



Mechanism of Legal Protection Against the Eradication of The Crime of Human Trafficking

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Abstract: This study aims to analyze how the protection of human trafficking is in the Law on the Eradication of the Crime of Human Trafficking, and to examine the ideal protection mechanism for human trafficking. This type of research in writing this proposal is a normative juridical research method. The approach used in this study is statutory. The results show that legal protection for criminal acts of trafficking in persons is generally regulated in various laws and regulations in Indonesia. The legal protection policy is directed at several aspects, namely: restitution and compensation, counseling services and medical assistance, legal assistance, and information provision. Indonesia must have a regulation that can protect against problems arising from acts of human trafficking carried out between countries.

Keywords: Eradication; Criminal Act; Human Trafficking;

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1. LatarBelakang

At the beginning of its development, human trafficking was not yet a criminal act, so no punishment was given to the perpetrators of human trafficking. In the United States itself, the legal movement to eradicate human trafficking began to appear for the first time in 1865. Then, in Indonesia itself during the independence period, human trafficking was declared an unlawful act. The Indonesian government criminalizes human trafficking with Article 297 of the Criminal Code (KUHP) which explicitly regulates human trafficking, in that article, it is stated that the trafficking of women and the trafficking of immature men are punishable by imprisonment for a maximum of 6 (six) years.¹

In a state of law, the law is used as the main basis in moving every aspect of social life in society, nation, and state. Not only that, but the law is also often used as a means of social control of the community. It can be said that the law is tasked with coordinating and integrating the interests of each individual in society. So it is hoped that the interests of one another can go hand in hand and not contradict each other. Achieve this goal, it can be done by limiting and protecting these interests.²

The articles that are often used as the legal basis to ensnare perpetrators of human trafficking (trafficking in persons) are Article 285, Article 287-298, Article 324, and Article 506 of the Criminal Code. Regulations in the Criminal Code still require improvements to ensnare any new activity or mode of human trafficking, then this was answered by the enactment of Law Number 21 of 2007 concerning the Eradication of the Criminal Act of Human Trafficking (UUPTPO).³

The existence of the PTPPO Law is based on the premise that: (1) human trafficking is an act that is contrary to human dignity and human rights; (2) whether human trafficking has spread in the form of an organized network or not, so that it becomes a threat to the community, nation, and state as well as abroad; and (3) that the desire to prevent and combat the criminal act of human trafficking is based on noble values, national and international commitments to carry out early prevention efforts, take action against perpetrators, protect victims, and increase cooperation. Before the PTPPO Law was born, it was preceded by government policies in the form of provisions of laws and regulations related to the issue of trafficking in women and children, as enshrined in the Criminal Code and Law Number 39 of 1999 concerning Human Rights. On December 30, 2002, Presidential Decree No. 88/2002 on the National Action Plan for the Elimination of Trafficking in Women and Children (RAN-P3A) was issued. To ensure the implementation of RAN-P3A, the government

¹ Karen E. Bravo, "Human Trafficking: Global and National Responses To The Cries for Freedom In Indonesia," Article, (Westlaw: University of St. Thomas Law Journal, 2009), hlm. 2. Lihat juga Erdianto Effendi, "PemberantasanPerdagangan Orang Dengan Sarana Hukum Pidana", JurnalCita Hukum, Vol. I No. 1 Juni 2013, hlm. 87

² IriyantoTiranda, Fenty Puluhulawa dan Johan Jasin, "Konsep Ideal Penanganan Perkara Tindak Pidana Korupsi Pungutan Liar Berdasarkan Asas Peradilan", JALREV 1 (2) 2019, hlm. 125

³ Ibid

formed a National Task Force. Then in 2007, Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking was enacted.⁴

The presence of the PTPPO Law has not yet become a guarantee that the criminal act of human trafficking can be eradicated. Law enforcement agencies are still unable to maximize their role in eradicating human trafficking. This can happen because of the light sentences given to traffickers in Indonesia. As a result, cases of human trafficking can not be overcome but on the contrary, are increasing.

