

LEGAL REVIEW FOR PERPETRATORS OF THE CRIMINAL ACTS OF EXPLOITATION OF HUMAN TRAFFICKING BASED ON THE TPPO LAW (Study of Case Decision Number: 2400/Pid.Sus/2023/Pn.Mdn)

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Abstract

In Indonesia, since the beginning of independence, the government has created the 1945 Constitution which includes protection for all Indonesian people and provides welfare for its citizens. The problem of "human trafficking" has now become a public problem that must be immediately addressed by the government, both central and regional, because without any action taken by the government in anticipating and handling this human trafficking case, it is feared that it will continue to extend the series of human trafficking cases. The formulation of the problem drawn in this study is how the criminal sanctions for perpetrators of human trafficking are based on the laws and regulations in force in Indonesia, How is the Author's Analysis of the application of the law for perpetrators of human trafficking crimes based on the study of Court decisions number: 2400 / pid.sus / 2023 / Pn.Mdn The research method carried out in this study is research using descriptive normative studies, namely describing, finding legal facts in full and systematically examining the problems studied. The results in this study, the Author has a different view of the Decision given by the judge, especially regarding the reduction of the defendant's sentence. This article also compares the Human Trafficking Law with Law Number 1 of 2023 which provides several changes in the eradication of human trafficking crimes.

Keywords: *Criminal Sanctions, Exploitation, Comparison, Crime of Human Trafficking,*

1. INTRODUCTION

1.1. Background

In Indonesia, since the beginning of independence, the government has enacted the 1945 Constitution, which stipulates protection for all Indonesians and the welfare of its citizens. The Indonesian government itself provides protection for all its citizens through the Human Rights Act, which regulates the rights and obligations of each individual. In the past, human trafficking was a social symbol/status, where people who had high social status (economic and power/political) were guaranteed to have a slave/purchase slave. What is meant by "slave" is a person who is bought and made into a slave, slave, servant. Everyone who owns slaves will be considered to have a high position. The problem of "human trafficking" has now become a public problem that must be immediately addressed by the government, both central and regional, because without any action taken by the government in anticipating and handling this human trafficking case, it is feared that the series of human trafficking cases will continue to prolong. In relation to the existence of a form of crime in the form of human trafficking, the Indonesian government, with the existence of various regulations that uphold the rights and safety of citizens, has made laws and regulations that discuss in detail the crime of human trafficking. ¹Adami Chazawi,. Criminal Law Lessons: Interpretation of Criminal Law, Basis for Elimination, Aggravation & Mitigation, Complaint Crimes, Concurrent & Causality Doctrine. Jakarta: PT. RajaGrafindo Persada, 2017. ²Law of the Republic of

Indonesia Number 21 of 2007, namely Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking. Human Trafficking In Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking in Article 2 Paragraph (1) it is explained that 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 bondage or giving payment or benefits, so as to obtain the consent of a person who holds control over another person, for the purpose of exploiting that person in the territory of the Republic of Indonesia, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah). There are several factors that support the occurrence of human trafficking crimes, one of the most supporting factors is the demand for work in the informal sector that does not require special skills, and is willing to be paid low wages and does not require complicated work agreements.³

Individuals who are vulnerable to becoming victims of human trafficking are:

1. The poor;
2. People with a consumptive lifestyle;
3. People who don't have skills
4. People with low education;
5. Illiterate people;

³Kamea, Herlien C. (2016). Criminal Law Enforcement Against Human Trafficking Crimes According to Law Number 21 of 2007. Lex Criemen, Vol.V, (No.2/Feb), pp-126-133

6. People who dream of high salaries by working outside the region or country without clear information;
7. Victims of domestic violence;
8. People who have lost family members;
9. Victims of conflict;
10. . Disaster victims;
11. Unemployment;

As in a case, of course, there are elements of a crime that must be fulfilled, such as the presence of a perpetrator, victim, and evidence that occurs in the chronology of the case, the matter discussed in this study is one of the incidents that is a form of a criminal act of human trafficking that does not receive an element of pressure (coercion) from several individuals who force the victim to commit an unlawful act. The chronology of the case can be seen as follows; That this case began in March 2023 when a fugitive named ANDI (DPO) contacted the defendant ELISA WATI PARDEDE by telephone, asking for help in arranging the sending of several people abroad illegally. ELISA WATI PARDEDE was then involved in processing passports and sending four victims, namely M. ANWAR IBRAHIM, DICKY ODIVA KARO-KARO, KIKI PERMANA, and ADI SUPRIADI to be sent to Cambodia via Malaysia. In this process, the defendant received a wage of IDR 500,000 per person sent. On September 9, 2023, the defendant was finally arrested by police in Medan while attempting to dispatch the victims. The investigation revealed that ELISA WATI PARDEDE did not have official permission to dispatch migrant workers, and her actions risked exploitation of the victims.

