

International Criminal Law Policy on the Issue of Human Trafficking Crimes

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Abstract

The objective of study was to analyze the International Criminal Law Policy on the Issue of Human Trafficking Crimes. The analysis was focused on policy of International Law to human trafficking crime. The study is compiled with normative juridical research method with the approach of legislation, the conceptual approach and the approach of international law. Based on the survey results was revealed that basically the concept and criteria of International Criminal Law Policy on the Issue of Human Trafficking Crimes. Human Trafficking is a transnational crime or at least several countries, thus becoming the International Criminal Human Trafficking. Therefore it requires the commitment of all states to tackle the human trafficking. Such a commitment must be realized in various forms, including: international agreements, protocols, etc., on the prevention of human trafficking.

Keywords: *International Law, Human Trafficking, Transnational Organized Crime.*

Introduction

Globalization is a process in the life of humanity toward a society that covers the entire globe. This process is made possible and facilitated by the lack of progress in technology, especially communication and transportation. In a global community of humanity that it will happen patterns of social relationships is different from before. The ease of moving from one place to another, and communication networks that reach every corner of the shelter, there will be interaction between members and between groups of people who have a background that is different.

In the context of such interaction, there happened a meeting or a cross between the culture (norms, values or ethics of a society). In the next process, with the intensity of communication and interaction is high, it can create a global community, or in other words, there is the notion that all mankind is heading the formation of community associations (*gemeinschaft*), because mankind will live in a "global village" (madjid, 1996)

The consequences of such a life is needed system value or a universal norm that can serve as a common reference for all members of society with ethnic backgrounds, races, cultures and countries are different, but does not exclude or eliminate the system of values, norms or rules (legal) prevailing in the society. System universal values and norms that goal is to safeguard and protect the interests of the (shared) society in all countries. In order not to harm either the State or citizens of one country, in this position required International scale law that regulates life among nation or state or among citizens. Law was then referred to international law.

While it is known today the international community preoccupied with the issue of trafficking, the trafficking. This trafficking was allegedly a syndicate of inter-State international scale. At least, this trafficking is involving several States or citizens of several countries. Trafficking in human beings or the term Human Trafficking is a crime that is very difficult to eradicate and touted by the international community as a contemporary form of slavery and a violation of human rights. This crime is constantly evolving both nationally and internationally. While the development and advancement of technology, information, communications and transportation, then growing also in the operation mode of the crime which is often carried out in secret and move outside the law.

Human trafficking is one of the oldest crimes in the world, since he knew the practice of slavery at the time of the ancient country. This practice is in fact still happening in today's modern era in the 21st century, reckoned an international crime, with the profit the 3rd largest in the world under the crime of illegal arms trading and drug trafficking (KPAI, 2014).

Trafficking can victimize anyone, adults and children, men and women who are generally in vulnerable situations and conditions. Mode is used in this crime is very diverse and also have a complicated aspects of our work. With the development and advancement of technology, information, communication and transportation, the more developed also in the mode of operation of the crimes that are often closed and move outside the law. Traffickers were quickly developed into transnational syndicates with a deadly way of working. Trafficking also classified as serious crimes against humanity (Presidential Decree No. 88 of 2002 and the regulation of Indonesia no 1 2016) that needs to be eradicated to its roots because it has caused anxiety and anxiety for the people and country.

Each year, approximately eight to nine hundred thousand people are trafficked across international boundaries into conditions of forced labor or slavery (US Department of State, 2003). Although exact figures are

difficult to obtain, but there is strong evidence that the trafficking of women and children in Asia is a phenomenon that is really serious. Governments, NGOs, and international organizations, has documented the forced labor, including forced prostitution, among others, from Burma to Thailand, Indonesia to Malaysia, Nepal to India and Thailand to Japan (Human Rights Watch, 2000).

From these data it can be concluded that trafficking is a crime (international), which is an extra-ordinary. So in this case is needed urgently serious treatment.

Based on the above then formulated the following issues: How does the international criminal law policy on the issue of human trafficking crimes (trafficking)?

Literature Review

1. Human Trafficking

The definition of trafficking as quoted Wijers and Lap-Chew namely trafficking as the movement of people (mainly women and children), with or without the consent of the person concerned, within the country or abroad, for all forms of exploitation, not only prostitution and slavery under the guise of marriage (wedding slave). A new conceptual framework for this trade symbolizes the shift in some of the situations below are based on points awarded Wijers and Lap-Chew.

