

## JURIDICAL ANALYSIS OF THE CRIME OF TRAFFICKING IN PEOPLE

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**Background:** The phenomenon of trafficking in persons has often occurred in Indonesia, especially in Tanjungpinang City. Trafficking in persons is a form of criminal practice that violates human dignity and dignity, and is a violation of human rights. This criminal act of trafficking in persons is very disturbing to the community, so that there is a need for serious action from the government to tackle this criminal act of trafficking in persons. Trafficking in persons is not only a problem in one country, but has plunged into cross-country or international .

**aim:** To analyze the juridical crime of trafficking in persons (Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons).

**Methods:** The method used is a qualitative method using normative juridical research.

**Findings:** the government issued Law no. 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons. The regulation is expected to provide legal protection directly or indirectly to the public. Law No. 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons states that everyone who is a victim of trafficking in persons has the right to receive restitution. However, with the issuance of this law, it is felt that it has not fulfilled the sense of justice for the people who are victims of this human trafficking .

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### KEYWORDS

*Trafficking in Persons; Factors that cause TIP; Trafficking Crime*

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### INTRODUCTION

Law is a law that stands with justice. The law is true and its existence is recognized if nothing else is underestimated and arbitrary with all its rights. However, from year to year, especially in Indonesia, especially in Tanjungpinang, it is inseparable from criminal acts ranging from small to big things. In particular, what will be discussed is the crime of trafficking in persons. Where the crime of trafficking in persons is still happening in the Tanjungpinang area in 2021.

This crime of trafficking in persons has occurred in various regions in Indonesia, but many people do not understand this human trafficking well. Some areas become concentrations of human trafficking and exploitation. So it is necessary to have a special approach to inform the public the importance of understanding this human trafficking (Cholil, 2011).

The crime of trafficking in persons or abbreviated as TIP is the act of recruiting, transporting, boarding, sending or receiving a person by means of threats of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power, or a position of vulnerability, debt bondage, or paying or benefits, thereby obtaining the consent of the person having control over that person (No. 21 CE) . Which is where the purpose of human trafficking is to

take advantage of others, for the benefit of the perpetrator. Either by means of an invitation, to all the tricks so that the victim participates in the activities as referred to in Article 1 paragraph (1) of Law no. 21 of 2007 concerning the Crime of Trafficking in Persons.

The problem of the criminal act of trafficking in persons must be taken seriously by the government. Because people are in a state of threatened rights. One of them is the right to freedom. As an enforcer, the state apparatus also protects it with a legal umbrella that specifically regulates the elimination of the crime of trafficking (trafficking in persons).

The Indonesian government has ratified Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons with the consideration that everyone as a creature of God Almighty has human rights in accordance with the dignity of his dignity and is legally protected by the 1945 Constitution of the Republic of Indonesia. as stated in Article 28A that: "Everyone has the right to live and has the right to defend his life and life" (Kambu, 2021) .

Law enforcement regarding the crime of human trafficking in Indonesia is still not optimal where we can see this from the news in the media both in print and electronic media so that many cases of human trafficking are identified as victims of human trafficking but to ensnare perpetrators of human trafficking is very difficult because of the modus operandi it turns out the perpetrators are more than one person and a company, and if the perpetrators are found, it will be increasingly difficult to proceed to court to obtain criminal sanctions because the evidence must be guided by legal criminal procedures, namely the Criminal Procedure Code which has the principle that judges are not allowed to commit crimes against a person unless there is at least two valid evidence, he or she has the belief that a criminal act has actually occurred and that the defendant is guilty of doing so, as regulated in Article 183 of the Criminal Procedure Code (Daud & Sopoyono, 2019) .

## **METHOD**

The method used is a normative juridical research method in which researchers look at problems from literature studies and studies from various sources as research material, such as legislation as the main material (primary legal material) and secondary legal materials from various legal books, scientific works, scientific articles that discuss the criminal act of trafficking in persons (human trafficking).

## **RESULTS AND DISCUSSION**

### **A. UNDERSTANDING HUMAN TRAFFICING**

Trafficking in persons is defined as the receipt, transportation, delivery, harboring and or receipt of persons with the intent to treat or use violence or other forms of pressure, from kidnapping, fraud, from fraud, abuse of power or an easy position or from giving or acceptance or payment or benefits in order to reach an agreement from a person who has control over another person, with the intent of extortion (Sitorus, 2016).