In this regard, the United Nations Children's Fund (UNICEF) estimates that 100,000 women and children in Indonesia are trafficked annually for commercial sexual exploitation in Indonesia and abroad. Around 30 percent of female prostitutes in Indonesia are under the age of 18 and 40,000-70,000 children are victims of human trafficking.⁵

In connection with the explanation above, one of the problems in law enforcement in Indonesia is human trafficking. PTPPO Law, Article 1 point 1 defines Human Trafficking in the qualification that the act of recruiting, transporting, harboring, sending, transferring, or receiving a person is an element of an alternative act; each act may stand alone committed through the threat of force, or the use of force, or abduction, or of confinement, or fraud, or of deception, or the abuse of power or a position of vulnerability, or of debt bondage or of giving payments or benefits, for exploitation or resulting exploited people.

Indonesia's desire to prevent or tackle the perpetrators of the crime of human trafficking is to ratify the Palermo Convention and the Palermo Protocol. However, it does not clearly explain the forms of crime after being ratified into Law No. 27 of 2007. This ambiguity can be seen in Article 1 regarding the formulation of human trafficking, namely

“Human Trafficking is the act of recruiting, transporting, harboring, sending, transferring, or receiving a person through the threat of force, use of force, abduction, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage or payment or benefit, to obtain the consent of a person who has control over another person, whether carried out within a country or between countries, for exploitation or causing people to be exploited.”

Based on the above formula, there are 3 elements, namely "any person who commits" (recruitment, transportation, shelter, delivery, transfer, or receipt), "by using" (threats of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage, or providing payments or benefits), and "for

⁴ Neni Nuraeni & Dede Kania, “*Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang dalam Perspektif Hukum Islam*”, AL-‘ADALAH Vol. 14, Nomor 1, 2017, hlm. 133

⁵ Agus Takariawan dan Sherly Ayuna Putri, *Perlindungan Hukum terhadap Korban Human Trafficking dalam Perspektif Hak Asasi Manusia*, Jurnal Hukum IUS QUIA IUSTUM NO. 2 VOL. 25 MEI 2018, hlm. 3

the purpose" (exploiting the person). The formulation as above, then a criminal act of human trafficking can be fulfilled if one of the three parts is carried out. For example, if someone recruits by taking advantage of a vulnerable position for exploitation, then that person has fulfilled the elements in this article on human trafficking.

While the Palermo Convention and the Palermo Protocol explain the formulation of criminal acts differently Article 3 explains the definition of human trafficking in more detail, namely:

"Human Trafficking shall mean the recruitment, transportation, transfer, harboring, or receipt of persons, through the threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power, or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation. Exploitation shall include, the cat ca minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs".
("Human Trafficking" means the recruitment, transportation, transfer, harboring, or receipt of persons, through the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person. who has control over another person, for exploitation. Exploitation must include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, slavery, or organ removal)⁶

The elements of human trafficking through the elaboration of several definitions above are; Acts that include acts of recruiting, transporting, transferring, hiding, or receiving. Then there is a way to control the victim by threats, use of coercion, various other forms of violence, kidnapping, fraud, fraud, abuse of power or a position of vulnerability, or the giving/receiving of payments or benefits to obtain the consent of those who have control over the victim.

Article 4 of the PTPPO Law discusses the criminal act of human trafficking who bring Indonesian citizens with the intention of being exploited outside the territory of Indonesia, in full as follows:

"Everyone who brings Indonesian citizens outside the territory of the Republic of Indonesia intending to be exploited outside the territory of the Republic of Indonesia shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 years and a fine of at least Rp. 120 million and a maximum of Rp. IDR 600 million"

The formula 'bringing Indonesian citizens outside the territory of the Republic of Indonesia to be exploited outside the territory of the Republic of Indonesia' in this article, means perpetrators (especially brokers) who recruit and hold Indonesian citizens domestically for exploitation in the country. abroad and has not carried out the act of bringing outside the territory of the Republic of Indonesia with the aim of

⁶ Terjemahan dikutip dari: <https://www.bing.com/translator>, Diakses tanggal 8 Juli 2021

exploitation outside the territory of the Republic of Indonesia (overseas) not yet subject to full punishment under this article, such as the crime of human trafficking in border areas that have occurred so far, can only be classified as Poging (attempted criminal offense) for the act of bringing abroad for exploitation in the classification of persuasion (uitlokking) to be taken abroad for exploitation.⁷

