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**Topic:** Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children

## **Fulfillment of the Elements of the Crime of Human Trafficking in Judicial Evidence: An Analysis of Decision Number 625/Pid.Sus/2023/PN Sda**

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**Abstract.** Human trafficking is a serious criminal offense that violates human dignity and fundamental human rights. The complexity of proving human trafficking cases arises from the requirement to establish the fulfillment of cumulative elements consisting of the act element (process), the means element, and the purpose element of exploitation as regulated under Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking. The existence of recruitment, transportation, or assistance activities related to employment arrangements cannot automatically constitute human trafficking without proof of unlawful means and exploitative purposes. This research aims to analyze the fulfillment of the elements of human trafficking in judicial evidence and to examine the legal considerations of judges in acquitting the defendant in Decision Number 625/Pid.Sus/2023/PN Sda. This research employs a normative juridical method using statutory, conceptual, and case approaches. The legal materials analyzed consist of legislation, court decisions, legal doctrines, and relevant national and international academic literature concerning human trafficking and criminal evidence. The analysis focuses on the relationship between the elements of trafficking and the evidence presented during the trial. The results indicate that the prosecution failed to prove all elements of human trafficking cumulatively. The defendant's alleged involvement in recruitment or employment-related assistance was insufficient to establish the act element, while the means element and exploitation purpose element were not proven through valid evidence. The judges' acquittal was therefore consistent with the principle of legality and the evidentiary standard under Article 183 of the Indonesian Criminal Procedure Code, which requires proof beyond reasonable doubt before imposing criminal liability. This research emphasizes the importance of careful judicial assessment in distinguishing

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*human trafficking offenses from other related violations to ensure legal certainty and fair criminal enforcement.*

**Keywords:** *Criminal Evidence; Exploitation; Human Trafficking; Judicial Consideration; Trafficking in Persons.*

## **1. Introduction**

Human trafficking is a serious criminal offense that constitutes a violation of human dignity and fundamental human rights. The crime of human trafficking has a complex nature because its fulfillment does not merely depend on the existence of recruitment, transportation, transfer, or receipt of a person, but requires proof of several essential elements as regulated under Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking.<sup>1</sup> The crime of human trafficking consists of three fundamental elements, namely the act element (process), the means element, and the purpose element in the form of exploitation. These elements must be proven cumulatively in order to establish criminal liability against the perpetrator.<sup>2</sup>

The complexity of proving human trafficking offenses arises because the factual circumstances in practice often overlap with other criminal offenses, particularly illegal recruitment, unlawful placement of Indonesian migrant workers, or administrative violations in employment procedures. Therefore, law enforcement authorities must carefully distinguish whether a particular act constitutes human trafficking or merely constitutes another form of unlawful conduct. The application of criminal provisions must remain consistent with the principle of legality, which requires that criminal liability may only be imposed when all elements of the offense stipulated by law have been fulfilled.<sup>3</sup>

In criminal proceedings, the determination of a defendant's guilt must be based on valid evidence and the judge's conviction that the criminal act has been legally and convincingly proven. Article 183 of the Indonesian Criminal Procedure Code (KUHAP) establishes that a judge may not impose a criminal sentence unless there are at least two valid forms of evidence and the judge obtains the conviction that a criminal offense has actually occurred and that the

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<sup>1</sup> Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, Article 1 Number 1.

<sup>2</sup> United Nations Office on Drugs and Crime (UNODC), *Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto* (New York: United Nations, 2004), 268-269.

<sup>3</sup> Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2008), 25.

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defendant is responsible for it.<sup>4</sup> The requirement demonstrates that proving the elements of a criminal offense is the central aspect in determining criminal responsibility.

The issue of proving the elements of human trafficking can be observed in Decision Number 625/Pid.Sus/2023/PN Sda of the Sidoarjo District Court. In this case, the defendant was charged with committing the crime of human trafficking; however, the panel of judges acquitted the defendant because the elements contained in the indictment were not proven legally and convincingly during the trial.<sup>5</sup> The decision illustrates that the existence of activities related to recruitment or assistance in the process of sending workers cannot automatically be categorized as human trafficking unless the elements of the offense, particularly the means of exploitation and the purpose of exploitation, are supported by sufficient evidence.

