



Sanctions for Criminal Trafficking in Persons

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Abstract: The purpose of this research is to know and analyze about sanctions for the perpetrators of the Crime of Trafficking in Persons at the Manado District Court. This type of research is normative research. The results of this study include prostitution, physical, sexual exploitation, utilizing one's energy and or abilities by parties who have control to gain benefits both materially and immaterially. In this case the defendant for committing the crime of trafficking in persons was found guilty, even though there was evidence that from the facts revealed in court the idea of sexual exploitation of the victim actually came from the victim herself who wanted to exploit herself. The actions of the defendant who could be blamed for allowing did not prevent the victim from doing this and the defendant complied with the victim's instructions to chat with the michat application on the victim's cellphone by showing the victim's potential customers. This means that the defendant took part in the sexual exploitation of the victim who is still a child.

Keywords: *Children, Exploitation, Trafficking in Persons*

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How to cite (Chicago Style):

Febriyana Febiola Onggi. "Sanctions for Criminal Trafficking in Persons" *Estudiante Law Journal*. 4, no. 2 (2022): 360-369

1. Introduction

One of the mandates of the Opening of the 1945 Constitution of the Republic of Indonesia as the *modus vivendi* (noble agreement) for the formation of the Indonesian state in the fourth paragraph states that one of the goals of the state is "to protect the entire Indonesian nation", this has provided a bridge to the existence of holistic and comprehensive protection that become the responsibility of the state along with the elements of the state inherent in it. As is well known, that Of course, if you read the nuances of kebatinan from the birth certificates of this country, then substantively this country was formed to be free from all forms of oppression, both physically and psychologically for all the people and society mediating the Unitary State of the Republic of Indonesia, including in this case is the child.¹

Every country in this world certainly has a legal system. Broadly speaking, it is known as the continental legal system in the Anglo-Saxon legal system. This is because a system cannot be separated from the principles that support it. Thus, the nature of the system is comprehensive and structured in which all of its components work together in a functional relationship.²

So law is a system of rules made by humans themselves which aims to limit human behavior so that this behavior can be controlled.³ According to R. Soeroso, law is a set of regulations made by the authorities which are useful for regulating the order of social life which has the characteristics of ordering, prohibiting and forcing by imposing sanctions on those who violate them.⁴

The term criminal also means punishment. However, the term punishment is a general and conventional term which has a broad and changing meaning because it can connote a wide field. According to Martiman Prodjohamidjojo, one of the legal experts in Indonesia, states that criminal law is part of the overall law in force in a country, which establishes the principles and rules for determining which actions may not be committed, which are prohibited, accompanied by with threats or certain criminal sanctions for anyone who violates them,⁵

In addition, criminal law also aims to prevent or inhibit community actions that are not in accordance with applicable legal regulations. Even though the criminal sanctions imposed have been severe, there are still many crimes that often occur in Indonesia, especially criminal acts. Criminal law can be classified into General Criminal Law and

¹ N. M. Alhasni, M. R., Badu, L. W., & Nggilu, "Menakar Peran Kepolisian Dalam Mencegah Tindak Pidana Pencabulan Terhadap Anak Di Bawah Umur," *Jurnal Legalitas* 12, no. 2 (2019): 110-23.

² R. Abdoel Djamali, *Pengantar Hukum Indonesia* (Jakarta;Rajawali, 2013).

³ Yuhelson, *Pengantar Ilmu Hukum* (Gorontalo;Ideas Community, 2013).

⁴ Ibid p. 5

⁵ Teguh Prasetyo, *Hukum Pidana* (Jakarta: PT Raja Grafindo Persada, 2012).