UU no. 21 of 2007 does not formulate the qualifications of offenses (crimes or violations) so it is difficult to apply the provisions for poging and assistance because pogging for violations cannot be punished (Article 54 of the Criminal Code) and helping to commit violations cannot also be punished (Article 60 of the Criminal Code). includes exploitation, at least for prostitution or other forms of sexual exploitation, forced labor, slavery, servitude, and organ harvesting. There is a difference in meaning that when the Protocol explains the forms of crime in various forms of violence or other threats, while in Indonesia it does not interpret the form of the crime, it results in the formulation of the criminal act of human trafficking in Law No. 21 of 2007 which in principle wants to realize the protection of victims of human trafficking, but the crime of human trafficking is still inadequate.

This is the concern of the compilers to examine how the protection of human trafficking is in Law Number 21 of 2007 concerning Human Trafficking, as well as to examine the ideal protection mechanism for human trafficking in Article 4 of Law Number 21 of 2007 concerning Human Trafficking.

2. Method

This type of research in writing this proposal is a normative juridical research method, another name is doctrinal legal research which is also known as library research or document study because this research is carried out or aimed only at written regulations or other legal materials.⁸The approaches used by researchers in compiling this research are, among others: the Legislative Approach (Statue Approach) and; the Case approach (case approach).⁹Data collection was carried out through library research, meaning that the technique of collecting data and information from several books and readings and legislation related to the problem under study. This literature study was conducted in the library. The legal materials used in this study were obtained from searches through literature studies, namely collecting various legal materials, both in the form of laws and regulations, literature, scientific works, results of previous research, documents, opinions of legal practitioners, journals, and various relevant books that related to this thesis.

⁷ Syarif Hasyim Azizurrahman, “Pembaharuan Kebijakan Pidana Kejahatan Perdagangan Orang (Studi Di Wilayah Perbatasan Kalimantan Barat-Sarawak)”, *Yustisia* Vol. 3 No.2 Mei - Agustus 2014, hlm. 91-92

⁸ Soerjono Soekanto, dan Sri Mamudji, *Penelitian Hukum Normatif*, Cetakan Ke-8, Jakarta, PT Raja Grafindo Persada, 2004, hlm. 14.

⁹ Yayuk Rizki Hulukati, Dian Ekawaty Ismail, Novendri M. Nggilu. 2020. Penyalahgunaan Narkotika Oleh Pegawai Negeri Sipil Dilihat Dari Perspektif Kajian Kriminologi, *Jurnal Legalitas* Vol. 13 No.1 (Gorontalo: Universitas Negeri Gorontalo), hlm. 18

3. Protection of Human Trafficking in Law Number 21 of 2007 Concerning Human Trafficking

According to Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, there are 9 (nine) chapters. Chapter I regulates the general provisions regulated in Article 1, which consists of 15 points of explanation regarding the criminal act of human trafficking, Chapter II concerning the sanctions for the criminal act of human trafficking, which contains 17 articles, starting from Article 2 to Article 18, Chapter III rules regarding sanctions for criminal acts of human trafficking. other crimes related to the crime of human trafficking, which are regulated in Articles 19 to 27.

According to Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, there are 9 (nine) chapters. Chapter I regulates the general provisions regulated in Article 1, which consists of 15 points of explanation regarding the criminal act of human trafficking, Chapter II concerning the sanctions for the criminal act of human trafficking, which contains 17 articles, starting from Article 2 to Article 18, Chapter III rules regarding sanctions for criminal acts of human trafficking. other crimes related to the crime of human trafficking, which are regulated in Articles 19 to 27.

Chapter IV rules regarding investigation, prosecution, and examination in court are regulated in Articles 28 to 42, Chapter V rules regarding the protection of witnesses and victims, regulated in Articles 43 to 55, Chapter VI rules in prevention and handling, regulated in Article 56 to Article 58, Chapter VII rules regarding international cooperation and community participation, Article 59 to Article 63, Chapter VIII concerning transitional provisions, are regulated in Article 65 to Article 67.

