Human Rights, Article 8 of the Civil Covenant and Political Rights (ICCPR), and Article 6

(1) of the American Convention on the Human Rights. In the situations of armed conflict, all forms of slavery are also forms of violation of humanitarian law. Article 4 of the Universal Declaration of Human Rights:
No person may be enslaved or servitude; slavery and the slave trade in any form shall be prohibited.
Article 8 of the civil Covenant dan Political Rights (ICCPR):
1. No one shall be held in slavery, slavery and the slave trade in all its forms must be prohibited;
2. Nobody can servitude.
3. In the case of:

- a) No one shall be required to perform forced or compulsory labor;
- b) Paragraph 3 (a) no one shall preclude the implementation of forced labor as a result of the penalty imposed a competent court, in countries where the sentence with hard labor may be imposed as a punishment for crime;
- c) For the purposes of this paragraph, the term "forced or compulsory labor" shall not include:
 - 1) Any work or service not referred to in subparagraph (b), normally required of a person detained on lawful order of a court, or of a person during conditional release from such detention;
 - 2) Every task that is required to do in an emergency or disaster that threatens life or well-being of society;
 - 3) Any tasks that are required to do in an emergency or calamity that threatens the life or well-being of society;
 - 4) Any work or service is part of the general obligations of citizens

Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination:

State guarantees Participants

This article contains a guarantee of any State Party through the courts or other state agencies to:

- 1. Any act of racial discrimination which violate humanity;
- 2. The quest for justice in the case of racial discrimination;
- 3. Enterprises for commensurate compensation for damage suffered as a result of acts of racial discrimination.

Trafficking in Indonesia started rolling in early 2000. It was specifically triggered by the emergence of cases of torture of Indonesian women working abroad either as domestic workers (PRT) or as mired in prostitution. Previously, human trafficking was understood merely occurred in the context of prostitution. The article 297 of the Book of the Criminal Justice Act (hereinafter referred to as the Criminal Code) sets the penalty for human traffickers. Unfortunately, this article is rarely used by law enforcement officers to help women and children trapped in prostitution, one of the reasons is because there is no full explanation of what is meant by human trafficking. Moreover, there is a contradiction in the various laws regarding the age limit for adult and child prostitutions. Furthermore, formerly, Indonesian women have been looking for a job abroad, and the violence they experience in the workplace is often considered to be reasonable as far as our society tends to be patriarchal accompanied with less welfare and low educational background.

Advances in information technology, communications and transportation which accelerate the globalization, are also abused by criminals to disguise slavery and servitude into their new form: human trafficking who operates in secret and move unlawfully. Traffickers are rapidly evolving into transnational syndicates and are very subtle in trapping the victims, but they have exploited them ruthlessly in various ways so that the victims becomes powerless to release.

Human Trafficking especially in women and girls has long been a national and international issue for many nations in the world including Indonesia. Human trafficking though it is so familiar occurred in society, but it seems not many people understood it terminologically. The understanding in the community about trafficking is still very limited, this is because the information obtained in the community about trafficking remains low.¹

Human trafficking is an issue of concern in Asia and even the whole world. Trafficking occurs not only inter-island of Indonesia but also across countries. The rise of the issue of trafficking usually starts by the increasing of job seekers both men and women and even children to migrate to other regions until abroad to look for work. Lack of education and lack of information possessed have caused them vulnerable to be trapped in the trafficking. A variety of causes that contribute to this includes the dominant factor of poverty, unavailability of jobs, orientation changing of development from agriculture to industry and never-ending economic crisis.

The majority of trafficking of women and children considered as a kind of slavery in the modern era is a multi-dimensional crisis experienced by Indonesia. Human Trafficking is now declared as a serious global problem and has even become a global business that has provided great advantages for traffickers; from time to time the practice of human trafficking has showed the quality and quantity.

Human trafficking has been criminalized in Indonesian positive law. Human trafficking referred to explicitly in the Criminal Code which states that:

Article 297 of the Criminal Code states that:

Trafficking of women and boys under the age is punishable by imprisonment of 6 (six) years.

The concept of ban setting is in the same period of the formation of the Criminal Code. Article 297 of the Criminal Code that specifically regulates the trafficking of women and boys under the age which shows that at the time of the invaders was the trafficking of women and children has been qualified as a crime or considered as an inhuman act and deserving of criminal sanction. However, with advances in technology, information, transportation which provide acceleration to the globalization of actors of trafficking (traffickers) quickly developed into transnational syndicates who are doing it secretly in trapping their victims, but with a ruthlessly exploit in various ways so that the victim becomes powerless to release.

