

## JURIDICAL STUDY ON CRIMINAL IN THE CRIME OF HUMAN TRAFFICKING ACCORDING TO LAW NO. 21 OF 2007 (CASE STUDY OF DECISION NO. 3119/PID.SUS/2020/PN. MDN)

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### Abstract

Human trafficking is a modern form of slavery. The victims are trafficked not only for prostitution but also include other forms of exploitation where in this case Human rights are violated, such as forced labor or forced services, slavery, or practices similar to the slavery are also traded. This case has become a symptom all over the world especially in Indonesia, the development of the era and social media at this time is dangerous and makes people more and more willing to do whatever without worrying about their own safety. The problem in this research is the application of law against the perpetrators of the criminal act of Human trafficking reviewed in law number 21 of 2007 concerning the eradication of the crime of Human trafficking, the factors causing the crime of Human trafficking, as well as the judge's considerations in sentencing the perpetrators of the crime of Human trafficking in the decision No.3119/ Pid.Sus /2020/ PN.Mdn This study is using a normative juridical research method which is a community social research followed by a literature study by examining the secondary data obtained by conducting a literature study. The consideration of the judges of the Medan State Court in deciding the case No.3119/ Pid.Sus /2020/ PN.Mdn has considered this case well based on the proven evidence and facts in the trial. The aggravating and mitigating circumstances have been considered by the panel of judges, so that the judge's decision has fulfilled a sense of justice for the community.

**Keywords:** Criminal act, Human trafficking, Case Study

## INTRODUCTION

In Indonesian, human means *manusia* and illegal trade means *perdagangan illegal*. Slavery or acts like slavery are directly linked to human trafficking.<sup>1</sup> Human trafficking is defined as other people's prostitution or other types of sexual exploitation, forced labor or services, slavery or slavery-like behaviors, and slavery, according to the Palermo Protocol.<sup>2</sup>

Human trafficking is a new form of human enslavement in today's world. Human trafficking is likewise a deplorable type of dehumanization. The increasingly widespread practice of human trafficking in various countries, particularly in Indonesia, has transformed Indonesia into a civilized ward, as evidenced by its membership status in international organizations, particularly the United Nations (UN), which is actively involved in the eradication of this human trafficking practice.<sup>3</sup>

Human trafficking is not tolerated in Indonesia, which is a legal country. There are numerous articles in the Criminal Code that can be used to prosecute traffickers, including Articles 297, 324, 328, 329, 378, and 506.

When it comes to identifying human trafficking, practically every country in the globe has a history of cases of human trafficking in their country. Each year, the United Nations (UN) reports that 4 (four) million people, including men, women, and children, are victims of human trafficking across international borders. According to the International Organization for Migration (IOM), 500 thousand women are trafficked each year in Western Europe and ASEAN.<sup>4</sup> Every year, incidences of human trafficking are reported in our country, Indonesia. Indonesia is one of the most common nations of origin for victims of internal and cross-border human trafficking. Indonesia is one of the main nations of origin, destination, and transit for Indonesian men, women, and children who end up as forced laborers and sex trafficking victims. Every province in Indonesia is both the source and the destination of human trafficking. Human trafficking is estimated to affect between 74,616 and 1 million Indonesians per year, according to the authorities. According to the government, roughly 1.9 million of the 4.5 million Indonesians who work overseas are women who do not have documents or have overstayed their visas.

Their vulnerability to human trafficking is heightened as a result of this predicament. Indonesian citizens are exploited as domestic workers, manufacturing workers, and construction workers in other countries, as well as victims of sex trafficking.

The problem of recognizing human trafficking has now become a public problem that must be addressed immediately by central and regional governments, because without government action in anticipating and handling cases of human trafficking, the series of cases of human trafficking is expected to continue. The program to prevent human trafficking is also a regional authority within the framework of regional autonomy.

The goal of this research is to understand the elements that lead to a person committing a human trafficking crime, as well as government policies aimed at perpetrators and victims of human trafficking.

## RESEARCH METHOD

The form of study we used to write this paper is normative juridical law research, which is defined as research that is based on current legal sources. The library study research method is employed in this study, which is looking through written information to find laws that come from a variety of sources and can be broadly distributed. In this case, the author draws on legal literature, academic opinions, legal research papers, and legal journals to discuss the crime of human trafficking. The data gathered and processed from the outcomes of the research is qualitative, i.e., data in the form of words. It is then detailed in order to get the understanding and understanding stated in this journal work.

<sup>1</sup> Loisa Magdalene Gandhi Lopian & Hetty A. Geru. *Trafiking Perempuan dan Anak*. Jakarta: Yayasan Obor Indonesia, 2006, hlm. 47.

