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Law Enforcement against Human Trafficking in the Police Jurisdiction at Sangihe Islands Resort

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ABSTRACT

The form of application is based on mistakes that are in accordance with legal elements and there is no reason for unlawful elimination, the element of intent by the perpetrator (dolus) so that there is no justification or reason for him/her to avoid punishment. Law enforcement efforts in the eradication of human trafficking are implemented through non-penal and penal approaches. Non-penal approaches are conducted through counseling, social education in order to develop the social responsibility of citizens who are aware of human trafficking crimes, legal counseling, resocialization, workshops, etc., especially in crime-prone environments. The penal approach is carried out through legal efforts so that perpetrators of human trafficking crimes are legally processed based on the provisions of laws and regulations up to the court level and execution in order to obtain criminal sanctions and guarantee legal certainty in society. The objective of this research is to analyze the application of criminal sanctions and law enforcement against human traffickers in the Police jurisdiction, North Sulawesi Regional District, Sangihe Islands Resort. This research used a case approach which aims to examine the application of legal norms or rules in legal practice. In addition, legislation is conducted by reviewing all laws and regulations that are related to the legal issues being addressed. The 1945 Constitution of the Republic Indonesia in one of its articles, Article 3, mentions the right not to be enslaved. Therefore, to realize the protection of this right, the Indonesian government needs to regulate human trafficking crimes separately.

Keywords: Criminal Offense, Human Trafficking, Law Enforcement

INTRODUCTION

Human trafficking has been an ongoing problem and is an act that contradicts human dignity. It is a violation of human rights, human dignity, which are protected under Pancasila and the 1945 Constitution of the Republic Indonesia. Human trafficking is an organized crime committed using both conventional and modern approaches. The perpetrator organizes the crime by building a network from the area/country of origin of the victim to the area or target country. Human trafficking crimes are usually not only committed by individuals but also by groups of people (corporations).¹ Another form of human trafficking relates to commercial sex work and exploitation. Exploitation includes, exploitation of prostitution by another person, or other forms of sexual exploitation, forced labor or service, slavery, or practices similar to slavery, servitude or illegal organs trafficking. The problem discussed in this case is the imposition of criminal sanctions in the Criminal Code and outside the Criminal Code and how the sanctions are related to Law No. 39/1999 on Human Rights.² The Indonesian government does not fully meet the minimum standards for combating human trafficking, but the government is undertaking significant efforts to realize them. These efforts include providing protection services to more victims through the Ministry of Social Affairs by identifying, accepting, and assisting more victims of exploitation abroad; restoring the wage rights of Indonesian workers claiming compensation for unpaid work abroad; creating and disseminating awareness-raising campaign materials on the dangers of human trafficking; and enacting several implementation regulations for Law No. 18/2017 on the Protection of Indonesian Migrant Workers enacted in 2017.³

However, the Indonesian government has not met minimum standards in several important areas. The number of prosecutions and convictions decreased for the second consecutive year, and courts sometimes stopped processing civil and criminal cases related to human trafficking without a formal suspension, ruling, or legal justification. The involvement of officials in human trafficking crimes remained a common concern, and as in the previous year, while the government reported ongoing investigations, it did not report prosecutions or convictions of officials allegedly involved in human trafficking crimes. The absence of solid and systematic identification procedures prevented the overall identification of victims, especially male victims. Coordination between the national-level TPPO Prevention and Handling Task Force and its counterparts at the provincial and district/city levels is inadequate in implementing central government policies.⁴ The government

¹ Andi Hamzah, *Hukum Pidana Indonesia* (Jakarta: Sinar Grafika, 2017).

² Sharon B. Buchbinder & Nancy H. Shanks, *Introduction to Health Care Management*, Third. (Burlington: Jones & Bartlett Publishers, 2016).

³ Erdianto Effendi, *Hukum Pidana Indonesia Suatu Pengantar* (Bandung: Refika Aditama, 2014).