As an illustration, a criminal case of human trafficking happened at the District Court of Jurisdiction Class IA Tanjung Karang in Bandar Lampung, is the case No. 1044 / Pid.Sus / 2013 / PN.TK., with the defendant on behalf of the daughter Nurul Istiqomah Suparni lived on Jalan Teluk Tomini Gang Swadaya (Pemandangan) Way Lunik Village, South Teluk Betung, Bandar Lampung, where the accused Nurul Istiqomah bint Suparni committed the crime of human trafficking for the victim named Febri Lestari bint Tukijo. The defendant was charged with Article 2 (1) of Law No.

21 of 2007 on the Eradication of Human trafficking, which by the judges was sentenced to imprisonment for 3 (three) years with a fine Rp.120.000.000, - Based on the above description, the authors are interested in doing research as outlined in the form of a thesis with the title: "The Analysis of Criminal Liability for Crimes Perpetrators of the Crime of Human trafficking"

2. STATISTICAL MODEL AND ANALYSIS

Approach to the problem that will be used in this research is normative and empirical approach.

a. Normative juridical approach

The approach through the study of literature (Library Research) is used to see the problem as a rule of law that is considered in accordance with normative juridical research. This normative juridical research conducted on theoretical matters, in which the approach is done by studying the general principles of law in the theory / opinion of scholars and legislation in force.

b. Empirical approach

The approach is taken by seeing and observing directly the object of research on the analysis of the criminal responsibility of the perpetrators of criminal acts of human trafficking.

3. RESULTS AND DISCUSSION

Based on the results of interviews in Bandar Lampung Town Resort Police (Polresta) with Mr Siswanto as Bandar Lampung Police investigators, it is said that Indonesia is a country that is considered as a source of trafficking of women, children and men for the purpose of forced labor and commercial sexual exploitation. In the smaller scope, Indonesia became the destination and transit country for human trafficking from other countries. Provinces in Indonesia becomes the source and destination of human trafficking primarily Javanese followed later by West Kalimantan, Lampung, North Sumatra, Banten, South Sulawesi, West and East Nusa Tenggara, and North Sulawesi.

Furthermore, Mr Siswanto as the investigator said that human trafficking in the country is still a major problem in Indonesia, where women and children are exploited become domestic servants, sex workers, and workers in small factories. The traffickers sometimes conspire with the school to start recruiting young

students at a vocational school to become forced labor in Malaysia through opportunities of "internship" which are actually fictitious. Residents of Indonesia were recruited with offers to work in restaurants, factories, or as domestic servants and then forced to undergo seks. Besides, Indonesia children experience very pathetic experience that they become the victims of sex tourism with the perpetrators majority from Malaysia and Singapore. Sex tourism involving children are found in many urban areas and tourist destinations.

Human trafficking crime that is transnational crimes or transnational crime has become a global concern all over the world. To ensnare the crime of human trafficking, Indonesia already has Law No. 21 of 2007 on the Eradication of Human trafficking.

Based on the results of interviews at the State Attorney of Bandar Lampung with Ms. Eka Aftarini as the Attorney, it is said that the discussion in outlining the factors that cause the occurrence of the crime of human trafficking is very broad, none of which is a special cause acts of trafficking in Indonesia. This can be caused by the whole thing consists of a variety of conditions and varied issues, including the lack of awareness, a number of people who migrate to find work either in Indonesia or abroad and are not aware of the dangers of trafficking and did not know the ways used to trick or trap them in n arbitrary job or akin to slavery.

4. CONCLUSION

Based on the results of research and discussion in the writing of this paper, it can be concluded that the occurrence of Crime in human Trafficking in Indonesia is dominantly caused by some factors such as rapid but uneven economic growth, poverty, family disintegration, migration networks, lack of education and information, culture, insensitivity and gender inequality, negative consequences from the left war and official corruption and collaboration.

REFERENCES

- [1] M. Zaelani Tammaka, Towards a Humane Journalism Trafficking Case in the Media in Central Java and Yogyakarta, Aji Surakarta, Surakarta, 2003.
- [2] Law Number 21 Year 2007
- [3] Article 297 of the Criminal Code