The author sees an oddity in the chronology of the case, namely that in the case description above, there is a victim who is absolutely under coercion or pressure to sell or give his organs to patients who need the organs, but the perpetrator is the one who appears to be the victim. This is because the victim approached the patient who needed the organs and asked for a sum of money in return, which the victim considers appropriate as a form of reciprocity for the kidney organ that will be donated. Based on the author's hypothesis, before carrying out further research, the author formulated the problem to be able to analyze the things that will be studied in this research so that the discussion that will be discussed can be understood more clearly and is not too broad in its scope.

1.2. Formulation of the problem

- a. What are the criminal sanctions for perpetrators of TPPO voluntarily based on the laws and regulations in force in Indonesia?
- b. What is the author's analysis of the application of the law for perpetrators of human trafficking crimes based on the study of Court Decision Number: 2400/pid.sus/2023/Pn.Mdn?

1.3. Benefits of research

a. Theoretical Benefits

To increase the author's knowledge and insight in the field of general knowledge, especially legal knowledge and court proceedings related to the title of my research, namely "Criminal Sanctions for Perpetrators of Human Trafficking Crimes Carried Out Voluntarily (Study of Case Decision Number: 2400/Pid.Sus/2023/Pn.Mdn). ⁴Court Decision in case number: 2400/Pid.Sus/2023/Pn.Mdn

b. Benefits of the Academy

One of the prerequisites for obtaining a Bachelor of Laws (SH) degree in the Legal Studies Program and adding nationally accredited journals to support the improvement of the accreditation of the Legal Studies Program at Panca Budi Development University, Medan.

c. Practical Benefits

Providing information and understanding to the public regarding the criminal sanctions imposed by court judges on perpetrators of human trafficking crimes can also help law enforcement officers in the form of socialization, even though it is non-verbal.

1.4. Research methods

a. Nature of Research

The nature of the research in this journal is descriptive, namely describing, finding legal facts comprehensively and systematically examining the problems being researched.

b. Types of research

The type of research used is normative study research (Normative Law, namely the type that refers to norms, laws, customs and doctrines (opinions of scholars) which are secondary in nature.

c. Method of collecting data

To obtain scientific truth in this journal, a data collection method is used in the form of library research, namely a data collection method sourced from literature, books, written legal regulations and other supporting materials.

d. Data Types

Using secondary data in the form of legal materials which include 5:

- 1) Primary Legal Materials, consisting of: Law of the Republic of Indonesia Number 1 of 2023 concerning the Crime of Human Trafficking and Court Decisions.
- 2) Secondary Legal Materials, consisting of: related literature, nationally accredited journals, scientific works and scientific articles.
- 3) Tertiary Legal Materials, consisting of: legal dictionaries and the Big Indonesian Dictionary (KBBI)

e. Data analysis

The data analysis used in this journal is qualitative data, which is a research method that produces descriptive data, namely what is obtained from data from libraries and also data from trusted and official sources.

II. DISCUSSION

2.1 Legal Review of the Crime of Human Trafficking According to the Laws and Regulations in Force in Indonesia

In this modern era, humans and the law are constantly evolving. Actions that were previously conventional and limited to the legal realm that regulates them are starting to have many loopholes, so they escape the clutches and become increasingly rampant. This is caused by the law still stumbling to keep up with global developments to embrace them again within the provisions that regulate them.⁶ As part of globalization and the advancement of human civilization, technological progress has become a component that greatly influences how society conducts its activities. ⁵Mertokusumo, Sudikno, and A. Pitlo. Chapters on Legal Discovery. (Bandung: PT. Citra Aditya Bakti, 2017. ⁶Rochmah, S, and F Simangunsong. "Criminal Accountability for Perpetrators of Human Trafficking Crimes." Indonesian Journal of Law and Social-Political Governance 3, no. 1 (2023): 231–43.<https://doi.org/10.53363/bureau.v3i1.177>. activities⁷. When human crimes are committed by exploiting technological advances, such as banking crimes, corruption, TPPU and TPPO.

