

Protection Of Human Rights Against Female Commercial Sex Workers as Victims of Trafficking in Person Under law Number 21 of 2007 Concerning The Crime of Trafficking in Persons

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ABSTRACT

Whereas the practice of sexuality or prostitution in Indonesia is generally strictly prohibited by law, however it is still carried out secretly and sometimes even without regard to age limits. This practice is often motivated by criminal acts of human trafficking. The formulation of the problem that will be the main topic of discussion is: How is human rights protection for female commercial sex workers in Indonesia from the perspective of the rule of law, What are the elements in the criminal act of trafficking in persons, What are the legal protection efforts for women who are victims of the criminal act of trafficking in persons Based on the Law -Law of the Republic of Indonesia Number 21 of 2007 concerning the Crime of Human Trafficking, this research is normative juridical research, namely research that refers to legal norms contained in statutory regulations, court decisions and legal norms that exist in society. In this research, an analysis and dissection of Law of the Republic of Indonesia Number 21 of 2007 concerning the Crime of Human Trafficking will be carried out. In this research it can be concluded that the implementation of Law Number 21 of 2007 concerning the Eradication of the Criminal Act of Trafficking in Persons (PTPPO), is still very weak. So far, law enforcement officials have mostly used the Criminal Code (KUHP) to ensnare perpetrators of cross-border human trafficking (trafficking) whose networks are increasingly complex.

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1. INTRODUCTION

Human trafficking, as one of the worst acts of violation of human dignity, is nothing new. The practice of buying and selling human beings, especially women and children, has been going on for a long time and has changed in the form and pattern of capturing victims from time to time. Recently, human trafficking has become a real concern, namely that apart from the increasing number of victims, quite neat networks

of traffickers have also been formed, and their modus operandi has become increasingly sophisticated. (Hanifah, 2008)

Based on empirical evidence, women and children are the groups most sought after by victims of human trafficking crimes. Victims of human trafficking are not only for the purpose of prostitution or other forms of exploitation, for example forced labor or forced services, slavery or similar practices. (Hatta, 2012)

Human trafficking is a classic problem that occurs throughout time. We cannot refute the public view (*communis opinio*) that human trafficking is a form of modern slavery. Human trafficking is a very evil crime and is one of the fastest growing crimes in the world. Nowadays human trafficking is also one of the five biggest crimes in the world that must be tackled because of the consequences it has not only on the economic aspect, but also on the political, cultural and humanitarian aspects. (Ali & Pramono, 2011)

Indonesia as a legal state guarantees legal protection for every citizen, including victims of human trafficking. This can be seen in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which emphasizes that "the State of Indonesia is a State of law". As a state of law (*recht staat*), Indonesia accepts law as an ideology to create security, order, justice and prosperity for its citizens. As a follow-up to cover the crime of trafficking in persons, Law of the Republic of Indonesia Number 21 of 2007 concerning the Crime of Trafficking in Persons was promulgated. According to Mahmud Mulyadi, in order to achieve this goal, law must be applied to divide rights and obligations between individuals in society, divide authority and regulate ways of solving problems related to law and as an effort to maintain legal certainty. The law protects all Indonesian people, without distinction between ethnicity, culture and gender, both men and women are equal in the eyes of the law (equality before the law). In fact, the law also protects society from the crime of human trafficking. (Ziliwu, Kalo, Mulyadi, & Ablisar, 2016)

This means that Indonesia as a country of law must treat its citizens equally before the law, so the principle of equality before the law must be upheld. (Tahir, 2002). This is an absolute right that must be implemented because the criminal act of human trafficking is a human rights crime. Regarding human rights, Sudikno Mertokusumo stated that justice is one of the goals of law and every legal subject wants justice. Every legal institution strives to create justice that provides satisfaction for legal subjects as the regulation of human actions by power is said to be valid not only in decisions but also in their implementation in accordance with natural law, in other words, the law

must be in accordance with the nation's ideology as well as protecting the people.(Soumena, 2011)

As is known, Human Rights (HAM) are rights that are inherent in individual individuals, and these rights are the most basic rights for every individual to stand and live independently in a society, nation and state. This means that the crime of human trafficking is a form of discrimination against humans. From the explanations above, it can be seen that the Indonesian State is actually committed to law enforcement so that every citizen will receive recognition, guarantees, protection and certainty of fair law and equal treatment before the law. So the legal basis for human rights in Indonesia is Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights. (Tumpa, Halim, Sampurno, & Jurdi, 2010)

2. METHODS

This research is descriptive research, which aims to get suggestions about what should be done to overcome the problems in this research. Descriptive research is research aimed at obtaining suggestions for solving certain problems. This research aims to obtain suggestions for criminal law protection for women who become commercial sex workers, as victims of criminal acts of human trafficking.

