

The Criminal Consequences of Human Trafficking in the Form of Prostitution

Estu Wiji Lestari

estuwijilestari@gmail.com

Abstract: *The purpose of this research is to find out, study and analyze the consequences of criminal law against acts of human trafficking in the form of prostitution. The approach method used in this paper is normative juridical. The specification of this writing is descriptive analytical. The crime of trafficking in persons is a modern form of human slavery which is an act contrary to human dignity and is a serious violation of human rights. Women are the most vulnerable group to become victims of trafficking in persons. Victims are most commonly trafficked for the purpose of prostitution or other forms of sexual exploitation. Act No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, the form of sexual exploitation in the form of trafficking is regulated in Article 2. The law needs to show a deterrent effect on pimps in Indonesia if you want to encourage the prevention of the practice of prostitution in Indonesia. Because of the network, access to prostitution at this time with the times and technology will be increasingly quiet and law enforcement through the Police in investigations is increasingly being challenged. For this reason, the judge as the decision maker and also a manifestation of the parameters of the weight of punishment for pimps needs to improve legal reasoning in terms of the impact and effectiveness that occurs when a pimp is punished proportionally and appropriately to create a deterrent effect for other pimps.*

Keywords: *Consequences; Prostitution; Trafficking.*

1. Introduction

Law is a social institution that lives in society to control life in the midst of society (social control).¹ Law has a role to create peace, and peace is a concept that guarantees harmony between external order and inner peace.²

¹ M. Harun. Legal Policy Reform Against Election Criminal Law Enforcement in Maintaining State Sovereignty. *Rechts Vinding Journal*, Volume 5 Number 1, (2016), p.112.

² Sidik Purnama, Criminal Act Principles Policy Renewal of Criminal Act in Indonesia, *Daulat Hukum Journal*, Volume 1 No. 2 (2018), p.480

Law is no longer seen as a mere reflection of power, but must also radiate protection of the basic rights of citizens. The main problem in law besides the problem of law formation is also the problem of law enforcement.³ Law enforcement is essentially an interaction between various human behaviors that represent different interests within a mutually agreed framework of rules.⁴ Law enforcement that only prioritizes legal certainty will have implications for not achieving the true meaning of law enforcement itself, namely providing justice, happiness and guaranteeing the fulfillment of human rights.

Human trafficking has been going on for a long time and is an act that is contrary to human dignity.⁵ This is a violation of human rights, human dignity and worth which are protected under Pancasila and the 1945 Constitution. Trafficking in persons is an organized crime that is carried out either by conventional means by cajoling, doubtful or modern ways. Perpetrators organize crimes by building a network from the region/country of origin of the victim to the area or country of destination.

Women are the most vulnerable group to become victims of trafficking in persons. Victims were trafficked not only for the purpose of prostitution or other forms of sexual exploitation, but also included other forms of exploitation, such as forced labor or slavery and slavery.⁶ Prostitution is not only an individual symptom but has become a social symptom of deviation from normal sexuality and religion.⁷ As a country with the ideology of Pancasila, prostitution has damaged the nation's identity which is noble and upholds high values. So that it can be said, prostitution can be a disturbance or obstacle and even a threat to national resilience in the ideological and socio-cultural fields. Prostitution is a category of social disease that develops in society or is better known as social pathology.

The form of imposition of criminal sanctions is based on an error that is in accordance with the elements of law and there is no reason for abolition which is against the law, an element of intent by the perpetrator (*dolus*) so that there is no justification or reason for him to avoid punishment.⁸ Law enforcement efforts in

³ John Suhardin. The Phenomenon of Ignoring Justice in Law Enforcement. *Journal of Law Platform*, Volume 21 Number 2, (2009), p.342.

⁴ Yanto Irianto, To A Complaint Crime Implementation of Sexual Violence of Husband to Wife in Cirebon Police Jurisdictions, *Journal of Daulat Hukum*, Volume 1 No. 3 (2018), p.767

⁵ Nanang Suhendar and Sri Kusriyah, Criminal Policy and The Role of The Government in The Control of Commercial Sex Workers in The District of Kuningan, *Daulat Hukum Journal*, Volume 1 No. 3 (2018), p.644

⁶ Arif Zaenal Abidin, Implementation of Online Prostitution Crime Investigation in Polres Cirebon City Jurisdictions, *Journal of Daulat Hukum*, Volume 1 Issue 3 (2018), p.726

⁷ Terence H, Endang Sulistianingsih, Gavin WJ, 1997. *Prostitution in Indonesia*, Jakarta: Sinar Harapan Library, p. 3.

