

Analysis of a Criminologist Regarding Human Trafficking as An Extraordinary Crime

Poppy Andi Lolo

Satria University of Makassar, Makassar, 90213, South Sulawesi Indonesia

Abstract

This study aims to reconstruct the crime of human trafficking which is a remarkable social fact through criminological analysis as part of a criminal policy. It employs the empirical legal research approach (non-doctrinal). Data was obtained from primary (interviews and questionnaires) and secondary (documentation) sources. Lawyers, judges, correctional institutions and NGOs served as respondents. Criminological analysis and argumentation techniques and theories of criminology were used. This study discusses the legislations governing the crime of trafficking in persons in Indonesia. It deals with the formation of criminal acts, criminal responsibilities, and the maximum sanctions. Apart from increasing crime and victimization, decadence and the erosion of societal values and norms are now prevalent. This study suggests that all statutory provisions which prohibit such crimes should be strengthened and that the crime of trafficking in persons be treated as an extraordinary crime. In addition, law enforcement officers should apply the maximum sanctions for criminal offences to serve as a deterrent to others.

Keywords: Criminologist; Human Trafficking; Extraordinary Crime.

Introduction

A. Background

Crime is a creation of the social reaction which exist in the modern society influenced by the advent of development and technology such as communication, which has turned the world into a global village. This is what led to the negative activity in the society called crime. Trafficking in persons is one of the crimes that has become a topical issue today.

Before the enactment of Law Number 21 Year 2007 Against Trafficking in Persons, lawyers relied on Law Number 23 Year 2002 of Child Protection and some articles in the criminal law book. Moreover, there are several other laws which specifically applies to human trafficking such as Law Number 23 Year 1999 of Health, Law Number 1 Year 1979 of Extradition, and Law Number 39 Year 1999 of Human Rights. However these laws are still grossly inadequate in terms of solving the problem of human trafficking.

After the enactment of Law Number 21 Year 2007 Against Trafficking in Persons, it was expected that it would go a long way in preventing and solving the cases of human trafficking in Indonesia.

Human trafficking is referred to as the modern form of human slavery and is also one of the worst treatment that can be meted out to a human being; it constitutes a violation of human dignity.

Based on empirical evidence, women and children are the most likely victims of human trafficking. They are trafficked not only for prostitution and other sexual exploitation, but also forced to the work as slaves. The perpetrators lure their victims under the guise of recruitment, evacuation, asylum and transportation. They also use force (abuse of power) to violate and kidnap vulnerable people or pay their parents/guardians huge sums of money for them to release their children/wards.

Different kinds of exploitation include forced labour, slavery and any practice related to slavery. Trafficking, especially of women and children is strongly linked to crime, whether organized or unorganized. Perpetrators have links both within (local) and outside (international) the country. The victims may not realize that they have been exploited if the exploitation takes place for a short period. However, if the exploitation continues for a long time, the victims then realize that they have been exploited. Exploitation involves violence, extortion, physical advantages, sexual advantages and the ability of a person to benefit from other peoples effort without commensurate payment. The main purpose of human trafficking is exploitation.

In a bid to address the issue of trafficking, The Indonesian Government enacted the Law Number 21 Year 2007 as earlier mentioned. It took into consideration the protection of witnesses and victims. This is the main point in prevention law. Prevention law aims to protect the victims and witnesses, considering the huge damage of human trafficking to both the victims and possibly to the next generation of Indonesian people.

Human trafficking is not peculiar to any geographic area but has an international spread. This makes it difficult to control. Even though anybody could be a victim of human trafficking, particular attention is paid to women and children because they are the most vulnerable.

The issue of trafficking is a sensitive issue; it is indirectly linked to issues of cultural values and discrimination which has been in existence for a long time. The culture of patrilineality is one factor which places women in an unfair position. It leads to marginalization, subordination, stereotype and violence.

According to The United Nations, between 2 and 4 million women and children are victims of the

human trafficking. Out of this number, about 200,000 to 225,000 are from the South East Asia.

In the year 2003, the number increased according to the *Bureau of Public Affairs, United Nations Department of State*.

Women are most affected. Human trafficking has become a serious global phenomenon. Human trafficking is not only an international crime but also a gross violation of human rights and a new form of slavery in this modern era. In some Asian countries, women are maltreated and their humanity and dignity are ignored. These women are forced and trafficked for sex and entertainment businesses. Some of them work in homes or factories with unlimited working hours and low salaries.

