

Legal Analysis of Criminal Responsibility for Human Trafficking Crimes Based on Justice

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Abstract. *The purpose of this research is to determine and analyze the criminal liability of criminal acts of human trafficking based on the value of justice, to determine and analyze the criminal liability of criminal acts of human trafficking in the future. This legal research uses an empirical legal research approach. The crime of human trafficking (TPPO) is a serious crime that involves widespread human exploitation, both at the national and international levels. Criminal accountability for TIP perpetrators must be based on the value of justice, including severe punishment, compensation for victims, rehabilitation of perpetrators, and sustainable prevention. This study examines regulations in countries such as Portugal, Australia, and Japan, which integrate a multidimensional approach to punish perpetrators, rehabilitate victims, and prevent similar crimes in the future. In the Indonesian context, strengthening punishment, protecting victims, training law enforcement officers, international cooperation, and public education are strategic steps to eradicate TIP. This holistic approach aims to achieve justice for all affected parties, while protecting human rights.*

Keywords: *Criminal; Justice; Trafficking.*

1. Introduction

The Republic of Indonesia is a state based on law (Rechtsstaats), not a state based on mere power (Machtsstaat), which is expressly regulated in the body, namely in Article 1 paragraph (3) of the 1945 Constitution. In the concept of a state based on law, it is idealized that the law must be the commander in all dynamics of state life.¹

Criminal law as one of the laws in the Republic of Indonesia, has a general objective, namely, to maintain public order, then its specific objective is to combat crime or prevent crime from occurring by providing harsh and sharp sanctions as protection for the interests of society and the state.

¹Laurensius Arliman, Realizing Good Law Enforcement to Realize Indonesia as a Legal State, Al Qadau Journal, Vol 8 No 1, 2021, pp 509-534

Trafficking or human trafficking, especially against women and children, has long been a national and international problem for various nations in the world, including Indonesia. Human trafficking has been so familiar in society. However, in terms of terminology, it seems that not many people understand it.²

The problem of poverty seems to be the main reason for the question of why human trafficking continues to experience an increase, whether consciously or unconsciously this mode has become a lucrative source of income. For children who are prostituted, their opportunities to get an education and to reach their full development potential are robbed, which means destroying human resources that are vital for national development. This condition is widespread in groups of people who have a very strong economic dependence on economic forces outside their community.³

During the colonial period, crimes against women and children were already qualified as crimes or considered inhumane acts and worthy of criminal sanctions. However, along with advances in technology, information, and transportation that accelerate the globalization of traffickers, human trafficking quickly developed into a cross-border syndicate that very subtly ensnares its victims, but very cruelly exploits them in various ways so that the victims become powerless to free themselves.

History shows that trafficking and slavery have existed for decades, centuries, or even thousands of years ago. It all started with one group being conquered by another group and the most powerful group would rule over the weaker group. As a result, economic ownership and political power were provided. Today, human trafficking is a problem in many areas that does not only affect the Indonesian government. In addition to inter-island human trafficking, human trafficking occurs outside Indonesia to other countries.

Roeslan Saleh stated that:⁴"In discussing criminal responsibility, it cannot be separated from an aspect that must be seen from a philosophical perspective. One of them is justice, so that discussing criminal responsibility will provide a clearer view. Criminal responsibility as a matter of criminal law is intertwined with justice as a matter of philosophy."

The advancement of communication, information technology, and the shift in mode more about crimes increased. The mode of human trafficking crimes is increasingly sophisticated. Traders behave in a neat and orderly manner. Most usually, the perpetrators use various methods to find victims, such as by seducing potential victims. There are perpetrators of crimes who make direct contact with

²M.Zaelani Tammaka, *Towards Humane Journalism: Trafficking Cases in Media Coverage in Central Java and the Special Region of Yogyakarta*, Surakarta, Aji Surakarta, 2003, p. 3

³Abdul Haris and Nyoman Andika, *Waves of Migration to Human Trafficking*, LESFI, Jakarta, 2002, p. 122.