1. From the "Recruitment" for "exploitation"

This framework has evolved from a recruitment trade concept only in exploitative conditions faced by a person as a result of recruitment. In 1904 created the first international convention on anti-trafficking, the International Covenant Eradication White Slave Trade (International Convention to Combat Slave Trade Peel White). The purpose of the convention is an international recruitment perpetrated against women, against their will, for the purpose of sexual exploitation. Then in 1910 was created a burgeoning convention, convention in 1904 to enter the domestic trade. Both of these conventions to discuss the recruitment process carried out by force or violence against women for the purpose of sexual exploitation.

2. From the "Coercion" to "with or without consent".

The framework has also been changed from requiring trade must involve an element of deception, force or coercion, be an acknowledgment that a woman can become victims of trafficking even if he approves the recruitment and sending him to another place.

3. From the "prostitution" to "informal labor and not regulated by law"

In 1994, the UN adopted a resolution on "trafficking in women and children" that expand the definition of exploitation trafficking that combines not only for the purposes of prostitution, but also for all kinds of forced labor. In this resolution, trafficking is defined as "the ultimate goal of forcing women and girls into the oppressive and exploitative situations in terms of economic or sexual"

4. From the "violence against women" to "human rights violations"

Changes in the conceptual framework indicates a shift of view of trade as an issue that is often regarded as a problem within the country and outside the jurisdiction of the State into human rights violations.

5. From the "Trafficking of Women" to "Illegal Migration"

This paradigm shift mainly reflects the change in perception of country to trade as an issue of illegal migration and smuggling has negative consequences. Changes course only focuses on the status of the migration, this changed framework ignores the most important aspect of trading, the first one, there are many cases where the trafficking of women to countries of destination is legitimate. Perception also does not account for the possibility of domestic trade. Second, and perhaps most importantly, the framework is to attract the attention of crime victims. Measures to be one of the victims of illegal migration is the perpetrator and the country became a victim

The term in human trafficking can be defined as "the recruitment, transportation, transfer, harboring or receipt of persons by threat or use of force, abduction, fraud, deception, abuse of power or of a position of vulnerability or receiving or giving payments or benefits to achieve the consent of a person having control over the other person, for the purpose of exploitation which minimally includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or other practices similar to slavery, servitude or the removal of organs." (source: Article 3, Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, in addition to the UN Convention against Transnational Organized Crime, 2000).

The United Nations in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, additional United Nations Convention Against Transnational Organized Crime Organization in 2000, defines Trafficking as:

"(A) the recruitment, transportation, transfer, harboring and receipt of persons by means of:

- The threat or use of force or other forms of coercion
- Kidnapping
- Fraud
- Lie

- Abuse of power or of a position of vulnerability or
- Giving or receiving any payment or benefit in order to obtain the consent of a person who has power over another person for the purpose of exploitation

Exploitation shall include at least:

- exploitation of the prostitution of others or other forms of sexual exploitation
- Work or forced services
- Slavery or practices similar to slavery
- Servitude
- harvesting of organs

(B) Approval of trafficking victims to the exploitation referred to in subparagraph (a) is not relevant if one of the ways set forth in subparagraph (a) is used;

(C) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any manner set forth in subparagraph (a) of this Article;

(D) "The child is any person under the age of eighteen years." Both definitions are very important because it highlights not only the recruitment process and deliveries are crucial for trade, but also the associated exploitative conditions into which people are trafficked.

The broad definition is necessary because the definition will touch all types of violence experienced by people who suffered human trafficking.