Special Criminal Law, the difference lies in the regulations. General crimes are regulated in the Criminal Code, for example, such as theft, murder, assault, gambling and the Criminal Code, such as cybercrime, narcotics, corruption, and the Crime of Trafficking in Persons. One example of a specific crime that occurred in Manado City as the author's research location is the Crime of Trafficking in Persons (TPPO),⁶

The phenomenon of the crime of trafficking in persons is an example of a special crime in which almost no country in the world escapes the influence of human trafficking. This phenomenon is not only a social phenomenon that arises because of economic and educational factors, but also a phenomenon that violates the law and human rights (HAM) that is born from the practice of crime and cruelty committed by a person or group.⁷

Women and children are the most numerous groups who are victims of the Crime of Trafficking in Persons. Victims are trafficked not only as prostitution or other forms of sexual exploitation, but also include other forms of exploitation, for example forced labor or forced services, slavery or practices similar to slavery.⁸

combat trafficking in persons by introducing new rules and improving policies by increasing the attention, as well as the energy needed to be given to the initiators of anti-trafficking in persons, where the Indonesian government has created Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, hereinafter referred to as Law Number 21 2007 concerning PTPPO which adopted a comprehensive approach to addressing trafficking in persons.⁹

There are many ways that can be done to deal with the rampant crime, one of which is by changing and continuing to improve what type of punishment should be imposed by looking at the purpose of the imposition, which is usually called Penology. The position of the penologist in tackling crime is very strategic. This is because penology determines the success of imposing sanctions on perpetrators, starting from what sanctions are appropriate for perpetrators, and how they are implemented.¹⁰

In this case of trafficking in persons, the author wants to focus more on children who are the object of crime with the aim of sexual exploitation (child prostitution), because the perpetrators of this crime have violated Law no. 35 of 2014 concerning ratification of amendments to the Child Protection Law No. 23 of 2012 which will be subject to a minimum prison sentence of 5 years and a maximum of 15 years. And it has also been

⁶ Farhana, *Aspek Hukum Perdagangan Orang* (Jakarta;Sinar Grafika, 2010).

⁷ Brada Nawi Arief, *No Title* (Jakarta;PT RajaGrafindo Persada, 2016).

⁸Trafficking in Persons (Trafficking) Crime Act, page 28

⁹ Marlina dan Azmiati Zuliah, *Hak Restitusi* (Bandung;PT Refika Aditama, 2017).

¹⁰ Abdul Muqtadir Al-Haq, "Penology," accessed September 6, 2022, <http://pembelajar Hukumindonesia.blogspot.co.id/2011/10/penologi.html>.

explained in Law no. 27 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, perpetrators of human trafficking will be subject to a minimum sentence of 3 years and a maximum of 15 years in prison. To protect children from situations involving prostitution, this law must continue to be promulgated. Because in cases of trafficking in persons for sexual purposes, usually perpetrators take advantage of young people who have low socioeconomic status, minimal levels of education, and who have a high desire to change their lifestyle to look instantly rich to meet their needs. In most of these cases, perpetrators allowed and participated in sexual exploitation of children who were underage as victims. This is because the minds of children are still very unstable so it is easy for the perpetrators to take advantage. perpetrators allow and participate in sexual exploitation of children who are underage victims. This is because the minds of children are still very unstable so it is easy for the perpetrators to take advantage. perpetrators allow and participate in sexual exploitation of children who are underage victims. This is because the minds of children are still very unstable so it is easy for the perpetrators to take advantage.¹¹

In 2020 in North Sulawesi Province in the City of Manado there was a case of the Crime of Trafficking in Persons, the chronology of the case started with information from the community around the Griya Sintesa hotel where human trafficking transactions took place, at 04.30 wit. The North Sulawesi Regional Police Maleo Team succeeded in securing around 31 (thirty one) people consisting of 12 (twelve) women, 7 (seven) of whom were minors and 19 (nineteen) men, 2 (two) of whom were also children who are still underage are in 4 (four) rooms in the hotel. Since May 23 2020, the defendant has committed the crime of trafficking in persons through the MicChat application which is very popular among sex workers, because it is very easy to use. simple and highly guarded privacy who use it. The use of this application aims to make it easier for manufacturers to build relationships with potential customers who want to use the services of their application account, because in this application it is written the distance to be traveled and the current location to make it easier for them to make transactions. The defendant made an offer to consumers or customers of the application with prices starting from Rp. 1,000,000 until there is an agreement with the customer for Rp. 550,000. Apart from the Griya Sintesa Hotel, the defendant also looked for a customer for the victim-witness in February 2020, but what determined the place was the customer with an agreed price of Rp. 400,000., the defendant gets a reward of Rp. 50,000 and food in the form of packaged rice from the victim's witness. The use of this application aims to make it easier for manufacturers to build relationships with potential customers who want to use the services of their application account, because in this application it is written the distance to be traveled and the current location to make it easier for them to make transactions. The defendant made an offer to consumers or customers of the