The acquittal in this case raises a significant legal issue regarding the judicial assessment of the fulfillment of human trafficking elements. On one hand, the state has an obligation to eradicate human trafficking and provide protection for victims; however, on the other hand, criminal proceedings must guarantee the protection of individual rights through the principle of due process of law. The court must ensure that criminal punishment is imposed only upon individuals whose actions have fulfilled all elements of the offense and have been proven through lawful evidence.<sup>6</sup>

The accuracy of judges in examining the relationship between facts, evidence, and the elements of criminal offenses is therefore essential in achieving legal certainty and justice. A failure to prove one element of the offense should result in the defendant being released from criminal liability because criminal law does not recognize conviction based on assumptions or incomplete proof.<sup>7</sup>

Based on these issues, this research examines the fulfillment of the elements of the crime of human trafficking in judicial evidence by analyzing Decision Number 625/Pid.Sus/2023/PN Sda. This research focuses on the examination of how the elements of human trafficking are proven during the trial process and how judges construct their legal considerations when determining that the defendant cannot be held criminally responsible due to the failure to prove the elements of the indictment.

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<sup>4</sup> Indonesian Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana), Article 183 and Article 184.

<sup>5</sup> Decision of the Sidoarjo District Court Number 625/Pid.Sus/2023/PN Sda concerning the Crime of Human Trafficking. The official court decision database is available through the Supreme Court Decision Directory.

<sup>6</sup> Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2019), 254.

<sup>7</sup> P.A.F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia* (Bandung: Citra Aditya Bakti, 2014), 193.



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The research problems discussed in this study are: first, how is the fulfillment of the elements of human trafficking assessed in the evidentiary process before the court? Second, how are the legal considerations of judges in Decision Number 625/Pid.Sus/2023/PN Sda related to the failure to prove the elements of the alleged human trafficking offense?

This research aims to analyze the application of evidentiary principles in proving human trafficking offenses and to examine the legal reasoning of judges in determining whether the elements of human trafficking have been fulfilled. This research is expected to contribute to the development of criminal law studies, particularly regarding the relationship between criminal elements, evidence, and judicial considerations in human trafficking cases.

## 2. Research Methods

This research uses a normative juridical method by examining legal norms, statutory regulations, legal doctrines, and court decisions related to the fulfillment of the elements of the crime of human trafficking in judicial proceedings. The approaches applied in this research are the statutory approach, conceptual approach, and case approach. The statutory approach examines Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking and the Indonesian Criminal Procedure Code (KUHP), while the case approach analyzes Decision Number 625/Pid.Sus/2023/PN Sda of the Sidoarjo District Court regarding the acquittal of the defendant due to the failure to prove the elements of the alleged offense.<sup>8</sup>

The legal materials used consist of primary legal materials, including legislation and court decisions, as well as secondary legal materials in the form of legal literature, scientific journals, and expert opinions. The collected materials are analyzed qualitatively by examining the relationship between legal provisions, evidence presented during the trial, and the judges' legal considerations in determining whether the elements of human trafficking have been legally and convincingly proven.<sup>9</sup>

## 3. Results and Discussion

### 3.1. Analysis of the Act Element (Process Element)

The act element in human trafficking cannot be interpreted solely through recruitment or transportation activities because trafficking requires a connection between the act, the means,

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<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2017), 133–136.

<sup>9</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2015), 13–14.



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and the exploitation purpose. Previous studies emphasize that uncertainty in defining trafficking elements often creates difficulties in prosecution and judicial assessment<sup>10</sup>

The act element (*process element*) is the initial component in determining whether an act can be categorized as human trafficking. Article 1 Number 1 of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking defines trafficking in persons as an act involving recruitment, transportation, transfer, harboring, or receipt of a person. However, the fulfillment of the act element cannot stand independently because human trafficking is constructed through the combination of three cumulative elements: the act element, the means element, and the purpose element of exploitation.<sup>11</sup>

Academic studies emphasize that recruitment or transportation activities alone do not automatically constitute human trafficking. The existence of these actions must be connected with unlawful methods and an exploitative objective. Harahap et al. explain that the evidentiary process in human trafficking cases requires a comprehensive assessment of each element because TPPO has a different legal character from ordinary employment violations or illegal worker placement.<sup>12</sup>

In Decision Number 625/Pid.Sus/2023/PN Sda, the defendant was prosecuted for allegedly committing human trafficking. The facts presented during the trial indicated the existence of activities related to the process of recruiting or assisting individuals in relation to employment opportunities. However, the existence of recruitment or assistance activities does not automatically fulfill the act element of human trafficking unless such actions are proven to be part of a trafficking scheme intended to place a person in an exploitative situation.

