

Job Offers as A Mode of Human Trafficking Criminal Acts From the Perspectives of Positive Law and Islamic Law

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<p>Article History Received : 2019-09-04 Revised: 2019-09-10 Published: 2019-09-30</p> <p>Keywords: <i>Slavery, Hukman Trafficking</i></p>	<p>It's important to note that Indonesia is one of the largest suppliers of migrant workers in Asia. Migrant workers are recruited through various means, including both legal (official) and illegal (smuggling) methods. The recruitment of illegal migrant workers has always been linked to slavery, which is one of the forms of human trafficking. In fact, human trafficking crimes have many forms and variations, generally carried out to extort and oppress victims for profit. Although various fundamental prevention strategies have been formulated and implemented, the social reality is that various obstacles are encountered in preventing human trafficking through the placement of migrant workers. Therefore, cooperation and synergy between all individual sectors, law enforcement agencies, and the government are needed.</p>

I. INTRODUCTION

Indonesia's current development agenda focuses on achieving greater citizen prosperity and national happiness while maintaining independence, justice, and religious morality. However, in reality, some Indonesians still struggle and are often enslaved, contradicting the goals of development and the human rights revolution. Therefore, human rights are fundamental and essential freedoms. Therefore, human rights are a very special and extraordinary entity because they are a gift from God. The absence of human intervention means they cannot be changed. Human rights are the responsibility of everyone, regardless of who they are, including the state, law, society, and individuals, to uphold and protect them at all times and places. Human rights include civil, political, social, and economic rights, as well as the right to live independently and free from intimidation that affects human dignity. Any action that is seen as violating human freedom and liberty is slavery.

Indonesia is currently one of the largest suppliers of migrant workers in Asia. Migrants are

often exploited both legally and illegally. The term "slavery" is generally used to describe illegal transportation, which is also linked to human trafficking. Government officials are deeply concerned about the existence or occurrence of modern slavery, a criminal offense involving human trafficking, particularly women and children. Due to the high risk of violence, trafficking in women and children is more protected than in men. Human trafficking not only violates human rights but also violates human rights protections and is contrary to the general welfare. Furthermore, human trafficking activities are often accompanied by various forms of intimidation and arbitrary acts that can lead to future suffering for the victims, especially those often from low economic status.

Strengthened physically (women and children), mentally, and financially. Based on this, the Indonesian government has taken legal action by ratifying several international human rights treaties. According to the Black Law Dictionary, slavery is a situation in which one person has absolute power over the life, fortune, and liberty of another. Slavery was a major problem for the

Constitution makers. Those who profited from it insisted on protecting it; those who loathed it dreaded even more the prospect that insisting on abolition would mean the Constitution would be abolished. So the framers reached a compromise, of sorts. The words "slave" and "slavery" would safeguard the 'peculiar institution' from the abolitionists.

However, KBBI states that slavery has a similar meaning to being a slave, aka being treated as a slave, and all of this refers to slaves who are purchased. In the course of its evolution, styleThe current practice of slavery, the distribution of migrant labor, which leads to slavery, can be categorized as a variation of "human trafficking," a widespread crime, and therefore society, has become a threat to the state and nation. Therefore, it is important to have a spirit to overcome, overcome, and even eradicate human trafficking practices based on noble values, as well as efforts to prevent them from the start, combat perpetrators, protect victims, and increase cooperation. National and even international efforts are needed. In response to this, the Indonesian government has confirmed that Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (UU PTPPO) is a comprehensive and integrated law enforcement effort.

Formulation Of The Problem

1. Why Can Job Offers Become a Mode of Slavery?
2. What are the Regulations on Slavery in Human Trafficking?

Materials And Methods

Data source

In this case, the author uses several data taken from various sources, namely as follows:

1. The author uses the 1945 Constitution of the Republic of Indonesia as the basis for the rules.
2. The author also uses Law No. 21 of 2007

concerning the Eradication of Criminal Acts of Human Trafficking as a reference regarding human trafficking.