Legal Analysis

Human trafficking crime according to the Law of Republic of Indonesia Number 21 Year 2007 include:

1. Everyone who is involved in recruitment, transportation, sending, evacuation and acceptance of people with violent treatment, kidnapping, fraud, cheating, abuse, trapping by debt, and making payment or offering any other benefit to get permission from a person who is a guardian to a victim of trafficking in Republic Indonesia will be sentenced to a jail term of 15 years and a fine as much as six hundred million rupiahs (Articles 2)
2. Everyone who smuggles people into Indonesian Republic from other countries for the purpose of exploitation would be sentenced to jail for 15 years and a maximum fine of six hundred million rupiahs.
3. Everyone who takes Indonesian citizens outside the Republic of Indonesia for the purpose of exploitation will sentenced to a maximum jail term of 15 years and a maximum fine of six hundred million rupiahs (Articles 4).
4. Everyone who is involved in the adoption of a child and promises or gives something for the purpose of exploitation is liable to a maximum jail term of 15 years and maximum fine of six hundred million rupiahs (Articles 15).
5. Everyone who transports children into and out of the country for exploitation shall be sentenced to a maximum of 15 years or pay a maximum fine of six hundred million rupiahs (Articles 6).
6. Any officer of the state who abuses his power resulting in the criminal act of human trafficking as mentioned in articles 2, 3, 4, 5 and 6 is subject to an increase of punishment by 1/3 (one-third) of the punishment described in Article 2 and may receive an additional sanction of dishonorable discharge (Article 8).
7. Everyone who attempts to carryout human trafficking shall be sentenced to a fine of two hundred and forty million rupiahs (Articles 9).
8. Everyone who aids an attempt to commit human trafficking shall be sentenced to the same jail term mentioned in articles 2, 3, 4, 5 and 6. (Article 10).
9. Everyone who plans to carryout human trafficking individually or intends to do so with other people shall be given the same sentence as the perpetrator mentioned in articles 2, 3, 4, 5 and articles 6. (Article 11).
10. Everyone who uses or intends to derive any benefit from a victim of human trafficking by sexually harassing them, or performing any other activity with the purpose of benefitting from it shall be sentenced as mentioned in articles 2, 3, 4, 5 and 6 (Article 12).

The protection of witnesses and victims:

1. The witness, the victim and their families have a right to hidden identity to prevent the victim from getting bad treatment either psychologically or physically.
2. Each province and region/city must have special rooms in police offices for victims and witnesses who are checked in as witnesses and/or victims of trafficking.
3. Each region should have a center for the victims and witnesses of trafficking.
4. The Police of The Republic of Indonesia have a compulsory duty to protect witnesses and victims of trafficking and their families from all dangerous situations and conditions due to their status as witnesses and victims throughout the duration of a case.
5. All the victims have a right to get restitution such as compensation for any loss of property or income, or financial support for medical services and other losses suffered by the victim as a result of trafficking.
6. The victim have a right to medical rehabilitation, social rehabilitation and social reintegration from the government if the victim suffered as a result of trafficking.
7. For traumatic and dangerous diseases due to trafficking, the minister or institution to which the matter was reported to must respond within 7 days of receiving the application.
8. If a victim who is abroad needs legal protection from trafficking, The Indonesian Government should provide legal protection through the Indonesian embassy for the interest of the victim and return the victim back to Indonesia with government's financial support.
9. If the victim is a foreigner who is resident in Indonesia, the government should do its best to protect and return the victim back to his country by coordinating with his country's embassy in Indonesia.

RESEARCH METHOD

Type of research

This research employs the empirical normative research approach. It is based on the questionnaire that is offered as a logical consequence of the legal issue of this research.

Characteristic of research

There is the need to maintain the characteristics of a research to focus on the object of the research. The characteristic of a research will describe the purpose or classification of the object of the research that will be applied to conduct the research. Due to the need to harmonize the theoretical and practical aspects (case study), the researcher determined the characteristic of this research as explained by the case study in order to answer the questions of the research. The characteristic of this research according to the researcher is correct, since trafficking is an extraordinary crime in Indonesia and beyond, and is well organized.

Location

The research is based in Makassar as its main location while samples were taken from other cities in Indonesia where the criminal act of trafficking in person took place like Manado, Surabaya, Batam, and Entikong. Other locations served as support location when the need arises.

Population and sample

The population in this research includes all victims of the criminal act of trafficking in persons; law enforcement agents like the police, judges and public prosecutors; employment agencies and community leaders. The sample of this research include 15 victims, 5 investigators, and 10 people from employment agencies. The technique used for sampling all the respondent is purposive sampling. The total number of samples of this research is 40 people. This technique is used for respondents and informants with the consideration that not everyone knows about the criminal act of trafficking in person as an extraordinary crime.

Sources of data

In this research, data was sourced from primary and secondary sources. Primary data was obtained from the key respondents and informants while secondary data was from the results of relevant researches, judges' decisions and documentation and reports issued by the government or relevant non-governmental organization.

Technique of collection of data

While collecting legal data, only data that fits the type and the characteristic of the research were collected. Documentation guide was used to collect data from primary and secondary legal sources.

The collection of data using the empirical normative legal method was done by using in-depth interviews and closed and open questionnaires together with documentation guided.