¹¹ Ahmad Sofian, "The Rise of Child Prostitution, as a Trafficking Commodity for Sexual Purposes," Ecpat Indonesia, accessed June 28, 2022, <https://ecpatindonesia.org/berita/the-rise-of-prostitute-children-as-trafficking-commodities-for-destination-sexual/> .

application with prices starting from Rp. 1,000,000 until there is an agreement with the customer for Rp. 550,000. Apart from the Griya Sintesa Hotel, the defendant also looked for a customer for the victim-witness in February 2020, but what determined the place was the customer with an agreed price of Rp. 400,000., the defendant gets a reward of Rp. 50,000 and food in the form of packaged rice from the victim's witness. The use of this application aims to make it easier for manufacturers to build relationships with potential customers who want to use the services of their application account, because in this application it is written the distance to be traveled and the current location to make it easier for them to make transactions. The defendant made an offer to consumers or customers of the application with prices starting from Rp. 1,000,000 until there is an agreement with the customer for Rp. 550,000. Apart from the Griya Sintesa Hotel, the defendant also looked for a customer for the victim-witness in February 2020, but what determined the place was the customer with an agreed price of Rp. 400,000., the defendant gets a reward of Rp. 50,000 and food in the form of packaged rice from the victim's witness.

Based on the chronology above, the public prosecutor/prosecutor filed charges against the defendant that he was guilty of having committed the crime of human trafficking as stipulated in the indictment of article 2 paragraph (1) of Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons with a prison sentence of 5 (five) years reduced while the accused is in temporary detention and a fine of Rp. 120,000,000 (one hundred twenty million rupiah). And as a result of the decision handed down, the defendant was proven legally and convincingly guilty of having committed the crime of "allowing and participating in the sexual exploitation of children" only getting a prison sentence of 1 year and a fine of Rp. 20,000,000. with the judge's consideration that the facts revealed in the trial,¹² aspects of child protection that prohibit child marriage especially with the aim of exploitation¹³

Thus, the researcher is interested in conducting research related to Analysis of the Judge's Decision on the Case of the Crime of Trafficking in Children based on the Penology Principle

2. method

This type of research is normative research, using an approach statutory approach the author analyzes the laws and regulations. This study uses data analysis techniques with integrative and conceptually tends to be directed to determine, identify, process, and analyze legal material to understand its significance and relevance.

¹²Data Source: Manado High Court

¹³ MTZ Sarson, "Criminal Acts Performed by Children in the Perspective of Criminology (Case Study in Gorontalo City on 2008-2012)," Indonesian Journal of Advocacy and Legal Services 1, no. 2 (2020): 205-22.

3. Analysis And Discussion

Penological Analysis of Criminal Sanctions in Manado District Court Decisions

Crime is an act that has been continuously carried out by humans from the past until now. Humans commit bad deeds both to themselves and to others.¹⁴ In this case it was found that it turned out that the victim himself wanted to carry out the exploitation act, and the defendant only obeyed the victim's orders to chat with his consumers through the michat application on the victim's cellphone. However, the actions or attitude of the defendant can be blamed for allowing or not preventing the victim from committing these acts. Which, according to the authors, the defendant was based on or subject to Article 76 I Law number 35 of 2014 concerning amendments to law number 23 of 2002, "everyone is prohibited from placing, allowing, ordering to do, or participating in economic exploitation and/or or sexual relations with children", and includes Article 6 of the Trafficking in Persons Law, "Anyone who sends a child to or from the country in any way that causes the child to be exploited is subject to imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and grudges of at least Rp. 120,000,000 (one hundred twenty million rupiah) and a maximum of Rp. 600,000,000 (six hundred million rupiah).¹⁵

