

Law No. 21 of 2007 concerning the Eradication of Human Trafficking Crimes

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Abstract

Trafficking in persons is categorized as a transnational crime. Therefore it is important to create an adequate legal umbrella in efforts to eradicate trafficking in persons. Given the magnitude of the danger of TIP, both for victims and future generations of the Indonesian nation in the future, it is expected that the implementation of intensive, effective and comprehensive socialization efforts for all circles of society and all efforts to prevent and handle TIP will receive support so that the eradication of TIP runs smoothly without many obstacles in implementation. It is hoped that the application of the TIP Law will provide a deterrent effect for the perpetrators, justice for the victims and a decrease in the crime rate of trafficking in persons.

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1. INTRODUCTION

Public understanding of Trafficking in Persons is related to an attitude of awareness of the law regarding the importance of rules in the form of positive law. Related to the level of legal awareness, therefore understanding of the law is not only at the understanding of enactment of laws and regulations, but rather at the level of implementation, so that understanding of trafficking in persons is not only at the concept level, but is prioritized at the level of implementation or application related to legal awareness. Regulations have been felt as a necessity, then they will become legal feelings, so that legal regulations will be able to apply as needed and not because of compulsion. Thus the purpose of law and law enforcement will run in accordance with the rule of law. (Nurhenny, 2010: 350).

Historically, human trafficking can be regarded as slavery and also violates human rights. This condition develops in an economic society that has a weak economic level, lacks understanding of religion or morality, and depends on strong economic groups. The reasons given by the victims were generally that their actions were legal on the basis of an agreement. Violations of human rights in the form of slavery are generally in the form of deprivation of freedom from a person, which is carried out by strong economic groups against weak economic groups. So, on that basis the prevention of Trafficking in Persons in the perspective of violations of Human Rights must be carried out in a comprehensive and integral manner, which can be carried out through the level of criminal law policy by legislative, executive and judicial means. (Farhana, 2010: 198).

Trafficking in Persons has been regulated in Law Number 21 of 2007 concerning the Criminal Act of Trafficking in Persons, and is punishable by criminal sanctions, but in practice this act is still widely carried out, even used as a livelihood or a source of income for family life. The Human Rights Law, in which perpetrators will be subject to criminal sanctions, which, judging from its effectiveness, this regulation is ineffective. (Kansil, 2009: 129).

The causes are of course various reasons, it can be caused by other factors, resulting in an ineffective law enforcement process or public distrust of legal institutions, because they think they will not get justice (Priyanto, 2013: 68).

This organized crime includes any group of people whose main activity is violating criminal law to gain illegal profits and power by carrying out criminal activities (Rosnawati, Din & Mujibassailin, 2016).

Historically, human trafficking can be regarded as slavery and also violates human rights. This condition develops in economic communities that have a weak economic level, lack of understanding of religion or morality, and depend on strong economic community groups (Satriani, & Muis, 2013).

In general, the reasons given by victims were legal actions based on agreements. Human rights violations in the form of slavery are generally in the form of deprivation of one's freedom, which is carried out by strong economic groups against weak economic groups. Therefore, on that basis the prevention of trafficking in persons from the perspective of human rights violations must be carried out in a comprehensive and integral manner, which can be carried out through the level of criminal law policy through the legislature, implementation and judiciary (Munthe, 2015).

The Government of Indonesia has enacted Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons with the consideration that every person as a creature of God Almighty has Human Rights in accordance with the glory of his dignity and is legally protected by the 1945 Constitution of the Republic of Indonesia. as stated in Article 28 A that: "Every person has the right to live and has the right to defend his life and existence" (Azizur Rahman, 2014).

The definition of law according to Utrecht (1963) is a set of regulations (commands and prohibitions) that regulate order in a society and must be obeyed by that society. Therefore, violation of the law can lead to legal action to be taken by the government/authority. The law was created for society, so the law must be in accordance with developments in society. Law has a binding and coercive nature. So that the community has the obligation to obey and comply with these rules/laws.