<sup>2</sup> Muhammad Farid. "Perdagangan Hak Asasi Manusia." *Jurnal Perempuan*, Yayasan Jurnal Perempuan, no. 51 (2007): hlm. 31.

<sup>3</sup> Penjelasan atas Undang-Undang Republik Indonesia Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Orang.

<sup>4</sup> Laporan Rapat Koordinasi GT PP-TPPO Nasional, Jakarta, 2016, halaman 2

## RESULTS AND DISCUSSION

### A. Factors Causing the Crime of Trafficking in Persons

Human trafficking is mostly caused by three factors: the environment, the economy (poor), and education. The occurrence of cases of criminal actions of human trafficking is due to these variables. These three elements will be discussed one by one:<sup>5</sup>

- a. Environmental elements, such as the environment's involvement or the community's role, are critical in dealing with situations of human trafficking including parents, teachers, religious leaders, community leaders, and government officials. Usually, human trafficking happens as a result of the victim's proximity to the offender, which makes it easy for the victim to trust the perpetrator and leads to the victim being influenced and wanting to make a lot of money without having to work hard.<sup>6</sup>
- b. Economic reasons (poor), due to a big population and a lack of or inadequate economic options, poverty is one of the most relevant elements in the case of human trafficking.<sup>7</sup>
- c. Educational variables are thought to play a significant impact in this scenario. Because the victim is unaware of the crime's dangers, he is readily drawn into the crime. This is what allows the criminals to easily captivate the victim by luring her in with enormous sums of money, trade her, and sexually exploit her.<sup>8</sup>

### B. Legal Policy Efforts Against Trafficking in Persons

Preventing crime can begin with education and end with legal action. According to Barda Nawawi Arief's quote from A. Mulder. The policy line to be determined is " *Strafrechtspolitiek* ":

- a. How far the applicable Criminal provisions need to be changed or updated
- b. What can be done to prevent the occurrence of criminal acts
- c. The way in which the investigation, prosecution, trial and execution of the crime must be carried out.

Criminal law policy is divided into three categories: legislative policy, judicial policy, and execution policy (executive policy).<sup>9</sup>

UU no. 21 of 2007 concerning the Eradication of the Criminal Act of Trafficking in Persons was ratified with the desire to seek as early as possible the prevention of the Crime of Trafficking in Persons. This is stated in the consideration of letter d, namely: "that the desire to prevent and overcome the crime of trafficking in persons is based on noble values, national and international commitments to carry out prevention efforts from an early age, take action against perpetrators, protect victims, and improve cooperation".<sup>10</sup>

Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons as a form of protection for victims of Trafficking in Persons by imposing severe sanctions and providing a more specific definition than the Criminal Code. The regulation of trafficking in persons regulated in the Criminal Act of Trafficking in Persons can be analyzed to identify the qualifications of the criminal act, criminal liability and criminal threats which will be explained as follows:

#### 1. Criminal Qualification

There is no confirmation of the identity of the Criminal Act of Trafficking in Persons, including criminal offenses or offenses, in each item of the Law on the Criminal Act of Trafficking in

<sup>5</sup>Abu Hanifah, "Perdagangan Perempuan dan Anak: Kajian Faktor Penyebab dan Alternatif Pencegahannya", Jurnal Penelitian dan Pengembangan Kesejahteraan Sosial, Vol 13, No.02, 2008, hlm 53

<sup>6</sup>Republika.co.id, "Ini penyebab semakin maraknya perdagangan orang" <https://republika.co.id/berita/oudchr425/ini-penyebab-semakin-maraknya-perdagangan-orang> (diakses 25 januari 2022)

<sup>7</sup>Sherly Ayona Putri,dkk, "Pemahaman Mengenai Perlindungan Korban Perdagangan Anak(Trafficking) dan Pekerja Anak di Bawah Umur di Jawa Barat", Jurnal Aplikasi Ipteks Untuk Masyarakat, Vol.6 No.3,2017, hlm 248.

<sup>8</sup> Bastianto Nugroho,dkk, "Analisa Hukum Tindak Pidana Perdagangan Orang (Human Trafficking)", Jurnal Bina Mulia Hukum, Vol.2 No.1,2017, hlm 109.

<sup>9</sup>Noor Cahyadi, 2013, "Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan Penghimpunan Dana Ilegal Berpola Syariah", Tesis, Fakultas Hukum Universitas Gadjah Mada, Yogyakarta

<sup>10</sup> Undang-Undang No. 21 tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang

Persons. There is no mention of the need for a victim complaint in the prosecution procedure in each item that regulates criminal activities. As a result, the Law on the Crime of Human Trafficking can be classified as a common law offense, meaning that the perpetrator's activities can be tried without the victim's consent. Arrangements for violations of Articles 2 (1), 3, 4, 5, 6, 9, 10, 11, 12, 19, 20, 21 (1), 22, 23, and 24 of the Criminal Act on Human Trafficking, including formal violations. Meanwhile, because there are formal and material elements, the offenses in Articles 2 (2), 7 (1), 7 (2), 21 (2), and 21 (3) of the Criminal Act of Trafficking in Persons are mixed offenses.