⁴ Shofi Nurul Rahmawati and Djoko Sumaryanto, "Legal Protection for Human Trafficking A Case Study of Sidoarjo District Court Decision No. 889/PID.SUS/2018/PN.SDA," *YURIS*

reduced the victim protection budget and budget allocation for TPPO handling offices that are part of the TPPO Prevention and Handling Task Force, unfortunately their performance has declined in the last four years. The Indonesian government has not enacted principal implementing regulations of Law No. 18/2017 on the Protection of Indonesian Migrant Workers, hindering its effectiveness. The 2007 Law on the Eradication of Human Trafficking is inconsistent and not in alignment with international law as it still requires the use of force, fraud, or coercion to justify the crime of child sex trafficking.⁵

Nowadays, human trafficking has become a serious concern due to the realization of the exploitation of humans by humans. It can be called a modern form of cannibalism. Both sellers and buyers use human beings as commodities to gain profit and pleasure from selling human beings or possessing the human beings they buy. It means that the seller gets profit from the sale while the buyer gets pleasure from controlling that which he/she has bought. For example: sexual gratification, enslavement, and illegal organ trafficking. The form of application is based on mistakes that are in accordance with legal elements and there is no reason for unlawful elimination, the element of intent by the perpetrator (*dolus*) so that there is no justification or reason for him/her to avoid punishment.⁶ Law enforcement efforts in the eradication of human trafficking are implemented through non-penal and penal approaches. Non-penal approaches are conducted through counseling, social education in order to develop the social responsibility of citizens who are aware of human trafficking crimes, legal counseling, resocialization, workshops, etc., especially in crime-prone environments. The penal approach is carried out through legal efforts so that perpetrators of human trafficking crimes are legally processed based on the provisions of laws and regulations up to the court level and execution in order to obtain criminal sanctions and guarantee legal certainty in society.⁷

Article 1 of Law No. 21/2007 on the eradication of the human trafficking crime explains that human trafficking is a modern form of human slavery. It is also one of the worst forms of human dignity violation. The increasing problem of human trafficking in various countries, including Indonesia and other developing countries, has caused it to become an important focus for all global institutions. The 1945 Constitution of the Republic Indonesia in one of its articles, Article 3, mentions the right not to be enslaved. Therefore, to realize the protection of this right, the Indonesian government needs to regulate human trafficking crimes

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<https://journal.jfpublisher.com/index.php/jcj/article/view/209>.

⁵ Pemerintah Pusat, *Undang-Undang (UU) No. 21 Tahun 2007 Pemberantasan Tindak Pidana Perdagangan Orang* (Jakarta, 2007).

⁶ Anggie Rizqita Herda Putri and Ridwan Arifin, “Perlindungan Hukum Bagi Korban Tindak Pidana Perdagangan Orang Di Indonesia (Legal Protection for Victims of Human Trafficking Crimes in Indonesia),” *Res Judicata* 2, no. 1 (2019): 170–185.

⁷ Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dan Perempuan*, 1st ed. (Bandung: Refika Aditama, 2014).

separately. Human trafficking is not a recent form of crime. During the Indonesian history, human trafficking has occurred through slavery and servitude.