The crime of human trafficking starts from recruitment, and transportation until later being employed both domestically and abroad with elements of fraud, persuasion, exploitation or violence even carried out in a corporation, all of which are contained in Article 2 to Article 18 of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking. Articles 2 to 18 of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, regulates the criminal provisions imposed on the Crime of Trafficking in Persons, both imprisonment and fines.

Regarding criminal sanctions that can ensnare criminal acts of trafficking in persons in Law no. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, is regulated in Chapter II which contains 17 articles starting from Article 2 to Article 18, including the following: Article 2 paragraph (1)

“Any person who recruits, transports, harbors, transports, transfers, or receives a person through the threat of force, use of force, abduction, confinement, fraud, deception, abuse of power or position of vulnerability, debt bondage, or providing payments or benefits despite obtaining the consent of another person who holds control over another person, to exploit that person in the territory of

the Republic of Indonesia, shall be punished with a minimum imprisonment of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah)”

Furthermore, Article 3 of the TIP Law states:

“Everyone who imports people into the territory of the Republic of Indonesia intending to be exploited in the territory of the Republic of Indonesia or exploited in another country shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah)”

Based on the provisions of Article 3, this provision intended that the territory of the Republic of Indonesia is a destination or transit country. Talking about the place where the criminal law applies, in this Article 3 other principles related to the territorial principle apply, according to the territorial principle, the enactment of the criminal law of a country depends solely on the place where the criminal act or criminal act is committed, and the place must be located within the territory or territory of the country concerned.

Article 2 of the Criminal Code reads: "criminal rules in Indonesian legislation apply to everyone who commits a crime in Indonesia". Everyone's words mean both Indonesian citizens and foreigners residing in Indonesia. In the case of committing an act, there is a possibility that the act itself is not in Indonesia, but the consequences occur in Indonesia. This Indonesian territory was expanded by Article 3 of the Criminal Code which originally stated that the criminal provisions also apply to anyone outside Indonesia who commits a crime in an Indonesian water vehicle or aircraft. The provisions contained in Article 3 include: “(1) Bringing people into Indonesian territory to be exploited; (2) Sentenced to imprisonment for a minimum of 3 years and a maximum of 15 years; (3) Sentenced to a minimum fine of Rp. 120,000,000.00 and a maximum of Rp. 600,000,000.00”.

As a criminal act, human trafficking has been regulated in the Criminal Code, which contains provisions regarding the prohibition of trading women and minor boys as regulated in Article 297 of the Criminal Code, as well as the prohibition of trading in slaves as regulated in Article 324 of the Criminal Code and qualifying these actions as crimes. Article 297 and stake 324 of the Criminal Code are no longer valid since the enactment of Law Number 21 of 2007 concerning the Eradication of Trafficking Crimes. Law No. 21 of 2007 has regulated several things that are special and separate, deviating from the rules stipulated in the Criminal Code. These special provisions include:¹⁰

¹⁰ Bachtiar H. Tambunan, *Makalah Strategi Polri Dalam Pemberantasan Tindak Pidana Perdagangan Orang*, Seminar Nasional di Univ. Jember, tanggal 27 Juni 2009, hlm. 10

1. It can be imposed/applied to state-run corporations that abuse their power which results in the occurrence of a criminal act of human trafficking. Note, that the principal criminal offense for corporations committing criminal acts of human trafficking is a fine.
2. Specially regulates the unsuccessful adjudication of the crime of human trafficking.
3. Assisting or conducting an attempt to commit a criminal act of human trafficking whose punishment is the same as the main perpetrator. This is different from the provisions formulated by the Criminal Code. For trials, Article 53 paragraph (2) of the Criminal Code has formulated "the maximum principal penalty for crimes in terms of probation can be reduced by one third". As for assistance, the Criminal Code affirms in Article 53 paragraph (1) "In the case of assistance, the maximum principal penalty for crimes in the case of probation can be reduced by one third".
4. The victim's consent does not prevent the prosecution of the criminal act of human trafficking. This is different from the principle of criminal law which has so far recognized the existence of Consent of the Victim (as one of the criminal erasers).
5. The testimony of the victim's witness alone is sufficient to prove that he is guilty if accompanied by other valid evidence. This is a special arrangement that deviates from the legal principle of the criminal procedure *unus testis nullus testis* (one witness is not a witness).