Technique of data analysis

Qualitative analysis through discussions and legal argumentation was applied in this study. For all the result of this research, the following steps of analysis were applied: 1) Investigation of the legal source of the purpose of research. 2) Identification of the legal source of the questionnaire problems mentioned. 3) Categorization of the source of data in a table or diagram for easy analysis. 4) Analysis of the legal source by examining the falsification of the legal source with the theoretic concept by examined correspondent and the data collected from the field.

CHAPTER IV ANALYSIS

A. Human Trafficking in Practice

The increase in human trafficking cases in Indonesia is very disturbing. From year to year, it is increasing very fast. It can be likened to an ice berg i.e. the number of undisclosed cases is much more than the known cases. International migration data shows that by April 2006, the number of cases of human trafficking in Indonesia reached 1,022. The details are as follows: 86.6 % of victims were exploited as house workers while 17.1% were forced into prostitution.

Among other cases of trafficking, a serious case was exposed in the year 2000 in Indonesia. Several models of trafficking include: promises of good jobs, kidnapping, helping pregnant woman to give birth, baby smuggling and commercial worker.

In general, the victim only realizes that she is a victim of human trafficking after getting inhumane treatment abroad.

According to the survey that was done by a monitoring and eradication fund in The United States,

every year approximately 600,000 to 800,000 men, women and children are assumed to pass the international boundary and the number is still increasing. Most of those involved are smuggled for the purpose of international prostitution and labour. This is done through organized transnational crime syndicates. The region from which the highest number of people are trafficked surrounds Indonesia. According to a particular data, at least 80 % of about 8,000 cases of human trafficking since 2004 got their victims from Subang, Karawang, Cianjur, Indramayu, and West Java. The effect of these cases is that Indonesia is at risk of being removed from the list of countries which have the right to get human trafficking funding from UN.

Other regions also have increased cases. Bangka is one of the main destination for human trafficking. It is known that human traffickers traffic their victims from many other places to Bangka Island. Cases of human trafficking in 2006 increased by five times the number in 2005. As the economy of Bangka started to grow, the area became the destination of traffickers and not just a transit to other places.

Also, human trafficking may take the form of sending Indonesian workers abroad. In order to solve this aspect of human trafficking, it is necessary to put in place measures that will prevent workers from being sent abroad because the workers who are being sent do not have much knowledge about the procedure and the conditions they have to fulfill.

B. Human Trafficking of the Indonesian Worker

Apart from Indonesian workers who became victims of human trafficking, some children became victims of the crime. An example is the case of a couple, Gunawan and Nining, who both worked as rubbish pickers. Their daughter, Fitri, 10 years old was a victim of kidnapping. The tragedy occurred when Gunawan and Nining met a man called Ryan. They felt sorry for Ryan who had no job. They asked Ryan to join them as rubbish pickers and clean up the train station. They did not suspect that Ryan would act the way he did except when Fitri disappeared and Ryan was nowhere to be found.

In 2009, about 42,000 cases were reported to the National Commission on the Protection of the Child, including 130 cases of children and babies. However, this figure does not account for all the cases of trafficking because a lot of cases are not reported. The weak coordination within government institutions and the weakness of law enforcement agencies have resulted in increasing cases of human trafficking in Indonesia on a daily basis.

C. Human Trafficking of the Woman

Women are very reluctant to be trafficked for commercial sex. Women serving in institutions and Police officers in East Java have succeeded in bringing up cases of women being trafficked between the islands for the commercial sex purpose. Due to the many reports of parents about their missing children, the police went to search for the missing children and found out that they were kidnapped and placed in different locations for sex commercial purpose in many places around Indonesia. The police found 74 women that were victims of trafficking in a hotel. From their narrations, it was discovered that the mode of operation of the traffickers starts at the bus station in East Java where they picked up their victims who looked confused at the station. They then offered to provide the confused girls with jobs of high income.

The rate of unemployment, the offer of high income jobs and the lack of education encourages trafficking.

Chapter V

Closing

A. Conclusion

The fast increasing cases of trafficking especially in Indonesia suggests that Law Number 21 year 2007 is not being properly implemented due to the low level of awareness in the society. Many people still do not understand what trafficking is. The law should not be partially enforced but must be made to reach all the sectors in a state.

In order to solve this problem, a comprehensive plan should be mapped out. Also, the commitment of the government and the contribution of all people in the country are needed to solve human trafficking.

B. Suggestion

The prevention of the human trafficking can be achieved by the implementation of the following measures:

1. Mapping out a plan to tackle the problem of human trafficking in Indonesia, both for domestic and foreign cases.
2. Increasing the education of Indonesian People, especially alternative skills for children and woman including the facilities.
3. Increasing the people's knowledge through sharing information about trafficking and related issues.
4. Ensuring that every member of a family, especially women and children, have access to education, training, reasonable income and social services.
5. The Government and NGOs should collaborate to ensure implementation of the law of human trafficking.

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