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The Syndicate Pattern Of The Human Trafficking From The Criminological Perspective In Indonesia

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Abstrak

Kejahatan perdagangan manusia merupakan kejahatan transnasional dan menjadi perhatian global bagi negara-negara di seluruh dunia. Indonesia memiliki Undang-Undang Nomor 21 Tahun 2007 tentang Penahanan Pelaku Perdagangan Orang. Tujuan dari penelitian ini adalah untuk mengetahui sudut pandang kriminologi perdagangan orang. Penelitian ini menggunakan metode normatif dengan pendekatan doktrin dan perundang-undangan. Hasil penelitian menunjukkan bahwa permasalahan perdagangan orang tidak hanya berdampak pada satu institusi saja, namun harus melibatkan seluruh aktor masyarakat yaitu lembaga negara, organisasi non-pemerintah, organisasi kota yang bergabung dalam kemitraan yang ditingkatkan negara, keputusan dan keputusan menteri bersama-sama untuk menyelesaikan masalah perdagangan manusia.

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Abstract

The crime of human trafficking is a transnational crime and become a global concern for countries in all around the world. Indonesia has Law No. 21 Of 2007 concerning Detention of Persons Trafficking Offenders. The purpose of this research is to find out criminological point of view of human trafficking. The research uses normative methods with doctrine and statutory approaches. The results of the research show that the problem of human trafficking does not only affect one institution, but must involve all community actors, namely. state agencies, non-governmental organizations, municipal organizations joining the state-enhanced partnership, decrees and ministerial decrees together to solve human trafficking problems.

INTRODUCTION

In the development era which the age of crime is increasing, especially in Indonesia, financial needs is often used as the main reason and main means occurrence of crime. Particularly, the economic retardation during the COVID-19 pandemic has led to many crimes such as women trafficking, which is often referred to as prostitution. Prostitution is the exchange of sexual intercourse for money or gifts as a commercial transaction. By the technology growth, it has created opportunities for some people to engage in online prostitution. Prostitution seems attractive for some people because it will help financial problems for some party. This causes commercial sex workers to take shortcuts to meet their daily needs.

Indonesia recognized as a country source of women, children and men trafficking for forced labor and commercial sexual exploitation. On a smaller scale, Indonesia is a destination and transit country for human trafficking from other countries. Indonesia province as the source or destination of human trafficking are mainly Java then West Kalimantan, Lampung, North Sumatra, Banten, South Sulawesi, West Nusa Tenggara and East Nusa Tenggara, and North Sulawesi. Trafficking of teenage girls pretending to be brides, particularly from the West Kalimantan region to Taiwan is still continues. There they were forced into prostitution.¹

A new trend emerged in the past year, namely the dozens trafficking of Indonesian women as housemaid to the Iraqi Kurdistan region. Another trend is traffickers kidnapping young girls who are sent to Malaysia and forced into prostitution. Women from China, Thailand and Eastern Europe are trafficked to Indonesia for the purpose of sexual exploitation, although the number is much lower than that of Indonesian women trafficked for similar purposes.

Domestic trafficking remains a major problem in Indonesia, where women and children are exploited as housemaid, commercial sex workers and workers in small factories. Smugglers sometimes conspire with schools to recruit young students into vocational schools for forced labor in Malaysian hotels through fictitious "training opportunities". Indonesians are recruited based on offers of jobs in restaurants, factories or as housemaid and then forced into the sex trade. In addition, it is very sad that Indonesian children are victims of sex tourism because most of the perpetrators are tourists from Malaysia and Singapore. Child sex tourism is widespread in cities and tourist spots.

¹ Sri Palupi, *Urgensi UU No. 39 Tahun 2004 tentang Perumahan dan Perlindungan Tenaga Kerja Indonesia*. (Yogyakarta: Institut Hak Ecosoc, 2009) hlm 23.

Human trafficking which is a crime or international crime has become a global problem for countries in the world. Indonesia already has Law No. 21 of 2007 concerning the Elimination of the Human Trafficking, so that Indonesia able to arrest smugglers. However, it is very unfortunate that sometimes law enforcement officials actually become partners of human trafficking perpetrators such build the cooperation with the perpetrators.