Based on the description above, it can be said that legal protection in criminal acts of human trafficking can be divided as follows:

a. Giving Restitution and Compensation

Every victim of a criminal act of human trafficking or their heirs has the right to obtain restitution from the perpetrator. This restitution is compensation for loss of wealth or income, suffering, costs for medical and/or psychological treatment, and/or other losses suffered by the victim as a result of human trafficking. material loss and all costs that have been incurred and are the emotional satisfaction of the victim.¹¹

As for the interests of the perpetrator, the obligation to compensate is seen as a form of punishment imposed and felt as concrete and directly related to the mistakes made by the perpetrators. The definition of restitution according to Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking is the payment of compensation charged to the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or his heirs. Restitution is more directed at the responsibility of the perpetrator for the consequences caused by the crime so that the main target is to overcome all the losses suffered by the victim. The benchmark for determining

¹¹ Munthe, Riswan, "*Perdagangan Orang (Trafficking) sebagai Pelanggaran Hak Asasi Manusia*", Jurnal Pendidikan Ilmu-Ilmu Sosial Volume 7 Nomor 2, 2015, hlm. 30

the amount or size of compensation depends on the social status of the perpetrator and the victim.¹²

Usually, the victim with a lower social status than the perpetrator will prioritize compensation in the form of material and restoration of dignity, and a good name will be prioritized for victims with the opposite status. The rules or laws do not specify and formulate explicitly, Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking only explains that restitution is the right of the victim or his heirs and the restitution is given and included in the court's decision, the size is not explained or an indicator of the amount of restitution and whether or not the compensation is appropriate.

From article 48 it can be seen that the form of compensation called restitution is in the form of money. Thus, the purpose of compensation, namely the fulfillment of demands in the form of compensation for a sum of money. In addition to restitution, compensation can be used as another form of protection for victims of criminal acts as compensation for losses provided by the state. Compensation by the state is a payment for welfare services because the state is responsible and morally obliged to protect its people. If community members become victims of criminal acts, the government is considered to have failed in fulfilling its obligations, namely preventing and protecting the community from crime.

b. b. Counseling and Medical Services/ Assistance

In general, the protection provided to victims as a result of the crime of human trafficking can be physical or psychological. Psychological effects take longer to heal than physical effects. The effects of the criminal act of trafficking in persons can last for months or even years. For some victims, the effects of the effects do not reach a stable situation in which the memory of the event can be received one way or another. For some victims, the effects of it can not come out as good as drowning in suffering called psychotrauma. Therefore, assistance or counseling is needed to help victims to recover their psychological condition as before.

As a companion to the victim, he must try to keep himself on the side of the victim and not judge him. The principles of assisting victims must be thoroughly mastered when assisting victims. Victims in a state of trauma need someone who is trusted and can create a sense of security for themselves. Medical services are provided to victims who suffer as a result of a crime. The medical services in question can be in the form of health checks, treatment, and written reports or visum.

c. Legal Aid

¹² Mustafid, Fuad, “Perdagangan Orang Dalam Perspektif Ham dan Filsafat Hukum Islam” Jurnal Pemikiran Hukum Islam Voume 29 Nomor 1, 2019, hlm. 110

Victims of crime, including the crime of human trafficking, should be given legal assistance. When the victim decides to resolve his case through legal channels, the state is obliged to facilitate it. The state in this case represents the victim to prosecute the perpetrators of the crime. Non-governmental organizations also have a role in providing legal assistance to non-criminal victims, including victims of human trafficking.¹³

This is because many of the victims do not know their rights and what legal steps they can take to resolve the cases they face. The procedure for reporting to the National Police then how to get a visa so that it can be used as evidence and other legal steps that are not known to the victim because they do not have special knowledge for it. Thus, the provision of legal assistance to victims is given whether requested or not requested by the victim because there are still many victims who have a low level of legal awareness. Allowing the victim of a crime not to receive proper legal assistance can result in the worsening of the condition of the victim of a crime, including the crime of human trafficking.