From the above definition, it shows that trafficking includes various activities of sending women and children in various forms aimed at exploitation, especially labor exploitation and sexual exploitation. Human trafficking has the following elements :

1. The existence of actions , including: Recruitment, transportation, harboring, shipping, transfer, or acceptance of a person
2. There are ways, including: threats of violence, use, verbal and physical violence, kidnapping, confinement, forgery, fraud, abuse of power, position of vulnerability, debt bondage, or providing payments or benefits.
3. Existence of Purposes, including: Prostitution, forced labor or services, slavery, oppression, extortion, unlawful use (physical, sexual reproductive organs), transferring or transplanting organs and or body tissues, or exploiting one's power or ability by another party to obtain benefits, both material and immaterial.

The definition of human trafficking is so broad that activists who are concerned in the field of eliminating trafficking agree that this understanding is considered sufficient if it has fulfilled one of the elements of the actions taken by traffickers, the method used and the purpose of the action being carried out. Traffickers are generally criminal organizations that are secret, difficult to track or catch (Yulianto, 2021) . Based on the literature, human trafficking at the global level can be divided into several forms, namely:

### **1. By Delivery Destination**

Based on the purpose of delivery, trafficking in persons can be distinguished into trafficking in persons within the country (*Internal-trafficking*) and trafficking in persons between countries/cross borders (*international trafficking*). Internal trade usually takes place from village to city or from small town to big city within a country. While trade between countries is the trafficking of people from one country to another. This model deals with immigration issues. People enter from and to a country usually through unofficial channels. Domestic trafficking is usually caused by lack of income or the economy and no opportunity to work. Internal trafficking is a serious problem in Indonesia, especially in Tanjungpinang City. Many women are exploited in the form of domestic slavery (*servitude dosmetic*), commercial sex exploitation, *forced labor* in agriculture, mining, and the fishing industry. (Syamsuddin, 2020).

### **2. Based on the Victim**

Based on the victims, trafficking in persons can be divided into several parts, as follows:

#### **a. Trafficking of Women**

Women are the most vulnerable group to become victims of trafficking in persons, especially for sexual exploitation, domestic slavery, and forced marriage. The vulnerability of women to be trafficked due to several factors, namely the need (demand) of women to be used as commercial sex workers. In addition, women are also able to sacrifice their education in order to take on the responsibility of caring for, supporting their parents or siblings. Under these circumstances, it is easy for women to be seduced and taken abroad to work to help their family's economy. In Article 1 paragraph 1 of the Regulation of the Minister of Women's Empowerment and Child Protection of the Republic of Indonesia Number 13 of 2020 concerning Protection of Women and Protection of Children from Gender-Based Violence in

Disasters, it is stated that women need protection. The protection of women in this law is all efforts aimed at protecting and providing a sense of security to women and the fulfillment of their rights through consistent, structured, and systematic attention aimed at achieving gender equality (Dian, 2018) .

b. Child Trafficking

Article 1 paragraph 1 of Law Number 23 of 2002 concerning Child Protection states that "a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb (Article 1 Paragraph 1 of Law Number 23 of 2002 concerning Child Protection). Child Protection, nd) . (Article 1 Paragraph 1 Law Number 23 Year 2002 concerning Child Protection, nd) Children are the most vulnerable group to be trafficked. Factors that cause children to be easily trafficked are the values that apply in the community where children are required to serve their families, the existence of children who run away from home for reasons, the feeling of loneliness living at home, and the negative influence of their friends. The same thing happened in Tanjungpinang City.

In June 2021 there was 1 case of a child as a victim of this criminal act of trafficking in persons. The age group of children who are mostly trafficked are teenagers aged 15 to 17 years. This age group is entangled in many ways and with almost the same goals as adults (Syamsuddin & Fuady, 2020) .

3. Male Trafficking

If women and girls are mostly trapped in sexual exploitation, then men usually enter into economic exploitation. Which is in the form of forced labor or work without pay. This incident is often found in Indonesian workers who work for palm oil companies or construction workers in Malaysia.

4. Trafficking in Persons by Form of Exploitation

Based on the form of exploitation, trafficking in persons is divided into sexual and non-sexual exploitation. Sexual exploitation is distinguished into forced prostitution, forced marriage and marriage through intermediaries. Meanwhile, non-sexual exploitation is divided into forced labor and organ trafficking.