The function of law according to Sudikno Mertokusumo (1987) "The law functions as a protection of human interests, so that the interests are protected, then the law is carried out in a real way. Then distinguish based on the function is Primary and Secondary. The primary direct function of law includes:

1. Prevention of certain acts and encouraging the performance of certain acts
2. Provision of facilities for private plans
3. Service providers and repurchase of goods
4. Settlement of disputes outside the regular channels.

2. LIBRARY STUDY

A. Law No. 21 of 2007 concerning Eradication of Criminal Acts Against Human Trafficking.

Human trafficking is a crime that is classified as an international crime. This is because the crimes committed do not only involve domestic networks but have involved cross-country networks. History explains that human trafficking was initiated by slavery during the colonial era.

East Nusa Tenggara (NTT) is one of the provinces that is active in sending workers abroad. Data from the Legal Aid Institute (LBH) of the Indonesian women's association for justice (APIK) explains the crime of human trafficking under the mask of sending workers from NTT to other regions and abroad.

Law No. 21 of 2007 concerning the eradication of criminal acts of human trafficking is one of the policies made by the government as a form of effort to inhibit and eradicate cases of human trafficking. Article 1 explains that what includes acts of human trafficking are acts of recruiting, transporting, harboring, sending, transferring, or receiving someone with threats of violence, use of force, kidnapping, confinement, counterfeiting, fraud, abuse of power, and debt bondage. In its implementation it has not run optimally, this is indicated by the number of cases that have occurred and have even taken root in society.

If a law has been promulgated in the State Gazette, then the law is considered to have been known and understood by certain people. Law No. 21 of 2007 is one of the laws and regulations that has been ratified and promulgated. Thus the community is considered to have known and understood the policy. However, the results of observations made by the community in particular have not fully understood the policy.

The main problem in this research is how to apply law no. 21 of 2007 concerning the eradication of criminal acts of human trafficking.

Law No. 21 of 2007 concerning the Eradication of Human Trafficking Crimes was made to protect human rights in accordance with their dignity. This cannot be separated from the State's duty to protect the entire Indonesian nation and all of Indonesia's bloodshed.

Policy implementation is a very crucial stage in the public policy process. In implementing the policy, the policy will be tested whether the policy is feasible or not to be implemented. This stage is a determinant of the success of a policy. According to Edward The three determinants of policy implementation or application are:

a. Communication

Communication, that is, every policy will be implemented properly if there is effective communication between the executors of the victims and the target groups (SUBARSONO, 2011; 90).

b. Resource

Resources, namely any policy that must be supported by adequate resources, both human resources and financial resources (INDIAHONO, 2009:31).

c. Disposition

Namely pointing to the characteristics that stick closely to the implementer of the policy. Important characters possessed by the implementer are honesty, commitment and democracy (WIDODO, 2008: 104)

d. Bureaucratic structure

Bureaucratic structure is important in policy implementation. The aspect of bureaucratic structure includes two important things. The first is the mechanism and organizational structure of the implementing organization itself. Meanwhile, the two implementing organizational structures must also be able to guarantee rapid decision-making on extraordinary events in the program (INDIAHONO, 2009:32).

B. Criminal act

a. Definition of Crime

The term criminal act in Dutch is called *Criminal act*, whereas in the Indonesian translation besides the term "Criminal Act" several other terms are also used either in books or in written regulations such as punishable acts, punishable acts, criminal incidents, criminal offenses and criminal acts

Moeljatno (2008) defines the term "*Criminal act*" as a "Criminal Act", namely an act prohibited by a rule of law, the prohibition is accompanied by threats or sanctions in the form of certain crimes for anyone who violates the prohibition.

b. Elements of a Criminal Act

According to the experts as follows:

1) According to Prof. Moeljatno, the elements of a crime are as follows:

- a. Human actions
- b. Comply with legal requirements
- c. Is against the law

2) According to Van Hamel, the elements of a crime include:

- a. Human actions formulated in law
- b. Against the law
- c. Done by mistake
- d. Should be punished

c. All kinds of crimes

1. Offenses of Crime and Offenses of Violations
Crime offenses and violation offenses are known in the formulation of the Indonesian Criminal Code articles that are in force until now. However, the formation of the law explicitly defines what is meant by criminal offenses and violation offenses. Criminal offenses are acts that are considered to be criminal because they are contrary to justice, even though these actions have not been regulated by law.
 2. Formal offenses and material offenses
A formal offense is a criminal act that has been completed and the act complies with the formulation in the article of the law concerned. While material offenses are a prohibited consequence arising from a certain act or its consequences.
 3. Deliberate offense and negligent offense
Deliberate offense is an offense committed on purpose. While offenses of negligence are committed due to errors or negligence.
 4. Complaint offenses and general offenses
Complaint delict is an offense that can be prosecuted by requiring or requiring a complaint from the injured person. Meanwhile, a general offense is an offense that can be prosecuted without the need for a complaint.
 5. Special offense
A special offense is an offense that is only committed by people who have certain qualities or characteristics, for example civil servants and members of the military.
 6. The offense stands alone and the offense continues
An independent offense is an offense that is only committed once. Meanwhile, continuing offenses are offenses that include actions where the actions are one with another and continuously.
 7. Pure political offenses and mixed political offenses
Pure political delicts are offenses aimed at political interests. Meanwhile, mixed political offenses are offenses that are half political and half general.
 8. Ordinary offenses and qualified offenses.
Ordinary offenses are all offenses in the form of basic or simple without weighting criminal threats. Meanwhile, a qualified offense is an offense that takes a special form due to certain circumstances that can exacerbate or reduce the penalty.
- d. Objectives of the Theory of Crime Regarding these objectives, there are three theories, namely:
1. To scare
The theory of Anselm VonReurbach, the punishment should be given in such a way that people fear to do evil.
 2. To improve
Punishment that is imposed with the purpose of improving the condemned so that he becomes a useful person
 3. To protect
The purpose of the law is to protect society against evil acts
The oldest relative theory or objective theory is the general deterrence theory. According to this theory, in order to protect public order (society) against a crime, the perpetrator who is caught must be used as an example with such punishment so that people become repentant because of it.
While relatively more modern theory with special prevention theory. This theory holds that the purpose of punishment is to prevent the evil intentions of the perpetrator of a crime who has been sentenced to a crime from committing another crime.
The retributive approach places emphasis on the idea of the right to impose harsh punishments on the grounds that because a person is responsible for his actions, he should have accepted the punishment imposed on him. *Revenge Theory* or the theory of revenge is also usually made, putting the justification of sentencing into the depths of past human

experience, at least back to principle *The law of retaliation*, eye for eye, soul for soul. *Expiation Theory* or the theory of repentance which means that only through punishment a criminal will atone for his sins.

Deterrence has the basic premise that punishment which results in pain is not justified unless it can be shown that by giving a sentence a better result will be obtained than if a penalty is not given. According to intimidation theory, if a person is serving a sentence, he cannot commit a crime, therefore, according to this view, punishment serves to reduce or eliminate crimes that can be committed by that person.

The basis for punishment according to the incapacity theory is that the perpetrators of crimes are made unable to commit crimes again either temporarily or permanently. Meanwhile, according to rehabilitation theory, the purpose of punishment is to change the personality or mentality of the offender, so that his personality is in accordance with the law.

The last theory is a combination of the theories above, namely the theory of coaching. This coaching theory prioritizes attention to the perpetrator of the crime, not to the crime that has been committed. This punishment is based on the severity and severity of the crime committed, but must be based on the needs needed to be able to correct the perpetrator of the crime.

C. Review of human trafficking actions

One of the factors causing violations or crimes of human trafficking. The increasing problem of trafficking in persons in various countries in the world, including Indonesia and other developing countries, has long been a concern for Indonesia as a nation, and has also become the concern of the international community. Trafficking in persons has caused suffering for many people because victims are trafficked not only for the purpose of prostitution or other forms of sexual exploitation, but also includes other forms of exploitation, such as forced labor and slavery. They are generally physically exploited in various places for commercial purposes and are isolated from the outside world so that the impact of physical and psychological suffering on victims is accompanied by deprivation of liberty.

The prevalence of trafficking in persons can be seen from cases of trafficking in persons which have been uncovered with a relatively large number of victims. On July 16 2019 the police arrested seven suspects in the case of the crime of trafficking in persons, with four victims namely T, MP, WWri and RAF. The police then conducted an investigation and succeeded in arresting a recruited suspect named Mamun, from the group.