d. Information Provision

Providing information to victims or their families related to the process of investigation and examination of criminal acts experienced by victims. The provision of this information plays a role in efforts to make the community partners with the police because through the information it is hoped that the community's control function on police performance can run effectively. One of the efforts made by the police is to provide information to victims or their families through websites at several police offices, both policy and operational. In the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, various forms of protection have been formulated. can be given to victims, namely access to justice and fair treatment, restitution, compensation, and assistance. According to the declaration, victims must be treated with compassion and respect for their dignity. Victims have the right to have the opportunity to use justice mechanisms and to obtain compensation immediately by national legislation. Courts and administrative mechanisms are in place to enable victims to obtain compensation through formal and informal procedures that are effective, fair, inexpensive, and affordable.¹⁴

This is by the principles contained in the Criminal Procedure Code, namely fast, simple, low-cost justice. The availability of judicial and administrative processes, to address the needs of victims must be facilitated by informing victims of the process and progress, in particular, allowing victims' concerns to be raised and considered without suspect against the accused and by the national criminal justice system, providing adequate assistance to victims during the sentencing process, taking appropriate action against the accused. actions to reduce harassment to victims, protect personal freedoms and if necessary ensure the

¹³ Farhana, *Aspek Hukum Perdagangan Orang Di Indonesia*, Sinar Grafika, Jakarta, hlm. 165

¹⁴ *Ibid*

safety of themselves and their families and witnesses from intimidation and retaliation, and avoid unnecessary delays in the placement of cases and the execution of orders or decisions that provide compensation to victims.

The rule of law in a material sense aims to protect citizens against arbitrary actions from the authorities to enable humans to gain their dignity as human beings. Therefore, the essence of the rule of law in a material sense is the existence of guarantees for community members to obtain social justice, namely a condition that is felt by members of the community with reasonable respect from other groups; while each group does not feel disadvantaged by the activities of other groups. Some of the characteristics of the rule of law according to A.V Dicey which he calls the rule of law, namely; the supremacy of law; equality before the law; and due process of law.¹⁵

The state has made maximum efforts by formulating regulations in such a way, not only regarding legal protection but also to guarantee the rights and compensation that the victim must receive in return for what the perpetrator has done to her. This is by the purpose of the law itself, namely to create justice, certainty, and legal benefits.

4. The Ideal Protection Mechanism for Human Trafficking Article 4 of Law Number 21 of 2007 concerning Human Trafficking

Concretely formulated in Law no. 21 of 2007 in the form of elements of the crime of human trafficking, legal subjects or persons and or corporations categorized as perpetrators of the crime of human trafficking, as well as criminal threats for persons and or corporations violating the provisions in Articles 2 to 18.

Article 2 paragraph (1) of Law No. 21 of 2007 This article determines the elements that must be met in the form of (1) action (2) how to do it (3) the purpose of doing it, and it is categorized as a formal offense, on the contrary Paragraph (2) is categorized as a material offense. The three elements of the Crime of Human Trafficking referred to as locus delicti are carried out in the Territory of the Republic of Indonesia. If the locus delicti has crossed the border of Indonesian territory or abroad, it cannot be threatened by this article.

Criminal policy in the formulation stage of Law no. 21 of 2007 formulates a prohibited act that must pay close attention to the development goals, currently known as the vision and mission of implementing development so that it does not have an undesirable impact or deviate from the goal of crime prevention. The problem of criminalization must be considered:¹⁶

- a. The criminal law used must pay attention to the achievement of national

¹⁵ Lisnawaty W. Badu dan Ahmad, 2021, *Purifikasi Pemberian Amnesti dan Abolisi: Suatu Ikhtiar Penyempurnaan Undang-Undang Dasar 1945*, Jurnal Ius Civile Vol. 5 No. 2, (Aceh: Universitas Teuku Umar), hlm. 104-105

¹⁶ Niko, Niko demus. "Kemiskinan sebagai Penyebab Strategis Praktik Humman Trafficking di Kawasan Perbatasan Jagoi Babang (Indonesia Malaysia) Kalimantan Barat." Dalam Prosiding Seminar Nasional Indocompac. 2016, hlm. 4

- development goals, namely realizing a just and prosperous society materially and spiritually based on Pancasila; in connection with that, criminal law is used to tackle crime and confer on the countermeasures itself, for the welfare and protection of the community;
- b. Efforts to prevent or cope with criminal acts must be required as "undesirable acts", namely actions that cause harm (material and or spiritual) or community members.
 - c. The cost and benefit principle in using criminal law must also be calculated.
 - d. The capacity or working capacity of law enforcement agencies must be considered in using criminal law so that there should be no overload of duties (overbelasting).