The definition of human trafficking known as the recruitment, transportation between regions and countries, surrender, release, acceptance and temporary protection or temporary residence of trafficked women. By threatening, using verbal and physical violence, cheating, exploiting vulnerabilities, giving, or receive payments or benefits when female workers are used for prostitution. Every effort or act of recruiting, promoting within or across borders, buying, selling, transferring, sending or receiving someone by deception or pressure, including threats of violence or abuse of power or debt bondage, with the intention of obtaining or retaining unwanted goods, personal work (domestic, sexual or reproductive work), whether paid or not, is forms of human trafficking.

There are many factors that lead to the growth of trafficking in women or prostitution. One of them is the rapid development of technology that has significantly influenced people's thinking and behavior. In addition, environmental factors affect people's lifestyles that wants to look luxurious also influences some people to choose human trafficking.

The sociology of crime really needs to record accurate data on crimes committed by looking at these symptoms in numbers². Concrete and reliable statistics on human trafficking in Indonesia are still very difficult to obtain because it is illegal and hidden. However, the following information may give an idea of the extent of this problem;

First migrant worker, The Ministry of Manpower and Migration estimates that in 2009 around 500,000 Indonesia peoples abroad to work through informal track. Several Indonesian NGOs (including KOPBUMI) estimate that around 1.4 to 2.1 million Indonesian migrant workers are currently working abroad. Second housemaid, the 2001 ILO-IPEC conference report estimated that there were around 1.4 million Indonesian domestic workers in Malaysia, 23 per cent of them were children. Three commercial sex workers, a 2008 World Labor Organization (ILO) report

² Bongger. *Pengantar Kriminologi*. (Jakarta: Perpustakaan Siswa, 1995) hlm 27.

estimates that there are around 130,000-240,000 Indonesian sex workers in Hong Kong, and up to 30 percent are children under the age of 18³.

Based on background above, the aim of this article is to find out how “the syndicate pattern of the human trafficking from the criminological perspective in indonesia”. This article uses the term human trafficking crime, because it is contained in Law No. 21 Of 2007 concerning the Eradication of Human Trafficking. In this research, the authors raised the formulation of the problem in the form of: how the syndicate pattern of the human trafficking from the criminological perspective in indonesia?

DISCUSSION

The Reality of Human Trafficking

Human trafficking is a modern problem that raises much attention with oppressive nature and the aim of exploiting people (individuals or groups). It is due to the scale of human trafficking impact so classified as an extraordinary crime. Human trafficking is a crime that violates the Human Trafficking Law No. 21 of 2007. In this case, a person's right to life has been violated. This right is a fundamental human right, therefore human trafficking violates human rights law so the perpetrator deserves being imposed the sanction. Therefore, in applying legal sanctions to perpetrators of human trafficking, it is necessary to pay attention to the severe sanctions of the Law on Human Trafficking or the Law on Human Rights.

Human trafficking beings means in handling of every case of human rights violations, so in a crisis situation must be carried out immediately by the court as the basis of an urgent order which the settlement strictly limited. In 2007, based on Article 13 of Human Trafficking Law stated: The crime of human trafficking considered to be committed by a community if the crime is committed by people acting for and/or on behalf of or for the benefit of the community, either based on work or other relationships, even alone or together in a business environment.

³ Adas Manis Hamim dan Augustiniant. *Mencari Solusi Yang Adil Bagi Korban Perdagangan Manusia; Sulistyowati Irianti (Ed.). Perempuan Dan Hukum, Tentang Hukum Dari Perspektif Kesetaraan Dan Keadilan.* (Jakarta: Yayasan obor, 2008) hlm 61.

The legal basis is written based on the 1945 Constitution of the Republic of Indonesia, which also contains human rights and basic obligations of the Indonesian nation, but the term human rights is actually not contained in the 1945 Constitution.⁴

When talking about human rights, the first thing to pay attention to is the rule of law definition, or rule of law in general. A rule of law means a rule of law in the sense that according to today's understanding has universal foundations, such as the recognition and protection of human rights. The legality of state actions in the sense of how the actions of state apparatus can be legally accounted for and free guaranteed rights. The Universal Declaration of Human Rights refers to a United Nations Declaration 1946, a declaration that includes the protection of human rights and freedoms. This declaration contains basic freedoms for all, men and women, without discrimination of any kind. Human rights exist since a person lives in the womb, born, throughout life and until death. Human rights are born with human. In other words, human rights have existed as long as humans existed.