3. Then the author uses Presidential Decree Number 88 of 2001

II. RESEARCH METHODE

A method is a way to achieve a goal. A method refers to a specific technique used to facilitate the achievement of a goal. The research method used in this study is quantitative, which utilizes numerical data obtained from news media. However, we also used literature review to supplement this article.

III. RESULTS AND DISCUSSION

Slavery In The Criminal Act Of Human Trafficking

According to Anwar Tosibo's English-Indonesian dictionary, the word slavery means "slavery" or "forced labor." Meanwhile, in the general Indonesian dictionary, slave means "servant." In other words, the term slavery has the same meaning as slavery, dependence, and a more humane dyadic relationship, although in this case it has an oppressive effect. Slaves are not given rights, but are given obligations, as explained by Martasjita. He must always serve his master. He lives for his master and mistress. A slave must be willing and loyal in carrying out the orders of his master or mistress. Meanwhile, the Arabic expression for slave or servant means "abdun" (male) or "amatun" (female). Because the word comes from the word *ibda* or *-ibada*, worship can be understood as devotion to Allah SWT. "Paisa" or "paidos" is the Greek equivalent of the word "servant" for male or female, or simply "child."

Slavery refers to the practice of treating another person as private property, resulting in the loss of liberty and abuse for personal gain. In this case, the person is employed solely to meet the perpetrator's personal needs and to gain

personal gain. People in developing countries associate slavery with poverty, while those in developed countries see it as a symbol of prosperity and an accessible means of supporting their families, leading many people from developing countries to migrate to developed countries. Social, political, and economic issues play a significant role in determining the potential for migration in any country. Migration is typically associated with economic, political, and social instability (particularly changes in consumer behavior).

Similarly, the crime of human trafficking is regulated through various means, for example, through Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (TPPO), which in its implementation imposes criminal sanctions and the threat of punishment. Despite the sanctions contained in this law, this regulation has not been effective in fact. However, the causes are certainly diverse, and there are other factors such as economic, environmental, educational, inefficient legal development systems, or a lack of trust in the legal system by people who believe they will not receive justice.

The concept of a slave is akin to an object that can be owned, used, damaged, or harmed, and the master can buy or sell them at will. Their bodies and souls are restricted, without freedom, and under duress. Therefore, slaves are inclined to do nothing but obey their master's wishes. This situation is the exact opposite and very different from that of a free person. You are free and not controlled by anyone because you are the sole owner of your body and soul. Modern forms of slavery involve not only physical violence and abuse, but also verbal, psychological, and spiritual annihilation. The most significant impact of this slavery is the loss of self-confidence.

According to M. Yunan Nasution, there are at least three new types of slavery in modern times:

1. Slavery motivated by political considerations.

This makes one nation dependent on another nation (or people), thus creating subtle and hidden constraints.

2. Human trafficking, employing migrant workers for sexual exploitation, and selling babies for profit are examples of social slavery.
3. The slavery resulting from industrial progress and development is known as industrial slavery. The survival of individuals in factories, mines, or other industries depends on their work for minimum wages.

Domestic workers and housemaids (PRT) are the most common domestic workers in Asia, and Indonesia is a major source of international migrant workers. This situation provides an opportunity for Indonesian Manpower Agencies (PJTKI) to utilize their workers and consider their diverse needs. However, the labor situation in Indonesia differs from that in other countries. Indonesian migrant workers (TKI) often face problems, both personal and in general, with the Indonesian government. The biggest problem is that Indonesian migrant workers are often targeted for recruitment, which ultimately leads to human trafficking.

Migrant workers who become victims often face various problems as domestic workers abroad. Many of the victims hope to provide financial benefits for their families, but unfortunately they are exploited through human trafficking. Women and men, boys and girls, are trafficked from Indonesia across national borders to other countries. Target countries include Malaysia, Singapore, Hong Kong, Taiwan, and Middle Eastern countries (Saudi Arabia). The situations and conditions faced by victims include economic, social, political, educational, environmental, and even physical and mental conditions that can affect the victim's condition. In cases of crime, the perpetrator and victim may or may not know each other, or may have met before or during the crime. Victims, like the

perpetrator, can be individuals, groups, or communities that suffer losses due to the perpetrator's actions. The negative side of victims causes stress such as psychological pressure such as disorders such as irritability, irritation, anxiety, trauma, stress, and psychological disorders.