There is one case of human trafficking in Indonesia, a case handled by the North Sulawesi Regional Police of the Sangihe Islands Resort, which basically describes the chronology of its case as follows: the human trafficking crime committed by a suspect named Samsudin aka Otong and another suspect named Agus Nawawi (suspect in a separate file) who accommodated a group of foreign citizens from the Philippines at Panorama Hotel and in several rented houses in West Java. Furthermore, the 7 Filipino women will be sent to several countries in the Middle East to be used as household assistants. All seven victims were Filipino women from poor backgrounds. The two suspects were tasked to bring the seven victims from General Santos City in southern Philippines into Indonesian territory on a pump boat captained by Menira Bukapintu Maulana aka Embo Ira and a crew member, Irfan Cristiano Adilang and anchored at Kampung Petta Timur Beach, Tabukan Utara. They did not pass through the cross-border posts on Marore or Miangas Island and did not have official immigration documents. The seven victims were taken to Manado and stayed at an inn there, then will be departed to Bandung, West Java. The action of the syndicate network was later traced by the police after receiving information from residents. Based on this report, the police immediately began development. From the results of the development, the police then managed to secure seven victims and were taken to Cimahi Police Station on 16 February 2022, and then taken to Sangihe Police Station. Actually, the smuggling of the seven victims has been known since 25 January 2022 at around 23.00. The suspects are charged with Law of the Republic of Indonesia No. 6/2011 on immigration with a minimum imprisonment of 5 years and a maximum of 15 years with a maximum fine of IDR 1.5 billion and Article 3 of Law of the Republic of Indonesia No. 21/2007 on the eradication of trafficking in persons with a maximum imprisonment of 15 years and a maximum fine of IDR 600,000,000. Based on previous backgrounds, this research is conducted to analyze the application of criminal sanctions and law enforcement against human traffickers in the Police jurisdiction, North Sulawesi Regional District, Sangihe Islands Resort.

RESEARCH METHODOLOGY

This research used a case approach to examine the application of legal norms or rules applied in legal practice, especially regarding cases that have been decided as can be observed in the case jurisprudence towards the cases that are the research focus.⁸ The case approach is used by practitioners in conducting research by identifying court decisions that have qualified jurisprudence to be used in concrete

⁸ Johnny Efendi, Jonaedi & Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris*, 1st ed. (Depok: Prenada Media Group, 2016).

cases.⁹ Furthermore, the statutory approach, this approach is conducted by examining all laws and regulations that are related to the legal issues. In addition, this approach is conducted by studying the consistency/compatibility between the Constitution and the law, or between one law and another law.¹⁰

RESULT AND DISCUSSION

Article 1 of Law of the Republic of Indonesia No. 2/2002 on the Indonesian National Police, states that the police are all matters relating to the functions and institutions of the police in accordance with statutory regulations. Members of the Indonesian National Police are civil servants of the Indonesian National Police. The police are one of the institutions assigned to the investigation. In addition, the police also have other duties, the main police duties are related to law enforcement, maintenance of public order and security, including: law enforcement duties as investigators and prosecutors (judiciary), social and humanitarian duties, legal awareness education duties, and limited government (*bestuurlijk*) duties. Police duties can be divided into two categories, including repressive and preventive duties. This repressive task is similar to the executive power task, which is to implement regulations or orders from the authorities when there has been a violation of the law. Meanwhile, the preventive task of the police is to guard and supervise so that the rule of law is not violated by anyone. The main task of the police is to maintain domestic security. This is different from the task of the army, which is primarily to maintain the defense of the country, which basically refers to the possibility of attacks from abroad. Meanwhile, Law No. 2/2002 on the Indonesian National Police Article 13 explains that the main tasks of the police are as follows:

1. Maintaining community security and order;
2. Enforce the law; and
3. Provide protection, care and service to the community.

Furthermore, in Article 14 explained that in conducting the main task as referred to in Article 13, the Indonesian National Police is assigned:

1. Conduct arrangements, guards, escorts, and patrols of community and government activities as needed.
2. Organizing all activities in ensuring the safety, order and smooth flow of traffic on the road.
3. Fostering the community to increase community participation, public legal awareness and citizens' obedience to laws and regulations.
4. Participate in the development of national law.
5. Maintain order and ensure public safety.

⁹ Prof. Dr. I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Jakarta: Prenada Media Group, 2016).

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (Jakarta: Kencana, 2016).