The type of research in this thesis is Normative Juridical Research, namely research that refers to legal norms contained in statutory regulations, court decisions and legal norms that exist in society. In this research, an analysis and dissection of Law of the Republic of Indonesia Number 21 of 2007 concerning the Crime of Human Trafficking will be carried out. Because this research is normative research, the data collection method used is library research and document study. The literature study in this research is to look for theoretical foundations and research problems. So the research carried out is not a trial and error activity.

- I. Primary Legal Material Data obtained through the 1945 Constitution of the Republic of Indonesia, the Criminal Code, Law of the Republic of Indonesia Number 27 of 2007 concerning the Eradication of the Crime of Human Trafficking.
- II. Secondary Legal Materials Data obtained from books, documents, scientific legal writings and the internet.
- III. Tertiary Legal Materials Data whose legal materials provide explanatory information regarding primary legal materials and secondary legal materials, for example legal dictionaries.

After the data has been collected, both primary, secondary and tertiary, it is then analyzed again using qualitative analysis methods as data analysis based on quality, qualities and real characteristics that apply in society. How to analyze data sourced from legal materials based on concepts, theories, statutory regulations, doctrine, legal

principles, expert opinions or researchers' own views, related to criminal law protection for women who are commercial sex workers, as victims of criminal acts of human trafficking.

3. FINDINGS AND DISCUSSION

A. **The concept of the Indonesian rule of law is related to respect for human rights**

As is known, the Unitary State of the Republic of Indonesia (NKRI) is a legal state. Constitutionally, the 1945 Constitution emphasizes that the Indonesian state is based on law (Rechtstaat) and not state power (Machtstaat). This statement was later amended in the 1945 Constitution (1999-2002) regulated in article 1 paragraph (3) which stipulates that "the State of Indonesia is a State of Law". The concept of the Pancasila legal state originates from Indonesian socio-cultural values whose crystallization is Pancasila as the Foundation of the State as stated in the Preamble to the 1945 Constitution which is the "Staatsfundamentalnorm" of the Unitary State of the Republic of Indonesia.

The Indonesian people understand that the Universal Declaration of Human Rights (UDHR), which was initiated in 1948, is a statement of humanity that contains universal values that must be respected. At the same time, the Indonesian people also view that the Universal Declaration of Human Responsibility which was initiated by the Inter Action Council in 1997 also contains universal values that must be upheld to complement the UDHR.(Soeharno, n.d.)

General awareness regarding human rights and obligations animates the entire legal system and the Indonesian constitution, therefore it needs to be adopted into the formulation of the Constitution on the basis of basic understandings developed by the Indonesian people themselves. Thus, the formulation in this Constitution includes the legacies of thought regarding human rights in the past and also includes ideas that will continue to develop in the future. (Soeharno, n.d.). If human rights are not protected in a country, that country is not a rule of law, but a dictatorship with an authoritarian government. Protection of human rights in a rule of law is realized in the form of norming these rights in the constitution and laws and subsequently enforcing them through judicial bodies as executors of judicial power. (B. J. Nasution, 2011)

If in a country, human rights are neglected or violated intentionally and the suffering they cause cannot be dealt with fairly, the country concerned cannot be called a rule of law country in the true sense. To look further at the rule of law with human rights, it can be studied from a democratic perspective, because human rights and democracy are conceptions of humanity and social relations that were born from the history of human civilization throughout the world. This means that the rule of

law guarantees the freedom of its citizens and respects the human rights of every citizen. Thus, the relationship between human rights and the rule of law is very close. Human rights are basic rights or citizenship that are inherent in individuals from the moment they are born by nature, which are given directly by God Almighty, whose existence cannot be taken away or revoked and must be respected, upheld and protected by the state, law, government and every person. for the sake of honor and protection of human dignity.