## 2. Criminal Liability

Articles 2, 3, 4, 5, 9, and 19 do not explicitly specify the elements of intention or omission in the sound of the article, instead mentioning the elements "for the purpose," "with aim," "to facilitate," and "trying." The criminal liability under Articles 2, 3, 4, 5, 9, and 19 of the Criminal Act of Trafficking in Persons complies to the principle of accountability based on error since these aspects indicate a purposeful act where the perpetrator aims to achieve the intended goal. The Trafficking in Persons Act explicitly uses a cumulative criminal formulation system in the application of the criminal formulation system, namely, both criminal penalties and fines must be given where the phrase "and" appears in the sound of the article, so that judges are not given the freedom to punish the perpetrator due to their calculative nature. Fines have a specific minimum and maximum amount when it comes to prison sentences and criminal punishments.<sup>11</sup>

### C. Judge's Consideration in Sentencing in Decision No.3119/ Pid.Sus /2020/ PN.Mdn

The judge's consideration is one of the most important factors in determining the value of a judge's decision that contains justice (*ex aequo et bono*) and legal certainty, as well as benefits for the parties involved, so the judge's considerations must be carefully addressed, backwards, and carefully.<sup>12</sup>

The writers characterize recognizing the judge's concerns in Medan District Court Decision No.3119/ Pid.Sus /2020/ PN.Mdn in the following way:

#### 1. Judge's Consideration

Given that the Public Prosecutor has filed an alternative indictment against the Defendant, the Panel of Judges, after considering the aforementioned legal facts, will choose the first alternative indictment as outlined in Article 2 of Republic of Indonesia Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, whose elements are as follows:

1. everyone;
2. Who recruits, transports, harbors, transports, transfers or receives persons by means of threat of force, use of force, abduction, confinement, fraud, deception, abuse of power or position of vulnerability, debt bondage or giving payments or benefits despite obtaining consent from persons who has control over another person, for the purpose of exploiting that person in the territory of the Republic of Indonesia.

Ad. 1. The "everyone" element

Considering Whereas "everyone" refers to a legal subject who has rights and obligations and may be held accountable for his conduct, it excludes people who are deemed incapable of being held accountable under article 44 of the Criminal Code. Based on the statements of the witnesses, the instructions, and the testimony of the defendant himself, the defendant Alexander Tambunan Als Bela, who has been presented before the court since the first trial until now, can be named the perpetrator of the crime.

Considering During the trial, the defendant Alexander Tambunan Als Bela stated that he was physically and mentally healthy, and that he could understand the contents of the Public Prosecutor's indictment, and that there was an answer to answer in the trial process that all of

<sup>11</sup> Nuraeny, Henny, 2013, Tindak Pidana Perdagangan Orang: Kebijakan hukum Pidana dan Pencegahannya, Cet.2, Jakarta: Sinar Grafika.

<sup>12</sup> Mukti Arto, Praktek Perkara Perdata pada Pengadilan Agama, cet V (Yogyakarta, Pustaka Pelajar, 2004), h.140

the defendants could answer for, so the defendant's actions can be accounted for and no excuses or justifications can be made.

Whereas the aforementioned elements have been met and legally established.

Ad. 2 Elements "Those who carry out recruitment, transportation, shelter,

The sending, transferring, or receiving of persons in the Republic of Indonesia by threat of force, use of force, abduction, confinement, fraud, deception, abuse of power or vulnerability, debt bondage, or giving payments or benefits, despite obtaining the consent of a person having control over another person, for the purpose of exploiting the person"

Considering Recruiting, on the other hand, refers to the act of inviting, gathering, bringing, or removing a person from his family or group. Considering that, based on the facts revealed at trial from witness statements, the defendant's instructions and statements, and evidence, the defendant introduced a victim witness named Suci Syakira Pratiwi to the men. the Masher via WhatsApp (WA) media on Monday, July 6, 2020, where the defendant promised that the victim's witness was a woman who could have sexual relations with the Masher.

When the victim's witness arrived at the defendant's residence on Jalan KH. Wahid Hasim No. 125 district. Medan Baru on Tuesday, July 7, 2020, the defendant told the victim witness "this is a job," but I first asked this brother (the Masher), after the defendant asked the Masher via WhatsApp (WA), the defendant said again to the victim's witness "this is a job LT (long time) serving sex". The defendant explained that the Masher offered Rp. 1,500,000, - (one million five hundred thousand rupiah), and it turned out that the witness was humiliated.

