



# Icon-LBG 2016

## The Third International Conference on Law, Business and Governance

# PROCEEDINGS

Hosted by  
Faculty of Law, Faculty of Economics and Faculty of Social Science  
Bandar Lampung University (UBL)

# Icon-LBG 2016

THE THIRD INTERNATIONAL CONFERENCE  
ON LAW, BUSINESS AND GOVERNANCE 2016

20, 21 May 2016  
Bandar Lampung University (UBL)  
Lampung, Indonesia

## PROCEEDINGS

Organized by:



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## **PREFACE**

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the Third International Conference on Law, Business and Governance (3<sup>th</sup> Icon-LBG 2016) organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participants. It is noteworthy to point out that about 46 technical papers were received for this conference.

The participants of the conference come from many well known universities, among others : International Islamic University Malaysia, Unika ATMA JAYA, Shinawatra University, Universitas Sebelas Maret, Universitas Timbul Nusantara, Universitas Pelita Harapan, Universitas Bandar Lampung, Universitas Lampung.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also grateful to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

Bandar Lampung, 21 May 2016

**Mustofa Usman, Ph.D**  
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# **THE POLICY OF CRIMINAL LAW AGAINST THE CRIME OF PEOPLE TRAFFICKING**

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## **Abstract**

Trafficking is a complex issue. Examples of such people is to do acts of recruitment, transportation, shelter, delivery, transfer, or receipt of a person made a threat with the purpose of exploitation. Trade this guy not only occurs in developed countries, even developing countries such as Indonesia also participate in criminal acts of trafficking people. Has been detected, the regions in Indonesia that is central to producing commercial sex workers is an area of the North coast of Central Java and East Java are very known as the granary of producing a sex worker. Criminal law policies undertaken in the prevention of criminal acts of trade people is as follows the policy formulation/application/ Policy legislation, yudiksi, execution policy/administration and basic consideration in the determination of the Criminal Verdict Taking criminal action against the Trafficking of people based on the CODE of CRIMINAL PROCEDURE and the Principal Act Power of Justice is basically the judge also refers to the judicial code of conduct, article – article that inducted to the defendant that is based on Act No. 21 of 2007 about the eradication of criminal acts of Trafficking people and also upon the conscience of the judges.

*Keywords: Criminal Law, Crime of People Trafficking*

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## **1. INTRODUCTION**

### **1.1. BACKGROUND**

Every person who lives in this world, are protected by the rights inherent in the womb. So also with the Indonesian state, guaranteeing the human rights of each individual community. So that people who become victims of crime, get legal protection from the state.

Trafficking in persons is a complex problem. Examples of such trafficking is the act of recruitment, transportation, harboring, transportation, transfer, or receipt of persons who carried out the threat with the purpose of exploitation.

Nowadays, people trafficking is dominated by women as victims for the purpose of prostitution. This issue is complex involving many tissues, namely the network of inter-regional, inter-island, national, and international networks also in a large scale. In this case the network is no indication that the use of these networks is quite solid, simple, and direct. With a network system that is at the stage of recruitment are complex or semi-complex which make intermediaries in it related not too obvious. Most intermediaries working on their own, which in turn is part of the network.<sup>1</sup>

Trafficking in persons is not only happening in advanced countries, even developing countries such as Indonesia are also taking part in the crime of trafficking in persons. Has been detected, regions in Indonesia which is the production center of commercial sex workers is the north coast of Central Java and East Java who is known as the granary producer of sex workers. Moreover Indramayu is a region that long ago known as the origin of women trafficked for sex work. However, in some areas of the north coast of Central Java and East Java also known as the granary producer of sex workers.<sup>2</sup>

Victims of human trafficking is dominated by women and children. Although the mobility and activity is illegal but it can not be denied that Indonesia is one of the suppliers of commercial sex workers is high. It is related from easy to obtain and dispatch of Indonesian sex workers. Trafficking victims are more often found in rural communities who do not understand the situation and / or condition of the city.

