

Trafficking crime policy in a philosophical, sociological and juridical perspective

DOI: 10.46932/sfjdv3n4-061

Received in: April 14th, 2022

Accepted in: June 30th, 2022

Wulandari

Master of Law UNTAG Semarang

Institution: University 17 Agustus 1945 Semarang, Indonesia

Address: Jl. Pawiyatan Luhur Bendan Dhuwur Semarang

E-mail: ndari904@gmail.com

Setiawati

Master of Law UNDIP Semarang

Institution: University 17 Agustus 1945 Semarang, Indonesia

Address: Jl. Pawiyatan Luhur Bendan Dhuwur Semarang

E-mail : iyengsantoso@yahoo.com

Sumartini Dewi

Master of Law UNDIP Semarang

Institution: University 17 Agustus 1945 Semarang, Indonesia

Address: Jl. Pawiyatan Luhur Bendan Dhuwur Semarang

E-mail: sumartini.dewi@gmail.com

ABSTRACT

This study aims to discuss government policies in tackling the crime of trafficking as a criminal act that violates human rights. Trafficking is a transnational crime and Indonesia as a country with a large number of trafficking victims. Trafficking victims are women/children, various endemics are the reasons for the occurrence of Trafficking crimes against vulnerable groups based on social, economic, and cultural conditions. The method used in this research is a descriptive method with a qualitative approach. In dealing with the crime of trafficking, it is necessary to do it bilaterally/multilaterally. Various prevention efforts have been carried out by the government through law enforcement (penal) against perpetrators as well as a form of protection for victims such as providing compensation to both victims and their families. However, the lack of understanding and professionalism of law enforcement officers in dealing with the crime of trafficking has resulted in this crime not being able to be resolved optimally, so there needs to be an integrated handling of cases by prioritizing non-penal efforts and involving the community in crime prevention and control, namely through preventive and repressive efforts.

Keywords: legal policy, trafficking crime.

1 INTRODUCTION

The motives for the crime of trafficking in persons against women/children are varied and often invite the unexpected. Various endemics as reasons for poor families, dropping out of school, low education and social conflicts are potential factors driving the emergence of trafficking in women and children. So that the crime of trafficking violates the rights and dignity of humanity, so comprehensive

and integral prevention efforts are needed at the level of legal policy through legislation, execution and judiciary.

Indonesia has ratified the convention on the elimination of discrimination against women, as formulated in law no. 7 of 1984 concerning and Ratification of the Convention Regarding the Elimination of All Forms of Discrimination and Law no. 21 of 2007 concerning the Crime of Trafficking in Persons. Unfortunately, the two (2) regulations have not been able to run effectively, exacerbated by the weakening of the role of families and community members who make girls and women a commodity as a source of income for family life in meeting economic and social needs.

Human trafficking is a criminal act that violates human rights to be able to live properly. Therefore, the government needs to provide protection and respect for the rights of every citizen in accordance with Pancasila and the Preamble to the 1945 Constitution. Meanwhile, the government's commitment to combating trafficking in persons and protecting victims of trafficking is carried out by ratifying the ASEAN Convention.

Indonesia is a country of origin for a large number of victims of human trafficking. Several international principles that have been agreed upon need to be followed up in accordance with national legal instruments on the prevention of trafficking, the provision of sanctions for traffickers, victim protection and countermeasures. Ironically, various methods of deception are carried out to deceive victims so that even though arrests (law enforcement investigations) have been carried out against traffickers, these criminal acts still continue to occur so that efforts to prevent and overcome trafficking crimes are needed in an integrated (integral) way.

Crime prevention policies are an integral part of efforts to protect society (social defense) as well as efforts to achieve social welfare. Law enforcement is generally accepted and is expected to be a deterrent to criminals not to commit crimes again and is expected to influence the public not to commit crimes. However, it is not always the case that criminal sanctions that apply as a way of overcoming criminal acts can meet the expectations of preventing crime.

Efforts to protect women and children who are victims of the crime of trafficking are not enough to impose criminal sanctions (means of penal) alone, but non-penal efforts are needed to make criminals aware that human trafficking is not legally justified. The problem of human trafficking in law enforcement in Indonesia leaves many problems, such as the lack of understanding and professionalism of law enforcement officers in understanding the problem of trafficking and the limitations of existing legislation that are deemed inadequate to capture trafficking crimes. Therefore, the author aims to explore and analyze several aspects related to government policies to provide protection for women/children victims of the crime of human trafficking in a philosophical, sociological and juridical perspective.

2 RESEARCH METHOD

The type of method used in this research is normative legal research by examining library materials or secondary data and legal rules/norms related to the problem. Data analysis using descriptive qualitative analysis.

