



The Crime of Trafficking in Persons with the Mode of Becoming a Female Worker

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ABSTRACT

This research was conducted using empirical juridical research methods because this research aims to determine law enforcement for women victims of trafficking in persons. . Obstacles to law enforcement against female workers show: 1) Law enforcement against perpetrators of the crime of trafficking in persons with victims of labor is in accordance with applicable law. Whereas in law enforcement against perpetrators and victims who have reconciled, the legal process is not at the prosecutor's level (prosecution process). 2) The police as a law enforcement agency in the process of enforcing the law on the crime of trafficking in persons also pays attention to the value of justice.

INTRODUCTION

In some densely populated areas, the level of education and mastery of technology is also low, resulting in more and more poverty occurring in poor countries and developing countries. For this reason, humans move only to get jobs for a better life. There is cooperation between countries, this cooperation is not driven solely by human personal interests but because of the existence of a free market, in a free market there are three things that move freely, namely the flow of goods, services and labor. In Indonesia, it requires and accepts foreign workers, at the same time Indonesia sends Indonesian Migrant Workers (TKI) and Female Migrant Workers (TKW) abroad. The level of poverty and the difficulty in finding jobs in Indonesia has made most women, especially women, work abroad as female workers (TKW). The large number of interested women workers working abroad is what causes labor brokers to cheat that they will be paid high wages abroad or in certain cities in Indonesia. In fact, they were sent out given a small salary and some were not paid. There are even women workers who were originally promised to be factory workers or housemaids but in the end the implementation is employed in plus-plus massage parlors and even as commercial sex workers (PSK) and sold to masher men.

Likewise in Indonesia, as a country, Indonesia is economically a developing country. In the economic field, Indonesia cooperates with many countries and even with most of the countries in the world that have opened diplomatic relations with Indonesia. Except with the state of Israel, Indonesia does not open diplomatic relations for political reasons.

Trafficking in persons has expanded in the form of organized and unorganized crime networks, both inter-state and domestic, so that it becomes a threat to society, the nation and the state, as well as to the norms of life which are based on human rights. Trafficking in human beings is a form of crime that deprives basic human rights and is considered the most serious violation of human rights. Humans are traded both within national boundaries and between countries with the sole aim of obtaining material benefits without regard to the rights of victims as human beings. Victims' rights as human beings are deprived for the unilateral interests of traffickers without considering humanity. Regulation of trade offences people can start from the development of law and human rights, that is cannot be separated from the concept of natural law. Natural law is law that is rooted in the human mind, or society, and that natural law is independent of conventions, legislation, or other institutional means. The law is divided evenly, there must be in every society on this earth. Someone who is very primitive or someone who is very modern must have laws. Law cannot be separated from society but law has a reciprocal relationship with society.

The main causes of trafficking in persons are economic factors and poverty, apart from that other factors which are supporting factors are:

- a. Women are considered suitable for jobs in production and informal sector jobs which are notorious for their low wages for ordinary workers, hazardous working conditions and the absence of agreements;
- b. Increased demand for overseas workers for domestic and baby-sitting roles;
- c. The development of the sex and entertainment industry;
- d. The characteristics of trafficking work are almost without risk accompanied by large profits coupled with the lack of will and awareness as well as the difficulty for law enforcers to prosecute perpetrators, including owners or managers or institutions that accept and make use of trafficking *victims* ;
- e. Easy control and manipulation of women who are vulnerable;
- f. Lack of access to a legal system that guarantees protection, assistance and compensation for victims.

Arrangements regarding the Crime of Trafficking in Persons in Indonesia are specifically regulated in RI Law Number 21 of 2007, According to Article 1 paragraph (1), Law Number 21 of 2007 concerning eradicating the Crime of Trafficking in Persons (TPPO), Trafficking in Persons is an act of recruiting, transporting, harboring, sending, transferring, or accepting someone with threats of violence, kidnapping, confinement. Then falsification, fraud, and abuse of power or position of vulnerability, money trapping or giving benefits so as to obtain approval from the person who has control over the other person, whether carried out within the country or between countries, for the purpose of exploitation or causing people to be exploited, according to Article 1 paragraph (7) of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, The definition of Exploitation is an act with or without the consent of the victim which includes but is not limited to prostitution, forced labor or services, slavery or slavery practices, acts of extortion, physical exploitation , sexual, reproductive organs or illegally removing or transplanting organs and or body tissues or utilizing the energy or ability of another party to gain material or immaterial benefits.