The Universal Declaration of Human Rights has become the first element of a human rights regime (international law) as a basis for legal compliance with the protocol and in addition to international agreements on civil and political rights, and these two committees monitor their implementation and every agreement provide mechanisms to defend those rights.

Respect for the principles of the Universal Declaration of Human Rights is the most important criteria for other countries to recognize new country or new system. In addition, respect for human rights is actually a requirement for membership in a number of international and regional organizations, including the United Nations. No country can be held accountable for damages caused by human rights violations. On the other hand, they must ensure respect for the rights and freedoms defined in the Declaration as minimum standards. It is safe to say that no other international instrument has had such an impact.

Article 7 of the Universal Declaration of Human Rights (UDHR) states as follows: Persons are equal before the law and entitled to equal protection under the law without any form of discrimination. Everyone has the right to equal protection against discrimination contrary to this declaration and against incitement to such discrimination.

In accordance with socio-political and legal developments in Indonesia, which is called the reformation period, the government passed a new law. Specifically in matters of human rights,

⁴ Majda *El-Muhtaj*, *Hak Asasi Manusia dalam Konstitusi Indonesia*, (Jakarta: Prenada Media, 2005) hlm 61.

initially Indonesia only followed United Nations regulations, namely the Universal Declaration of Human Rights on December 10, 1948, but now the Indonesian people can be proud of the enactment Human rights Law No. 39 of 1999.

According to Article 1 of the Human Rights Law, human rights are a set of rights inherent in the nature and existence of humans as creations of God Almighty and agifts that must be respected, loved and protected by the state, law, government and all for the sake of honor and protection to human dignity. Based on the developments and progress of the Indonesian nation's journey, now we can see that there is a common vision of human rights and tasks related to enhancing human rights between the government on the one hand and the general public on the other hand. But what distinguishes the two is how the protection of human rights is implemented in people's lives.

Human trafficking in the form of networking between government and state which organized and unorganized crimes. This crime has huge mount into a threat to societies, nations and countries, and standards of living based on human rights. The desire to prevent and eradicate the human trafficking is based on noble values, national and international obligations, taking earlier preventive action, taking action against perpetrators, protecting victims, and increasing cooperation. Human trafficking is also one of the worst forms of treatment, and violating human dignity, so it is violation of human rights. Prevention and processing of human trafficking violations is the responsibility of the state, state governments, municipalities and families. In order to take comprehensive and integrated steps in the implementation of prevention and treatment, it is necessary to form a working group. Human trafficking victims are often children and women, the problem of human trafficking that has developed in several countries including Indonesia and other developing countries has become a problem for Indonesia as a nation. According to empirical evidence, women and children are the most frequent victims of human trafficking.

Human Trafficking Causes

The discussion in the description of the human trafficking causes is guided by the concept of criminology which is based on a causal approach. Criminology explains causal relationships and criminal facts and tries to find answers why crimes occur. Although this crime is defined as antisocial behavior, it is prohibited and framed as a crime in positive law. Regarding the causes of human trafficking, it is very broad and none of them is a specific reason for the occurrence of

human trafficking in Indonesia. This can be caused by a combination of different conditions and problems, including the following: First, lack of awareness. Many people who move to Indonesia or abroad in search of work are not aware of the dangers of human trafficking and the way they are tricked or imprisoned for abuse or forced labor. Second, poverty. Poverty has forced many families to adopt livelihood strategies, including changing jobs and debt relief. Third, the desire to get rich in quick way. The desire for material possessions and a higher standard of living drives migration and makes migrants vulnerable to trafficking. Fourth, cultural factors. The following cultural factors influence human trafficking, namely the role of women in the family, the role of children in the family, early marriage, and a history of debt bondage.⁵

The reasons for the occurrence of human trafficking described above are in line with the sociological theory of crime which views crime as a social phenomenon. The extent to which the causes of crime lie in society also includes the study of the physical environment in broadest sense. In criminological analysis, delinquency and criminal behavior are associated with a "consciousness" that is so great as to give rise to feelings of guilt or so weak that it controls the individual's impulses and need for immediate gratification.⁶ This means that in the context of the crime of smuggling there are many opportunities for perpetrators to commit crimes because potential victims are more dominated by economic factors and the government's weak prevention and protection efforts for potential victims.