The panel of judges assessed that the actions attributed to the defendant did not sufficiently demonstrate that the defendant had carried out a trafficking process as intended under Article 1 Number 1 of Law Number 21 of 2007. The evidence presented before the court was considered insufficient to establish that the defendant's actions constituted a prohibited trafficking process rather than merely an act related to employment arrangements or assistance.

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<sup>10</sup> Farrell et al., "The Prosecution of State-Level Human Trafficking Cases in the United States" (2016); Cooper et al., "Factors that Influence the Criminal Justice Response to Human Trafficking" (2024).

<sup>11</sup> Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, Article 1 Number 1.

<sup>12</sup> Lukman Hakim Harahap et al., "Aspek Hukum Pembuktian dalam Kasus Tindak Pidana Perdagangan Orang," *Journal of Law, Administration, and Social Science* 4, no. 6 (2024): 1027–1035.



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Therefore, the act element must be interpreted together with the other elements of trafficking. Criminal liability cannot be imposed solely based on the existence of recruitment or involvement in sending workers because criminal law requires proof of all elements of the offense cumulatively.

### **3.2. Analysis of the Means Element**

The means element represents the method used by the perpetrator to commit human trafficking. Under Article 1 Number 1 of Law Number 21 of 2007, the means element includes threats of violence, the use of force, kidnapping, fraud, deception, abuse of power, exploitation of vulnerability, debt bondage, or the giving or receiving of payments to obtain consent from a person having control over another person.<sup>13</sup> Unlike ordinary recruitment activities, human trafficking requires the existence of improper means that eliminate or limit a person's free will. Therefore, the prosecution must prove that the defendant used one or more of the prohibited methods to control or exploit the victim.

In analyzing Decision Number 625/Pid.Sus/2023/PN Sda, the court found that the prosecution was unable to sufficiently prove the existence of coercive methods, deception, abuse of vulnerability, or other prohibited means committed by the defendant. The evidence presented during the trial did not demonstrate that the defendant exercised control over the victims through unlawful means as required by the provisions of the Human Trafficking Law.

The absence of proof regarding the means element became one of the reasons why the defendant could not be held criminally responsible. A person's involvement in facilitating employment or migration procedures cannot be categorized as human trafficking unless it is accompanied by legally prohibited methods aimed at exploiting the victim.

### **3.3. Analysis of the Exploitation Purpose Element**

The exploitation purpose element represents the fundamental characteristic of human trafficking. Without exploitation or the intention to exploit, an act cannot be classified as human trafficking. Article 1 Number 1 of Law Number 21 of 2007 recognizes exploitation in various forms, including forced labor, slavery, sexual exploitation, and other practices violating human dignity.

Research on human trafficking emphasizes that exploitation is the element that separates trafficking offenses from other related offenses. The existence of recruitment, transportation,

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<sup>13</sup> Ibid.



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or employment arrangements becomes legally relevant only when these activities are directed toward placing a person in an exploitative condition.<sup>14</sup>

In Decision Number 625/Pid.Sus/2023/PN Sda, the panel of judges considered that the purpose of exploitation was not legally and convincingly proven. The evidence presented did not demonstrate that the defendant intended to exploit the individuals involved or knowingly placed them in a condition of forced labor, slavery, or another form of exploitation. The failure to prove the exploitation purpose element resulted in the failure to establish the complete structure of the human trafficking offense. Since the act, means, and purpose elements are interconnected and cumulative, the absence of one element prevents the imposition of criminal liability for human trafficking.<sup>15</sup>

### 3.4. Judge's Legal Consideration in Acquitting the Defendant

The acquittal in Decision Number 625/Pid.Sus/2023/PN Sda illustrates the application of the criminal evidentiary principle under Article 183 of the Indonesian Criminal Procedure Code (KUHAP). A defendant may only be convicted when the existence of a criminal act and the defendant's responsibility are proven through at least two valid forms of evidence accompanied by the judge's conviction.<sup>16</sup>