Considering that the defendant and the victim witness then went to the Rakasih Hotel on Jalan KH. Wahid Hasim No. 86 district. Medan Baru Medan City to meet the Masher, when they arrived at the place, the defendant and the victim's witness met the Masher, and the Masher gave the defendant Rp. 300,000, - (three hundred thousand rupiah) as a commission to introduce the victim's witness, and the victim's;

Since all of the conditions of Article 2 of Law No. 21 of 2007 on the Eradication of the Crime of Human Trafficking have been met, the Defendant must be found to have been lawfully and conclusively demonstrated to have done the criminal act charged in the first alternative indictment;

considering the Panel of Judges could not discover anything in the trial that may absolve the Defendant of criminal accountability, turning it back as an explanation and or excuse for forgiveness, the Defendant must be held accountable for his acts;

Considering the Defendant is capable of being accountable, he must be found guilty and sentenced to a criminal penalty;

Considering defendant was subject to lawful arrest and detention in this case, the total amount of such arrest and detention must be reduced totally from the sentence imposed;

Considering, whereas because the Defendant is being held and the detention of the Defendant is based on sufficient grounds, it is necessary to determine that the Defendant remains in custody;

Considering, whereas the above-mentioned evidence which was presented before the trial was shown to the Defendant and also shown to the witnesses, in which the witnesses and the Defendant stated that they recognized, confirmed and acknowledged the evidence in the form of: 1 (one) unit of Samsung Grand Duos Android cellphone white color and money worth Rp. 300,000, - (three hundred thousand rupiah);

It is necessary to first pay attention to and consider the aggravating and mitigating circumstances for the defendant as stipulated in Article 2 of the Republic of Indonesia Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons and Law No. 8 of 1981 concerning the Criminal Procedure Code and other relevant laws and regulations:

Aggravating the defendant:

- a. The defendant's actions harmed the Sacred Witness Syakira Pratiwi;
- b. The defendant's actions disturbed the public;

Things that relieve the defendant:

- a. The defendant was polite in the judge;
- b. The defendant admitted his actions;

## 2. Verdict

### ADJUDICATE:

- a. Stating that the Defendant Alexander Tambunan Als Bela above is proven legally and convincingly guilty of committing the crime of "trafficking in persons" as in the first indictment;
- b. Sentencing the Defendant therefore with a prison sentence of 5 (five) years and a fine of Rp. 120,000,000, (one hundred and twenty million rupiah) provided that if the fine is not paid, it will be replaced with imprisonment for 3 (three) months;
- c. Determine the mass of arrests and detentions that have been served by the Defendant to be deducted entirely from the sentence imposed;
- d. Determine that the Defendant remains in custody;
- e. Determine evidence in the form of:
  - 1) 1 (one) unit of white Samsung Grand Duos Android phone, destroyed;
  - 2) Money worth Rp. 300,000, - (three hundred thousand rupiah), confiscated for the State;
- f. Charges the Defendant to pay court fees in the amount of Rp. 5,000.00 (five thousand rupiah);

Based on the description of the decision above, the authors hereby argue that:

The judge's consideration Number 3119/ Pid.Sus /2020/ Pn.Mdn has complied with the juridical aspect, clearly stated the basis of the demands that were indicted by the Public Prosecutor (JPU), and also in describing the actions of the defendant into each element of Article 2 RI Law No. 21 of 2007 is deemed appropriate and to the points. From the sociological aspect, the imposition of a prison sentence of 5 (five) years and a fine of Rp. 120,000,000, - (one hundred and twenty million rupiah). From the Philosophical Aspect, to ensure the recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with considerations of security and public order in a democratic society, for the realization of quality, integrity, and noble human beings.

The decision by the panel of judges must contain three dimensions from the juridical, sociological and philosophical aspects so that the justice to be realized and accounted for in the judge's decision is justice oriented to legal justice, moral justice, and community justice.

## CONCLUSION

1. The factors that cause the occurrence of the crime of trafficking in persons are the lack of knowledge of the community whose education is limited, especially economic factors and government supervision.
2. The policy of the Criminal Act of Trafficking in Persons, in responding to this is the policy issued by the Government in the legislation. Law Number 21 of 2007 concerning the Crime of Trafficking in Persons, and also assisted by family factors and environmental factors.
3. The judge's consideration of the sentencing in decision no. 3119/ Pid.Sus /2020/PN Medan. Whereas in this case the judge did not find anything that could erase criminal liability behind justification/forgiveness reasons, the defendant has been subject to arrest and legal detention. With the existing evidence and the statements of the witnesses. With a sentence of 5 years in prison and a fine of Rp. 120,000,000.

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