6. Coordinating, supervising, and providing technical assistance to special police, civil servant investigators, and forms of self-initiated security; conducting investigations and inquiries into all criminal acts in accordance with the criminal procedure law and other laws and regulations regarding the provisions of these investigations and inquiries, more details have been regulated in the Criminal Procedure Code which includes describing the definition of investigations, inquiries, investigators and prosecutors and their duties and authorities.
7. Organizing police identification, police medicine, forensic laboratories and police psychology for the benefit of police duties.
8. Protect the safety of body and soul, property, society, and the environment from disturbances of order and/or disasters including providing assistance and help by upholding human rights.
9. Serving the public's interests temporarily before being handled by authorized agencies and/or parties.
10. Provide services to the public in accordance with their interests within the scope of police duties; and conduct other duties in accordance with laws and regulations.
11. Implement other duties in accordance with statutory regulations.

Meanwhile, the authority of the Police is regulated in Article 15 of the Indonesian National Police Law No. 2/2002 which states that in order to conduct the tasks as referred to in Articles 13 and 14 the Indonesian National Police is generally authoritative:

1. Receive reports and/or complaints;
2. Facilitate the resolution of community disputes that may disrupt public order;
3. Prevent and overcome the growth of community diseases;
4. Supervise the flow that can cause division or threaten national unity and integrity;
5. Establish police regulations within the scope of police administrative authority;
6. Conduct specific examinations as part of police actions in the context of prevention;
7. Take the first action at the scene of crime;
8. Take fingerprints and other identities and photograph a person;
9. Seek information and evidence;
10. Organize a national criminal information center;
11. Issue licenses and/or certificates required in the context of community service;
12. Provide security assistance in the trial and implementation of court decisions, activities of other institutions, and community activities;

13. Receive and temporarily store found items.
14. Authorize and supervise public gatherings and other community activities;
15. Organize vehicles registration and identification.
16. Provide motor vehicle driving licenses;
17. Receive public information on political activities;
18. Authorize and supervise firearms, explosives, and sharp weapons;
19. Provide operational licenses and supervise business entities in the field of security services;
20. Provide guidance, educate, and train special police officers and self-initiated security officers in the technical field of policing;
21. Cooperate with the police of other countries in investigating and combating international crimes.
22. Supervise functional police against foreigners who are in the territory of Indonesia in coordination with related institutions;
23. Represent the Indonesian government in international police organizations.
24. Carry out other authorities included in the scope of police duties.

The purpose of the Indonesian National Police is to realize domestic security, which includes the maintenance of security and public order, order and law enforcement, the implementation of protection, supervision, and services to the community, and the preservation of public peace by upholding human rights. One of the important points that must be underlined regarding the objectives of the Indonesian National Police is the order and law. The law referred to in this case is all forms of legal regulations that have been recorded in the state gazette, including legislation including Law of Republic Indonesia No. 21/2007 on Human Trafficking.

Based on law enforcement matters regarding the criminal act of human trafficking that occurred in the Sangihe Islands, the police have the duty as investigators, as specified in the Criminal Procedure Code (KUHP) Article 1 Paragraph 1 that the definition of an investigator is a state police officer of Indonesia or certain civil servant officials who are authorized by law to investigate, then emphasized in Law No. 2/2002 on the Indonesian National Police Article 14 Paragraph 1 letter G that in implementing its main task, the Indonesian National Police is tasked with investigating and prosecuting all criminal acts in accordance with the criminal procedure law and other laws and regulations.¹¹

According to the provisions of Article 6 Paragraph (1) letter A, the Criminal Procedure Code states that one of the agencies authorized to conduct Investigations is "State Police Officers of Indonesia. However, before a police officer is assigned

¹¹ M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP Penyidikan Dan Penuntutan*, 2nd ed. (Jakarta: Sinar Grafika, 2014).

the position of investigator, he/she must meet the “rank requirements” according to the explanation of Article 6 Paragraph (2) of the Criminal Procedure Code, it is determined that the requirements for the rank of the authorized Indonesian State Police Officer will be further regulated by a Government Regulation. Then, the explanation stated that the ranks determined by the Government Regulation are aligned with the ranks of Public Prosecutors and Judges of general courts. In subsequent developments, the new Police Act of 2002 states that the police can investigate all criminal offenses. This means that they have the authority to investigate special criminal offenses.