In this case, it is also very contrary to Lombrosso's theory that the origin of crime comes from wild genes and wild attitudes inherited from ancestors, and marked based on a person's physical characteristics.⁷ In fact, there are many crimes which the perpetrators are so big that sometimes people do not believe that the person is the perpetrator and vice versa. If potential victims manage to protect themselves, human trafficking is unlikely, the perpetrators here are not primarily stupid or uneducated, they usually have networks overseas.

⁵ Valentina. *Perdagangan Perempuan Dan Anak Dari Perspektif Aktivistis; Sulistyowati Irianto (Ed.). Perempuan Dan Hukum, Tentang Hukum Dari Perspektif Kesetaraan Dan Keadilan.* (Jakarta: Yayasan obor, 2008) hlm 14.

⁶ Topo Santoso dan Eva Achjani Zulfa. *Kriminologi.* (Jakarta: Raja Grafindo Persada, 2007) hlm 51.

⁷ *Ibid*, hlm 55.

The Form of Human Trafficking

There are various forms of human trafficking to be aware of, because sometimes people do not realize they are being trafficked. The forms of human trafficking according to Agus Hamim and Agustinanto are:⁸

1. The first is forced sex work and sexual abuse - both abroad and within Indonesia. In many cases, women and children are promised jobs as migrant workers, domestic workers, restaurant workers, shopkeepers, or other unskilled jobs, but are then forced to work in the sex industry once they arrive at their destination.
2. Second, domestic workers - both outside and inside Indonesia. Both abroad and in Indonesia, domestic workers experience abusive working conditions, including extremely long hours of forced labor, illegal labor, unpaid wages or deductions, debt bondage, physical or mental abuse, sexual abuse, food shortages or malnutrition, and may not practice their religion or order them to violate their religion. Some employers and agents confiscate passports and other documents to ensure that domestic workers do not try to escape.
3. Third, other forms of migrant work - both outside and within Indonesia. While many Indonesians work as domestic workers, others are promised unskilled jobs in factories, restaurants, craft workshops or small shops. Some of these migrant workers are trafficked into harsh and dangerous working conditions with little or no pay. Many are also trapped in such jobs through debt bondage, coercion or violence.
4. Fourth, dancers, entertainers and cultural exchanges - particularly overseas. Women and girls are promised jobs abroad as cultural ambassadors such as dancers, singers or entertainers. Upon arrival, many of these women are forced to work in the sex industry or in slave-like conditions.
5. Fifth, mail-order brides, especially overseas. Some women and girls who immigrate to become the wives of foreigners are tricked into marriage. In such cases, their husbands force young women to work for their families in conditions similar to slavery or sell them into the sex industry.

⁸ Adas Manis Hamis dan Augustiniant. *Mencari Solusi Yang Adil Bagi Korban Perdagangan Manusia; Sulistyowati Irianti (Ed.). Perempuan Dan Hukum, Tentang Hukum Dari Perspektif Kesetaraan Dan Keadilan.* (Jakarta: Yayasan obor, 2008) hlm 40.

6. Sixth, various forms of child labor - especially in Indonesia. Some (not all) children begging on the street, fishing by the beach such as Jermal and working in the fields enter the current situation. And finally baby selling - both abroad and in Indonesia. Some Indonesian migrant workers are tricked into marrying abroad and then forced to give up their children for illegal adoption. In other cases, Indonesian housewives are tricked by trusted domestic workers who run away with the mother's baby and then sell the baby on the black market.