⁴Roeslan Saleh. *Thoughts on Criminal Responsibility*. Ghalia Indonesia. Jakarta. 1982, p. 8

potential victims or who send immigrant workers, various regions, and various countries, departure, acceptance, and shelter.⁵

The way of working carried out by the perpetrators is mostly done individually, or planned, starting from the most direct by looking for victims to places where they are, remote areas by persuading, trapping, lying and exploiting the vulnerability of potential victims and their parents, even to violence. Using sophisticated technology to impose sponsorship along with the pretext that the job offered gets a lot of salary, multiple bonuses.⁶

Constitutionally, with the protection of human rights, every citizen is guaranteed the right to work at home and abroad as regulated in Article 27 Paragraph 2 of the 1945 Constitution. Indonesian citizens have the right to decent work and livelihood, so that no one can prohibit them from working abroad. And therefore, every Indonesian citizen has the right to migrate safely. Safe migration is the dignified departure of migrants abroad through government, private, or independent processes. The state must respect, protect, and uphold their rights both before they leave, while they are working, until they return to their homeland.⁷

In operating the crime of human trafficking is always done in secret and deviates from the law. Human traffickers become fast, a cross-border clue with a way of working that is quite dangerous for victims of crime. Human trafficking crimes are developing because of a factor, namely poverty. People who experience poverty who are in remote areas will be promised by the perpetrators to get jobs with high salaries that make victims interested in the perpetrator's invitation. This condition is caused by low education. People who have low education do not know that the invitation from the perpetrator is a crime. In addition, there is an instant mindset, namely wanting to quickly have abundant wealth.⁸

Every perpetrator of human trafficking must be held accountable for all their actions before the law. Criminal liability is essentially a negative consequence of the deviant behavior carried out by the perpetrator of the crime. In addition, criminal liability can also be useful for the realization of an event that is desired to be obtained from the imposition of the sentence. On the other hand, criminal

⁵Marcelino Andrew Judas, *Criminal Responsibility for the Crime of Human Trafficking*, *Lex Privatum*, Vol 11 No 2, 2023, p. 17

⁶OC Nugroho, "State Responsibility in Handling Criminal Acts of Human Trafficking," *De Jure Legal Research Journal*, Vol. 18, No. 4, Dec. 2018, p. 543

⁷BS Daud and E. Soponyono, "Implementation of Criminal Sanctions Against Human Trafficking Perpetrators in Indonesia," *Indonesian Legal Development Journal*, Vol. 1, No. 3, 2019, pp. 352-465

⁸LV Sitania and E. Suponyono, "Accommodation for Eradicating Criminal Acts of Human Trafficking in International and National Legal Aspects," *Indonesian Legal Development Journal*, vol. 2, no. 1, 2020, pp. 38-54

liability is intended to improve the behavior or conduct of the convict and to prevent others from committing a similar criminal act.⁹

The purpose of criminal responsibility is not a revenge for the perpetrator of the crime, witnesses against the perpetrator are punished with a minimum of 1 year in prison, and it is strongly emphasized for the purpose of preventing others from committing the same crime. The decision on this punishment also provides an opportunity for the perpetrator to make changes.¹⁰ Offenders convicted of crimes or legitimate activities may still be subject to a change or adjustment taking into account the prisoner's development and the purpose of the sentence.¹¹

One example of a human trafficking case that attracted quite a lot of attention occurred in 2023. The TPPO case under the guise of an internship program was revealed after four students came to the Indonesian Embassy in Germany who were taking part in a *ferien job*. After being investigated by the Indonesian Embassy, this program was run by 33 universities in Indonesia with a total of 1,047 students sent. However, the students were employed non-procedurally so that the students were exploited.¹²

2. Research methods

This legal research uses an empirical legal research approach method. Empirical legal research is legal research using legal principles and principles in reviewing, viewing, and analyzing problems in research, in addition to reviewing the implementation of law in practice.¹³ Empirical research method is a combination of doctrinal legal research method and empirical legal research method, so what is done by the researcher is a document study accompanied by a field study. Document study in this study is a literature using laws and regulations. Data analysis used in this study is Qualitative analysis, namely data that has been obtained from field studies and literature studies will be collected and grouped systematically according to the facts and characteristics of the objects studied precisely and then analyzed qualitatively with the aim of obtaining a conclusion from the research problem.¹⁴