The exact meaning of human trafficking remains unclear. Various laws often use this term as the most likely way to prove that an act of human trafficking is unlawful. Examples include criminal law, child protection law, and migrant worker law. Therefore, efforts to manifest this crime into Indonesian law are a good step. Following the issuance of Law Number 21 of 2007, designed to eradicate human trafficking, the language used in the law has become a primary reference. Article 1, number 1, states: "Human trafficking is the act of recruiting, transporting, harboring, sending, transferring, or receiving a person by means of threat or use of force, abduction, confinement, forgery, deception, abuse of power or a position of vulnerability, debt bondage, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, whether within the country or across countries, for the purpose of exploitation or resulting in the exploitation of that person."

Causes of Human Trafficking

A closer look at the world's third-largest transnational crime reveals a number of very complex reasons. Human trafficking occurs in Indonesia for many reasons. This problem is triggered by various conditions. However, several important factors include:

1. Lack of awareness of the dangers of human trafficking and how victims are tricked into doing this work when looking for work.
2. Poverty forces people to ignore risks and seek work.
3. Cultural factors have made women and children vulnerable to trafficking through forced marriage by parents and through early

marriage. Many women who are forced into marriage are then forced to live outside their home region or migrate abroad, far from their parents. Human trafficking is a common problem among women and children due to cultural factors, including forced or early marriage by parents. Those forced into marriage often feel compelled to move away from their home village or abroad, far from people they can trust.

4. The absence of a birth certificate can result in children being treated like adults.
5. In the case of human trafficking, inadequate law enforcement is a major concern.

In some cases, poverty is the primary cause of vulnerability and powerlessness. The majority of victims come from the most marginalized families and communities. Families facing financial hardship are often forced to sell their daughters to traffickers to pay off debts. However, in recent years, victims of human trafficking have become more likely to be poor and uneducated, but also to face absolute poverty (being below the poverty line), high unemployment, and women and girls who become victims of human trafficking because they perceive themselves as poorer than others and want to bridge the gap. Human trafficking has become an international concern for several reasons, including the numerous human rights violations that occur as a result and impact. Human trafficking is characterized by forced, non-consensual, and exploitative behavior, which is associated with numerous serious human rights violations.

To address this phenomenon, all parties must engage in meaningful activities in schools, campuses, and wherever youth gather. Outreach efforts would be even more beneficial if they foster empathy or reduce the negative stigma against victims of sexual exploitation. The fight against human trafficking must be supported by firm and non-discriminatory law enforcement,

particularly against organized trafficking syndicates.

In addition to raising legal awareness, it is important to apply the principle of empowerment in outreach activities, especially among vulnerable women and girls and their families. They can gain an understanding of the law and safeguard their rights as stipulated in the law, including providing an understanding of human rights and their principles. Therefore, human rights values can be integrated into all activities of various groups at all levels. More importantly, this is about helping victims overcome situations of violence and sexual exploitation, or more precisely, encouraging them to live without stopping. The priority is to help victims cope after experiencing violence or sexual abuse, such as beatings and abuse, and to provide support to continue living. After being informed of their condition, victims often experience depression, self-harm, or suicide due to lack of food and sleep. Most victims hide their wounds and misrepresent their experiences to counselors. This is a reputational issue, but details of sexual exploitation perpetrated by the economic elite are often kept secret.

Human trafficking is an extraordinary crime that degrades the dignity of human beings as believers in God and constitutes a violation of human rights. Learning about the dangers of human trafficking and modern slavery from an early age can help avoid or prevent them. It is crucial to take necessary action to eliminate them. The government may not be solely to blame, as preventing this problem is difficult without the participation of all parties. The goal is to build an advocacy network for Indonesian migrant workers (TKI/TKW) and those affected by human trafficking in Indonesia. Strengthening and building a noble society requires us to establish responsibilities that prioritize understanding and advocacy for human rights.