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<sup>1</sup> Ruswati Suryasaputra, *Trafficking Perempuan untuk Tujuan Prostitusi dalam Perspektif HAM*, Komnas HAM, Jakarta, 2007. Hlm 3

<sup>2</sup> Ruswati Suryasaputra, *Organisasi Perburuhan Internasional*, Jakarta, 2007. Hlm.21-23

Potential victims are those who are gullible and in enticing lure of wealth by their jobs promised reward or imbalah large enough that make them are tempted to work in the city. With education the less they can be easily affected on that assumption.

Today trafficking is considered analogous to slavery, which is defined as sutu condition of someone who is under the ownership of another person.<sup>3</sup> The criminal acts of trafficking in persons is also said to be a modern form of human slavery, which is the worst act of violation of human dignity. On that basis, the problem of human trafficking crime is a serious concern of several countries including Indonesia. The reasons mentioned above, based on noble values and national commitment and international for prevention and early countermeasures, with prosecution and protection to victim and perpetrators, required the cooperation of national, regional dsan universal, and most importantly is the policy of the law.

Legal policies need to be done, especially in prevention and law enforcement against human trafficking pidana acts, so that the law can be run effectively and in line with expectations. Mochtar Kusumaatmadja law without power is a chimera, while power without law is tyranny.<sup>4</sup>

Before the enactment of Law No. 21 of 2007 on the Eradication of Trafficking in Persons, in the month of April 2007, the regulations existing and valid can not be sufficient to tackle trafficking in persons, in order to ensnare traffickers and sense of justice for the protection of victims because legislation that can be used is Article 297 of the Penal Code and Constitution No. 39 of 1999 on Human Rights relating to trafficking and criminal penalties under Article 297 of the Criminal Code penalties are mild, that the threat is 0-6 years in prison, while in sub-constitution number 39 of 1999 on Human Rights no sanctions.

The legislation else related to trafficking in persons, namely Law No. 4 of 1979 on Child Welfare are intended to provide protection to children, but child trafficking is also not anticipated in the Constitutions. After the passing of Law No. 21 of 2007 on the Eradication of Trafficking in Persons in April 2007 which is a special regulation governing the crime of trafficking in persons, so it can be a tool for law enforcement, particularly the handling of human trafficking.

## **1.2. ISSUE**

Based Background The problem has noted differences , then some problems can be formulated as follows :

1. How does the criminal law policy against human trafficking crime?
2. What is the basic consideration in making the determination of the criminal verdict against human trafficking crime?

## **2. DISCUSSION**

### **2.1. Policy Criminal Law Against the Crime of Trafficking in Persons**

The criminal acts of trafficking in persons is one of the types of actions / deeds called evil, and crime in juridical terms is called a felony. According Crime Saparinah Sadli is one form of deviant behavior that always exist in society, and in reality no society is devoid of crime.<sup>5</sup> As social problems, crime is not just a particular threat to society, but even become a problem that must be faced by the whole of society, without being confined by space and time.

Development of law or law reform has a strong relationship with politics, because the law reform starting from formation until pelembagannya carried out by a political institution, which is the agency force in society. The process of making laws implemented through policy formulation, while the enforcement process or institutionalization conducted through application policy/yudikasi and implementation process carried out by criminal execution policy/administration. The third stage of the criminal law policy conducted in the prevention of the crime of trafficking of people is as follows:

#### **a. Policy formulation /legislation**

Policy formulation/legislation is the process of legislation conducted by lawmakers {Government together with the House of Representatives / DPR}. Both bodies / authorized institutions is what makes the rule of law, namely through the process of law bring hope in reality. Therefore, any rule of law that is made should be able to reach every need and happenings in the community.