3. Results and Discussion

⁹Siti Rochmah, Frans Simangunsong, Criminal Accountability for Perpetrators of Human Trafficking Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance, Vol. 3 No. 1 January - April 2023

¹⁰Marpaung, Leden, Principles of Criminal Law Practice Theory, Sinar Grafika, Jakarta, 2012, p. 21

¹¹Prasetyo Teguh, Material Criminal Law, Kurnia Alam, Yogyakarta, 2005, p. 7

¹²Mariana Ricky, Chronology of Human Trafficking Under the Guise of Internship in Germany Targeting Students <https://news.solopos.com/kronologi-perdagangan-orang-berkedok-magang-kerja-di-jerman-sasar-mahasiswa-1890966>

¹³Ronny Hanitijo Soemitro, Legal Research Methodology and Jurimetrics, Ghalia Indonesia, Jakarta, 1990, p. 33.

¹⁴Sudarwan Denim, Becoming a Qualitative Researcher, Pustaka Setia, Bandung, 2012, p. 62.

3.1. Criminal Accountability for Human Trafficking Crimes Based on Justice Values

Criminal law as one of the laws in the Republic of Indonesia, has a general objective, namely, to maintain public order, then its specific objective is to combat crime or prevent crime from occurring by providing harsh and sharp sanctions as protection for the interests of society and the state.

Trafficking or human trafficking, especially against women and children, has long been a national and international problem for various nations in the world, including Indonesia. Human trafficking has been so familiar in society. However, in terms of terminology, it seems that not many people understand it.¹⁵

The problem of poverty seems to be the main reason for the question of why human trafficking continues to experience an increase, whether we realize it or not, this method has become a lucrative source of income.¹⁶ Currently, human trafficking is a problem in many areas that not only affect the Indonesian government. In addition to inter-island human trafficking, human trafficking occurs outside Indonesia to other countries. Transnational ready crimes are currently considered by the global community as crimes that endanger national and global sovereignty, security and balance and are completely contrary to the sense of justice in society. Therefore, a regulation is needed to regulate this matter and the United International States (UN) as the country's employer has regulated it in the United Nations Convention Against Transnational Ready Crime (UNCATOC) or also known as the 2000 Palermo Convention.

In operating the crime of human trafficking is always done in secret and deviates from the law. Human traffickers become fast, a cross-border clue with a way of working that is quite dangerous for victims of crime. Human trafficking crimes are developing because of a factor, namely poverty. People who experience poverty who are in remote areas will be promised by the perpetrators to get jobs with high salaries that make victims interested in the perpetrator's invitation. This condition is caused by low education. People who have low education do not know that the invitation from the perpetrator is a crime. In addition, there is an instant mindset, namely wanting to quickly have abundant wealth.

Talking about criminal liability, it cannot be separated from the existence of a criminal act. Criminal liability is stated based on the applicable criminal law and subjectively to the perpetrators who meet the requirements to be subject to criminal penalties for the act. The basis for the existence of a criminal act is the principle of legality while the basis for the perpetrators being able to be punished is a criminal act without fault. This means that perpetrators of criminal acts will only be punished if they have made a mistake in committing the crime. Moeljatno,

¹⁵M.Zaelani Tammaka, 2003, Towards Humane Journalism: Trafficking Cases in Media Coverage in Central Java and the Special Region of Yogyakarta, Surakarta, Aji Surakarta, p. 3

¹⁶<http://id.shyoong.com/social-sciences/1824479-a-thousand-faces-of-human-trafficking> A Thousand Faces of Human Trafficking, Saturday, October 12, 2024

makes a clear distinction between criminal acts and criminal liability, criminal acts according to Moeljatno are "acts that are prohibited by a rule of law, prohibitions accompanied by threats (sanctions) in the form of certain penalties, for anyone who violates the prohibition".¹⁷

Every perpetrator of human trafficking must be held accountable for all their actions before the law. Criminal liability is essentially a negative consequence of the deviant behavior carried out by the perpetrator of the crime. In addition, criminal liability can also be useful for the realization of an event that is desired to be obtained from the imposition of the sentence. On the other hand, criminal liability is intended to improve the behavior or conduct of the convict and to prevent others from committing a similar criminal act.