Legal basis

Indonesia's National Action Plan for the Elimination of Trafficking in Women and Children (RAN) was issued in 2002 through Presidential Decree No. 88 of 2001, which aims to eliminate human trafficking, with a particular focus on women and children. The essence and objectives of RAN-P3A are to:

- a. Ensure increased and accelerated efforts to protect victims of human trafficking, especially women and children.
- b. Using preventive and repressive measures to prevent and control trafficking in persons, especially against women and children, engaging in preventive and repressive measures and taking measures to prevent and control trafficking in persons, especially against women and children, and
- c. Conduct advocacy for the formation and/or improvement of legislation regarding human trafficking, especially against women and children.

To ensure the implementation of the National Action Plan for the Eradication of Trafficking in Women and Children, a Task Force for the Eradication of Trafficking in Women and Children will be established at the national, provincial, and district/city levels. A national task force will be assigned to the task force and report directly to the president. It will consist of a steering committee led by the Minister responsible for Coordinating People's Welfare and an implementing group led by the Minister responsible for Women's Development.

Several regulations and laws address human trafficking in Indonesia, ranging from the Basic Law (UUDNRI) on the Eradication of Human Trafficking to specific laws addressing this crime. Eradicating human trafficking is a primary objective of the 1945 Constitution of the Republic of Indonesia (UUDNRI), which contains several articles:

1. Article 27 paragraph (2) Every citizen has the right to work and a decent living for

humanity.

2. Article 281: The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive laws are human rights that cannot be reduced under any circumstances.
3. Article 28B paragraph (2): Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination.

Legal Protection for Victims of Human Trafficking in Indonesia

As human trafficking becomes more organized, it becomes increasingly difficult for governments to protect victims due to its transnational, structured, and organized nature. This situation necessitates further consideration of victim protection from human trafficking. Furthermore, this article aims to examine how victims are protected from human trafficking and the factors that hinder government protection. Although Indonesia has laws protecting against human trafficking, neither the authorities nor the government have taken sufficient steps to implement effective law enforcement. The legal system, the primary organ and pillar of law enforcement, still does not favor victims. This is because the law still contains abstract provisions regarding victims, who are represented solely by the state. In fact, factors complicating protection lie not only with the government but also with the victims themselves. They may neglect protection because, first, they cannot respond to wrongdoing, and, second, victims and other regulatory bodies fear they will not be able to address wrongdoing. Third, this indifference has become a social condition caused by a widespread lack of response.

Human trafficking is a growing crime in Indonesia. Article 297 of the Criminal Code

regulates this matter, but there is no indication that this provision is being used. Law enforcement must take bold, observational steps to enhance the humanitarian aspect of criminal law. Criminal law expert Arif Gosita stated that our criminal justice system still tends to view crimes from the perspective of the perpetrator. He believes that when the victim's perspective is ignored, something is lost and the balance is thrown off. However, without the victim, the elements that cause the crime would not occur. There are two elements between the victim and the perpetrator that cause a crime to occur. There needs to be a greater focus on the study of victimization, particularly as it relates to victims and perpetrators of human trafficking. This is done to find effective solutions that can be used as a deterrent to crime to prevent further victimization, and as a prerequisite for conducting a comprehensive criminal justice review. The state portrays victims as merely those seeking retribution against their perpetrators, which is manifested in the form of suffering determined by law.

Victims are often underserved here. Even if someone who has committed a crime has been punished, this doesn't necessarily mean they are ready or feel safe. Many victims still feel they haven't received justice or haven't recovered from their social woes due to the trauma they've suffered and the intense psychological pain that is difficult to reverse. This is why protecting victims of crime is crucial. As human trafficking becomes more organized, it becomes increasingly difficult for governments to protect victims, as this crime is transnational, structured, and organized. In response to this, it's crucial to further consider the protection of victims from human trafficking.