In the cases that the authors raise in this study, several elements of the criminal act of trafficking in persons have been fulfilled. Among them, firstly the fulfillment of the element "everyone", Everyone in question is a person who has committed a criminal act and can be held accountable to him in this case is that the defendant Michel has fulfilled the law violation with the existence of evidence in the form of witness statements, suspect statements, and evidence in the form of a cell phone.

The defendant was proven guilty because he fulfilled the elements of the crime of trafficking in persons as any person/individual actor or corporation who committed the crime of trafficking in persons in which the defendant made a delivery by replying to chat messages to customers, allowing witness victims to be sexually exploited and from the results of the actions of the defendant getting compensation in the form of money cash and food. Therefore, the elements of each person including Indonesian/foreign citizens must be responsible for the actions they have committed in accordance with applicable legal regulations.

¹⁴ Sarson.

¹⁵The Child Protection Act and the Trafficking in Persons Act

According to the author, the defendant was guilty and he should have received an appropriate punishment based on the regulations he violated as explained in the imposition of sanctions against TIP perpetrators in the Criminal Code, because the defendant had committed acts of sexual exploitation by allowing or facilitating obscene acts on victims, and benefiting from the result of his actions. Therefore, according to the author, the defendant has violated the rule of law as explained in Law 35 of 2014 Article 76I concerning amendments to Law 23 of 2002 concerning Child Protection "Every child is prohibited from placing, allowing, doing, ordering to do, or as well as exploiting economic and/or sexual behavior towards children."

In Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, it provides for quite severe criminal sanctions for perpetrators of crimes of human trafficking as a form of protection for victims of human trafficking. It is explained that trafficking in persons is a person who recruits, transports, shelters, sends, transfers or accepts someone with threats of violence, use of violence, kidnapping, confinement, counterfeiting, fraud, abuse of power or a position of vulnerability, debt bondage or giving payments or benefits, so as to obtain the consent of the person who has control over the other person, whether it is carried out within the country or between countries, for the purpose of exploitation or causing people to be exploited. And also actions that include inviting, collect, take, or separate, a person from his family or community. Thus the act of carrying, which is meant by the act of carrying, as described by the public prosecutor in his criminal charge, that the act of carrying in question does not have to be interpreted as being taken together with the defendant. Which includes the defendant allowing or even assisting the defendant in carrying out this sexual exploitation.

Initially the court of first instance, the Public Prosecutor's Office of the Manado District Attorney filed charges against the defendant as stipulated in the indictment of Article 2 paragraph (1) of law no. 21 of 2007 concerning the eradication of the crime of trafficking in persons, to be sentenced to imprisonment for 5 (five) years reduced while the accused is in temporary detention, and a fine of Rp. 120,000,000 subsidiary 3 months in prison. However, the Manado District Court ruled that the defendant legally proven and guilty of having committed the crime of "allowing and participating in the sexual exploitation of children" and the defendant was sentenced to 1 year in prison and a fine of Rp. 20,000,000 and if the fine is not paid it must be replaced with 1 month in prison. However, in the opinion of the writer, the sentences handed down to the defendant were too short and lenient, so there is a possibility that in the future the defendant will continue to commit these acts in the future, because he thinks the sentence will only be

light, even though in this case the defendant never forced the victim to commit such exploitation.