The provisions regarding the prohibition of human trafficking are basically regulated in the Criminal Code (KUHP), Law No. 21 of 2007 and some of its contents have been amended in Law No. 1 of 2023. The important thing in protecting victims/potential victims according to Law Number 21 of 2007, is the guarantee of protection in the form of restitution as a result of human trafficking, which must be received and provided by the perpetrator of the Crime of Human Trafficking. The right to restitution of victims/potential victims is in the form of medical insurance, social security, reintegration, and repatriation for victims who experience physical, psychological, and social suffering as a result of the Crime of Human Trafficking. Based on Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, the form of the crime of commercial sexual exploitation of children in the form of trafficking of children for sexual purposes is regulated in Article 2, namely:

Article 2: (1) Any person who recruits, transports, shelters, sends, transfers or receives a person by means of threats of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage or giving payments or benefits even though they have obtained the consent of a person who has control over another person, for the purpose of exploiting that person. ⁷Hanim, Lathifah., & Prakoso Putro, Adityo. (2021) Legal Protection for Victims of Human Trafficking Crimes (A Study on the Implementation of Law No. 21 of 2007). Journal of Legal Reform, Volume II No. 2 May-August, pp-234-244 ⁸Damanik, Jalison., & Siregar, Taufik. (2014). Application of Legal Sanctions to Trafficking Crime Perpetrators (Study of Decisions at the Binjai District Court). Jurnal Medika, Vol. 7, (No. 2/ December), pp-109-124 in the territory of the Republic of Indonesia, shall be punished with imprisonment of at least 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah). (2) If the act as referred to in paragraph (1) results in people being exploited, then the perpetrator shall be punished with the same penalty as referred to in paragraph (1).

Article 2 number 1 of Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, there is the word "for the purpose of" before the phrase exploiting people indicating that the crime of human trafficking is a formal offense, namely the existence of a crime of human trafficking is sufficient with the fulfillment of the elements of the act that have been formulated, and does not have to cause consequences. In addition to Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, there are other provisions which have been amended in Law No. 1 of 2023 in Article 455 where the article reads 9:

“(1) Any person who recruits, transports, shelters, sends, transfers or receives a person by means of the threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or a vulnerable position,

debt bondage, or giving payments or benefits even with the consent of a person who has control over another person, for the purpose of exploiting that person in the territory of the Unitary State of the Republic of Indonesia, shall be punished for committing the crime of human trafficking, with a minimum prison sentence of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least category IV and at most category VII. 121 If the act as referred to in paragraph (1) results in a person being exploited, the perpetrator shall be punished with the same penalty). Law Number 1 of 2023 concerning the Eradication of the Crime of Human Trafficking introduces several important updates regarding the prevention, handling, and eradication of human trafficking in Indonesia. One significant change in this law is an increased focus on ⁹Law No. 1 of 2023 concerning the Eradication of Human Trafficking provides for stricter law enforcement against perpetrators and stronger protection for victims of human trafficking. Furthermore, cross-border surveillance is being enhanced to prevent the movement of illegal migrants, which often leads to exploitation. Law No. 1 of 2023 also emphasizes international cooperation in law enforcement, given the transnational nature of many human trafficking cases. In the context of this case study, the differences between Law No. 21 of 2007 and Law No. 1 of 2023 can be seen in the additional criminal provisions for perpetrators acting as facilitators and those who arrange the illegal travel of migrant workers.