Routes of Human Trafficking in Indonesia

Human trafficking occurs throughout Indonesia, with some areas designated as sending or origin, receiving and transit areas. In general, these regions are linked to the origin, reception and transit areas of migrant workers, as human trafficking tends to exploit people who seek work far from their place of residence. Sending or originating areas are the areas of origin of the victims, with sending areas usually being small and quite rural and relatively poor. These transmission areas are usually on the island of Java, although Lombok, North Sulawesi, and Lampung are also known as transmission areas.⁹ Transit zones are areas that victims pass through before reaching their destination. Most transit areas are areas with port cities, airports, major land transportation terminals and international border areas. These include Jakarta, Batam, Surabaya, East Kalimantan, West Kalimantan, and Lampung.

Impact of Human Trafficking

The consequences of human trafficking are complex, meaning that in addition to the social impact on society, it also has an emotional impact on the victim, including a loss of control and a sense of security. Traumatic events deprive individuals of self-control, often resulting in a generalized and profound sense of anxiety and insecurity, and victims are forcibly separated from their neighborhoods and kinship systems - violating their safe zones. The perpetrator may also threaten them not to share their experiences. This makes it difficult for them to trust others and talk about their experiences. When working with victims and providing services, the most important thing is to make them feel safe.

⁹ Sri Palupi, *Urgensi UU No. 39 Tahun 2004 tentang Perumahan dan Perlindungan Tenaga Kerja Indonesia*. (Yogyakarta:Institut Hak Ecosoc, 2009) hlm 15.

Uncertainty. Victims of sexual violence and abuse usually lack self-confidence. This can manifest in various behaviors such as depression, shyness, lethargy, violent emotional reactions, emotional sensitivity, etc. Social stigma and shame for various reasons, including the experiences they had during human trafficking (e.g., rape, torture, sexual abuse), they cannot earn money for their families, they feel like the person who caused the offense they committed.¹⁰

Severe emotional reactions. Trauma due to human trafficking can lead to various emotional responses such as anger, hysteria, crying easily, obsessive behavior, silence, etc. But such answers cannot be read directly. For example, if someone laughs when you tell them about sexual violence, it doesn't mean they find the story funny. Human trafficking usually involves a breach of trust or manipulation of a trusted person. Display of Sexual Behavior. A common social response seen in victims of sexual violence is the tendency to engage in sexual behavior. This can be in the form of intimidation, touching, etc. And this usually happens in cases where the victim is a sex worker who understands her identity in sexual form. This type of reaction is due to the fact that the person received attention through sexual intercourse (without coercion) in the past and therefore feels that the only way to show self-control and/or try is to get attention and appreciation from others, which is due to this behavior.

Prevention and Handling of Human Trafficking Crimes

Prevention of human trafficking crime aims to prevent the occurrence of human trafficking crime as soon as possible. To prevent and eradicate the crime of human trafficking, it is also stated in Articles 56-63 of Law Number 21/2007 on the Eradication of the Crime of Human Trafficking. Indonesia is also involved in international cooperation because human trafficking is a transnational crime. For example, UN organizations, foreign governments, the ASEAN group, international financial institutions such as the IMF, World Bank and ADB, regional and international NGOs (human rights, health, legal aid, consumer, child protection, women's organizations, labor rights or employees, labor unions or employees).

Based on the National Instrument, Indonesia seeks to combat human trafficking in various ways, including by creating inter-agency unity, i.e. State Implementing Ministries (Minister of PP,

¹⁰ Achie Sudiarti Luhulima dan Kunthi Tridewiyanti. *Pola Perilaku Dan Kekerasan Sosial Budaya Terhadap Perempuan; Memahami Bentuk-Bentuk Kekerasan Terhadap Perempuan Dan Solusi Alternatifnya*. (Jakarta: PT. Alumni, 2000) hlm 60.

Ministry of Labor and Migration, Ministry of Law and Human Rights, ministries). Social Affairs, Immigration Service, National Education, Lawyers, Tourism, Coordinating Minister for the Economy, Coordinating Minister for Public Protection, Coordinating Minister for Political and Security Affairs, Regional Executive, Legislature (all levels), Legal System, Law Enforcement - Police, Immigration, Customs and Excise, Prosecutor's Office, Military Justice - Border Patrol, Navy) and working closely with the Women's Empowerment Commission, which served as the main organizer and coordinator of the National Anti-Smuggling Task Force to draft the plan. National Action Plan Against Human Trafficking 2009-2013.