⁸ Anggie Rizqita Herda Putri and Ridwan Arifin, Legal Protection for Victims of Human Trafficking Crimes in Indonesia, *Res Judicata*, Vol.2, No. 1, 2019. p. 180

eradicating trafficking in persons are carried out by means of non-penalty and penal means. The non-penal approach is carried out with counseling, social education in the framework of developing social responsibility of citizens who are aware of the crime of trafficking in persons, legal counseling, resocialization, workshops, etc., especially in crime-prone environments. The penal approach is carried out through legal efforts so that the perpetrators of the crime of trafficking in persons are legally processed based on statutory provisions up to the court and execution level in order to obtain criminal sanctions and guarantee legal certainty in society. Law enforcement efforts in eradicating trafficking in persons are carried out by means of non-penalty and penal means.⁹

The purpose of the author's research is to find out, study and analyze the consequences of criminal law on human trafficking in the form of prostitution.

2. Research Methods

To conduct an assessment in this writing the authors use the normative juridical method. Writing specifications are carried out using a descriptive analytical approach. The data used for this writing is secondary data. To obtain the data in this writing, secondary data collection methods were used which were obtained from library books, laws and regulations, as well as the opinions of legal experts. The data that has been obtained is then analyzed with qualitative analysis.

3. Results and Discussion

3.1. Human Trafficking

Expansion of the definition of trafficking as quoted from Wijers and Lap-Chew namely "Trafficking as the movement of people, especially women and children, with or without the consent of the person concerned, within a country or abroad, for all forms of exploitative labour, not only prostitution and slavery under the guise of marriage (servile marriage)".¹⁰

Human trafficking transfers a person from one party to another using threats, deception and control. Trafficking in human beings contains elements of diversion whose purpose can be for anything, including exploitation of laborers, domestic workers, harvesting of organs and up to commercial sexual exploitation.¹¹

⁹Maidin Gultom, 2014. Criminal Law Enforcement, Bandung: PT Refika Aditama, p. 50.

¹⁰Yohanes Suhardin, Concerning Human Trafficking From a Human Rights Perspective. Law Platform Volume 20, No.3. (2008), p.162

¹¹Lola Wagner, Trafficking of Women and Teenagers for Commercial Sexual Exploitation in Batam. Women's Journal Edition 29, (2004), p.211

3.2. Prostitution

The word prostitution comes from the Latin "prostitution (em)", which is then translated into English into "prostitution", which means prostitution, prostitution, immorality, and then becomes prostitution in Indonesian. According to James A. Inciardi as quoted by Topo Santoso, prostitution is the offer of sexual relations in order to obtain money or other benefits.¹² Iwan Bloch argues, prostitution is a form of sexual relations outside of marriage with a certain pattern, that is, to anyone openly and almost always with payment for intercourse or other sexual activities that provide the satisfaction desired by the person concerned.¹³

3.3. Consequences of Criminal Law on Human Trafficking in the Form of Prostitution

Trafficking in persons is a behavior that deviates from the norms that exist in a social system. Paul Horton suggests that there are six characteristics of deviant behavior including deviance must be defined, deviance can also be accepted or rejected, relative deviance and absolute deviance, deviation from real culture and ideal culture, there are avoidance norms, adaptive social deviance (adjustment). Social deviance can also be categorized as social pathology which means social/social disease or is all human behavior that is considered inappropriate, violates general norms and customs, or is not integrated with general behavior, including namely: gambling, corruption, criminology, prostitution, drug and drug abuse,¹⁴

According to Act No. 26 of 2000 concerning the Human Rights Court, trafficking in persons is a violation of human rights, including crimes against humanity. Article 9 states that a crime against humanity is an act committed as part of a widespread or systematic attack which he knows is that the attack was directed directly against the civilian population. In addition, Indonesia has signed the UN Convention on Transnational Organized Crimes and its protocols, namely the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol Against the Smuggling of Migrants by Land, Sea and Air, in December 2000 in Palermo Itali, which of course is in the context of addressing the legal

¹² Dewi Bunga, 2011, *Cyber Prostitution (Discourse on Law Enforcement in the Anatomy of Traditional Crime)*, Bali, Udayana University Press, p. 11