There are three different elements of the crime of trafficking in persons which are interrelated with one another, namely:

- a. Actions or actions taken, namely recruiting, sending, transferring, harboring or receiving someone;
- b. Means, using the threat or use of force, or other forms of coercion, kidnapping, deception, fraud, abuse of power or position of vulnerability or giving or receiving payments or benefits to obtain the consent of people;
- c. Purpose or purpose, for the purpose of exploitation, exploitation includes at least sexual exploitation, prostitution of other people or other forms of sexual exploitation, forced labor, slavery, servitude and the harvesting of organs.

If one of the above elements is fulfilled, then the act of trafficking in persons occurs, the consent of the victim regarding exploitation as the purpose of the said trafficking in persons loses its relevance or is no longer meaningful when the means of coercion or deception as described in the definition above have been used.

LITERATURE REVIEW

1. Law Enforcement Theory

According to Satjipto Raharjo what is meant by law enforcement is: Law enforcement is an attempt to realize the ideas of legal certainty, social benefits and justice into reality. The process of embodiment of these three ideas is the essence of law enforcement. Law enforcement can also be interpreted as administering the law by law enforcement officials and everyone who has an interest and according to their respective authorities according to the applicable legal rules. Law enforcement is the process of making efforts to uphold or function legal norms in a real way as guidelines for behavior or legal relations in the life of society and the state, in another sense law enforcement is an effort made to make it law, both in the narrow formal sense and in a broad material sense, as a guideline for behavior in every legal action, both by the legal subjects concerned and by law enforcement officials who are officially given the task and authority by laws to guarantee the functioning of legal norms that apply in the life of society and the state.

According to Soerjono Soekanto, law enforcement is influenced by several factors, namely:

- a. The legal factor itself/ *law in book* (Regulations, Laws),
- b. Officials/Law Enforcement Factors , i.e. parties who form or establish the law,
- c. Factors of Facilities and Facilities, which support law enforcement,
- d. Community factors, namely where the law applies or is determined
- e. Cultural Factors, namely as a result of work, creativity and taste based on human initiative in social life.

Based on the factors mentioned above, the law enforcement indicators consist of:

1) The legal factor itself / *law in book* (Regulations, Laws)

As quoted from a journal written by Ediwarman regarding the legal factor itself, it explains that:

The better a rule of law, the more likely it will be enforced. Conversely, the worse a rule of law is, the more difficult it will be to enforce it. In general, good regulations are legal regulations that apply juridically, sociologically and philosophically. According to Hans Kelsen, juridical legal regulations are if the legal regulations are determined based on higher level rules. As for the legal regulations that apply juridically, sociologically and philosophically, in a journal written by Ediwarman regarding the legal factor itself it is explained that:

A legal regulation has the power to apply juridically if the legal regulation is formed according to a predetermined method. Then a legal regulation applies sociologically when the regulation is recognized or accepted by the community to whom the legal regulation is intended/applied. A law applies philosophically if the legal regulation is in accordance with the ideals of law (*rechts idee*) as the highest positive value. In Indonesia, the highest ideal of positive law is a just and prosperous society based on Pancasila and the 1945 Constitution.

2) Officials/Law Enforcement Factors

As for law enforcement factors, as quoted from a journal written by Ediwarman explained that: Law enforcers who are directly involved in the law enforcement process are carried out by the police, prosecutors, courts, and other legal practitioners who have a very important role in the success of law enforcement in society. Law enforcement can be carried out if the law enforcers are professional, mentally tough and have high moral and ethical integrity.

3) Facility Factors and Facilities.

As quoted from a journal written by Ediwarman regarding the factors of facilities and infrastructure, he explained that: Without adequate facilities and infrastructure, it is impossible for law enforcement to run as it should, the facilities where the law enforcement process will be carried out, for example, police offices, prosecutors and courts and also the infrastructure inside is not adequate results in the inconvenience of the law enforcement process due to security factors and so forth. Likewise, the skills of the apparatus from a legal perspective and skills in carrying out their duties, adequate equipment and finances are equally important.

4) Community factor

Related to law enforcement factors, as quoted from a journal written by Ediwarman explained that: Community factors can also affect law enforcement itself, because law enforcement originates from the community and aims to achieve peace in society. In this case what is important is the legal awareness of the community, the higher the legal awareness of the community, the better the law enforcement will be. Conversely, the lower the level of public legal awareness, the more difficult it is to enforce good law.