B. The existence of the National Women's Commission in protecting women who are victims of human trafficking crimes

Human rights originate from the idea that humans should not be treated arbitrarily by power, because humans have natural rights that are inherent in themselves because of their humanity. Although the principle of protecting human rights is individual freedom, the prioritization of individuals here is not egoistic because the implementation of human rights occurs within social prerequisites that individual freedom is always understood in the context of respecting the rights of other individuals.(Erwanti & Rahayu, 2012)

International law on human rights continues to be developed to reflect that issues and problems of human rights crimes have become international attention and concern which has also given rise to national solidarity.(A. B. Nasution, 2006). Women and children are very vulnerable to having their human rights violated by irresponsible people just to achieve satisfaction. This was confirmed by the United Nations General Assembly which stated that women are part of a vulnerable group (vulnerable groups), human rights violations occur, furthermore women from LGBT groups (Lesbian, Gay, Bisex, Transgender), local migrants, religious minorities are vulnerable groups that often become victims of violence, discrimination and other forms of human rights violations.(Sihombing, 2016)

The worrying condition of Indonesian women nationally will be even more obvious if the condition of women in the regions is compared with one another. Of course we still remember the incident known as the May 1998 Tragedy, where mass rapes of ethnic Chinese women occurred in several areas in Indonesia. At that time, the state was deemed to have failed to provide protection to women victims of violence, so the state had to be responsible for these victims. So the President issued Presidential Decree (Kepres) Number 181 of 1998 as the government's response to the pressure of women's groups regarding the May 1998 tragedy. So efforts were made to take responsibility for the victims and then make systematic efforts to continuously overcome violence against women by creating state auxiliary bodies which named the

National Commission Against Violence Against Women (Komnas Perempuan). This is reinforced by Presidential Regulation Number 65 of 2005.(Arliman, 2017)

Zainal Arifin Mochtar said that the legitimacy for the formation of an independent state commission received quite good sentiment after the amendment to the 1945 Constitution. The new constitution as a result of this amendment provides ample space for the further development of the state commission model formed by the House of Representatives (DPR) and the President through law. . The formation of these commissions is part of the state's legal politics to complement and strengthen the working power of the state government. In essence, the 1945 Constitution places many regulations regarding the independence and independence of state institutions that emerged after the amendments to the 1945 Constitution.(Mochtar, 2016)

As part of a national human rights institution, Komnas Perempuan is guided by the Paris Principles, namely principles related to the status and function of national human rights commissions for the promotion and protection of human rights. This principle was developed by the international community for the effectiveness of national human rights institutions that exist in various countries in the world. Some of these principles include the principles of competence and responsibility, and showing plurality. This principle is developed in the structure, mechanisms and work tools built by the National Commission on Violence Against Women. Institutionally, Komnas Perempuan has a structure consisting of a Plenary Commission which also holds the highest authority. The Plenary Commission is supported by the Working Body chaired by the Secretary General. The Plenary Commission includes leadership and members. In carrying out its duties, the commission is divided into sub-commissions which are formed functionally according to needs. (Erwanti & Rahayu, 2012)

C. Legal protection for women who are victims of criminal acts of human trafficking viewed from the perspective of human rights justice.

To improve the development and welfare of society, it cannot be separated from how the state is able to formulate good laws and regulations, law enforcement that can function well, especially by using criminal law as a tool to combat abnormal acts or acts, as well as carrying out cultural development and education. who is dignified, moral and ethical and respects human nature. As stated by Hart in Eddy's book, the function of criminal law is to maintain order and public decency and protect citizens from what is considered immoral or harmful and to provide protection against exploitation from other parties, especially for people who are weak because they are young and weak. physical, mental and experience.(Eddy, 2014)

From the opinion above, it can be seen that one of the objectives of criminal law is to protect citizens from crimes of morality, including women who are victims of violence and/or women who are victims of criminal acts of trafficking in persons who are used as commercial sex workers. Violence and the criminal act of human trafficking cannot be separated because elements of violence will definitely be attached to and/or support perpetrators of committing criminal acts of human trafficking against women.