If seen from the many kinds of trafficking in persons above, victims of this crime really need to be protected. Protection of victims here is seen because there are several considerations , namely:

5. Society is considered as a form of *institutionalized trust system (system of institutionalized trust)*. This belief is integrated through the norms expressed in institutional structures such as the police, prosecutors, courts, and so on (Hafrida, Nelli Herlina, nd) The occurrence of a crime against the victim will mean the destruction of the belief system so that the regulation of criminal law and other laws that regarding the victim will serve as a means of restoring the belief system.
6. There are arguments for social contract and social solidarity because the state can be said to monopolize all social reactions to crime and prohibit private actions. Therefore, if there are victims of crime, the State must pay attention to the needs of victims by improving services and regulating rights.
7. Protection of victims is usually associated with one of the objectives of punishment,

namely conflict resolution. By resolving conflicts caused by criminal acts, it will restore balance and bring a sense of peace in society. (Muladi, 1997) .

## **B. FACTORS OF HUMAN TRAFFICKING**

Trafficking is the illegal trade in humans for the commercial purpose of sexual exploitation or forced labour. The term trafficking comes from English and means “illegal trade” or illegal trade. This is a modern form of slavery. There is also an understanding that states that Trafficking comes from the word Traffic which means trade. The root word for people who trade / sell is "Trafficker" which means trader. The term "trafficking" was first recognized from the UN instrument. At first "traffic" was used to refer to the "white slave trade" experienced by women around 1900.

The United Nations (UN) defines human trafficking as: The recruitment, transfer, transfer, harboring or receipt of persons, by means of the threat or use of force, or other forms of coercion, of abduction, of fraud, of the abuse of power or of position of vulnerability, giving or receiving payments or benefits to obtain the consent of a person having authority over another person for the purpose of exploitation. (2000 United Nations Protocol to Prevent, Combat and Punish Traffickers against Humans, in particular women and children; Supplement to the United Nations Convention on Transboundary Crime). The United Nations Convention, Article 3 point a of the protocol to prevent, suppress and punish trafficking in persons, especially women and children, explains: “The recruitment, transportation, transfer, harboring, or receipt of persons by means of the treat af use of force of other forms of coecian, of fraud, of deception, of the abuse of power or of position of vulnerability or giving or receiving of payment ort benefits to achieve the consent of a person having control over another person, for the purposes of exploitation shall include, at a minimum, the exploitation of the prostitution of others or other froms of sexual *exploitation, forced labor or services, slavery of practices similiare to slavery, servitude or the removal of organs.* (Cahya Wulandari; Sonny Saptoajie Wicaksono, 2014).

### **1. Poverty Factor**

Poverty is one of the main factors that encourage people to do anything to get out of their limitations. The following is an overview of the three aspects of poverty; To supply side (supply side) is influenced by the poverty factor experienced by individuals (limited facilities and access to the necessities of life). The demand side (demand side) refers to commercial industries or activities that rely on poverty as a commodity (individuals traded illegally) with the aim of maintaining profit or profit. Various views of institutions or organizations in the majority state that the main factor and root cause of human trafficking is that it is influenced by the supply side as a result of poverty. The poverty factor has pushed millions of Indonesians to migrate, domestically and internationally, which is seen as a way to get a good life for themselves and their families. Based on research results, a study in 41 countries shows that the desire to improve economic conditions and lack of job opportunities are one of the main reasons women seek work abroad. (Everd Score Rider Daniel, Nandang Mulyana, nd)

In conditions of economic hardship, they try to improve the economy by looking for work. Making people dare to take risks to work outside the city to abroad which in this situation is very easy to be exploited by people to irresponsible associations. Then in conditions of poverty, people and irresponsible associations, through persuasion to

transport and send victims outside the region or abroad so that they can be traded. Thus, poverty is included as a major factor in the occurrence of criminal acts of trafficking in persons (Tanjung, 2020) .

## **2. Environmental factor**

The environmental factor (the influence of others) here is the proximity of the victim to the perpetrator which makes the victim easy to believe in the persuasion of the perpetrator. Then his association with his fellow friends who had also used the services of female Commercial Sex Workers (PSK) which made him fall into the crime of trafficking in persons. This is what makes him want to sell women to these people because they are willing to pay a lot of money so that it is easier for him to get a lot of money than having to work. In carrying out the criminal act of trafficking in persons, he has made many acquaintances with several customers, therefore this crime of trafficking in persons occurs because of an offer from these customers.

## **3. Economic Factor**

The economic factor is caused by the ease with which the perpetrator gets a lot of money from every transaction he makes to people who will use the services of the women he trades. Instead of having to work, it is not necessarily the money he gets from the job that can meet his daily needs.

## **4. Educational Factor**

The educational factor is the victim's lack of knowledge about the dangers of this crime which makes it easy for him to fall into the crime of trafficking in persons. This makes it easy for the perpetrators to persuade the victim and eventually traffic the victim and exploit her sexually (Zia Zakiri, 2017).