Stages of policy formulation / legislation is the most strategic phase, because at this stage will produce a rule of law which will guide the next steps in the policy process of law. Legislative product called the

<sup>3</sup> C.S.T. Kansil (et al), *Tindak Pidana Dalam Undang – Undang Nasional*, Jala Permata Aksara, Jakarta, 2009, hal. 129.

<sup>4</sup> Mochtar Kusumaatmadja, *Konsep – Konsep Hukum Dalam Pembangunan*, Cetakan kedua, Alumni, Bandung, 2006, hal. 199.

<sup>5</sup> Henny Nuraeny, *Tindak Pidana Perdagangan Orang*, Sinar Grafika, Jakarta, 2010, hal. 273.

legislation at the level of a legal policy formulation level, and located in the abstract level (in the form of regulations / laws), meaning that this legislation will have a meaning, if applied in reality.

b. Policy Application / yudiksi

Policy applications, namely the implementation phase Criminal Law by law enforcement officials from the prosecutor's office and court. This stage is also called stage yudiksi. Policy application / yudiksi can not be separated from the criminal justice system (criminal justice system), which sutau community efforts in tackling crime / felony. Policy application / yudiksi associated with the process of law enforcement and the working of the law in society. Therefore, in the realization of the criminal justice system (CJS), law enforcement (police, prosecutor, and judge) should be able to coordinate well in carrying out duties, harmony, and dignity, or should refer to management CJS.

c. Execution Policy / Administration

Execution policy is the policy of the law in the implementation phase of the criminal law in a concrete way by the officers for executing the criminal, and this stage is also called the administration stage. Criminal executive officers conducted by officers Penitentiary (Prison), for those who have been sentenced (punishment) by the judge. At this stage the judge in applying punishment, may include the imposition of sanctions in the form of a criminal (penal) and administrative sanctions (non penal). Against the imposition of sanctions for the perpetrators of human trafficking crime. Judges can refer to the legal concept of development of Mochtar Kusumaatmadja, which is rooted in legislation, jurisprudence, or a combination of legislation and jurisprudence.

If the perpetrators of criminal acts of trafficking in persons subject to sanctions according to the concept of development law, can refer to the Constitution No. 21 of 2007 on the Eradication of Trafficking in Persons, or jurisprudence. However, in the legal system in Indonesia, law enforcement peroses refers more to the principle of legality, which is based on written legal regulations (Act). Likewise Judge in Indonesia, more often impose sanctions in accordance with the rules in the Act No. 21 Year 2007 on Combating Trafficking in Persons.

To that end, efforts overcome crime / criminal is not enough to use legal means but also through social efforts of others, such as education, improvement of living standard Members of the public are classified as "economically weak", reduce unemployment, environmental improvements, and strategies other social.

## **2.2. Basic Considerations in Determining the Crime of Verdict Against Crime of Trafficking in Persons**

The judge gave the verdict in the criminal must be in accordance with applicable laws. In sentencing there are patterns separately regulated in the Criminal Code, Criminal Procedure Code and Law on the other. Legal expert, Marc Ancel has said, that "modern criminal science" consists of three components "Criminology", "Criminal Law" and "Penal Policy". Given by him that the Penal Policy is a science and an art, which in turn has a practical purpose to allow regulation of positive law formulated better and to give guidance not only to legislators, but also to the court to apply the law and also to the organizing or implementing the court decision.<sup>6</sup>

Criminal liability on an offender must meet four (4) the following requirements:<sup>7</sup>

1. There is an act by the perpetrator
2. Meet formulations offense in law
3. Characteristically unlawful
4. The culprit must be accountable.

Constitution No. 48 Year 2009 on Judicial Power Indonesia is a country that adheres to the concept of state law as embodied in the 1945 Constitution, therefore, all the rules that apply in Indonesia should be based on applicable laws. Indonesian Justice presided over by judges who will decide a case. The judge in deciding the case must also comply with the regulations or laws applicable. Building on the concept of state law, the Indonesian government regulates judicial authority for the judge in deciding the case is not arbitrary.

