

The Problematic of Human Trafficking in An International Legal Perspective

ABSTRACT

Inadequate legal regulations in a country cause difficulty in arresting human traffickers, both at the national and international levels. In fact, it is difficult to bring traffickers to justice. Apart from that, many victims do not obtain the rights that are regulated in legal regulations. This situation highlights the importance of improving and more effective law enforcement to protect victims and punish traffickers. This research was conducted to elaborate on Human Trafficking regulations in international law and describe the obstacles faced in handling human trafficking victims in Indonesia. The research was carried out using literature or empirical normative research methods and juridical research methods, namely elaborating each material followed by observing policy and regulatory studies. The results of the research are that national law has strictly regulated the criminal act of human trafficking in Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Criminal Act of Human Trafficking. This law was formed as a form of the Palermo Protocol which was ratified in Indonesia. Legal protection for victims of criminal acts of human trafficking is also guaranteed in the law by imprisoning the perpetrators of these crimes and providing legal rights for victims.

Keywords: *Human Trafficking, International Law, Crime of Human Trafficking*

INTRODUCTION

Increased interaction around the world has resulted in increased population mobility. People are moving more frequently, both nationally and internationally. In the modern era, population movement between countries has become smoother and faster, which is marked by an increase in the number of international migration, such as changes or inequality in population numbers between prosperous countries and developing countries. The majority of countries with large populations are located in developing countries. In addition, the impact of the industrial revolution and economic incentives has directed urbanization to areas that offer better economic conditions. This means that many people migrate to cities that have better job opportunities and facilities. The

support of information and communication technology that is increasingly affordable, easy to use, efficient and effective has encouraged increased population mobility, both at the international and national levels. Nowadays people can move places more smoothly thanks to technological advances.

In line with the opinion of Farid, RN, & Hasan, Z. (2022) who stated that "Crime in human life is a social phenomenon that will always be faced by every human being, society and even the country. The problem of crime is not a new problem, even though the place and time are different, the modus operandi is considered the same. However, the lightness and severity of any threat of punishment does not prevent someone from committing a crime or violation". Globalization has played an important role in increasing cases of *human trafficking*, especially because of its impact on human mobility, communication, and connectivity between countries. Here are some ways in which globalization affects *human trafficking*:

1. Increased Human Mobility:
 - a. Globalization allows people to move more freely between countries. This creates opportunities for *human traffickers* to take advantage of people looking for work, education, or a better life abroad.
 - b. People who seek these opportunities often become victims of human trafficking, especially when they do not have enough information about the risks and precautions.
2. Economic and Social Inequalities:
 - a. Globalization also increases economic and social inequality in various countries. People living in poverty or economic instability are more vulnerable to *human trafficking*.
 - b. This inequality creates demand for cheap and exploitative labor, which *human traffickers can take advantage of*.
3. Communications and Technology:
 - a. Human trafficking culprits to function universally. They can utilize the web, social media, and portable phone-based applications to enroll, facilitate, and migrate casualties.

- b. Technology also allows them to hide their tracks and evade law enforcement.
4. International trade:
- a. Globalization increases international trade, including trade in goods and services, but this trade also includes human and narcotics trafficking, with many minors acting as couriers when carrying drugs ⁱⁱ.
 - b. Victims of *human trafficking* are often exploited in domestic work, the sex industry, agriculture and construction.
5. Vulnerability to Law Enforcement:
- a. Globalization complicates law enforcement because *human trafficking cases* involve crossing national borders.
 - b. Cooperation between countries is needed to overcome this problem, but legal and policy differences between countries often pose obstacles.

In facing this challenge, international cooperation, public awareness, and effective law enforcement are very important to reduce cases of *human trafficking* and protect human rights globally.

International migration has a positive impact even though it also has a negative impact, namely the occurrence of human trafficking. Human trafficking includes selecting, transporting, harboring, sending, exchanging, or accepting a individual by danger of constrain, utilize of drive, capturing, imprisonment, imitation, extortion, manhandle of control, or a position of helplessness. The objective is to get the assent of the individual who has control over the other individual. Human trafficking can result in misuse, counting negligible shapes such as prostitution, sexual misuse, constrained administrations, servitude, constrained labor, or indeed the deal of body organs. Therefore, the elements of the criminal act of human trafficking are:

- a. Activities (recruitment, transfer, transportation, hiding and receiving people).
- b. By threatening, using power, and other forms.

- c. Exploitation purposes (forced labor, slavery, sexual intercourse, and sale of body organs).