¹³ D. Soerjono, 1997, *Prostitution in terms of law and reality in society*, PT. Karya Nusantara, Bandung, p.17

¹⁴ R. Rahmawati, *Social Deviance of Human Trafficking*. *Equilibrium Journal*, Vol.4, No. 1 (2016), p.30-37

implications of acts of trafficking in persons.¹⁵

Article 2 point 1 Act No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, there is the word "for the purpose" before the phrase exploiting people indicating that the crime of trafficking in persons is a formal offense, namely the existence of a crime of trafficking in persons is sufficient to fulfill the elements of the action that has been formulated, and does not have to be cause consequences. In addition to Article 2 of Act No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons there are other criminal provisions in the Act, namely Article 3, Article 4, Article 5 and Article 6 of Act No. 21 of 2007. In Act No. 21 of 2007, there is an additional criminal threat of 1/3 (one third) if the victim suffers serious injuries, serious mental disorders, other infectious diseases that endanger her life, pregnancy,

This is in accordance with Article 7 which reads:

- (1). If the crime referred to in Article 2 paragraph (2), Article 3, Article 4, Article 5 and Article 6 causes the victim to suffer serious injury, serious mental disorder, other infectious diseases which endanger her life, pregnancy, or interruption or loss of reproductive function, the criminal penalty shall be increased by 1/3 (one third) of the criminal penalty in Article 2 paragraph (2), Article 3, Article 4, Article 5 and Article 6.
- (2). If the crime referred to in Article 2 paragraph (2), Article 3, Article 4, Article 5 and Article 6 results in the death of the victim, the penalty shall be imprisonment for a minimum of 5 (five) years and a maximum imprisonment for life and a minimum fine of IDR 200,000,000.00 (two hundred million rupiahs) and a maximum of IDR 5,000,000,000.00 (five billion rupiahs).

The application of criminal sanctions in Indonesia, the implementation of which is in the Criminal Code (KUHP), the imposition of criminal sanctions against the crime of trafficking in persons (human trafficking) in the Criminal Code is regulated in book II Article 295 paragraph (1) numbers 1 and 2, Article 295 paragraph (2), Article 296, Article 297, Article 298 paragraph (1), (2) and Article 506. From the meaning contained in the Criminal Code can be described as follows:

- a. Deliberately causing or facilitating obscenity in which the victims are children (biological, step, adoptive) and children under their supervision; the perpetrator's actions as a livelihood;

¹⁵Maslihati N Hidayati. Efforts to Eradicate and Prevent Trafficking in Persons Through International Law and Indonesian Positive Law. Journal of Al-Azhar Indonesia Social Institutions Series, Vol. 1, No. 3, (2012), p.125

- b. Same act, but for adults;
- c. Trade women and boys;
- d. There are additional penalties (1) revocation of rights (custody for perpetrators whose victims are children), (2) dismissal from work if crimes are committed in their work.¹⁶

Act No. 21 of 2007 concerning the eradication of the crime of trafficking in persons provides for quite severe criminal sanctions against perpetrators of criminal acts of human trafficking as a form of protection for victims of human trafficking. Criminal provisions are contained in Article 2 to Article 23 of Act No. 21 of 2007 concerning the eradication of the criminal act of trafficking in persons. One example of Article 2 which regulates the criminal action of a trafficker in human beings, either unlawfully or obtaining approval from a person who has control over another person with the aim of exploiting. Article 2 of Act No. 21 of 2007 concerning the eradication of the crime of trafficking in persons, namely:

“Anyone who recruits, transports, shelters, sends, transfers, or accepts someone with threats of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or position of vulnerability, debt bondage or gives payments or benefits even though obtaining approval from a person who has control over another person, for the purpose of exploiting said person within the territory of the Republic of Indonesia, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least IDR 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of IDR 600,000,000.00 (six hundred million rupiah)”.

Regarding human trafficking in the form of prostitution, the Criminal Code when viewed from social norms clearly prohibits or forbids the crime of prostitution. However, in the Criminal Code there are no articles that can be used to ensnare service users and perpetrators or Commercial Sex Workers (PSK). There are rules related to the crime of using online media in the ITE law and the Pornography law. Although both do not specifically regulate prostitution or online prostitution, both contain sexual exploitation which is part of prostitution activity.