Presidential Decree of the Working Group on Child Contracting No. 88 of 2002; established by Presidential Decree No. 88 of 2002. The general objective of the working group is the elimination of all forms of child trafficking. For the regional working groups, the Minister of Home Affairs sent a Circular Letter No. 560/1134/PMD/2003 to governors, administrators, and mayors throughout Indonesia. As the central point for the implementation of the eradication of human trafficking in the regions, the circular provides the working units within the state government responsible for children's issues through the organization of official coordination meetings in the regions. The aim was to set minimum standards for the implementation of children's rights, establish local anti-trafficking working groups, strictly control labor recruitment and allocate Regional Revenue and Expenditure Budget funds for activities.¹¹

Some provinces and districts have established local action plans and anti-trafficking committees. Women's Empowerment Commission organizes social training against human trafficking. The central government has shown little political will to renegotiate the 2006 memorandum of understanding with Malaysia that removed the right of Indonesian domestic workers to keep their passports while working in Malaysia. However, last year the government made no effort to reduce the demand for forced labor or commercial sex workers.¹² Indonesian police, in cooperation with Australian and Swiss authorities, arrested and deported two pedophiles who sexually abused children, and an Indonesian court in 2009 sentenced an Australian child sex

¹¹ Komnas Perempuan. *Penanganan Kasus Kekerasan Terhadap Perempuan Di Lingkungan Pengadilan Pemerintah Australia (Ausaid)* diakses https://indonesia.embassy.gov.au/jaktindonesian/SM12_059.html Pada Februari 2023.

¹² *Ibid.*

tourist to eight years in prison. The government provides the army with anti-trafficking training before they are deployed on international peacekeeping missions.

In addition, the involvement of the community and community organizations or Non-Governmental Organizations (NGOs), including Environment and Family, Community Organizations, Trade Unions or Labor Unions, Non-Governmental Organizations (National Human Rights Commission), Health. (YKB), Legal Aid (e.g. Legal Aid Organizations, Legal Aid Association of Indonesia), consumer rights (e.g. Foundation of The Indonesian Consumer Organization), child protection (e.g. National Commission for Child Protection, Women's Organizations). This includes religious leaders and religious organizations, as well as community leaders.

In 2009, the Indonesian government convicted 129 people suspected of human trafficking. Whereas in 2008 there were 109 convictions. Convictions in 2009 also increased to 55 from 46 in 2008. In 2009, there were a total of 55 trials and 9 convictions in labor trafficking cases. The average length of prison time for convicts was 43 months, almost matching the 2008 average of 45 months. However, Indonesia's move to prosecute suspects is still not optimal as the Indonesian government has not fully met the minimum standards to eliminate human trafficking. In addition, the Indonesian government has Law No. 21 of 2007, but also applies other laws, such as the Labor Law. So no compensation is paid to victims. Here the true meaning of criminology is used mainly to guide society on how to eradicate and more importantly avoid crime with good results.

CONCLUSION AND SUGGESTIONS

Human trafficking in Indonesia is a very complex problem. Victims of human trafficking work relatively long hours and experience physical, psychological, and sexual abuse. They have no external support or protection. Their health is also threatened by sexually transmitted diseases, alcohol, and drug trafficking. CHAPTER 69 Solving the problem of human trafficking does not concern only one institution, but must involve all community stakeholders, namely government agencies, non-governmental organizations, and community organizations that have established partnerships confirmed by government regulations, at least ministerial regulations, to solve the problem of human trafficking together. One of the drivers of human trafficking is the inability of

the current education system and society to prevent family members from leaving school and pursuing higher education. Village and sub-district officials who assist with ID card forgery are also a major driver of human trafficking. To address this issue, more stringent legal instruments or policies are needed to effectively prevent identity card forgery. The Indonesian government is expected to immediately set minimum standards to combat human trafficking. In addition, it should be in accordance with the implementation of Law No. 21/2007 on the Elimination of the Crime of Trafficking in Persons, including debt bondage. Better functioning of courts, prosecutors and tribunals in labor trafficking cases, including those involving employment agencies. Review memoranda of understanding with countries affected by human trafficking and include victim protection. Efforts should be increased to prosecute and bring to justice officials who benefit from or are involved in human trafficking.

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