In this crime, women and men as well as teenagers and adult women are often the targets who are forced to engage in forced sexual activity or other forms of exploitation such as domestic work, prostitution, or marriage without consent, as do boys forced to become slaves on plantations, mines, or other more miserable places.ⁱⁱⁱ Human trafficking crimes can also occur due to poverty, population movement, discrimination, and patriarchal culture.^{iv} Endang, S., Hasan, Z., & Aurelia, RA (2023) stated that " KPAI reported that there were 374 cases of sexual harassment and 63 cases of sexual harassment in 2021, as well as 12 cases of sexual violence from January to July 2022. This is in accordance with the results of mass media monitoring of cases reported to the police by the families of the victims.^v" Eradication and prevention of human trafficking needs to be carried out immediately because it is a serious violation of human rights and creates a very worrying and dangerous situation due to the lack of optimal preventive measures and legal regulations.

Sari, Ariella Gitta, Harry Murty, and Hery Sulisty (2020) stated that "The lack of legal regulations in a country makes it difficult to catch human traffickers in the national and international realm. This is proven by the difficulty of bringing human traffickers to justice.^{vi}" In accordance with the problem, the title of this research is "The Problem of *Human Trafficking* in the Perspective of International Law", with the research problem formulation: (1) what are the regulations for *Human Trafficking* in national law?; (2) what are the obstacles faced in handling human trafficking victims in Indonesia? The aims of this research: (1) analyzing *Human Trafficking regulations* in international law; (2) analyzing the obstacles faced in handling human trafficking victims in Indonesia.

RESEARCH METHODS

This legal research method involves two main approaches: normative and empirical. Normative research focuses on analyzing legal norms contained in legislation, while empirical research involves collecting primary data from the field to understand real events related to human trafficking, both at the national and international levels. There are three types of legal materials used in this research, namely primary legal materials, secondary legal materials, and tertiary legal materials.

This research uses library research to collect data. Descriptive analytical techniques are used to provide data analysis and get answers to a problem. This research uses qualitative analysis through analytical descriptive methods.

RESULT AND DISCUSSION

Human Trafficking Regulations in International Law

Activities that drop into the category of human trafficking have been clearly clarified in Law no. 21 of 2007 concerning Annihilation of the Wrongdoing of Human Trafficking, where articles 1 and 2 of this Law characterize the components that constitute the wrongdoing of human trafficking.^{vii} The criminal act of trafficking in people is depicted in Article 2 Section 1 of the pertinent law as an act including the method of enlisting, harboring, sending, exchanging or getting people through the danger or utilize of viciousness, seizing, extortion, misrepresentation of reports, manhandle of specialist or circumstances of helplessness, or giving installments or benefits to get the assent of a individual who has control over another individual for the reason of abuse. The punishment for culprits found blameworthy of trafficking in people agreeing to this article is detainment for a least of 3 a long time and a most extreme of 15 a long time, as well as a fine of up to Rp600,000,000.00, where trafficking in individuals is an act that clearly abuses human rights, particularly abusing the rights to flexibility,

security, judgment and flexibility of development. Human trafficking, which mostly affects women, is a form of violence that robs women of their rights, which should be protected as part of human rights. Basically, human trafficking crimes do not treat humans as part of humanity. The elements in human trafficking are:

1. Actor: an organized group including state officials or individuals.
2. Action or process: the act of trafficking in persons can be carried out spontaneously or planned, but usually the action is carried out in a planned manner.
3. Mode: the method used to ensure the success or smooth running of a crime. These actions involve threats of violence, confinement, forgery, fraud, or payoffs.
4. Goal: something that is the desired result or consequence that arises from its implementation. For example, the act of buying and selling humans aims to obtain significant financial gain.

Handling of human trafficking cases in Indonesia follows general criminal law procedures, but with certain exceptions regulated in the Human Trafficking Eradication Law (PTPPO Law). The settlement handle incorporates examination, examination and indictment in court. In understanding with Article 41 Section 1 of the PTPPO Law, the trial can take put and be concluded indeed in the event that the litigant isn't show. Article 2 Passage 1 clarifies around declaration in human trafficking cases, whereas Article 7 Passage 1 includes punishments for culprits who cause genuine wounds to casualties, unsafe maladies, mental disarranges, harm to regenerative work, or pregnancy. In this case, the criminal punishment is expanded by one third of the most extreme punishment stipulated in Article 2 Section 1-6, so that the greatest punishment gets to be 20 a long time in jail and the least is 4 a long time, with a most extreme fine of IDR. 800,000,000.00.