Based on the provisions of Article 2 Paragraph (1) letter A of Government Regulation No. 27/1983 concerning the implementation of the Criminal Procedure Code, it can be recognized that not all state police officers are investigators. This provision regulates that only state police officers who have been appointed and assigned as investigators in accordance with the Decree of the Chief of Police on 24 December 1983 Number Police. SKEP/619/XII/1983, concerning the provisions for the Appointment of Investigators and the Appointment of Assistant Investigators within the Indonesian National Police. and now renewed by Government Regulation No. 58/2010 concerning the Implementation of the Criminal Procedure Code.

The police investigation of human trafficking cases must prioritize Standard Operating Procedures (SOP) in accordance with Police Chief Regulation No. 14/2012 on Criminal Investigation Management.¹² The regulation was issued with various considerations, such as those mentioned in point b of the regulation that in implementing law enforcement duties, the Indonesian National Police investigators have duties, functions and authorities in the field of criminal investigations, which are conducted professionally, transparently and accountably in every criminal case for the realization of the rule of law that is reflective of justice. The regulation also contains various principles that must be prioritized by investigators in handling human trafficking cases, in accordance with Article 3 of the regulation which states that the principles in this regulation:

1. Legality is the process of investigation and prosecution conducted in accordance with the provisions of laws and regulations.
2. Professionalism, that is, investigators/assistant investigators in implementing the duties, functions, and authority of the investigation in accordance with their competencies.
3. Proportional, each investigator / assistant investigator in performing duties in accordance with their functions, roles and responsibilities.
4. Procedural, that is, the investigation and prosecution process is in accordance with the mechanisms and procedures stipulated in the provisions of laws and regulations.

¹² Rahmawati and Sumaryanto, “Legal Protection for Human Trafficking A Case Study of Sidoarjo District Court Decision No. 889/PID.SUS/2018/PN.SDA.”

5. Transparent, which means that the investigation and prosecution process is conducted transparently and the progress of the handling can be known by the public.
6. Accountable, which means that the investigation process can be held accountable; and
7. Effective and efficient, which means that the investigation is conducted quickly, precisely, cheaply, and thoroughly.

There is one case of human trafficking in Indonesia, a case handled by the North Sulawesi Regional Police of the Sangihe Islands Resort, which basically describes the chronology of its case as follows: the human trafficking crime committed by a suspect named Samsudin aka Otong and another suspect named Agus Nawawi (suspect in a separate file) who accommodated a group of foreign citizens from the Philippines at Panorama Hotel and in several rented houses in West Java. Furthermore, the 7 Filipino women will be sent to several countries in the Middle East to be used as household assistants. All seven victims were Filipino women from poor backgrounds. The two suspects were tasked to bring the seven victims from General Santos City in southern Philippines into Indonesian territory on a pump boat captained by Menira Bukapintu Maulana aka Embo Ira and a crew member, Irfan Cristiano Adilang and anchored at Kampung Petta Timur Beach, Tabukan Utara. They did not pass through the cross-border posts on Marore or Miangas Island and did not have official immigration documents. The seven victims were taken to Manado and stayed at an inn there, then will be departed to Bandung, West Java. The action of the syndicate network was later traced by the police after receiving information from residents. Based on this report, the police immediately began development. From the results of the development, the police then managed to secure seven victims and were taken to Cimahi Police Station on 16 February 2022, and then taken to Sangihe Police Station. Actually, the smuggling of the seven victims has been known since 25 January 2022 at around 23.00. The suspects are charged with Law of the Republic of Indonesia No. 6/2011 on immigration with a minimum imprisonment of 5 years and a maximum of 15 years with a maximum fine of IDR 1.5 billion and Article 3 of Law of the Republic of Indonesia No. 21/2007 on the eradication of trafficking in persons with a maximum imprisonment of 15 years and a maximum fine of IDR 600,000,000.