On the concept of online prostitution, pimps in Act No. 19 of 2016 amending Act No. 11 of 2008 concerning Information and Electronic Transactions are sentenced to Article 27 paragraph (1). This article only provides an explanation related to distributing, transmitting, and making it accessible, does not contain elements regarding prostitution carried out by pimps. At first glance, the formulation of Article 27 paragraph (1) of Act No. 19 of 2016 Concerning Electronic Information and Transactions will not cause any problems, because every necessary element

¹⁶I Gusti Maharani, Ayu Stefani Ratna, & Ida Bagus Putra Atmadja, Criminal Sanctions Against Human Trafficking in Indonesia. Kertha Talk, Vol.04 No.03, (2015), p.252

in a criminal offense formula has been fulfilled. However, if examined carefully, questions will arise regarding the object of the prohibited act, namely "electronic information or electronic documents that have content that violates decency." In the elucidation of Article 27 paragraph (1) of the ITE Law, it is stated "quite clear", apart from that even in the general regulations there is no explanation of what is meant by content that violates decency. There is no explanation whatsoever that can be used to find the meaning of the norms regulated in Article 27 paragraph (1).¹⁷

In addition, if it is formulated based on the principle of a criminal act based on the doctrine of criminal law, then it is clear that the crime in Article 27 paragraph (1) does not fulfill the principles of *lex certa* and *lex scripta*, namely that the formulation of a criminal act must be clear (contain elements of good deeds, circumstances and consequences) and the formulation of the crime must be strict, not rubbery and not multiple interpretations. So, it can be seen that the criminal liability of pimps in the Information and Electronic Transactions Law does not provide further explanation regarding the object that pimps commit, namely prostitution online.

Pimps in the Criminal Code are sentenced under Article 296 and Article 506. Based on the two articles in the Criminal Code it is clear that it regulates the actions of pimps who practice prostitution. However, in this case the two articles do not provide an explanation regarding online prostitution, because in the perspective of the Criminal Code only regulates conventional criminal acts of prostitution.¹⁸ So that for now the Criminal Code can only reach the problem of conventional prostitution and cannot reach it online.

Liability of strict liability which is a criminal liability that does not question the existence of an evil inner attitude of the perpetrator (*mens rea*) because the main element of strict liability is a prohibited act (*actus reus*). So that the perpetrator of a criminal act can already be punished if he has committed a criminal act that is prohibited by law. In this case, determining the criminal liability of the pimp must first look at what actions they committed, and not only the actions but the impact of these actions, because in the application of strict liability these actions have been strictly prohibited by law and are categorized as dangerous activities.¹⁹

Regarding commercial sex workers as executors in sexual activities, they are

¹⁷Lalu Heru Sujamawardi, Juridical Analysis of Article 27 Paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, *Dialogia Iuridica: Journal of Business and Investment Law*, Vol.9 No.2, (2018), p.91

¹⁸Dinda Zulaini Madjid and others, Students as Online Prostitutes (Studies in Semarang City), Semarang State University, Vol.9 No.54, (2019), p.271

¹⁹Moch Juli Pudjiono, & Sigit Sapto Nugroho, Criminal Responsibility for Trafficking in Persons. *Social Journal*, Vol.15 No.1, (2014), p.331

determined only as victims, this is based on considerations made by Police Investigators.²⁰ That the Police have discretionary rights in which in the process of law enforcement against cases of prostitution, whether online or not, based on harmonizing the relationship of values that are spelled out in solid and manifest principles and attitudes as a summary of the elaboration of values at the final stage, to create, maintain and maintaining peace in social life so that in the process of law enforcement it produces decisions that are not strictly regulated by the rule of law, but have an element of personal judgment and essentially discretion lies between law and morality.

4. Conclusion

Based on Act No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, the form of the crime of sexual exploitation in the form of trafficking is regulated in Article 2. Examining Act No. 21 of 2007 at a glance, it is already comprehensive in the prevention and control of trafficking in persons. The imposition of sanctions for perpetrators (traffickers) is already very heavy, compared to the imposition of sanctions in the Criminal Code. The big influence and strong impetus for the practice of prostitution came from the front pimps. The law needs to show a deterrent effect on pimps in Indonesia if you want to encourage the prevention of the practice of prostitution in Indonesia.

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²⁰Wahyu Riadi, Implementation of Human Trafficking Prevention in the Perspective Of Defense System. *Journal of Universal War Strategy Study Program*, Volume 3 Number 2, (2017), p.173

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