Studies concerning human trafficking trials show that judges must carefully examine whether the evidence presented by the prosecution corresponds with each element of the offense. Prafitriana explains that expert testimony may strengthen the assessment of TPPO cases; however, such evidence remains subject to the judge's evaluation and cannot replace the obligation to prove all elements of the offense.<sup>17</sup>

Furthermore, Budiman highlights that differences in judicial interpretation often occur in human trafficking cases, particularly regarding the assessment of exploitation and the role of defendants in trafficking processes. Therefore, judges must avoid both excessive interpretation and narrow interpretation that may ignore the legal requirements of the offense.<sup>18</sup>

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<sup>14</sup> United Nations Office on Drugs and Crime, *Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto* (United Nations, 2004).

<sup>15</sup> Kitab Undang-Undang Hukum Acara Pidana (Indonesian Criminal Procedure Code), Article 183.

<sup>16</sup> Ibid.

<sup>17</sup> K. Prafitriana, "Penggunaan Keterangan Ahli dalam Pembuktian Tindak Pidana Perdagangan Orang," *Verstek* 4, no. 3 (2016).

<sup>18</sup> Adhigama Andre Budiman, "Misinterpretasi Hakim dalam Perkara Perdagangan Manusia: Kajian Putusan Nomor 15/Pid.Sus/2017/PN.Kpg," *Jurnal Yudisial* 17, no. 3 (2024).



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In this case, the panel of judges did not find sufficient evidence proving that all elements of human trafficking had been fulfilled. The court's consideration was not based on denying the existence of illegal acts in general, but rather on the failure of the prosecution to prove the specific elements required by the Human Trafficking Law.

The judge's decision is consistent with the principle of legality and the principle of *in dubio pro reo*, which requires that any doubt regarding the proof of a criminal offense must be interpreted in favor of the defendant. Criminal conviction cannot be based on assumptions or incomplete evidence because the burden of proof remains on the prosecutor to establish the defendant's guilt beyond the evidentiary requirements established by law.<sup>19</sup>

Therefore, the acquittal demonstrates that the application of human trafficking provisions requires strict interpretation and careful examination of each element of the offense. The protection of victims and the eradication of human trafficking must be balanced with the obligation to uphold procedural justice and ensure that criminal sanctions are imposed only against individuals whose actions fulfill all legal requirements of the offense.

#### 4. Conclusion

The analysis of Decision Number 625/Pid.Sus/2023/PN Sda demonstrates that the fulfillment of the elements of the crime of human trafficking cannot be determined solely based on the existence of recruitment, transportation, or assistance activities related to employment arrangements. Human trafficking requires the cumulative fulfillment of three essential elements as regulated under Article 1 Number 1 of Law Number 21 of 2007, namely the act element (*process*), the means element, and the purpose element of exploitation. The absence of one of these elements results in the failure to establish criminal liability for the offense of human trafficking. Based on the analysis of the act element, the defendant's involvement in recruitment or assistance activities was insufficient to prove that the defendant had carried out a trafficking process as intended by the Human Trafficking Law. Furthermore, regarding the means element, the prosecution was unable to prove the existence of unlawful methods, such as deception, coercion, abuse of vulnerability, or other prohibited means used by the defendant to control the victim. Likewise, the exploitation purpose element was not legally and convincingly established because the evidence did not demonstrate that the defendant intended to place the victim in an exploitative condition. The judges' consideration in acquitting the defendant in Decision Number 625/Pid.Sus/2023/PN Sda reflects the implementation of the criminal evidentiary principle under Article 183 of the Indonesian

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<sup>19</sup> Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2019), 254.



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Criminal Procedure Code, which requires the existence of valid evidence accompanied by judicial conviction before imposing criminal punishment. The decision confirms that the eradication of human trafficking must be carried out within the framework of legal certainty and due process of law. Protection of victims and strict enforcement against perpetrators must be balanced with the obligation to ensure that criminal sanctions are imposed only when all elements of the offense have been proven. Therefore, the case emphasizes the importance of a comprehensive evidentiary assessment in human trafficking cases. Law enforcement officers, prosecutors, and judges must carefully examine the relationship between factual circumstances and the legal elements of trafficking to prevent both the failure to prosecute genuine trafficking cases and the excessive application of criminal provisions against acts that do not fulfill the statutory requirements.

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