

## Application Of Criminal Sanctions Against Corporations For Human Trafficking In Indonesia

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**ABSTRACT.** *In recent years, news about human trafficking both domestically and across countries has increasingly been broadcast in print and electronic media. The rise in crimes that occur is caused by various factors that encourage perpetrators to commit crimes. Human trafficking is a practice of modern slavery that degrades dignity and can threaten the survival of the general public. The target or targets of this trading practice are usually people who earn low income and have low education. It is important to know that this crime can be committed individually or collectively. It is said to be joint if it is carried out in the name of a business entity and in the interests of the corporation based on the work relationship and work environment of the corporation. Corporations as legal subjects for the criminal act of trafficking in persons are regulated in Article 13 of Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. The current obstacle is that the implementation or application of punitive sanctions against corporations is still not firm. This can be seen from the increasing number of cases where the perpetrator is a business entity or corporation. The method used in this research is a normative legal research method which examines legal materials such as books or articles that discuss human trafficking using secondary data for detailed analysis. qualitative. The aim of this research is to determine the factors that cause corporations to commit criminal acts of human trafficking in Indonesia and to find out how criminal sanctions are applied against corporations for criminal acts of human trafficking in Indonesia.*

**Keywords:** *Application of Sanctions, Corporations, Crime, Human Trafficking.*

## INTRODUCTION

Human trafficking is an international problem where almost every country in the world has a record of human trafficking cases. One of the factors that causes human trafficking is the rapid progress of information and communication technology which almost does not recognize national borders, loose supervision in border areas or immigration checks, making it easier for cross-border criminal acts of human trafficking to occur. Human trafficking is also an organized crime, *meaning* a crime that provides large profits, low risks and is carried out systematically or neatly using illegal organizational media and provides large profits but low risks.

Human trafficking is also a behavior that deviates from existing norms in a social system. The government itself has ratified Law of the Republic of Indonesia Number 21 of

2007 concerning the Eradication of the Crime of Human Trafficking with various considerations that every person as a creature of God Almighty has human rights in accordance with his or her honor and dignity and is legally protected by law. The basis of the Republic of Indonesia 1945 as stated in Article 28A is that "Everyone has the right to live and the right to defend his life and living".

The definition of human trafficking is regulated in Article 1 point 1 of Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, namely "a series of acts of recruiting, transporting, harboring, sending, moving or receiving someone with the threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or a vulnerable position, debt bondage or providing payments or benefits so as to obtain the consent of a person who has control over another person, whether carried out within countries or between countries for the purpose of exploitation or resulting in people being exploited.

The definition of Human Rights in Article 1 paragraph 1 of Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights emphasizes that "Human Rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected." , upheld and protected by the state, law, government and everyone for the sake of honor and protection of human dignity." Human rights are the basis for the rights and obligations inherent in a person, namely the right to live safely, the right to freedom and the right to equality, the nature of which cannot be violated by anyone. December 2 is the moment when people all over the world commemorate the Abolition of Slavery Day every year.

Modernization has made slavery a part of human history that is only a distant memory. But the fact is that up to now slavery still occurs, in fact this slavery also drives human trafficking. The problem of human trafficking has long attracted world attention. Human trafficking often leads to a number of human rights violations. The violations in question are forced labor, exploitation sexual labor, violence and treatment arbitrary towards the victims.

Indonesia as a geographical country has a vast territory and a very dense population that really needs adequate job opportunities that can be reached by all people equally in order to support their lives. However, until now job opportunities in Indonesia have not reached all elements of society, so many Indonesian citizens are looking for alternatives as Indonesian Migrant Workers (PMI). The various types of exploitation of women and girls that we often hear about are domestic labor, prostitution or forced marriage. Meanwhile, exploitation of

men is due to being trapped by debt so they become slaves in mining areas, plantations or other worst forms of work.

Human trafficking can be carried out by individuals and also organized groups, namely corporations. Corporations have a large role in the development of the Indonesian economy. Considering the economic level, the majority of Indonesia's population is from the lower middle class. The lack of job opportunities adds to the high unemployment rate in Indonesia. Payment of inadequate wages makes it difficult for people to meet their daily needs. With the existence of corporations as providers of employment opportunities and making it easier for people to find sources of income. A person who works in a corporation will receive payment or wages in accordance with the agreed terms so that with this wage they will be able to maintain their life.

As time goes by, along with the increasingly rapid development of the national business world, facts are discovered in the field that in cases of criminal offenses very many corporations are involved. One of them is the crime of misuse of permits, namely committing the crime of human trafficking. It should be noted that corporations as legal subjects already exist in statutory regulations but still experience many obstacles when implementing them, especially in terms of corporate actions. This happens because the existence of legal entities or corporations as legal subjects is different from the nature and existence of natural humans (*natuurlijke person*) as legal subjects.