Indonesia has a unique history of human trafficking, encompassing various stages of its history, which will be detailed in this discussion. This includes the criminalization of criminal law provisions to the ratification of international

treaties prohibiting human trafficking. Nevertheless, Indonesia has proven to be a country attracting global attention, particularly the United States, which is interested in providing a statistical overview of the crime in Indonesia. According to the 2002 US Department of State Trafficking in Persons Report and the Economic and Social Commission for Asia and the Pacific, Indonesia is among the countries categorized as having the lowest and worst trafficking rates, along with eighteen other countries, including Burma, Cambodia, Afghanistan, Iran, Bosnia, Russia, Qatar, Lebanon, Turkey, Saudi Arabia, and the United Arab Emirates.

The worst and most dangerous countries have large populations, yet their governments fail to meet regulatory standards and fail to respond promptly to victims. The minimum standards under the Trafficking Victim Protection Act of 2000 consist of four elements:

- a. The government must take action against human trafficking and impose sanctions against it.
- b. The government is recommended to impose penalties commensurate with serious offenses that result in death, such as sexual assault with violence and violence or serious human trafficking for sexual purposes such as rape or kidnapping for sexual purposes.
- c. To curb the threat of human trafficking, governments must impose penalties that are severe enough to reflect the seriousness of the offense.
- d. The government is obliged to make serious and continuous efforts to eradicate the crime of human trafficking.

A set of activities can be developed by combining criteria and combining them to prioritize prevention, protection of perpetrators, and action against perpetrators. For example, the government can begin with prevention and take steps such as education and training about the dangers of human trafficking. Protecting victims

of human trafficking also means ensuring that their rights are protected and that they are not punished.

Legal steps the government can take include investigating and prosecuting human trafficking activities in the region and extraditing suspected human traffickers and those accused of other serious crimes.

Since 2002 until now, the government's efforts to eradicate the crime of human trafficking in Indonesia can be summarized from several legal documents issued by the government. However, the government has made efforts to meet, if not fully meet, the minimum standards set by the US agreement mentioned above. Since the enactment of Child Protection Law Number 23 of 2002, Presidential Decree Number 59 of 2002, Presidential Decree Number 87 of 2002 established the National Action Plan for Child Labor to eliminate the worst forms of child labor. Presidential Decree Number 88 of 2002 concerning the Elimination of Commercial Sexual Exploitation of Children and the National Action Plan for the Elimination of Trafficking of Women and Children, as well as specific measures by relevant ministries, NGOs, community organizations, the police, etc. At the end of June 2003, Indonesia rose to second place, a step forward that reflects its significant efforts. This is a good start for the involvement of the Indonesian people.

The government made commendable prevention efforts in 2004 by raising public awareness of human trafficking. The government increasingly deployed anti-trafficking ambassadors, who were national television presenters, to raise public awareness and the need for further warnings about trafficking prevention efforts. Indonesia now has a more comprehensive law on the elimination of human trafficking, passed by the House of Representatives in April 2007, namely Law No. 21 of 2007 concerning the Elimination of the Crime

of Human Trafficking.

Legal Protection for Victims of Human Trafficking

Legal Protection

Viewed from the legal aspect of legal protection provided by the government, the most important and significant is the implementation of the Criminal Code (KUHP). Even though this legal product does not consider the interests of victims over perpetrators, there is at least one clause that regulates the provisions for victim protection. That is Article 14c Paragraph 1 of the Criminal Code concerning civil compensation. The article reads as follows: "In the order referred to in Article 14c, except in the case of imposing a fine, then together with the general condition, that the person convicted will not commit a crime, the judge may make a special condition that the person convicted will compensate for the losses incurred due to the crime, all or only part of it, which will be determined in the order specified in the order as well, which is less than the probationary period."

Based on the above article, one interpretation arises that the contents of criminal law do not provide specific attention to victims. According to Barda Nawawi, victim protection in positive criminal law is more abstract or indirect. This means that the different formulations of criminal acts in legislation mean that legal protection and human rights for victims are inherently provided.