Appendix Presidential Decree (Decree) No. 88 Year 2002 on the National Action Plan for the Elimination of Trafficking (Trafficking) in Women and Children states that "trafficking in women and children are all acts traffickers containing one or more acts of recruitment, transportation between regions and between countries, alienation, departure, reception and temporary shelter or at the destination, women and children. By means of threat, use of verbal and physical abuse, abduction, fraud, deception, abuse of a position of vulnerability (for example when a person has no other choice, isolated, drug addiction, debt trap and others), giving or receiving of payments or benefits, where women and children are used for prostitution and sexual exploitation, migrant workers are legal or illegal, adoption, mail-order brides, domestic service, begging, pornography industry, illegal drug dealings, and the sale of organs, as well as form more exploitation-shape "

2. International law

International law is a non-national norms or rules, which govern the relationship between the subjects of international law. International law is part of the law that regulates the activity of an international entity. At first, international law only defined as behavior and relations between countries but in the development pattern of increasingly complex international relations then extends this sense that international law also deal with the structure and behavior of international organizations and, to some extent, multinational corporations and individuals.

International law is the law of nations, international law or the laws between countries. The law of nations used to show the customs and rules of law applicable in the relations between the kings of ancient times. International law or the law of the country shows the complex rules and principles which is governing relations between members of the community of nations or countries.

International law is an overall rules and principles governing relations or issues that cross borders between:

(I) state by state

(ii) countries with other legal subjects not the state or state law is not subject to one another.

Just as the law in general, according to Istanto (1998) International law is also familiar with the formal legal source and the source of the material law.

1. Formal Legal Resources International Law

Formal legal source for International Law is an international agreement (treaty) and international customs (International custom). In the past most of the international law consists of customary international law. But now customary international law as a formal legal sources is no longer able to set the terms of international law are necessary in the international community association. Therefore, the role of international treaties as a source of formal law is now becoming increasingly important in meeting the needs of International Law is necessary, it is the process of establishing the rules of international law by using faster than with customary international law.

2. Source material law International Law

Sources of international law is the substantive legal principles that define the content of the applicable provisions of international law. Those principles, for example, that any violations of the agreement give rise to an obligation to provide compensation those victims of war must be treated humanely, and so on. J.G. Starke explained that substantive legal sources of international law can be defined as the actual materials used by the experts of International Law to establish the law applicable to a particular event or situation (Mauna, 2003). In outline the

legal materials can be classified into five forms, namely customs, treaties, court decisions and arbitration body, the works of the law, judgment or decree organ / international institutions. International law experts generally discuss the sources of International Law at the starting point in Article 38 paragraph 1 of the Statute of the International Court of Justice.

The third source of international law, according to Article 38 paragraph 1 of the Charter of the International Criminal Court is a general principle of law recognized by civilized nations (general principles of law recognized by civilized nation). The principle / general legal principle is a principle of law which underlies the modern legal system that is a positive legal system based on the principles and legal institutes for western countries is largely based on the principles and institutions of Roman law (Kusumaatmadja and Agoes, 2003). The purpose of the recognition of the principle / general principles of law is basically to avoid an indefinite state (open-ended) and vague. This is reinforced by the experience that was found by the Advisory Committee of Jurists, as a designer of the statute itself, which states that a state in which the absence of an answer within the treaties and customs, the presence of the principles of common law aimed at the possibility the court to use justice abstract (abstract justice). (Thontowi and Iskandar, 2006)

In the process, a source of international law becomes more complex then encourages scholars add to the long list of sources that already exist, such as international customs, international treaties, court decisions, doctrine or opinion of the scholars, decisions or resolutions of international organizations, etc. (Thontowi and Iskandar, SH, 2006)

But among the sources that exist, the agreement made between the countries will have a very fundamental role. In addition to the agreement it is a source of international law, as well as a way for all countries to develop peaceful cooperation between them. According to Mochtar Kusumaatmadja, is an international agreement is an agreement concluded between the members of the community of nations and aims to result in certain legal repercussions (Kusumaatmadja and Agoes, 2003). So obviously that can hold an international treaty must be the subject of international law that are members of the international community. Article 2 provides a definition convention 1969 Vienna treaty / agreement is an international agreement concluded between states in written form and governed by international law from, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. By Michel virally international agreement meant "a treaty is an international agreement the which is entered into by two or more states or other international persons and is governed by international law" (Situni. 1989).