Human trafficking is an international crime, where the elements of transnational crime are:

1. An action that has an impact on several countries.
2. Actions that have an effect on citizens of various countries.
3. The methods used exceed the territorial boundaries of the country.

To address and prevent the continuation of criminal acts of trafficking in persons, it is important to pursue cooperation through international agreements. Agreements of this kind allow for the harmonization of legal systems and strengthen legal relations between countries involved in the agreement, creating a uniform legal framework. Additionally, a country's autonomy is regularly accomplished not as it were through its claim endeavors but moreover through coordinate or roundabout bolster from other nations, such as through acknowledgment of sway by other nations.

An international agreement is a special form of general agreement, which is based on certain principles that are the foundation for the agreement. The foremost fundamental guideline in universal assertions is the *pacta guideline sunt servanda*, which affirms that the understanding is authoritative on the parties who have concurred to it. Regarding international agreement regulations, it is contained in Presidential Letter Number 2826/HK/1960 dated 22 August 1960 which was addressed to the DPR as a guide in implementing international agreements over the years. This Presidential Letter states that approval of universal assertions can be carried out through a Presidential Declare or Law, depending on the fabric substance of the universal understanding to be confirmed.

Palermo Protocol (2000) states that “States parties to the Conventions are required to take legislative and other measures necessary to address, prosecute and prevent human trafficking, with a particular focused on the protection of children and women who are vulnerable to becoming victims.^{viii}” Indonesia formalizes Law no. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons on April 19 2007, which was carried out before the ratification of the Palermo Protocol , and the Indonesian state has also agreed to a number of other international agreements, for example cooperation with UNHCR, cooperation with International Organizations for Migration , and

bilateral cooperation with Australia.^{ix} The relationship between national law and international agreements is established through a contractual agreement which states that Indonesia is obliged to follow the laws contained in ratified conventions, so that it automatically becomes part of the participating countries. The ratification process is considered important to give legal force to treaties, allowing ratifying countries to be bound by each other. By the confirmation of the Palermo Convention, Indonesia got to be portion of the UN's endeavors to help and avoid human trafficking, counting security for casualties and witnesses.

Human Trafficking Crimes

Indeed, in spite of the fact that there are laws controlling the wrongdoing of human trafficking, there are still deficiencies in giving equity and assurance to casualties. Therefore, more legal protection is needed for victims of this crime ^x. By the enactment of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, opportunities have been opened for victims to demand their rights in accordance with legal provisions. Articles 43 to 45 of this Law particularly clarify the rights that casualties and witnesses have in cases of human trafficking ^{xi}. The rights allowed by law to casualties incorporate:

1. The proper to utilize all applicable legal remedies.
2. The correct to get remuneration for all treatment that has caused him to endure.
3. The proper to get legitimate counsel.
4. The correct to deny stipend in case you do not require it.
5. The proper to get lawful assurance if threatened by the culprit.
6. The proper to stipend given to the heirs if the casualty of the criminal act of trafficking in people kicks the bucket.
7. The correct to deny to allow declaration in case it is felt that it imperils life.
8. The correct to get recovery and direction.
9. The correct to recoup what ought to have a place to him.

Thus, legal protection for victims of criminal acts of human trafficking is not only limited to detaining the perpetrator, but also includes fulfilling the victim's rights through the legal process. Rights include:

1. **Right to Compensation.** Compensation is recompense given to the casualty or their beneficiaries, both in fabric and insignificant shape, which must be paid by the culprit in agreement with the law and the judge's choice. This can be directed in Article 48 Section 1 of the TIP Destruction Law. Compensation can incorporate repayment of costs, remuneration for enduring persevered by the casualty, return of misplaced property, and installment of other rights that the casualty ought to get.
2. **Right to Protection of Identity.** The government and important specialists have an commitment to guarantee the assurance of the personality of casualties and their families in connection to the declaration given. This commitment is controlled in Article 44 Passage 1 of the TIP Annihilation Law.
3. **Right to Reintegration and Rehabilitation:** Victims of human trafficking have the right to repatriation and support for social reintegration and health rehabilitation. Rehabilitation is very important to help victims who experience psychological disorders such as depression and stress, with the aim of restoring their mental and physical condition to its original state.

CONCLUSION

The conclusion of the investigate is that National Law has entirely controlled the criminal act of trafficking in people in Law 21 of 2007 concerning the Annihilation of TIP. This law was shaped as a frame of the Palermo Convention which was confirmed in Indonesia. The law has ensured security for casualties of human trafficking by rebuffing culprits of this wrongdoing and advertising lawful rights to casualties. The investigate recommendation is to form solid lawful security for transnational human trafficking wrongdoings.

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