Judges are officials who perform judicial authority regulated by law, while the judicial power is independent of state power to organize judicial administration to uphold the law and justice based on Pancasila in order established State of Law of the Republic of Indonesia. And the court interpreted as a council or assembly hear the case or buildings hear the case.

The principle of judicial independence or judicial discretionary power is fully guaranteed in Article 1 of Law No. 48 Year 2009 concerning Judicial Authority.<sup>8</sup> In Article 1 paragraph (1) of Law No. 48 Year

<sup>6</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana Di Indonesia*, Citra Aditya, Bandung Bakti, 1996, hlm. 27

<sup>7</sup> Romli Atmasasmita, *Asas-Asas Perbandingan Hukum Pidana*, Yayasan Lembaga Bantuan Hukum Indonesia, Jakarta, 1989, hlm. 57

2009 on Judicial Power states that "Judicial Power is an independent state authority to conduct judiciary to uphold law and justice based on Pancasila and the Constitution of the Republic of Indonesia Year 1945, for the implementation of the State Law of the Republic of Indonesia."

Judge is a sub system of the judiciary, as the officials who carry out the judicial power, so the power of judges should remain in the corridors of the independence of the judicial power. In any decision-making, judges must adhere to the Code of Criminal Procedure and the Basic Law of Judicial Authority. In Article 183 Criminal Procedure Code explains that "The judge must not convict to an unless at least two valid evidence he gained confidence that a crime actually occurred and that the defendant is guilty of perpetrating" means in the decision making judges should still be refers to the valid evidence.

Valid evidence into consideration the judge stipulated in Article 184 Criminal Procedure Code, namely:

1. Legal evidence is:
  - a) statement of witness
  - b) expert testimony
  - c) Letter
  - d) Guidance
  - e) Description defendant
2. It is generally already known does not need to be proven

Basic considerations guided the judge in imposing sanctions on the articles which the accused defendant is based on Constitution 21 Year 2007 on Combating Trafficking in Persons. The judge in imposing its decision to first see the elements contained in article accused the defendant, but it also judges viewed from the elements as follows:

- a. Error defendant  
The defendant was found guilty of committing a crime, namely the recruitment of the victim by means of deception is wrong and the defendant shall be accountable for his actions.
- b. Attitudes and actions of the accused after committing a crime.  
The defendant admitted a mistake and regretted his actions and promised not to repeat his actions again.
- c. Life history and socio-economic circumstances defendant  
Whether the defendant is a person who has committed actions repeatedly (recidivis), or someone who is good and never do evil, or the defendant had committed the crime but have not been sentenced.
- d. The influence of criminal acts against the victim or the victim's family  
The defendant should be responsible for replacing the losses resulting from the act of doing, guilt and promise not to repeat it again.
- e. Forgiveness from victims and / or their families  
Whether the defendant has been forgiven by the victims and their families.

Referring to the matters set forth above, in the decision making in addition to referring to the Criminal Procedure Code and the Basic Law of Judicial Power is basically the judge also referred to the judicial code of ethics. The judge also himself basically have their own code of ethics and almost different from other law enforcement agencies. For the position of judge, the judge called the Code of Honor Code of Justice. Judge honor code includes three types of ethics, the official civil servants, judges Sebai functional ethics official law enforcement, personal ethics as a human judge members of society.

Judge in performing basic tasks required to examine and adjudicate by digging, follow and understand the values of law and justice in the society. For this reason many people looked forward to the judges for the birth of legal jurisprudence in Indonesia as a stopgap law, as well as cognition pengharmonisasi with the law in law with the law of real life in the community.<sup>9</sup>

The judges' verdict will be in qualifying as Jurisprudence law, the judge's decision if it meets the following requirements:<sup>10</sup>

1. A decision on an event that is not yet clear legal regulation in legislation;
2. The decision of the judge shall be a judge's ruling that has binding;
3. The decision of the judges has been used as the basis for deciding the same case in a long time;
4. The judge's decision has met the public sense of justice;
5. The judge's decision has been vindicated by the Supreme Court.