Trafficking in persons can be defined as the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception or of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over a person for the purpose of exploitation, which includes, at a minimum, exploitation through prostitution or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, illegal adoption or the removal of organs.¹⁸

Criminal Accountability for Human Trafficking Crimes Based on Justice Values is a study involving criminal law, morality, and human rights approaches. In this context, perpetrators of human trafficking crimes (TPPO) are not only punished based on applicable legal norms but also by considering the values of justice for victims, society, and the perpetrators themselves.

Justice for victims is the main element that must be prioritized in handling cases of human trafficking (TPPO). Victims often experience deep physical, psychological, and social suffering due to exploitation. Therefore, victim recovery is a priority, including providing financial compensation to cover the material and immaterial losses they have experienced. In addition, psychological and medical rehabilitation is needed to recover victims from trauma, so that they can return to living a normal life. Another step is social reintegration, which is an effort to return victims to their communities without stigma, which is often an obstacle for victims to build a new life. In addition, it is important to protect victims from stigma and potential re-victimization, both by society and by the legal system, which often worsens their suffering.

3.2. Criminal Liability for Human Trafficking Crimes in the Future

In Portugal, the crime of human trafficking (TPPO) is regulated within a national legal framework that is in line with European Union and international

¹⁷Moeltjano, Principles of Criminal Law, 2nd ed. Bina Askara, Jakarta, 1984, p. 54.

¹⁸Coordinating Ministry for People's Welfare. 2003. Elimination of Human Trafficking in Persons in Indonesia, https://text.id.123dok.com/document/q517_x43y-penghapusan-perdagangan-orangtrafficking-in-persons-di-indonesia

standards.¹⁹Portugal has adopted Directive 2011/36/EU issued by the European Parliament and the Council on 13 June 2024, which amends and strengthens measures to prevent and combat trafficking in human beings, as well as the protection of victims.

Portugal is also active in identifying and protecting victims of human trafficking. Between 2016 and 2020, Portuguese authorities identified 1,152 alleged victims of human trafficking. However, the Council of Europe noted that the number of investigations, prosecutions and convictions remained low compared to the number of victims identified, indicating the need for improvements in law enforcement and victim protection. Overall, Portugal's legal framework on human trafficking reflects the country's commitment to combating human trafficking, protecting victims and ensuring that perpetrators receive appropriate punishment in accordance with the principles of justice.

In Australia, human trafficking (TPPO) is a crime²⁰which is strictly regulated through national legislation, with the main objective of protecting victims and providing strict sanctions to perpetrators. The punishment for perpetrators of TPPO reflects a comprehensive approach to uphold justice, reduce the impact of the crime, and prevent similar cases from recurring in the future.

Imprisonment is one of the most common forms of sanctions imposed on perpetrators of TPPO. The severity of this punishment is adjusted to the specific conditions of each case. For example, in cases of child trafficking, perpetrators can be sentenced to up to 25 years in prison, demonstrating Australia's serious commitment to combating human trafficking. This severe punishment aims to provide a deterrent effect not only to the perpetrators, but also to the wider human trafficking crime network.

In addition to prison sentences, the Australian legal system allows courts to impose fines on perpetrators of TPPO.²¹This fine serves as a form of financial responsibility for the losses caused to the victim. The amount of the fine is determined based on the level of the perpetrator's guilt and the impact resulting from his actions. In this context, criminal fines are not only a form of additional punishment but also as an acknowledgement of the economic losses experienced by the victim and society.