Analysis of Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.

Indonesia is a state of law, as contained in the 1945 Constitution of the Republic of Indonesia. Of course, without prejudice to all rights related to human rights, Law no. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. The problem of criminal acts of persons is not a problem that can only occur at the national level, but is based on cases that occur at the international level. So this really threatens the enactment of violations of human rights for the victims.

The problem of trafficking in persons is not only detrimental to victims because their rights have been abused to the point of eliminating their rights, but the state also suffers losses. Call it some adult women who are sent abroad to be exploited or sold to fulfill the desires of masher men, then the state suffers a loss of human resources, lack of tax revenue where we know that our main state income is taxes. . Then this woman left the children who have the potential to become homeless for no relatives, then the homeless in Indonesia with the government's efforts are not decreasing, but increasing. Then the government's efforts in forming the RI Law no. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons is correct, and

honest law enforcement efforts are needed based on humanity, because fair decisions are decisions that are born from human conscience that humanizes humans, as well as efforts made by people who act caring for the environment.

Forms of exploitation include forced labor or services, slavery and practices similar to slavery. Forced labor or forced service is a working condition that arises through a method, plan or pattern intended to make a person believe that if he does not perform certain actions, he or his dependents will suffer both physically and psychologically. other people's property. A practice similar to slavery is the act of placing a person in the power of another person so that that person is unable to refuse a job that the other person has unlawfully ordered him to do, even though that person does not want it.

The issue of the crime of trafficking in persons (Human Trafficking) needs to be criminalized as a classification of serious crimes. That so far, for the perpetrators of this crime, selling or exploiting humans is a normal thing. This thought is the cause of the increase in criminal acts against human rights. Moreover, from the point of view of the possibility that criminal law sometimes violates the very basic human "rechgoederren", namely independence and soul, then it is the right place if the community, especially the community of law graduates, participates in our future criminal law development efforts.

It will be separated from the substance of the law, human resources for law enforcement officers, supporting facilities and infrastructure, interest groups in the community, and the legal culture of the community. Therefore, in trying and delivering verdicts, judges are not only guided by the written law (the mouthpiece of the law), but must pay attention to the values that exist in people's lives.

On that basis, law enforcement must be guided by methods of conflict resolution based on the rule of law, both written law (UU) or unwritten law (values in the form of customary law). The task of law enforcement officers should not only be to maintain order (social order) which functions as a mouth/mouth of the law, but must be based on the strength of the human ratio and values in society, which is an acknowledgment of human rights. In terms of human rights law, decisions against perpetrators must fulfill the community's sense of justice, and the values that live in society. However, the community's sense of justice cannot be fully fulfilled, because the crime of trafficking in people is very disturbing and disrupts the order in society, in reality it is also supported by certain communities because it is still considered profitable from an economic perspective (for the perpetrators), but in general TIP must be eradicated. Therefore, if the judge's decision is felt to be unfair and does not fulfill the community's sense of justice, it will lead to public distrust of the law, and in the end it will cause chaos and uncertainty, not even covering the possibility of a street trial. In addition, the process of enforcing and implementing criminal law that has been carried out as above, the role of criminal law does not only act as a means of regulating public order (social order) in order to create social policies (social defense), funds both preventively and repressively. judges will be in accordance with the objectives of criminal law policy, namely public welfare (Andreo, 2013) .

## CONCLUSION

From the results of research on data sources and analysis in the previous chapter , the authors can conclude as follows:

- a. Factors that occur in human trafficking.
- b. Poverty Factor, that in conditions of economic difficulty, they try to improve the economy by looking for work.
- c. The environmental factor (the influence of others) here is the proximity of the victim to the perpetrator which makes the victim easy to believe in the persuasion of the perpetrator. Then his association with his fellow friends who had also used the services of female Commercial Sex Workers (PSK) which made him fall into the crime of trafficking in persons.
- d. Economic factors are caused by the ease with which the perpetrator gets a lot of money from every transaction he makes to people who will use the services of the women he trades.
- e. The education factor is the victim's lack of knowledge about the dangers of this crime which makes it easy for him to fall into the crime of trafficking in persons.

Establishment of Law no. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons is one of the government's efforts in dealing with criminal acts that occur. Efforts to eradicate criminal acts of trafficking in persons are not solely the government's obligation, but our collective obligation. Therefore, law enforcers should really punish the perpetrators of the crime of trafficking in persons in order to provide a deterrent effect for other perpetrators.

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