According to JCT Simorangkir, SH and Woerjono Sastropranoto, SH, what is meant by law are regulations that are coercive in nature, which determine human behavior in the social environment, which are made by official bodies in authority, which if they violate the regulations As a result, action will be taken in the form of certain penalties. Legal regulations regarding the prohibition of human trafficking in Indonesia are basically regulated in the Criminal Code (KUHP).

In Article 297 of the Criminal Code, the criminal act of trafficking in women and underage boys is prohibited and qualifies this act as a crime. Specifically, the corporate criminal process is regulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations (PERMA RI No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations).

The definition of human trafficking according to Article 2 paragraph 1 of Law of the Republic of Indonesia Number 21 of 2007 concerning the Crime of Human Trafficking is any person who recruits, transports, shelters, sends, transfers or receives someone with the threat

of violence, use of violence, kidnapping, confinement , forgery, fraud, abuse of power or a vulnerable position, debt bondage or providing payments or benefits despite obtaining the consent of a person who has control over another person for the purpose of exploiting that person in the territory of the Republic of Indonesia, shall be punished with a fine of at least IDR 120,000,000.00 ( one hundred and twenty million rupiah) and a maximum of IDR 600,000,000.00 (six hundred million rupiah).

In connection with the increasing number of cases related to criminal acts of human trafficking committed by corporations and the lack of legal certainty that ensnares business entities or corporations, the author feels interested in discussing and researching further in a scientific work entitled "**Application of Criminal Sanctions Against Corporations for Human Trafficking Crimes in Indonesia.**"

## RESEARCH METHODS

Legal research is a process for determining legal rules, legal principles and legal theories to answer problem formulations in research. The type of research in this writing is a type of normative legal research which is carried out by examining primary legal materials and secondary legal materials. This research technique was carried out using a qualitative approach, namely a library *research approach* to obtain secondary data by studying statutory regulations, literature such as books, articles and journals, especially those related to the criminal act of human *trafficking* . Meanwhile, the approach used in this research is to take a *statutory approach* .

## DISCUSSION

### 1. Factors Driving the Occurrence of Human Trafficking Crimes *in* Indonesia

The rise of human trafficking in various places countries including Indonesia and other countries developing has become the attention of the world and especially the United Nations (UN). Human trafficking is a form of bad treatment because it violates human dignity. Trade between countries and abroad which is categorized as a special crime has been widespread and well organized.

In Indonesia itself, the problem of human trafficking is still a major threat, every year almost thousands of women and children become victims of trafficking. This happens because of the weak level of awareness and minimal public knowledge of the meaning of human trafficking so that it continues to grow. The increasingly rapid development of the times and the large profits obtained make the perpetrators more aggressive in carrying out their actions.

The Indonesian state is a state of law because basically the Indonesian state has state ideals to prosper and protect its citizens. In Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Criminal Act of Human Trafficking, it regulates the prohibition of human trafficking and anyone who violates it can be subject to serious criminal sanctions. However, the fact is that the crime of human trafficking *is* becoming increasingly worrying with the number of perpetrators of criminal acts of human trafficking being arrested, including women. Because women also tend to be involved in criminal acts of human *trafficking* .

Forms of human trafficking are divided into 3 (three) groups, namely:

1. Based on Delivery Destination

Based on the destination of the shipment, it is divided into 2 (two) parts, namely domestic and foreign trade. Domestic trafficking takes place from small towns to big cities, for example domestic exploitation, commercial sexual exploitation, forced labor on agricultural land, mining and fishing. Meanwhile, cross-border or international trade is generally related to immigration issues. Usually the victims are promised that they will be given a new job and a better life. The view of working abroad is considered prestigious and has promising results. They do not realize that they are actually victims of exploitation who have lost their human rights and freedoms.

2. Based on the Victim.

Human trafficking can be divided into trafficking of women, children and men. The group most vulnerable to trafficking is women, especially for sexual exploitation, domestic slavery and forced marriage. Then for child trafficking, the most trafficked are babies for illegal adoption and teenagers aged 15 to 17 years. This age group is usually economically exploited and used as begging, sexual exploitation and pornography as well as labor exploitation as child soldiers. On the other hand, it is said to be child trafficking because children as victims of trafficking are in conditions of forced labor.

3. Based on Exploitation

Human trafficking is divided into sexual exploitation and non-sexual exploitation. Sexual exploitation is differentiated into forced prostitution, forced marriage and marriage through intermediaries. Meanwhile, non-sexual exploitation is differentiated from forced labor and organ trafficking.