In Penology, as explained in previous research chapters, Penology is a science that studies punishment. Punishment arises because there is a crime and society will respond to the crime as a reaction by bringing up norms/regulations including legal norms. Penology also includes penalization policies and efforts to control crime, both repressive and preventive. That is, the penology does not only cover the study of the criminal code, but also investigates the ways in which the code is determined in court practice, and the wisdom in applying each type of punishment. For example, even if the constitution requires a court to pronounce a sentence (such as life imprisonment for a murderer),

The verdict received by the defendant in relation to the Penal Code was not commensurate with what he received. Even though in this case the victim was actually guilty because he had ordered the defendant to exploit himself, the defendant was still guilty because he had allowed or participated in the sexual exploitation of a minor.

In penology, the crime of trafficking in persons or exploiting minors is included in the combined theory, namely basing the crime on the principle of retaliation for the mistakes that have been made by the accused so that it is oriented towards the act and lies in the occurrence of the crime itself. This theory puts forward that sanctions in criminal law are imposed solely because people have committed a crime which is an absolute consequence that must exist as a retaliation for people who have committed crimes so that sanctions aim to satisfy the demands of justice. Because every crime must result in being punished by the offender. That's why this theory is called the absolute theory which is an absolute demand,¹⁶

According to the author, this case is strengthened by the existence of several theories or approaches that support the consideration of imposing a decision in this case, namely, firstly, the theory of Retribution (revenge). his own crime. Imprisonment for 1 year and a fine of Rp. 20,000,000 (twenty million rupiah) to the perpetrator for the purpose of retaliating for his actions for allowing the victim to be exploited. Imprisonment of imprisonment for 1 year and a fine of Rp. 20,000,000 (twenty million rupiah) to the defendant aimed at frightening, making the defendant powerless and improving his character so that in the future the same incident would not be repeated.

Criminal law is a different law, because criminal law provides sanctions in the form of punishment that will be threatened to violators of the law. The principle of legality is the legal system in Indonesia, this principle is the basis of a state based on law. In the

¹⁶ SH & Partners Andri Marpaung, "THEORIES OF CRIMINAL AND OBJECTIVES OF CRIMINAL," nd, <https://www.lawyersclubs.com/teori-teori-pemidanaan-dan-juang-pemidanaan/>.

Criminal Code there is a principle of legality in article 1 paragraph 1 which reads "An act cannot be punished, except under the provisions of the existing criminal law".

In imposing a sentence on the defendant for the Panel of Judges at the Court, it is not only limited to retaliation, but is a responsibility that must be carried out by the defendant and must be held responsible for the consequences of his actions because he has violated the law. Regarding determining the purpose of sentencing in a judge's decision, in essence it can also be the rationale for imposing criminal sanctions, why a person is sentenced to a person who violates it and what is expected by convicting someone.

In practice, the purpose of punishment can be a combination of the theory of retaliation and the theory of objectives, which is referred to as the combined theory. The theory is maintained as the initial foundation for considering the past (as contained in the theory of retaliation), but must also simultaneously consider the future (as intended in the theory of goals). Thus the imposition of a sentence will give a sense of satisfaction, both for the judge and for the criminal himself.¹⁷

The second is Deterrence Theory. This theory views that the result of the decision of the Panel of Judges of sentencing is not only retaliation for the defendant's mistakes, but also a means to achieve goals that are useful for protecting society. because sanctions are emphasized on their purpose, namely to prevent people from committing crimes, then they are not only aimed at absolute satisfaction of justice.¹⁸

4. Conclusion

Based on the results of the analysis and discussion that have been described above, it can be concluded that Penological Analysis of Criminal Sanctions in Manado District Court Decisions, The penological analysis of the defendant's actions in sentencing is in accordance with the criminal act, because it includes theory combination of the theory of revenge with the theory of goals. Which is where the imposition of a sentence will give a sense of satisfaction, both for the judge and for the criminal himself.

¹⁷ Ferdy Rizky Adilya, "Decision of Substantive Justice Criminal Judges Through a Progressive Legal Approach in the Perspective of Penology," *Actualita Journal* 1, no. 2 (2018).

¹⁸ Fajar Ari Sudewo, *PENOLOGY AND THEORY OF CRIMINAL* (Central Java; PT DJAVA SINAR PERKASA, 2021).

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