3 DISCUSSION AND ANALYSIS.

3.1 GOVERNMENT POLICY IN PROVIDING PROTECTION FOR WOMEN AND CHILDREN VICTIMS OF TRAFFICKING CRIMES

Crime as part of everyday people's lives, as behavior that is contrary to human morals and acts that violate the rules that live in society so that it is a form of behavior that violates the law and deserves to be punished.

Sociologically, crime is a form of action and behavior that violates moral norms that attack the safety of citizens.¹ Currently, the practice of trafficking in women and children is spreading in various places/countries like slavery like practices. Trafficking is used for the term human trafficking.

There are 2 (two) things that are driving factors for trafficking, namely:

1. Poverty, although it is very cliché, but this factor cannot be avoided. They look for shortcuts and without thinking about all the risks and obstacles/challenges that will occur.
2. Attractor, namely the lure factor/promises from people who are successful or successful from brokers to potential victims who have fallen into their trap without realizing it.

Trafficking victims, in general, are women with unstable conditions from weak economic groups, job seekers and have low education (women and children). They are a vulnerable group, as victims they are trapped in difficult conditions and exploited in various forms such as prostitution, forced labor/services, slavery and others.

The perpetrators of the crime of trafficking in persons carry out actions by recruiting, defrauding, kidnapping, forging or accepting people with the aim of trapping the victim with sweet promises/promises and/or payment or using all forms of threats of violence, coercion/control and intimidation. to obtain the consent of the parents or family. Weak law enforcement and social conflicts often make women and children a commodity to deal with family economic problems.

The problem of human trafficking has become a global problem, including Indonesia because trafficking is categorized as a type of crime against human rights (Article 20 of Law No. 39 of 1999) as follows:

"No one can be enslaved or inhibited, slavery or servitude, the slave trade, the trafficking of women and all acts of any kind with a similar purpose are prohibited."

¹ Mulyana W Kusumah, 1988, *Kejahatan dan Penyimpangan: suatu Perspektif Krimonologi*, YLBHI, p.40-42.

The crime of trafficking has an impact on the victim resulting in uncomfortable conditions from severe trauma to death. Given the severity of the impact, it will lead to the stigmatization of victims (women or children) who have been "exploited". Therefore, it is necessary to prevent and overcome the crime of trafficking in persons (human trafficking) from an early age as an effort to provide protection for victims.

Legal protection is a universal concept of the rule of law, both preventively and repressively and seriousness is needed in the law enforcement process in order to provide protection for victims. In addition, the concept of state responsibility for the rights of its citizens is obliged to provide assistance to restore psychological conditions until they return to their original position.

3.2 POLICIES FOR COMBATING TRAFFICKING CRIMES AGAINST WOMEN/CHILDREN IN PHILOSOPHICAL, SOCIOLOGICAL AND JURIDICAL PERSPECTIVES

Legal development as an effort to uphold justice, truth and order based on Pancasila and the 1945 Constitution, is directed at increasing legal awareness, ensuring law enforcement, service and certainty and realizing the national legal system.

Law enforcement policies as part of criminal policy, these efforts are carried out in order to achieve the ultimate goal of the policy of providing protection to the community in order to create order and prosperity.

Crime prevention policies can be implemented using several approaches, namely:

- a. Criminal law means the application of criminal law or criminal law application. Whereas penal crime prevention efforts are more focused on repressive nature, namely in the form of suppression, eradication, and suppression after the crime has occurred.
- b. Non-criminal law, namely efforts in the form of coaching and/or non-formal education efforts. This approach focuses more on preventive properties, namely in the form of prevention, deterrence, control before the crime occurs. For example, social problems that can directly or indirectly lead to the fertility of crime. From a macro and global perspective of criminal politics, non-penal efforts occupy a key/strategic position in overcoming the causes or conditions for the emergence of crime.
- c. Integrated is a combination of a penal approach and a non-penal approach. An integral approach is a rational approach, which in addition to upholding the principle of legality is also the principle of utility.

The penal policy is an effort to prevent crime through the making of laws while non-penal means are an integral part of efforts to protect society (social defense) to achieve social welfare. So criminal law policy is an integral part of social policy.

Providing protection to the community (social welfare) is the duty and responsibility of the government/state and is important in carrying out constitutional obligations towards human rights (state responsibility) by fulfilling obligations, respecting, protecting and upholding human rights, especially the rights of women and children. as stipulated in international conventions.

Indonesia as an archipelagic country with a large population is very vulnerable to various forms of crime, one of which is the crime of trafficking in persons which is motivated by various sociological factors that lead to forms of human exploitation (women and children) so that a legal framework is needed to prevent and tackle crime. trafficking through international cooperation to combat these crimes effectively. .

Prevention of trafficking crimes is not enough to do with a law enforcement framework but needs to be resolved through a mechanism of intergovernmental cooperation and focusing on the main factors/sources behind the occurrence of trafficking in persons such as poverty and unemployment. Meanwhile, trafficking victims need to get justice, namely the right to be free from threats of violence/retaliation and get legal remedies.