2.2 The Author's Analysis of Criminal Sanctions for Perpetrators of Human Trafficking Crimes Based on a Study of Court Decision Number: 2400/Pid.Sus/2023/Pn.Mdn

The results of the Judge's Decision that have been determined in the decision can be seen as follows:

JUDGING

1. Declaring that the Defendant Elisa Wati Pardede mentioned above has been legally and convincingly proven guilty of committing the crime of "Indonesian citizen leaving the territory of the Republic of Indonesia with the intention of being exploited outside the territory of the Republic of Indonesia who attempted to commit the crime of human trafficking" as stated in the Second Alternative indictment;
2. Therefore, to sentence the Defendant to 5 (five) years imprisonment and a fine of Rp. 500,000,000 (five hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with 6 (six) months imprisonment;
3. Determine that the period of arrest and detention that the Defendant has served is deducted in full from the sentence imposed;
4. Determine that the Defendant remains in detention;
5. Determine the evidence in the form of:
 - a) 1 (one) unit of Samsung A10 brand cellphone, blue, 2 (two) pieces.
 - b) Bintang Utara Putra Bus Tickets in the names of DIKI and KIKI; Confiscated for destruction;
 - a) Money cash amounting to Rp. 6,000,000 (six million rupiah); Confiscated for the State;

Based on the author's analysis, the author has a different view on the verdict rendered by the judge. In Law Number 21 of 2007, human trafficking is a serious crime that must be subject to severe penalties to provide a deterrent effect. Based on Article 2 of the Human Trafficking Law, the maximum criminal sanction is 15 years in prison and a fine of IDR 600 million. However, in the case of Elisa Wati Pardede, although the prosecutor demanded a sentence of 7 years, the judge only sentenced her to 5 years. One of the judge's considerations was the defendant's limited role as a facilitator, not the main perpetrator. Nevertheless, the role of the facilitator in the crime of human trafficking remains significant. Without the defendant's role, the sending of the victim for exploitation would not have occurred. Therefore, the author believes that the sentence imposed still does not reflect justice for the victim and does not provide a sufficient deterrent effect for perpetrators of similar crimes in the future. In this case, when compared to the provisions of Law No. 1 of 2023, the verdict is still considered lenient. Law No. 1 of 2023 underscores the need for increased penalties for human traffickers, particularly those acting as intermediaries or facilitators. This law provides stricter provisions for those exploiting legal

loopholes to illegally send migrant workers. Law No. 1 of 2023 also emphasizes the importance of protecting victims and preventing the exploitation of migrant workers through stricter oversight of illegal routes. In this context, the defendant's role in facilitating the victim's departure to Cambodia should be subject to a more severe sanction, in accordance with the spirit of this new law.

III. CLOSING

1. Conclusion

1. Law enforcement in Indonesia according to the regulations of Law Number 21 of 2007 and as updated by Law Number 1 of 2023 in the Crime of Human Trafficking is an important thing in protecting victims/potential victims. This is expected to be a guarantee of protection in the form of restitution as a result of human trafficking, which must be received and given by perpetrators of the Crime of Human Trafficking in order to comply with the expectations of society in enforcing the criminal law on human trafficking. However, in supporting the implementation of the prevention of criminal law on human trafficking legally, therefore, the Law that has been established regarding the Eradication of the Crime of Human Trafficking requires assistance from the substance of other branches of law.
2. Based on the results of the author's analysis, From the case study of the Medan District Court decision Number 2400 / Pid.Sus / 2023 / PN Mdn, it is seen that the application of the law to the defendant Elisa Wati Pardede does not reflect maximum justice. Although the judge has assessed the defendant's role as a facilitator, a lighter sentence than the prosecutor's demands is not in line with the spirit of eradicating human trafficking as regulated in the TPPO Law and Law Number 1 of 2023 and the Panel of Judges should in considering before passing a verdict on the defendant pay more attention to the chronological aspects of the case as a whole so that the verdict handed down not only provides a deterrent effect to the perpetrators of the crime but provides a lesson as well as a deterrent effect to the community who intend or want to try to commit such unlawful acts.

A. SUGGESTION

1. Law enforcement against TPPO / human trafficking crimes should be given more attention by the government, with special attention continuously to always adapt to the developments of the times, considering that the operating mode of human trafficking syndicates can easily penetrate national borders in the world through a neat management network supported by sophisticated technology so that they can easily enter a country, therefore every law enforcement officer must be smarter and more alert in anticipating this problem.
2. It is hoped that by seeing the consequences of the dangers of human trafficking, especially for the future of each individual, the government is expected to be more aggressive in eradicating this crime by opening up more job opportunities and access to adequate education because the factors behind human trafficking are economic factors, environmental factors and low levels of education and the lack of skills that lead people to justify any means to gain large profits and income.

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