Therefore, the suspect Samsudin aka Otong is suspected of violating Article 120 Paragraph (1) of Law No. 6/2011 concerning Immigration Jo Article 55 Paragraph (1) of the 1st Criminal Code and or Article 3 of Law No. 21/2007 concerning Eradication of Human Trafficking Jo Article 55 Paragraph (1) of the 1st Criminal Code. The Article 120 Paragraph (1) of Law No. 6/2011 on Immigration which states that any person who commits an act for the purpose of seeking profit, either directly or indirectly, for himself or for another person by bringing a person or group of persons, either in an organized or unorganized manner, or ordering

another person to bring a person or group of persons, either in an organized or unorganized manner, who does not have the right to legally enter the Indonesian Territory or exit the Indonesian Territory and/or enter the territory of another country, where the person does not have the right to enter the territory legally, either by using valid documents or fake documents, or without using Travel Documents, either through immigration checks or not, shall be punished for Human Smuggling with imprisonment of 5 (five) years at minimum and 15 (fifteen) years at maximum and a fine of at least IDR 500,000,000 (five hundred million rupiah) and a maximum of IDR 1,500,000,000 (one billion five hundred million rupiah).

Meanwhile, Article 3 of Law No. 21/2007 on the Eradication of Human Trafficking which states that any person who brings a person into the territory of the Republic Indonesia with the intention of exploitation in the territory of the Republic Indonesia or exploitation in another country shall be punished with imprisonment for a minimum period of 3 (three) years and a maximum period of 15 (fifteen) years and a fine of not less than IDR 120,000,000 (one hundred and twenty million rupiah) and not more than IDR 600,000,000 (six hundred million rupiah). Article 55 Paragraph (1) of the 1st Criminal Code which states “those who commit, those who order to commit, and those who participate in the act” shall be punished as perpetrators of criminal acts, which imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 10,000,000,000 (ten billion rupiah).

Based on this discussion, the law enforcement process against the perpetrators of human trafficking in the legal jurisdiction of the North Sulawesi Regional Police of the Sangihe Islands Resort can conduct investigations in the form of summons, arrest, detention, confiscation which are very supportive and mutually reinforcing between the testimony of witnesses, expert testimony, and the existence of evidence seized with the confession of the suspect, the researcher concludes that the male suspect Samsudin aka Otong, has been proven to have committed the crime of human trafficking, which is by committing the act of entering people into the territory of Indonesia with the intention of being exploited in the territory of the Republic Indonesia or exploited in another country as well as the act of assisting or attempting to commit the crime of trafficking in persons for these acts, he can be punished with a maximum imprisonment of 15 (fifteen) years, as referred to in Article 120 Paragraph (1) of Law No. 6/2011 on Immigration and or Human Trafficking crime shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years as referred to in Article 3 of Law No. 21/2007 on Eradication of Human Trafficking.

CONCLUSION

Law enforcement against human trafficking in the police jurisdiction, North Sulawesi regional district, Sangihe islands resort conducts investigations such as summons, arrest, detention, confiscation which are very supportive and mutual reinforcement between witness testimony, expert testimony, and confiscated evidence with confession from the suspect. Therefore, the researcher concludes that the suspect named Samsudin aka Oton, has been proven to have committed human trafficking, which involves the act of bringing foreigners into the territory of Indonesia with the intention of being exploited in Indonesia or in other countries. The act of assisting or attempting to commit human trafficking is punishable by a maximum imprisonment of 15 (fifteen) years, as referred to in Article 120 Paragraph (1) of Law No. 6/2011 concerning immigration and/or human trafficking is punishable by a minimum imprisonment of 3 (three) years and a maximum of 15 (fifteen) years as referred to in Article 3 of Law No. 21/2007 concerning the eradication of human trafficking.

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