From 2011 to 2019, around 500 people have departed to Asia Pacific and the Middle East. Traffickers generally search for victims in various ways, such as luring potential victims with various attempts. Among the perpetrators there are those who directly contact potential victims or use other methods by sending workers both between regions and between countries. There are perpetrators who work alone or in an organized manner who work with networks using various methods, subtly or violently.

Furthermore, based on empirical evidence that women and children are the most numerous or most vulnerable groups who become victims of the crime of trafficking in persons. This situation is caused by women and children who are physically and psychologically weak, so they are very easy to exploit.

The network of perpetrators of the crime of trafficking in persons, especially corporations, has a range of operations not only between domestic regions but also between countries. The perpetrators of the crime of trafficking in persons carry out various methods in recruiting, transporting, transferring, hiding, or accepting people for the purpose of inviting, imposing, or taking advantage of these people in the practice of exploitation in all its forms with threats of violence, use of force, kidnapping, falsification, fraud, abuse power or position span or provide payments or benefits, with the aim of getting as many victims as possible (journal of recourse, volume 3 number 1 of 2022 February; 316-323).

3. RESEARCH METHODS

A. Types of research

This type of research is normative legal research or doctrinal legal research, where Irwansah stated:

"The notion of doctrinal law is research on law which is conceptualized and developed on the basis of the doctrine adhered to by the drafter or its development" (Irwansah, 2020). Still regarding normative law, Peter Mahmud stated : "Legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal problems they face." (Marjuki, 2011).

B. Data Type

1. Primary Legal Materials

Is the main legal material, as legal material that is authoritative, namely legal material that has authority, primary legal material includes various laws and regulations and all official documents containing legal provisions

2. Secondary Legal Materials

Secondary Legal Materials are documents or legal materials that provide an explanation of primary legal materials such as books, articles, journals, research results, papers and so on, which are relevant to the issues to be discussed.

3. Tertiary Legal Materials

Tertiary Legal Materials as legal materials that provide instructions and explanations of primary and secondary legal materials, such as dictionaries and encyclopedias. Law as a whole regulation of behavior established by the government

C. Data source

This writing was done by means of literature study, namely by reading and examining books related to the problem and studying other literature which was then based on the literature study then processed and formulated systematically according to each subject and language material.

D. Data analysis

The data manager uses descriptive analysis, meaning that the data obtained is based on reality and then associated with the application of applicable laws and regulations, discussed, analyzed and then drawn conclusions which are finally used to answer existing problems.

E. Thesis Systematics

In this writing the author suggests the following systematic writing:

- a) Background: discussing the introduction or previous research as well as the core of the problem which is the reason why the problem with the title "**Law No. 21 of 2007 concerning the Eradication of Human Trafficking Crimes**"
- b) Problem Identification: discusses some of the findings of problems that often arise / or often occur, especially in the community environment.
- c) Focus of study: discusses the focus of the problem under study related to the case of "Cyber Trafficking Countermeasures with Criminal Law"
- d) Problem formulation: contains several problem findings that are felt urgent and must be answered according to the title or case to be studied
- e) Research objectives and benefits : contains objectives to be achieved in research , in order to obtain benefits from research in the form of academic and practical benefits .
- f) Literature review: the literature review describes the doctrine, expert opinion, and theoretical framework materials used by the author to support the analysis of the problem under study.
- g) Research method: contains research types, data types, data sources, data analysis and writing systematics.
- h) Writing system

- i) Bibliography: contains references cited or referred to in writing, the results of interviews and laws and regulations will then be compiled and used as a bibliography.

4. RESEARCH RESULTS AND DISCUSSION

The factors that cause the crime of human trafficking are caused more by factors of poverty, education and lack of awareness in addressing various problems in life that occur, coupled with economic conditions and taking advantage of weaknesses in remote villages where all information about everything can not get the maximum. Efforts to eradicate the crime of human trafficking are preventive and repressive efforts to eradicate crime. Preventive efforts are efforts made by the National Police with the support of the community. Repressive efforts are efforts taken to carry out investigative and investigative activities, prosecutions, court examinations and executive implementation.

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