In preventing and overcoming human trafficking, the government has taken the following actions:¹⁷

- 1) Guided by Law no. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (PTPPO).
- 2) Expanding the socialization of Law no. 21 of 2007 concerning PTPPO.
- 3) Passing the Child Protection Law (Law No. 23 of 2002).
- 4) Establishment of an Integrated Service Center (PP No. 9 of 2008 concerning procedures and mechanisms for integrated services for witnesses or victims of TIP).
- 5) The government has prepared a National Action Plan for the Elimination of Child Trafficking (Kepres No. 88/2002).
- 6) The establishment of the PTPPO Task Force consists of various elements of the government and society (PERPRES No. 69 of 2008 concerning the Task Force for the Prevention and Handling of TIP).
- 7) Drafting of the Trafficking Regional Regulation.

Prevention efforts that will be carried out by the Government of Indonesia for Human Trafficking are as follows:¹⁸

- 1) Public awareness to prevent the occurrence of human trafficking in the community through socialization.
- 2) Opening job opportunities through entrepreneurship skills training, economic empowerment, and others.
- 3) Increased creativity in children's education, both formal and informal.

In addition to the government, the community also has a big role in preventing human trafficking efforts because the community environment plays an important role in the occurrence and spread of human trafficking, the most important of which is in the nuclear family environment. A person's personality will be formed according to what he gets from the family environment. . In the next stage, the community environment in question is the environment around the house where someone hangs out in their

¹⁷ Manalu, Perdana Eliakhim, Suhaidi Suhaidi, Muhammad Hamdan, and Hasim Purba. "Sanksi Pidana terhadap Pelaku Tindak Pidana Perdagangan Orang (Studi Beberapa Putusan Pengadilan Negeri di Indonesia)." *USU Law Journal* 2, no. 3 (2014), hlm. 180

¹⁸ *Ibid*

daily lives. The social environment in question is whom the friends hang out with, what is the atmosphere in which he lives, and so on. However, these efforts did not provide maximum results in overcoming the crime of trafficking in persons because of the weakness of the applicable laws and regulations.

In this regard, Article 4 of Law 21/2007 discusses the criminal act of human trafficking who bring Indonesian citizens with the intention of being exploited outside the territory of Indonesia, which reads:

“Everyone who brings Indonesian citizens outside the territory of the Republic of Indonesia to be exploited outside the territory of the Republic of Indonesia shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 years and a fine of at least Rp. 120 million and a maximum of Rp. IDR 600 million”

Based on the description of Article 4 above, it can be said that there are 3 important elements, namely, everyone, bringing Indonesian citizens outside the territory of the Republic of Indonesia, to be exploited outside the territory of the Republic of Indonesia. Therefore, to be convicted of a criminal act of human trafficking, all of the above elements must be met. If the elements above are not met, then they cannot be punished.

The formulation of Article 4 of Law No. 21/2007 can be analyzed as follows:

1. Each Person

As explained in the discussion of Article 2 paragraph (1) of Law Number 21 of 2007, every person is the subject or perpetrator of a criminal act including individuals and corporations.

2. Who Brings

If in Article 3 the perpetrator brings people into the territory of the Republic of Indonesia, then in Article 4, the perpetrator brings people outside the territory of the Republic of Indonesia.

3. Indonesian citizens

Victims taken outside the territory of the Republic of Indonesia are Indonesian citizens. This means that if the victim is not an Indonesian citizen, but a foreign citizen, this article is not subject to criminal sanctions.

4. Get out of Indonesia

This element indicates the purpose of bringing people from within the territory of the Republic of Indonesia to outside the territory of the Republic of Indonesia.

5. With the intention of

As stated in the discussion of Article 3, this is an inner element or error, where the harshest form of intention is used, namely intentionally as an intention, namely "the act of the perpetrator is indeed desired and he also wants (imagines) the prohibited consequence".