5) cultural factors

As quoted from the journal written by Ediwarman regarding cultural factors explained that: Cultural factors basically include the values that underlie applicable law, which values are abstract conceptions of what is considered good and what is considered bad. The customary law is a habit that applies among the people at large. However, in addition to that, written laws (legislation) established by the government also apply. The law must be able to reflect the values that form the basis of customary law so that the law can work effectively. Meanwhile, habits affect law enforcers in law

enforcement itself, for example, bad habits in law enforcement. These five factors are closely related to each other, because it can be said to be the essence of law enforcement and also a rejection measure of the effectiveness of law enforcement in order to achieve the goals of law enforcement.

In upholding the law, there are 3 things that must be considered, namely legal certainty, benefit, and justice:

1. Legal certainty

The law must be implemented and enforced, everyone wants the law to be enforceable against concrete events that occur, how the law is, that is what must be applied to every event that occurs. So basically there is no deviation. After all, the law must be upheld, to the extent that the parable "even though tomorrow is the Day of Judgment, the law must still be upheld". This is what legal certainty wants. With legal certainty, order in society is achieved.

2. Benefits

The implementation and enforcement of the law must also pay attention to its benefits and its use for society. Because the law is actually made for the benefit of society (humans). Therefore the implementation and enforcement of the law must benefit the community. Do not let the implementation and enforcement of the law harm the community, which in turn creates unrest.

3. Justice

Soerjono Soekanto said that justice is essentially based on 2 things: first, the principle of equality, where everyone gets an equal share. Second, based on needs. So as to produce a comparability that is usually applied in the field of law. Criminal Law Theory (Criminal Conviction Theory) Criminal law is a norm that guides and protects society in dealing with criminal acts. In criminal law there are several theories of criminal law (criminal imposition theory)

which are generally divided into three groups of theories, namely:

a. Absolute Theory or Theory of Revenge

According to the Absolute *Theorien* or the *Vergeldings Theorien theory*, imposition of a sentence is justified solely because a person has committed a crime or crime. Criminal is a legal consequence that absolutely must exist as a retaliation for people who have committed crimes. So the basis for justifying punishment lies in the occurrence of the crime itself, because the crime causes suffering to the person affected by the crime, then according to the absolute theory or the theory of retaliation, this suffering must also be recompensed with suffering in the form of punishment for the person who committed the crime. Relative Theory or Objective Theory. According to the relative theory (*Relative Theorien*) or the theory of Purpose (*Doel theorien*) punishment is not to take revenge on the perpetrators of crime, but to have certain useful purposes. Thus the basis for justifying punishment according to this theory lies in the purpose of the punishment itself.

According to this theory, the justification for criminal justice is to guarantee legal order (*rechts orde*). This theory has its roots in the composition of the State because of the nature and purpose of the State is to guarantee legal order in its territory. The way is for the State to make regulations that contain prohibitions or requirements in the form of norms or rules. These norms are used to regulate life in society, so that norms are obeyed, violators of these norms are given sanctions in the form of criminal threats.

b. Joint Theory

Combined Theory (*Verenegings Theorieen*) is a combination of Absolute theory or the theory of retribution with Relative theory or theory of purpose. The basis for criminal justification of the combined theory includes the basis criminal justification from the theory of retaliation or the theory of purpose, which lies both in the crime and in the purpose of the crime.

This combined theory is divided into 3 (three) groups, namely:

1. The combined theory emphasizes retaliation, but that retaliation must not exceed that required to maintain social order.
2. The combined theory focuses on maintaining public order, but punishment should not be heavier than the severity of suffering in accordance with the legal awareness of society.
3. A combined theory that focuses equally on both revenge and the defense of social order.

METHODOLOGY

In order for this research to be more focused and accountable, a method was used. The research method used in writing this proposal is as follows:

1. Research sites

To facilitate the process of collecting materials and other research data, the authors focus on research locations within the jurisdiction of Indonesia.

2. Research Type

In conducting this research, the authors used empirical legal research. According to Bahder Johan Nasution, "Empirical method research is a functioning legal research method to see the law in the real sense and examine how the law works in society. In this study, the authors used interview data collection methods or interviews conducted directly using interview guidelines.

RESEARCH RESULT

Arrangements regarding the Crime of Trafficking in Persons in Indonesia are specifically regulated in RI Law Number 21 of 2007, According to Article 1 paragraph (1), Law Number 21 of 2007 concerning eradication of the Crime of Trafficking in Persons (TPPO), Trafficking in Persons is an act recruiting, transporting, harboring, sending, transferring, or accepting someone with threats of violence, kidnapping, confinement. Then falsification, fraud, and abuse of power or position of vulnerability, money trapping or giving benefits so as to obtain approval from the person who has control over the other person, whether carried out within the country or between countries, for the purpose of exploitation or causing people to be exploited.

