FACULTY OF LAW
PROCEEDING OF INTERNATIONAL CONFERENCE ON
THE LAW DEVELOPMENT FOR PUBLIC WELFARE
ISSN: 2798-9313
LICS 2026
Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Reconstruction of Substantive Criminal Law Policy Regarding Corporations as Perpetrators of The Crime of Human Trafficking (TPPO)

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Abstract. *The Crime of Human Trafficking (TPPO) has evolved into one of the most heinous forms of organized transnational crime, in which corporations now frequently act as the intellectual actors behind a façade of institutional legality. In practice, the mobility of this crime is no longer driven conventionally solely by individual offenders, but also involves legal corporations such as licensed labor recruitment agencies, shell companies, and hotel networks. Nevertheless, Indonesia's current substantive criminal law architecture has not been able to keep pace with the complexity of these criminal methods because it remains confined within a doctrine of criminal liability oriented toward natural persons as legal subjects. Doctrinal uncertainty regarding the formulation of corporate fault has caused law enforcement within the human trafficking eradication regime to be ineffective and often fail to reach corporations as the primary beneficiaries of human exploitation. This study aims to critically analyze the fundamental weaknesses in the formulation of corporate criminal liability under Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, and to formulate an ideal reconstruction of future substantive criminal law policy. Using a normative juridical research method with statutory, conceptual, and comparative approaches, this study identifies legal gaps and operational ambiguities regarding the criteria for determining corporate criminal intent. As a solution, this study offers a model for reconstructing substantive criminal law policy by explicitly integrating the doctrines of vicarious liability and identification into Indonesia's positive law. Future legislative policy must strengthen criminal sanctions in the form of permanent revocation of business licenses, comprehensive confiscation of corporate assets, and the imposition of multiplied fines as effective deterrent instruments. This transformation is absolutely necessary to shift the paradigm of criminal law enforcement from a traditional individual-centered approach toward a modern corporate-oriented* *approach that is responsive to victim protection. Through strengthening the substance of substantive criminal law, it is expected that Indonesia's criminal justice system will produce progressive and just decisions while simultaneously dismantling the economic foundations of corporate-based human trafficking syndicates in order to uphold civilized humanity.*

Keywords: *Corporation; Crime of Human Trafficking; Legal Reconstruction; Substantive Criminal Law.*

1. Introduction

Globalization and the development of the global economy have not only brought progress to human civilization but have also triggered the metamorphosis of crime from being local and conventional into organized transnational crime. One of the most alarming modern crimes against humanity that has flourished under globalization is the Crime of Human Trafficking (TPPO). This crime not only violates national positive law but also degrades human dignity, which is universally guaranteed by the Universal Declaration of Human Rights. In the domestic context, protecting human dignity from all forms of exploitation and modern slavery constitutes a sacred constitutional mandate, as explicitly stated in Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which affirms that the right not to be enslaved is a non-derogable human right.[1]

However, empirical developments indicate that the modus operandi of human trafficking has undergone a dramatic paradigm shift, with corporations now playing a central role in driving the human exploitation supply chain. Corporations, whether operating in the formal or informal sector, frequently exploit their legal status as a shield to conceal illegal activities involving the recruitment, transportation, and harboring of victims. Business entities such as Indonesian Migrant Worker Placement Companies (P3MI), travel agencies, shipping companies, and hotel networks are often indicated to be part of well-organized criminal syndicates. Corporate involvement causes far greater damage than that caused by individual offenders because corporations possess financial capital, logistical networks, and

[1] *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (Jakarta: Sekretariat Jenderal MPR RI, 2002), Pasal 28I ayat (1)

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administrative capabilities that enable them to exploit victims on a large scale and over extended periods.[2]

Philosophically, the involvement of business entities in this extraordinary crime undermines the foundations of social justice and violates the fundamental freedoms of citizens that ought to be protected. Corporations pursuing financial gain by exploiting labor or facilitating the sexual trafficking of women and children have reduced human beings to mere economic commodities with monetary value. Ironically, when human trafficking cases are uncovered, the enforcement of criminal law almost always targets only field operators such as brokers, drivers, or lower-level administrators, while the corporations that are the ultimate beneficiaries continue to operate freely beyond the reach of the law.