6. to be exploited outside the territory of the Republic of Indonesia

The purpose of bringing victims outside the territory of the Republic of Indonesia is to be exploited outside the territory of the Republic of Indonesia. The definition

of exploitation, as defined in Article 1 point 7, is an act with or without the consent of the victim which includes but is not limited to prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, physical, sexual, reproductive organ use, or unlawfully move or transplant organs and/or body tissues or take advantage of one's power or ability by another party to obtain material or immaterial benefits.

The problem of regulating criminal offenses is not comprehensive in Law 21/2007 which does not regulate all acts/processes of human trafficking. One of the problems, for example, is to process human trafficking that occurs with the aim of exploitation outside the territory of the Republic of Indonesia, which is only limited in Article 4 of Law 21/2007, namely only "taking" people out of the country and or "incoming" people into the country. That way, the crime is only limited to the act of "carrying" or the transfer has occurred, so that only field actors are ensnared. The limitations of this regulation result in weak law enforcement for certain cases in Indonesia.

The formula 'bringing Indonesian citizens outside the territory of the Republic of Indonesia to be exploited outside the territory of the Republic of Indonesia' in this article, means perpetrators (especially brokers) who recruit and hold Indonesian citizens domestically for exploitation in the country. abroad and has not carried out the act of bringing outside the territory of the Republic of Indonesia with the aim of exploitation outside the territory of the Republic of Indonesia (overseas) cannot be punished with full punishment under this article and, can only be classified as Poging for the act of bringing abroad for exploitation or acts of persuasion to be taken abroad for exploitation.

UU no. 21 of 2007 itself does not formulate the qualifications for offenses (crimes or violations) so that it is difficult to apply the provisions for poging and assistance, because pogging for violations cannot be punished (Article 54 of the Criminal Code) and helping to commit violations cannot also be punished (Article 60 of the Criminal Code).

Based on this, the essence of criminal law policy is a comprehensive criminal law enforcement process, through the stages of formulation, application, and execution. From a legal perspective, this effort is realized through criminal law. Criminal law is expected to be able to fulfill the ideals of public order. The formulation stage is known as law enforcement in the abstract, which lays the basis and benchmarks for implementing concrete law enforcement, namely the application stage and the execution stage. This is what is meant in the Lex Scripta principle which emphasizes that written regulations must be interpreted as written. The work of law in the community in carrying out law enforcement is also influenced by the social environment in the community. Therefore, Law no. 21 of 2007 concerning the Eradication of TIP, must be based on the mode and motive of the crime of human trafficking, and pay attention to factual conditions and community participation. This is emphasized in the theory of natural law that the law must be following the

conditions and values that exist in society. According to Achmad Ali, the function of law as a means of social control is not alone in society but carries out that function together with other social institutions that also perform the function of social control, that it is also a passive function, namely the law that adapts to the reality in society.¹⁹

This function is as a means of social engineering, namely changing society by creating changes in society towards planned progress, meaning to reorganize people's lives in a planned manner following the goals of developing the nation's life, but until now it has always experienced very rapid changes or dynamics. This shows that there are almost no groups of people in the world whose social life remains static. Any society will certainly experience changes either due to external influences or occur naturally in the community concerned. Therefore, lawmakers are required to always keep abreast of legal developments in society. The definition of a tool of engineering proposed by SoerjonoSoekanto above is a "Pioneer of Change" carried out by a person or group of people who gain the trust of the community as the leader of the pioneers of the change. The rule of law as a tool to change society has an important role, especially in the desired changes or planned changes (intended change or planned change).²⁰

5. Conclusion

Legal protection for criminal acts of human trafficking is generally regulated in various laws and regulations in Indonesia. In Law No. 21 of 2007 legal protection is regulated in articles 43, 44, 47, 48, 51, and 54. Therefore, legal protection policies are directed at several aspects, namely: restitution and compensation, counseling services and medical assistance, legal aid, and providing information.

The problem in Law No. 21 of 2007 lies in the uncertainty and ambiguity of the offense contained in article 4, namely: every person, takes an Indonesian citizen outside the territory of the Republic of Indonesia, intending to be exploited outside the territory of the Republic of Indonesia. The phrase "bringing" people abroad and or "incoming" people into the country. That way, the crime is only limited to the act of "carrying" or the transfer has occurred, so that only field actors are ensnared.

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