Furthermore, based on the provisions of Article 1 paragraph (7) of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, the definition of exploitation is an act with or without the consent of the victim which includes but is not limited to prostitution, forced labor or services, slavery or slavery practices, extortion, exploitation of physical, sexual, reproductive organs or against the law move or transplant organs and or body tissues or utilize the energy or ability of another party to gain material or immaterial benefits.

Against these perpetrators, the PTPPO Law (Eradication of Trafficking in Persons) provides criminal sanctions cumulatively, in the form of imprisonment of between 3-15 years and a fine of between Rp.120,000,000 - Rp.600,000,000, and if it results in the victim suffering serious injuries, severe mental disorders, other infectious diseases that endanger their lives, pregnancy, or disrupted or lost reproductive function, then the criminal penalty is added to 1/3 (one third) of the criminal threat mentioned above. If it results in the death of a person, then it is punishable by imprisonment for between 5 years and up to life and a fine of Rp. 200,000,000 - Rp. 5,000,000,000. Apart from that, Article 9 of the PTPPO Law (Eradication of the Crime of Trafficking in Persons) also provides for sanctions for anyone who tries to move other people to commit the crime of trafficking in persons, and the crime does not occur, shall be punished with a minimum imprisonment of 1- 6 years and a fine of between IDR 40,000,000 - IDR 240,000,000. Based on the data the author obtained, the Crime of Trafficking in Persons (TPPO) involving women with the mode of female labor (TKW), especially in the Jambi Regional Police (POLDA JAMBI) area, has continued to increase in the past 4 years and totaled 12 cases. In 2017 there were 2 cases, namely 1 case which rose to the Police level, in In 2018 there were 3 cases, i.e. 2 cases were promoted to the police level, in 2019 there were 3 cases, namely 2 cases were increased to the police level, and in 2020 there were 4 cases, i.e. 2 cases were increased to the police level.

The process of enforcing criminal law starts from reports or complaints about the crime of trafficking in persons up to the process of imposing sanctions by a court decision. From the data the researchers obtained, there were 12 cases of trafficking in persons that occurred in the jurisdiction of the Jambi Regional Police from 2017 to 2020, with an increase of 7 cases at the prosecution level. While 5 cases stopped at the investigation or investigation process at the Jambi regional police level.

Law enforcement is the process of making efforts to uphold or function legal norms in a real way as guidelines for behavior or legal relations in the life of society and the state, in another sense law enforcement is an effort made to make it law, both in the narrow formal sense and in a broad material sense, as a guideline for behavior in every legal action, both by the legal subjects concerned and by law enforcement officials who are officially given the task and authority by law to ensure the functioning of legal norms that apply in social and state life. Law enforcement must be based on ethics and morals so that there is synchronization between the side of justice and also the side of legal certainty. There should be no effort to enforce criminal law that only prioritizes the side of legal certainty, leaving aside the side of justice and vice versa.

From the results of an interview with Mr. Sejati, explained:

Almost all cases of trafficking in persons that occurred in the Jambi regional police area, the motive of the perpetrators of these crimes was to seek profit. The victims (women) were initially promised to be employed by the perpetrators but when they arrived at their place of work the victims were made into commercial sex workers (PSK). The victims did not dare to report this because they were threatened by the perpetrators.

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DISCUSSION

According to Mr. Johan Christy Silaen, the obstacles in law enforcement against women workers as victims of the criminal act of trafficking in persons in the jurisdiction of the Jambi Regional Police are:

1. Legal factor;
2. Weak law enforcement;
3. Community factors;
4. Weak socialization of legislation;
5. High levels of poverty.

Based on the explanation above, it can be seen that the obstacles faced by law enforcers according to the results of interviews with Mr. Johan Christy Silaen, which are described as follows:

1. Legal factor

In terms of law, the law is the first factor in law enforcement. Laws interpreted in a material sense are written regulations that are generally accepted and made by legitimate central and regional authorities in which there are principles, namely:

- a. The law is not retroactive, where the law can only be applied to events mentioned in the law and occur after the law is declared effective,
- b. Laws made by higher authorities have a higher position as well.
- c. Laws that are specific override laws that are general in nature if the actions are the same. That is, for special events it is obligatory to apply a law that mentions the event even though for these special events it may also be necessary to have a law that mentions broader or more general events, which can also include said special events.