That violence is any action that results in pain. So far, pain has never been defined. If pain is a condition that is the opposite of health, then you can take the definition of health from Law Number 36 of 2009 concerning health, namely: "Health is a state of health, both physically, mentally, spiritually and socially which allows everyone to live a socially productive life. and economical." Meanwhile, according to the World Health Organization (WHO): "Health is a state of perfection, both physical, mental and social and not only the absence of disease and disability.(Sari & Savitri, 2019)

The ratification of the Law on the Elimination of Domestic Violence Number 23 of 2004 was a material legal breakthrough, because for the first time domestic violence was regulated as a serious crime and not a private issue. Apart from that, this law accommodates the reality of forms of domestic violence experienced by victims, not only physical but also psychological, sexual and economic neglect. It is hoped that the enactment of this law will be a good start in efforts to end domestic violence.(Luhulima et al., 2006) Discussion of human trafficking or trafficking related to human rights means discussing the dimensions of human life. Human rights and their protection exist not because they are given by society and the goodness of the state, but based on their dignity as human beings. Recognition of human existence indicates that humans as living creatures are the creation of Almighty God, Allah SWT, and deserve positive appreciation.(Irsan, 2009)

The rights of victims of violence are regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, namely: a. Protection from the family, police, prosecutor's office, court, advocates, social institutions, or other parties, either temporarily or based on the determination of a protection order from the court; b. Health services according to medical needs; c. Special handling relates to the confidentiality of victims; d. Assistance by social workers and legal assistance; and e. Spiritual guidance services. Whereas the protection and services provided by institutions and institutions are in accordance with their respective duties and functions, the protection provided to women who are victims of violence or criminal acts of trafficking in persons may take the form of protection by the police in the form of temporary protection; b. Protection by advocates is provided in the form of legal

consultations, conducting mediation and negotiations between parties including the victim's family and the perpetrator's family (mediation), and accompanying victims at the level of investigation, prosecution and examination in court hearings (litigation), coordinating with fellow law enforcers, accompanying volunteers, and social workers (cooperation and partnerships); c. Protection by court order is issued in the form of a protection order which is given for 1 (one) year and can be extended; d. The services of health workers are very important, especially in efforts to provide sanctions against perpetrators of domestic violence; e. Social worker services are provided in the form of counseling to strengthen and provide a sense of security for victims, providing information regarding victims' rights. (Utami, 2016)

Companion volunteer services are provided to victims regarding the victim's rights to have one or more volunteer companions accompany the victim; and Services by spiritual guides are provided to provide explanations regarding rights, obligations and provide strengthening of faith and piety to victims.

4. CONCLUSION

Legal protection for women who are victims of criminal acts of human trafficking viewed from the perspective of human rights justice is that women victims of criminal acts of human trafficking who become commercial sex workers are still protected by the state, because the Indonesian state adheres to the principle of a rule of law which must respect the human rights of every citizen. The elements in the criminal act of trafficking in persons are the perpetrator element, the process element, the sequence of implementation or events that occur naturally or are designed, which include: including recruiting, transporting, harboring, sending, moving or receiving a person, the method element, the form of certain acts/actions. carried out to ensure the process can be carried out, which includes: threats, violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or a vulnerable position, debt bondage or giving payments or benefits so as to obtain the consent of a person who has control over another person which guarantees that the process can be carried out, which includes threats, violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or a vulnerable position, debt bondage or giving payments or benefits so as to obtain the consent of the person who has control over the other person and elements Goal Something that will later be achieved and/or realized as a result of the actions of the perpetrator of the criminal act of trafficking in persons which includes exploitation of people or results in people being exploited in Article 1 number 1 and Article 2 paragraph (1) of the UUPTPPO. Legal protection efforts for women who are victims of criminal acts of trafficking in persons are based on Law of the Republic of Indonesia Number 21 of 2007 concerning the Crime of Trafficking in Persons that law enforcement officers, in this case police officers, are more likely to take action when there are victims so that the law does not effective because of such a paradigm. The implementation of Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Trafficking in Persons (PTPPO), is still very weak. So far, law enforcement officials have

mostly used the Criminal Code (KUHP) to ensnare perpetrators of cross-border human trafficking (trafficking) whose networks are increasingly complex.

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