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<sup>8</sup> <http://padangekspres.co.id> tentang Urgensi pedoman Pemidanaan diakses tanggal 11 Mei 2016 pukul 20:58 WIB

<sup>9</sup> Abdulkadir Muhammad, *Etika Profesi Hukum*, PT. Citra Aditya Bakti, Bandung, 2001, hlm. 101

<sup>10</sup> *Ibid*

Jurisprudence as a Source of Law :<sup>11</sup>

1. The jurisprudence is fundamental to complement the various legislations in the application of the law because the national legal system plays a role as a source of law.
2. Without jurisprudence function and authority of the judiciary as the power of authority, will result in sterility and stagnant.
3. The jurisprudence aims to bring the laws up to date and be effective even be able to increase the authority of the judicial authorities, because it can preserve the rule of law, social justice and protection.
4. It takes systematic measures to enhance the established jurisprudence as a source of national law.
5. For the greatness of judges do not contested by jurists prudensi remain as a source of national law.

Courts are independent, neutral and competent is one important element in a state based on law. Through its decision (verdict) can judge someone's transferred ownership, revoke freedoms of citizens, ordered another law enforcement agency to put people into prison, until someone ordered the removal of the right to life.

The logical consequence must be interpreted as either generally or in cases of certain, leader court can give direction or guidance for judges nature of advice or guidance. Principles of Implementation On Freedom Judge:

1. Judges are independent and responsible in carrying out their duties.
2. Organizing judicial carefully appropriately.
3. Referral or guidance during the inspection run.
4. Referral or guidance verbally or in writing.
5. Tutorial or guidance on the assessment of truth, evidence, and justice.
6. warning or reprimand to the judge or judges.

### **3. CONCLUSIONS AND SUGGESTIONS**

#### **3.1. CONCLUSIONS**

- 1) Policy criminal law committed in the prevention of the crime of trafficking of people is as follows:
  - a) Policy formulation / legislation  
Policy formulation/legislation is the process of legislation conducted by lawmakers {Government together with the House of Representatives/DPR). Stages of policy formulation / legislation is the most strategic phase, because at this stage will produce a rule of law which will guide the next steps in the policy process of law.
  - b) Application Policy / yudikasi  
Policy applications, namely the implementation phase Criminal Law by law enforcement officials from the prosecutor's office and court. This stage is also called stage yudiksi. Policy application / yudiksi can not be separated from the criminal justice system (criminal justice system).
  - c) Execution Policy / Administration  
Execution policy is the policy of the law in the implementation phase of the criminal law in a concrete way by the officers for executing the criminal, and this stage is also called the administration stage. Criminal executive officers conducted by officers Penitentiary (Prison), for those who have been sentenced (punishment) by the judge.  
At this stage the judge in applying punishment, may include the imposition of sanctions in the form of a criminal (penal) and administrative sanctions (non penal).
- 2) Rationale In the determination of Verdict Crime Against the Crime of Trafficking in Persons guided by the Code of Criminal Procedure and the Basic Law of Judicial Power is basically the judge also referred to the code of ethics of the judiciary, the articles which the accused defendant is based on Constitution 21 Year 2007 on Combating Trafficking in Persons and also by error the defendant, the defendant's attitude and actions after committing a crime, life history and socio-economic circumstances of the defendant, Effect of criminal acts against the victims or their families and Forgiveness of victims and / or their families.

#### **3.2. SUGGESTIONS**

- 1) Should the cooperation and active participation of the victims, families, communities and law enforcement to combat the crime of trafficking in persons in responsible and sustainable.

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<sup>11</sup> *Ibid*

- 2) The judge in the judge should not only refer to the laws and regulations but also the judge is also expected to listen to the victims, and the defense of the accused and the consideration for the judge to be as fair as possible.

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