There are several terms to refer to an international agreement that is usually used in inter-state relations. These terms include the agreement (treaty), the convention (the convention), the consent (agreement), protocols (protocol), covenants, charters (charters), statutes (statute), certificate (act), declaration (declaration), Concordant, the exchange of memorandum (exchange of notes), an exchange of letters (exchange of letters), modus vivendi, agreed minutes and a memorandum of understanding (Suryokusumo., 2005). In general usage the term is used to distinguish the important agreement forms, official or not. Such as treaty, agreement form is intended for international agreements that are important and official, such as an agreement on peace or communion. Convention or international agreement may take the form of bilateral (which became the only two countries) and multilateral (which is a party more than two countries). International conventions which are the main source of international law is in the form of multilateral conventions, law making treaties are international treaties that contain principles that the provisions applicable in general (Mauna. 2003). In law making treaties, countries agreed to formulate a comprehensive set of principles and provisions of the law which would be a handbook for these countries in implementing activities and their relation to one another. In practice, the number of bilateral agreements is much more than multilateral agreements.

Research Method

To support the writing of this article, the method used is the method of legal-normative research. Legal research is usually done with library research methods which are usually referred to as normative law, which emphasizes the approach of legislation of the Republic of Indonesia and International by reviewing the laws of the Republic of Indonesia and International relating to the human trafficking crimes. The analysis used in this study, done through a qualitative approach in which the author will review all International laws then analyzed to analyze systematic law by examining a basic understanding of the system of law relating to the human trafficking crimes and then the facts of the existing legal as a form of protection for human trafficking crimes then drawn a conclusion

Result and Discussion

In the past, human trafficking is regarded as a forcible transfer abroad for the purpose of prostitution. But then the trade is defined as the removal of human (especially women and children), with or without the consent of the person concerned, within a country or abroad, for all forms of exploitative labor, not only prostitution and slavery under the guise of marriage (servile marriage).

Although times have changed, but slavery or exploitation of humans against other humans continue to occur. When there is a high economic inequality while economic resources are limited, this all has the potential to produce the crime.

The dynamics and the various efforts made at the national, regional and international levels to combat trafficking in persons, especially women and children through international instruments since 1904. The abolition effort marked by the convening of an international conference of human trafficking first time, the conference on woman trade or "trafficking in women" held in Paris in 1895. Nine years later in 1904, in the same city, 16 countries held a meeting which resulted in the first international treaty against the White Slave Traffic skinned known as the International Agreement Suppression of the White Slave Traffic. The agreement was opposed to the removal of women abroad with the aim of violation of decency. The initial Convention limit themselves in opposition to any form of forced trafficking in women, but not at all concerned about the lack of evidence of coercion or abuse of power in recruitment.

The agreement is in practice not been effective because of the anti-trafficking at the time it was more driven because of the threat to the purity of the population of white women. On the other hand, the agreement is also more focused attention to the protection of victims rather than punishing the perpetrator, so that exactly six years later, in 1910, approved the International Convention for the suppression of the White Slave Traffic (International Convention on 4 May 1910 for the Abolition of the Slave Trade White, in an amendment to the UN Protocol on 3 December 1948). The convention then requires states to punish anyone, who persuade others, either by smuggling or using force, coercion, abuse of power, or by other means in force, hired, abducted or persuade women for the purpose of violation of decency.

In a further development, assisted by the League of Nations, signed the Convention on the suppression of Traffic in Women and Children in 1921 (the International Convention dated May 4, 1910 for the Elimination of Trafficking in Women and Children, amended by the Protocol to the United Nations on October 20, 1947) and International Convention of the suppressions of Traffic in Women of Full Age, 1933 (International Convention dated October 11, 1933 for the Elimination of Trafficking in Women Adult, amended by the Protocol on 20 October 1947).

The fourth convention subsequently consolidated by the United Nations in 1949 to the Convention for the suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The Convention obliges States Parties to punish those who plunged the people, even if the victim agreed, in order to satisfy other people. In this convention is also mentioned that the participating countries are also bound to punish those who exploit prostitutes. The Convention also includes those who are financially involved in the management or operation of a whore house or anyone who rents or rent places for the prostitution of others.

In 1926, who was born an international instrument that expressly forbids the practice of slavery. This convention was later signed in Geneva on 25 September 1926. This convention requires states to take measures as soon as possible to the elimination of institutional devices and practices which include slavery by debt bondage, child betrothal and marriage practices where as things treated women-owned, either by his own family and the family of her husband, or can be inherited after the death of her husband.