Historically, the reluctance of Indonesia's criminal justice system to prosecute corporations stems from the strong influence of the colonial Dutch doctrinal principle societas delinquere non potest or universitas delinquere non potest, which holds that legal entities or corporations cannot commit criminal offenses.[3] Traditional criminal law has always assumed that criminal acts can only be committed by beings possessing a soul, intellect, and biological body, namely natural persons (natuurlijk persoon). This conventional view holds that corporations have no independent mental state or criminal intent (mens rea), so all criminal liability must be imposed individually upon the physical managers acting on behalf of the corporation.

Although Indonesia has modernized its legal system by enacting Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (UU PTPPO), which explicitly recognizes corporations as legal subjects capable of bearing criminal liability, the substantive criminal law policy contained therein still suffers from fundamental theoretical weaknesses. Article 13 of the Human Trafficking Law normatively provides that the crime of human trafficking is committed by a corporation when the offense is committed by a person acting for and/or on behalf of the corporation or for the benefit of the corporation, whether based on an employment relationship or another relationship, acting within the scope of the corporation.[4] Although this provision appears comprehensive at first glance, in practice it creates conceptual confusion among law enforcement officers regarding how to prove the element of fault or criminal intent of an abstract artificial entity such as a corporation.

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[2] Muladi dan Dwidja Priyatno, *Pertanggungjawaban Pidana Korporasi* (Jakarta: Kencana, 2010), hlm. 34

[3] Barda Nawawi Arief, *Kapita Selekta Hukum Pidana* (Bandung: Citra Aditya Bakti, 2013), hlm. 78.

[4] *Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang*

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This doctrinal uncertainty is further aggravated by the fact that the Human Trafficking Law does not explicitly formulate which doctrine of criminal liability it adopts to connect the physical acts of corporate managers with the corporation's mental fault. Does the law embrace the identification doctrine, vicarious liability, or the corporate culture doctrine, The absence of doctrinal clarification in the statutory text causes police officers, prosecutors, and judges to become trapped in methodological uncertainty, leading them to choose the safer route of relying on the traditional individual-centered approach to criminal law. Consequently, the provisions concerning corporate criminal liability in the Human Trafficking Law have become "dead-letter provisions" that are rarely applied in court proceedings.

The tangible consequence of this failure in substantive criminal law formulation is the emergence of corporate impunity that cumulatively harms both the state and victims. Corporations proven to have served as shelters for trafficking victims often receive only administrative sanctions, such as the revocation of operating licenses by the relevant ministries, without being subjected to comprehensive criminal prosecution. Once their licenses are revoked, the owners can easily establish new corporations under different names while maintaining identical operational patterns to continue their human trafficking business. This recurring pattern of criminal activity demonstrates that non-criminal sanctions have no meaningful deterrent effect capable of dismantling the criminal business empires of corporations.

The Supreme Court has attempted to address this procedural deadlock by issuing Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases Involving Corporations.[5] This regulation provides useful guidance regarding the parameters of corporate fault, such as whether the corporation gained benefits from the crime or whether it allowed the crime to occur. However, according to the hierarchy of laws and regulations, the Supreme Court Regulation constitutes procedural (formal) law and cannot replace or reconstruct the fundamental weaknesses inherent in substantive criminal law as embodied in legislation. As long as the substantive legal foundation remains unreconstructed, law enforcement against corporations involved in human trafficking will continue to be fundamentally deficient.

Looking at international legal instruments, the Palermo Protocol, which Indonesia ratified through Law Number 14 of 2009, emphasizes the importance of every State Party establishing

[5] *Peraturan Mahkamah Agung Nomor 13 Tahun 2016 tentang Tata Cara Penanganan Perkara Tindak Pidana oleh Korporasi*

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criminal liability for corporations involved in organized transnational crime.[6] This international commitment requires Indonesia to immediately harmonize its substantive criminal law architecture with global standards. A modern criminal justice system can no longer ignore the reality that the destructive power of corporations in human trafficking demands an extraordinary, measured, and progressive penal response.

Based on all the juridical and empirical issues described above, this study focuses on reconstructing substantive criminal law policy concerning corporate perpetrators of human trafficking in Indonesia. The urgency of this research lies in the need to renew Indonesia's ius constituendum so that it possesses sharp substantive legal instruments for independently or cumulatively prosecuting corporations. By reformulating the principle of fault, clarifying the criteria for attributing conduct, and redesigning a criminal sanction system oriented toward impoverishing criminal corporations, this article is expected to contribute practical and solution-oriented ideas for the reform of Indonesia's national criminal law in a manner that is just and civilized.