- d. The law that applies later cancels the law that applies before. This means that other laws that apply earlier which are regulated regarding a certain matter, are no longer valid if there is a new law that applies later that also regulates that particular matter, but the meaning or purpose is different or contrary to the old law.
- e. The law is inviolable,
- f. Laws are only a means to achieve spiritual and material well-being for society and individuals, through renewal (innovation) events.

In the implementation of law enforcement according to Mr. Johan Christy Silaen:

"In law enforcement related to cases of criminal acts of trafficking in persons with women as victims in the jurisdiction of the Jambi Regional Police, what we have done is in accordance with the procedures in force starting from the initial report or complaint from the public or investigating officers. Because the crime of trafficking in persons is a general offense, the perpetrators of the crime of trafficking in persons should still be processed even though the victims and perpetrators have reconciled. However, in several cases of the criminal act of trafficking in persons that occurred which did not reach the prosecution process, this was because the parties, namely the perpetrator and the victim, had reconciled. Indeed, in this case it should not be able to stop the law enforcement process against the perpetrators of the crime of trafficking in persons. We as the police must also prioritize the values of justice for both victims and perpetrators.

From the author's analysis and the results of interviews with investigators, the basis for the Jambi regional police to stop this case of trafficking in persons is restorative justice. Restorative justice is the settlement of criminal cases by involving perpetrators, victims and other related parties to jointly seek a fair solution. Sometimes in the practice of implementing law in the field there is usually a conflict between legal certainty and justice, this happens because the concept of law itself is an abstract formulation, while certainty itself is a procedure that has been determined normatively. The law is order and peace which can only be realized in reality if the law is implemented. If it is not implemented, the legal regulations are only words that have no meaning in people's lives. Sometimes in the practice of administering law in society there is a conflict between legal certainty and justice, this is because one party feels that it is fair and wise, while the other party is unfair, it feels that the law is not on their side, this is because justice is an abstract formulation and Legal certainty itself is something that has been determined normatively.

2. Weak law enforcement

Law enforcement itself includes the police, prosecutors, judiciary, and correctional institutions. Law enforcement holds important role how the law can be implemented properly in accordance with written regulations. If the rules are good, but the quality of the officers is not good, then of course there will be a problem. Actually, the law is made to be implemented in everyday life which functions to prosecute the community and can be used as a means of making changes in society and to regulate society itself. This law enforcement becomes the application of how the law works in a society in order to create an order and tranquility so that legal habits can be organized effectively. Law enforcement must really be able to maintain order and security for the community. The legal apparatus must be able to communicate with the community besides that they must be able to carry out a role that is acceptable to the community.

3. Community factor

Law enforcement will be carried out well if the community can participate in it so that the goal is to achieve peace within the community itself. Every member of the community or group, more or less, in their hearts must have attained legal awareness, the problem is the level of legal compliance, that is, high, moderate, or poor legal compliance. The degree of public compliance with the law is an indicator of the functioning of the relevant law. Law enforcement comes from the people and nature aims for the peace and order of the people themselves, so the people must also participate in it.

4. Lack of Socialization of Legislation

The lack of dissemination and counseling on laws and regulations in the field of criminal acts of trafficking in persons is one of the inhibiting factors in enforcing the law against criminal acts of trafficking in persons, especially with female victims, legal awareness in both the community and law enforcement officials is very low.

5. High Poverty Rate

The poverty rate of the people in Jambi is still below the poverty line, jobs that are difficult to find are the main factor for perpetrators of trafficking and trafficking in women. This condition is a strong reason for the occurrence of criminal cases of trafficking in persons involving women as victims

CONCLUSIONS AND RECOMMENDATIONS

1. Law enforcement against the crime of trafficking in persons with the female workforce mode after conducting research on law enforcement against the crime of trafficking in persons is influenced by several factors including: the legal factor itself, the apparatus/law enforcement factor, the facilities/facilities factor, the community factor, cultural factors.
2. The obstacles in enforcing the law on the crime of trafficking in persons with female victims are influenced by several factors, namely legal factors, weak law enforcement, community factors, weak socialization of legislation, high levels of poverty.
3. The role of the state apparatus is needed to synergize in preventing human trafficking.

In the future, investigators can carry out stricter and more rigorous law enforcement against the perpetrators of the crime of trafficking in persons. The crime of trafficking in persons is a general offense, in essence, between the victim and the perpetrator of the crime of trafficking in persons, peace can be reconciled, but this peace cannot stop the legal process against the perpetrator.

ADVANCED RESEARCH

Hopefully cases of human trafficking can be prevented because in the future this is very dangerous for the nation's generation.

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