Furthermore, on December 15, 2000, the UN General Assembly, based on UN General Assembly Resolution 55/25 of the United Nations adopted the Convention Against Transnational Organized Crime Convention or Convention on Organized Crime and its protocol, namely:

1. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (Protocol of trafficking in Persons, Especially Women and Children);
2. Protocol Against the Smuggling of Migrants by Land Air and Sea, supplementing the United Nations Convention Against Transnational Organized Crime (Migrant Smuggling Protocol);
3. Protocol against the Illicit of Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (Illicit Arms of Trafficking Protocol).

In the Preamble of the Protocol, States Parties (States Parties) declared effective action (effective action) is to prevent and combat trafficking in women and children requires an international approach comprehensively in the countries of origin, transit, destination (the countries of origin, transit, and destination) included efforts to prevent trafficking, punish the perpetrators (traffickers), and protect the victim, including protecting their rights are recognized internationally.

Protocol to prevent, suppress, punish perpetrators of trafficking in persons, especially women and children, as well as additional UN convention against transnational organized crime (Trafficking Protocol), G.A. Res. 55/25, Annex II, 55 U.N. GAOR Supp. (49) at 60, U.N. Doc. A / 45/49 (Vol.I) (2001), entered into force 25 December 2003 has been determined that the "Trafficking in Persons" (human trafficking) includes all actions related to the recruitment, transportation, transfer, sale, or purchase of humans by coercion, fraud or tactics of coercion others who aimed at putting them into conditions of forced labor or practices similar to slavery, where

work is drained through coercion physical or non-physical, including extortion, fraud, isolation, condemnation use of physical force or psychological pressure.

Based on the above explanation, it is clear that the International Criminal trafficking. Therefore, considering the principles of the International Criminal Law, should all states are obliged to combat such trafficking.

Further, can be stated that given the nature of trafficking that occur across national borders, the international legal instruments also plays an important role in shaping the standardization of legal protection instruments. In addition to some agreement regarding the removal of trade that have formed since the beginning of the 20th century, it is important to note also the convention that prohibits TPPO namely the International Convention dated 30 September 1921 for the elimination of trafficking in women and children (Convention of on the Suppression of Traffic in Women and Children), as amended by the UN protocol on 20 October 1947 and the International Convention on October 22, 1933 date for the elimination of trafficking in women (International Convention of the Suppression of the Traffic in women of Full Age), which was also amended by the UN protocol mentioned above.

International conventions above support various other international instruments related to the prohibition against TPPO, among other things:

- Universal Declarations of Human Rights;
- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social, and Cultural Rights;
- Convention on the Rights of the Child and its Optional Protocol Relevant;
- Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forums of Child Labor (ILO No. 182);
- Convention on the Elimination of All Forms of Discrimination Against Women;
- United Nations Protocol to Suppress, Prevent, and Punish Trafficking in Against Transnational Organized Crime;
- SARC Convention on Combating Trafficking in Women and Children for Prostitutions.

Conclusion

Trafficking can victimize anyone, adults and children, men and women generally are in vulnerable situations and conditions. Several factors strongly support the actions of these crimes where most actors feel deprived and looking for quick way to get what is needed, one Human Trafficking which is where most actors feel this is the only shortcut to get what the needs easily and quickly , especially when they see an opportunity like that in Indonesia itself is still very possible. In fact it makes the specter of improper and damaging generation of people who should be the first priority of a nation performance development. Most people just think practically without looking at the risks and the consequences that awaited him.

The problem of trafficking of women and children by reason of any goal remains a HAM. Indonesia as a violation of the States Parties of the United Nations Convention against Transnational Organized Crime along with the other Contracting State has a legal responsibility to ensure morally and existence of dignity possessed by a human. As according to the Declaration of Human Rights as well as several other international instruments, the government is responsible to enforce the law to provide protection to people who traded, shall act in hair-splitting to prevent, investigate and punish violations of human rights and provide healing and redress to offense victim.

Human trafficking or human trafficking is a crime that is incredible. It is a modern slavery crime or crime of modern slavery. Human trafficking is a transnational crime or at least several countries. Human Trafficking thus become the International Criminal.

Therefore it takes the commitment of all states to tackle the human trafficking. Such a commitment must be realized in a variety of forms, including: international agreements, protocols, etc., on the prevention of human trafficking.

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