2. Research Methods

This study employs a normative legal research method, or doctrinal legal research, focusing on the analysis of written legal norms, legal principles, and doctrines of substantive criminal law.[7] The approaches used include a statutory approach to examine the internal consistency of the Human Trafficking Law, the Criminal Code (KUHP), and Supreme Court Regulation No. 13 of 2016; a conceptual approach to analyze doctrines of corporate criminal liability; and a comparative approach to compare corporate penal policies in several developed countries as references for legal reconstruction. The primary legal materials include the 1945 Constitution, Law No. 21 of 2007, Law No. 1 of 2023 (the New Criminal Code), and relevant international instruments. Secondary legal materials consist of criminal law textbooks, national and international scholarly journals, and other legal documents, all of which are analyzed using qualitative analysis with deductive reasoning to produce prescriptive conclusions.

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[6] *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (Palermo Protocol, 2000), Article 5
[7] Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Jakarta: Kencana Prenada Media Group, 2015), hlm. 43

3. Results and Discussion

3.1. Characteristics of Corporate Modus Operandi and the Current Normative Limitations of the Anti-Trafficking Law

The modus operandi of corporations in the crime of human trafficking in the modern era has reached a highly sophisticated level, characterized by the use of legal organizational structures to conceal illegal exploitation activities. Corporations no longer act merely as secondary offenders but have become systematic facilitators that organize every stage of human trafficking, from forging identity documents, unlawfully processing passports and visas, to providing transportation and shelter that appear legitimate in the eyes of the public. This phenomenon gives rise to what is referred to in corporate criminology as organizational misbehavior, in which the corporation's ultimate objective of maximizing profits is achieved through institutionalized criminal methods, utilizing a rigid division of labor among its employees to obscure the line of individual criminal liability.[8]

When this sophisticated modus operandi is confronted with the current normative limitations of Law Number 21 of 2007 concerning the Eradication of Human Trafficking, it becomes evident that there is a significant legal gap resulting from impractical statutory provisions. Articles 13 and 14 of the Anti-Trafficking Law, which regulate corporations as legal subjects, impose an exceptionally heavy burden of proof on public prosecutors because their normative formulation still conflates the acts of corporate managers as individuals with the acts of managers acting "on behalf of" the corporation. These normative limitations fail to clarify how a corporation should be prosecuted when exploitation results from the corporation's systemic failure to exercise internal oversight (a culture of neglect), thereby creating a broad legal loophole that allows corporations to evade substantive criminal liability by shifting the blame entirely onto lower-level employees.

3.2. The Failure of the Formulation of Corporate Mens Rea in Positive Penal Policy

The fundamental failure of Indonesia's current positive penal policy in prosecuting corporations as perpetrators of human trafficking stems from the absence of a clear doctrinal formulation regarding the element of corporate fault (mens rea) within the statutory text. Indonesia's criminal law system remains heavily influenced by the principle actus non facit reum nisi mens sit rea, which requires the existence of a guilty mind before an offender can be punished. In the context of corporations, which are fictio juris, this guilty mind is not biological but organizational-psychological in nature; however, the Anti-Trafficking Law does not adopt

[8] Romli Atmasasmita, *Teori dan Kapita Selekta Kriminologi* (Jakarta: Eresco, 1992), hlm. 67

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theoretical instruments such as the doctrine of corporate culture or reactive corporate fault, which are capable of identifying criminal intent through written policies, board of directors' resolutions, or institutional tolerance of illegal practices.[9]

As a consequence of the absence of an explicit formulation of mens rea, law enforcement authorities face a dead end when attempting to prove that the placement of migrant workers that ultimately results in slavery abroad constitutes the corporation's own intent rather than merely the personal misconduct of an individual director. The current substantive criminal policy fails to recognize that within modern corporate structures, criminal decisions are often made collectively and collegially or are covertly delegated to middle managers in order to break the chain of legal accountability leading to senior executives. The inability of positive law to attribute this form of collective fault confirms that the existing formulation of substantive criminal law has become entirely inadequate and obsolete in addressing organized corporate crime.