To date, the Criminal Code has not provided specific and firm provisions to provide legal protection to victims, nor does it regulate criminal compensation for victims and their families. Because judges are selected on a voluntary basis, this provision is not binding and does not mandate judges to provide protection in accordance with the provisions of the Criminal Code. In addition to the protection of the Criminal Code, Law Number 13 of 2006 also covers the protection of victims and witnesses. Article 5 (1)

outlines legal protection for the safety of the person, family and property, as well as freedom from intimidation in connection with statements. Involvement in deciding protection and security measures, providing information without coercion, employing interpretive speakers (without asking confusing questions), staying informed of legal developments and court cases, establishing a new identity and address, receiving compensation for costs related to transportation, accommodation, using legal counsel, and receiving temporary living expenses until the protection period ends.

Regulations for preventing the crime of human trafficking are stipulated in Law Number 21 of 2007, which is called the Eradication of the Crime of Human Trafficking. Specifically, Article 43 paragraph (1) stipulates that the state provides compensation, medical rehabilitation, and social assistance to victims who suffer physical, mental, and social suffering due to the crime of human trafficking, and social reintegration. Articles 44, 47, 48, and 51 to 54 of Law Number 21 of 2007 regulate the confidentiality of the victim's identity and property rights. The inclusion of costs and compensation for legal disputes both at home and abroad is mandatory in court decisions.

Since the enactment of this law, the crime of human trafficking in Indonesia has become increasingly widespread, and therefore our government and parliament, among others, adopted Law 2009 to ratify the Protocol on the Prevention, Control and Punishment of Trafficking in Persons. Number 14 was ratified again. The UN Convention against transnational crime or what is called the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. In addition, the Government and the House of Representatives have announced Law Number 15 of 2009 which

ratifies the agreement on the implementation of the Protocol on the Elimination of Smuggling and Migration by Land, Sea, and Air, complementing the UN Convention against Organized Border Crime. (Protocol Against Smuggling Of Migrants By Land, Sea, and Air).

Non-Legal Protection

In addition to providing detailed explanations of the relevant laws and other relevant laws, we must also provide definitive, high-quality, and relevant terminological explanations of those references. The first step is to offer consultation services and medical assistance, which the state must provide specifically to an institution. This way, the public can feel safe and confident in uncovering real crimes, while feeling equal to the general public without discrimination. By providing information, the public can cooperate with the police as partners, and information is expected to improve their ability to monitor police performance.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Article This paper addresses the issue of human trafficking, focusing on Indonesian migrant workers who are often vulnerable to exploitation. It discusses various forms of modern slavery and the challenges associated with them, including the legal and illegal placement of workers, as well as the exploitation of women and children. The author also emphasizes the need for cooperation and synergy between various sectors of society, law enforcement, and the government to prevent and address human trafficking effectively. yang dibahas pada artikel ini. *Pertama*, lembaga-lembaga hukum adat saat ini merupakan lembaga hukum alternatif, yang penting untuk dijadikan sebagai landasan atau sumber pembentukan hukum nasional. *Kedua*, bidang-bidang hukum adat yang masih relevan dalam mengatasi permasalahan-permasalahan saat ini

meliputi baik bidang hukum yang bersifat netral seperti hukum keluarga dan waris, hak-hak atas tanah yakni ulayat, hak keuntungan jabatan, hak menarik hasil hak pakai, dan transaksi yang bersangkutan dengan tanah seperti, hak sewa, perjanjian belah pinang (maro), Sewa dan jaminan dalam perpindahan hak berkaitan dengan tanah maupun non netral seperti lembaga Nagari.

B. Suggestion

1. This article highlights the importance of a strong legal framework to address human trafficking and protect the rights of migrant workers, recommending the enforcement of existing laws and the development of new laws where necessary.
2. This article emphasizes the need for collaboration between government agencies, law enforcement, and civil society organizations to prevent human trafficking and provide support to victims. It also underscores the importance of international cooperation on this issue.
3. This article recommends establishing support mechanisms for victims of human trafficking, including access to legal, medical, and psychological assistance. It also highlights the need for measures to prevent re-victimization and support survivors' reintegration into society.
4. This article underscores the importance of raising awareness about human trafficking and migrant rights, both among the general public and potential victims. The author recommends including relevant topics in school curricula and disseminating information through various media channels.

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