Trafficking victims (women and children) do not receive enough services from the medical, psychological and social aspects but also need to receive integrated treatment to solve the problems experienced by trafficking victims. Meanwhile, in the legal process, the examination of trafficking cases (victims) requires more intensive assistance because they are usually in a very depressed/traumatic psychological condition.

Efforts to combat human trafficking are often constrained by problems of synchronization in the implementation of the Indonesian criminal justice system, such as community cultural factors, government policies (statutory regulations/legal substance) and law enforcement officers (legal structures). So that a collaboration is needed to make effective the prevention and eradication of trafficking that is regional, bilateral and multilateral.

The role of the community is very much needed in the form of providing information and reporting to law enforcement officers/authorities in the prevention and eradication of trafficking, as well as repressive actions/law enforcement in addition to preventive actions through useful entrepreneurship education.

4 CONCLUSION

The crime of trafficking is experienced by vulnerable groups (women/children) which has an impact on trauma and very heavy psychological pressure, resulting in the weakening of social values in society. Law enforcement on the protection of victims' rights has been carried out although not optimally,

through the concept of punishing the perpetrators and providing assistance, compensation/restitution to victims and/or their families.

The policy of dealing with trafficking crimes is carried out by preventing and reducing the suffering of victims as a form of exploitation of women/children, this condition is less favorable for the victim's self-development and the lack of understanding/professionalism of law enforcement officers in dealing with trafficking crimes. So there needs to be integrated handling of trafficking cases by prioritizing penal and non-penal facilities by involving the community regionally, bilaterally/multilaterally (preventive and repressive) and synchronizing the implementation of the Criminal Justice System between community cultural factors and government policies/law enforcement officials.

REFERENCES

- Abdul Wahid and Muhammad Irfan, 2001, *Perlindungan Terhadap Korban Kekerasan Seksual*, Advokasi Atas Hak Asasi Perempuan, Rafika Aditama, Bandung
- Arif Gosita, 2003, *Kumpulan Makalah Masalah Korban*, Jakarta
- AS Alam, 2010, *Pengantar Kriminologi*, Penerbit Pustaka Refleksi : Makasar
- Aloysius Wisnubroto, 1999, *Kebijakan Hukum Pidana Dalam Penanggulangan Penyalahgunaan Komputer*, Universitas Admajaya, Yogyakarta
- Barda Nawawi Arief, 2008, *Masalah Penegakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Jakarta, Kencana
- , 2010, *Bunga Rampai Kebijakan Hukum Pidana*, PT Citra Aditya Bakti, Bandung
- , 2011, *Pembaharuan Hukum Pidana Dalam Perspektif Kajian Perbandingan*, Bandung: Citra Aditya Bakti.
- CST. Kansil, 1989, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Balai Pustaka, Jakarta.
- Henry Campbell Black, 1979, *Black's Law Dictionary*, West Publishing Company, St. Paul Minn
- Mokhammad Najih, 2008, *Politik hukum Pidana Pasca Reformasi: Implementasi Hukum Pidana Sebagai Instrumen Dalam Mewujudkan Tujuan Negara*, Malang: In-Trans publishing
- Mudzakkir, 2002, *Pengaturan Hak Korban Kejahatan Dalam KUHAP dan Penegakannya Dalam Praktek Peradilan Pidana (Analisis Posisi Hukum Korban Dalam Ius Constitutum dan Ius Constituendum)*, Yogyakarta: Departemen Hukum Pidana Fakultas Hukum UII
- Mulyana W Kusumah, 1988, *Kejahatan dan Penyimpangan : suatu Perspektif Kriminologi*, YLBHI
- Ninik Widiyanti and Yulius Waskita, 1987, *Kejahatan Dalam Masyarakat dan Pencegahannya*, Bima Aksara, Jakarta
- Suryono Ekatama, 2000, et.al, *Abortus Provocatus Bagi Korban Perkosaan*, UAJ, Yogyakarta.
- Satjipto Rahardjo, 2000, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung.
- Topo Santoso and Eva Achjalni Zulfa, 2010, *Kriminologi*, Raja Grafindo Perkasa, Jakarta
- Wijers M & Lap-Chew, 1999, *Perdagangan Perempuan Dalam Kerja Paksa dan Praktik-Praktik Seperti Perbudakan Dalam Pernikahan, Rumah Tangga dan Prostitusi*, Fondation Against Trafficking in Women The Netherlands.

Law and Regulation

Law Number 39 of 1999 on Human Rights

Law Number 21 of 2007 on Elimination of Human Trafficking Crimes.

Government Regulation of the Republic of Indonesia number 69 of 2008 on the Task Force for the Prevention and Handling of the Crime of Trafficking in Persons.