Usually, to launch actions in the field of human trafficking business carried out by individuals or business entities, they use several modes or methods so that potential victims are tempted and want to cooperate with them. The methods they usually use are:

- a. Secretly kidnapping the victim. After that the victim was sold, held captive and employed as a commercial sex worker (PSK);
- b. Share job vacancy information on social media such as Facebook, Instagram, Whatsapp, Line and Tiktok. Once someone is interested and willing to work, they will withhold wages so that the victim does not have money to run away;
- c. Forging documents such as Resident Identity Cards (KTP), Family Cards (KK), Passports and Travel Documents. After the workers leave, they will withhold all other important documents so that the victims cannot move freely for fear of being arrested by the police;
- d. The perpetrator lures the victim with a salary that is higher than the average person's monthly salary if they work at the place they appoint;
- e. Sending workers abroad illegally means recruiting and sending workers without paying attention to the legal rules that have been determined by the state;
- f. Threatening and following the victim or his family;
- g. Sending workers in stages so that they are not suspected and are not detected by supervisors or law enforcers;
- h. Limiting contact with outside parties so that victims are isolated from those who can help; as well as
- i. Cutting ties between workers and family and friends.

The factors that cause criminal acts of human trafficking include:

- a. Poverty Factor. The lack of sources of income and the increasing necessities of life that must be met make the victim believe in the lure of the perpetrators, so that the victim is willing to be employed in a place determined by the perpetrator;
- b. Educational Factors. The victim's lack of knowledge about the dangers and impacts of crime makes it easy for the perpetrator to persuade the victim. So that victims easily fall into the crime of human trafficking;

- c. Unemployment Factor. The lack of job opportunities and low education means that it is difficult for people to find work while their daily needs must be met. This is what makes people turn a blind eye to any work;
- d. Factors of Low Ability and Skills Possessed by the Community. Usually, those who often become victims of perpetrators are people from rural areas who only have confidence in themselves to be able to get a job in the city without any skills or expertise. So perpetrators can easily recruit victims by promising jobs and salaries that are adequate for people like them;
- e. Environmental factor. Children who receive less love and attention in the family and environment will be more easily influenced or deceived by perpetrators of human trafficking;
- f. Gender Equality Factor. Women who are often victims of rape have to bear the shame and mental burden. In addition, the response or treatment of society does not embrace rape victims. This makes victims easily tempted by the seduction and lure of perpetrators of criminal acts of human trafficking; And
- g. Consumer Culture or Lifestyle Factors. As time progresses, a person's needs will increase while their income is insufficient to fulfill their lifestyle.

## **2. Application of Criminal Sanctions Against Corporations for Human Trafficking Crimes in Indonesia**

The issue of corporate responsibility as perpetrators of criminal acts is something that is not simple considering that this issue stems from the principle of no crime without fault. *Mens rea* or guilt is an inner attitude that naturally exists only in natural people and therefore it is considered that only natural people can be held criminally responsible. Legal subjects are everything that can have rights and obligations. Rights are the power and authority given by law to legal subjects, while obligations are burdens given by law to legal subjects.

Initially, corporations were not considered as subjects of criminal law because the subjects of criminal law were individuals or individuals. However, based on developments over time, corporations are also considered subjects of criminal law. Because there are times when humans commit criminal acts through organizations, the drafters of the law include corporations as legal subjects. The large role and losses caused by a corporation, especially in the case of human trafficking crimes, makes the government design a regulation that regulates corporations as legal subjects and corporate

responsibility. The perpetrators of the crime of trafficking in persons who were convicted were as follows:

1. Each person;
2. Corporation;
3. Organized group; And
4. State administrators who abuse their position.

Criminal acts committed by corporations constitute an element of error or *mens rea* which is difficult to prove because corporate legal subjects are not the same as humans who have reason and thoughts. According to Suprpto, "a corporation can be blamed if it is intentional or negligent on the part of the people who are its equipment, the mistake is not individual but collective, this is because every activity carried out by each individual is in order to provide benefits for the corporation. The element of fault is not It is again seen as an individual error and must be held accountable individually by each person who is a member of the corporation, but the elements of this error are collectively the fault of each individual member of the corporation which results in losses.

In terms of the application of criminal sanctions against perpetrators of criminal acts of human trafficking in Indonesia, it is contained in the formulation of Article 1 point 4 of Law of the Republic of Indonesia Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking which reads "A perpetrator is any individual or corporation who commits a criminal act human trafficking. And in Article 2 of Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, which states "Every person who recruits, transports, shelters, sends, transfers or receives someone with the threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or a vulnerable position, debt bondage or providing payments or benefits despite obtaining the consent of a person who has 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 IDR 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of IDR 600,000,000.00 (six hundred million rupiah).