3.3. Reconstruction of Substantive Criminal Law Policy Based on Modern Attribution Doctrines

In order to dismantle corporate impunity and create a significant deterrent effect, Indonesia's future substantive criminal law policy (ius constituendum) must be fundamentally reconstructed by adopting modern doctrines of fault attribution. This reconstruction should explicitly incorporate the doctrines of vicarious liability and identification (identification doctrine or alter ego doctrine) into the textual provisions of criminal law reform legislation. Under the identification doctrine, the acts and criminal intent of senior corporate officers who constitute the directing mind of the company are automatically identified as the acts and criminal intent of the corporation itself, without the need to prove a separate biological intent on the part of the legal entity.[10]

In addition to reconstructing the doctrine of liability, the formulation of criminal sanctions against corporations in human trafficking cases must also be completely overhauled, moving away from reliance solely on conventional fines toward sanctions involving corporate restructuring and corporate impoverishment (corporate death penalty). The new model of substantive criminal sanctions should include placing corporations under the supervision of a state-appointed administrator (corporate probation), the immediate freezing and confiscation

[9] Muladi, "Prospek Pertanggungjawaban Pidana Korporasi di Indonesia," *Jurnal Hukum Pidana dan Kriminologi* 2, no. 1 (2018): hlm. 12-15
[10] Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2016), hlm. 201.

of all assets obtained from criminal activities, and the permanent dissolution of corporations in cases where human trafficking is proven to constitute the company's core business.

The following table provides a comparison between the current substantive criminal law policy and the proposed design for future legal reconstruction:

Aspect of Substantive Criminal Law	Current Positive Policy (Anti-Trafficking Law)	Proposed Future Framework (*Ius Constituendum*)
Doctrine of Liability	Unclear; relies on conventional individual attribution.	Explicit integration of the Identification Doctrine and Vicarious Liability.
Standard of Fault (*Mens Rea*)	Depends on the personal fault of individual corporate officers.	Based on Corporate Culture and failure of internal supervision systems.
Primary Criminal Sanctions	Fixed monetary fines with limited deterrent effect.	Corporate asset deprivation, comprehensive asset confiscation, and Corporate Death Penalty.

Furthermore, this reconstruction of substantive criminal law must establish victims' right to restitution as a mandatory obligation attached to the economic existence of the culpable corporation. The new penal policy should formulate a strict liability clause specifically governing restitution for child and female victims of trafficking in persons, whereby corporate assets may be seized and auctioned directly by the state to restore victims' losses, even before the corporation is declared bankrupt or dissolved. By modernizing the architecture of substantive criminal law through contemporary doctrines of fault attribution and a progressive sanctioning system, Indonesia will possess a highly effective legal instrument to dismantle rogue corporations while simultaneously upholding a humane and just rule of law for all victims of human trafficking.

4. Conclusion

Indonesia's current substantive criminal law policy, as embodied in Law Number 21 of 2007 on the Eradication of Trafficking in Persons, has proven entirely ineffective in holding corporations accountable as perpetrators of human trafficking. This failure results from a rigid and impractical formulation of criminal liability that does not clearly define the criteria for attributing corporate fault (mens rea) to corporations as independent legal entities. Consequently, law enforcement authorities face methodological deadlocks and tend to refrain from prosecuting corporations, thereby perpetuating impunity for the intellectual perpetrators who reap enormous financial profits from the exploitation of human beings. Reconstructing substantive penal policy through the adoption of the identification doctrine and the corporate culture doctrine, together with a comprehensive reform of criminal sanctions involving corporate economic incapacitation (corporate death penalty), constitutes an urgent legal necessity to achieve substantive justice and meaningful deterrence. The Government and the

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House of Representatives (DPR) are expected to immediately undertake a comprehensive revision of the Anti-Trafficking Law by incorporating a dedicated chapter establishing evidentiary standards for proving corporate fault based on a company's failure to prevent wrongdoing through effective internal supervisory systems (failure to prevent). In addition, the Supreme Court, together with the Attorney General's Office and the Indonesian National Police, should intensively organize certified training programs on corporate crime for law enforcement officers in order to establish a shared doctrinal understanding and strengthen the institutional willingness to prosecute and punish corporations involved in trafficking in persons in the future.

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The 1945 Constitution of the Republic of Indonesia.