¹⁹Mara Celemente, The long arm of the neoliberal leviathan in the counter-trafficking field: the case of Portuguese NGOs, *International Review of Sociology Revue Internationale de Sociologie* Volume 31, 2021 - Issue 1, pp 182-203

²⁰Lyneham, S. (2021). Attrition of human trafficking and slavery cases through the Australian criminal justice system. *Trends and Issues in Crime and Criminal Justice* [Electronic Resource], (640), pp. 1-17.

²¹Rodda, Patricia C., and Heather Smith-Cannoy. 2024. "The Human Rights of Sex Trafficking Survivors: Trends and Challenges in American Vacatur Laws" *Societies* 14, no. 2: p 29.

In Japan, the crime of human trafficking (TPPO) is a serious problem that is handled with a comprehensive legal approach.²² Although Japan does not have specific laws that explicitly address human trafficking, various provisions of the criminal code are used to prosecute and punish perpetrators of this crime. The use of existing laws covers various aspects of the crime, such as sexual exploitation, forced labor, and child trafficking. This shows Japan's efforts to adapt its legal approach to the global challenges related to human trafficking.

To improve the regulation of accountability for perpetrators of human trafficking (TPPO) in the future, Indonesia can learn from various countries that have succeeded in developing better systems in dealing with this crime. One important step is to increase criminal penalties, especially for cases involving children and other forms of severe exploitation. Approaches such as those in Australia and Japan, which apply longer prison sentences and significant fines, can be adopted to provide a stronger deterrent effect. Determining minimum prison sentences for perpetrators of TPPO can also help create consistency in the application of the law and ensure that every perpetrator receives a punishment commensurate with the level of crime they have committed.

Indonesia can also strengthen law enforcement through special training for law enforcement officers such as police, prosecutors, and judges to handle TPPO cases more effectively. Responsive law enforcement includes the ability to identify TPPO cases early, evidence management that protects victims' rights, and victim-friendly courts so that they do not have to face the perpetrators directly in court. This can provide a sense of security to victims and increase their chances of providing testimony that supports the legal process.

On the other hand, prevention efforts should be a top priority through community education programs. Indonesia can adopt a community-based model like that of Australia, where communities are empowered to recognize and report signs of human trafficking. Effective campaigns can help reduce the number of potential victims by raising public awareness of the dangers of human trafficking.

By adopting these steps, Indonesia can strengthen regulations and accountability mechanisms for perpetrators of TPPO. This approach does not only focus on punishment but also pays close attention to victim recovery, crime prevention, and comprehensive human rights protection.

4. Conclusion

Criminal accountability for human trafficking crimes (TPPO) based on justice values includes a multidimensional approach that not only punishes perpetrators through imprisonment and fines, but also provides protection and recovery to victims through compensation, rehabilitation, and social reintegration. This

²²Erinn C. Cameron, Fiona J. Cunningham, Samantha L. Hemingway, Sherri L. Tschida & Kristine M. Jacquin. (2023) Indicators of Gender Inequality and Violence against Women Predict Number of Reported Human Trafficking Legal Cases across Countries. *Journal of Human Trafficking* 9:1, pp. 79-93.

approach aims to prevent similar crimes from occurring in the future by upholding retributive justice for perpetrators, as well as justice for victims who often experience deep suffering due to exploitation. Comprehensive implementation, involving collaboration between national and international law, human rights protection, and the active role of the community in prevention, is key to eradicating TPPO effectively and sustainably. Criminal accountability for perpetrators of human trafficking crimes (TPPO) in the future must integrate severe penalties for perpetrators, protection and recovery for victims, and comprehensive prevention efforts. Indonesia can learn from practices in countries such as Portugal, Australia, and Japan, by strengthening criminal penalties, ensuring financial compensation and psychological support for victims, and adopting rehabilitation programs for perpetrators. In addition, law enforcement must be improved through training of officers, protection of victims during the legal process, and international cooperation to track transnational crime networks. Improving public education and data-based monitoring systems are also important to prevent human trafficking more effectively. This holistic approach aims to create a balance between punishing perpetrators, rehabilitating victims, and preventing crime, while upholding the values of justice and human rights.

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