Meanwhile, the article that regulates criminal sanctions against corporations proven to have committed the crime of trafficking in persons is contained in Article 15 paragraph 1. In the case of a crime of trafficking in persons committed by a corporation,



apart from imposing a prison sentence on the corporation's management, a fine with a weight of 3 (three) can be imposed. ) times the fine as intended in Article 2, Article 3, Article 4, Article 5 and Article 6. As intended in paragraph 1, corporations may be subject to additional penalties in the form of:

- a. Revocation of business license;
- b. confiscation of wealth resulting from criminal acts;
- c. revocation of legal entity status;
- d. dismissal of management; and/or
- e. prohibition on the management from establishing a corporation in the same business field.

Based on Article 16, in the case of a criminal act of trafficking in persons carried out by an organized group, it is punished with the same crime as intended in Article 2 plus 1/3 (one third). And in Article 17, if the criminal act as intended in Article 2, Article 3 and Article 4 is committed against a child, then the penalty is increased by 1/3 (one third).

## CONCLUSION

From the descriptions above, the author draws the following conclusions:

1. The driving factors for criminal acts of human trafficking *in* Indonesia are poverty factors, educational factors, unemployment factors, low abilities and skills possessed by the community, environmental factors, gender equality factors and consumptive or lifestyle factors.
2. The application of criminal sanctions against corporations for criminal acts of human trafficking in Indonesia is contained in Article 15 paragraph 1. The penalties that can be imposed on corporations are in the form of imprisonment and fines with a weighting of 3 (three) times the fine as intended in Article 2, Article 3, Article 4, Article 5 and Article 6. Apart from corporate fines, additional penalties can be imposed in the form of revocation of business permits, confiscation of assets resulting from criminal acts, revocation of legal entity status, dismissal of management; and/or prohibition of the management from establishing a corporation in the same business field.

## **BIBLIOGRAPHY**

- Ali, M., & Pranomo, BA (2011). Trafficking in persons: Dimensions, international instruments and regulation in Indonesia. Bandung: PT Citra Aditya Bakti.
- Amirullah. (2012). Corporations from the perspective of criminal law subjects. *Al-Daulah: Journal of Islamic Law and Legislation*, 2(2), 139–160.
- Azizurrahman, Syarif H. (2014). Reform of criminal policies for human trafficking crimes (Study in the West Kalimantan-Sarawak border area). *Justice*, 3(2), 88–99.
- Dewi, FN (2020). The principle of caution in notaries making deeds and the consequences of notaries indicating criminal acts in authentic deeds. *National Conference on Bureaucratic Law for a Resilient Indonesia*, 191–206.
- <http://www.uno.org>.
- Kansil, CST (1989). Introduction to Indonesian law and legal system. Jakarta: Balai Pustaka.
- Civil Code (KUHPdata).
- Criminal Code (KUHP).
- Marzuki, PM (2009). Legal research. Jakarta: Kencana Prenada Media Group.
- Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.
- Ratomi, A. (2018). Corporations as perpetrators of criminal acts (a reform of criminal law in the face of globalization and industry). *Al'Adl Law Journal*, 10(1), 1–22.
- Sinaga, J. (2007). State obligations in the ICCPR (International Covenant on Civil and Political Rights). *National Human Rights Commission*, 4, 4.
- Soekanto, S., & Mamudji, S. (2003). Normative legal research: A brief review. Jakarta: Raja Grafindo Persada.
- Suhardin, Y. (2008). Judicial review of human trafficking from a human rights perspective. *Law Pulpit*, 20(3), 411–588.
- Suhardin, Y. (2008). Judicial review of human trafficking from a human rights perspective. *Law Pulpit*, 20(3), 411–412.
- Suhariyanto, B. (2017). Corporate criminal liability is based on the corporate culture model and its implications for community welfare. *Rechts Vinding Journal*, 6(3), 441–458.
- Suprpto. (1963). Economic criminal law is reviewed in the context of national development. Jakarta: Widjaja.
- Intercession, R. (2003). Human trafficking (Cet. 1). Jakarta: Lappera Pustaka Utama.
- Trafficking in human beings for the purpose of labor exploitation: A reference paper for Bosnia and Herzegovina. (2011).

Constitution of the Republic of Indonesia 1945.

Law of the Republic of Indonesia Number 21 of 2007 concerning Eradication of the Crime of  
Human Trafficking.

Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights.