

Policies Adopted by the Government of Indonesia in the Prevention of Trafficking in Persons (*Human Trafficking*)

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ABSTRACT

Human trafficking is a modern form of human slavery and is also one of the worst forms of human rights violations. How is the Indonesian government policy in terms of the prevention of crime of trafficking in people and what obstacles faced by the Indonesian government in the prevention of human trafficking crime. The normative legal research method is carried out by examining mere literature or secondary data. The government policy to prevent the crime of trafficking in persons is the application of severe punishments for the perpetrators of a primary or traffickers who are cooperating in prosecution ie cooperation inter-government (G-to-G) between NGOs, community organizations and individuals inside and outside country, traffic controlling across Indonesia borders , the protection of victims by providing shelter in a safe place, repatriation (to the region of origin or to the country), including efforts to provide legal aid and counseling, rehabilitation (recovery-physical and psychological health) and reintegration (reunification to his family or community). The obstacles is many community members who live below the poverty line; lack of quality of education and training for prospective workers who will work out of the country as well as the lack of involvement of the community in the prevention and repression of the perpetrators.

Keywords: *Indonesian Government Policy, Trafficking in Persons*

1. INTRODUCTION

• Background

Today trafficking in persons is considered the same as slavery, which is defined as the condition of someone who is under someone else's ownership. Slavery is the act of putting people in the power of others, so that the person is unable to refuse a job that is unlawfully ordered by someone else to him, even though the person does not want it. [1]

Based on data from the National Commission for Child Protection, in 2004 the number of children victims of trafficking was 10 cases. In 2005 the number increased to 18 cases. By 2006, the number had increased significantly to 129 cases and 240 cases in 2007. In 2008 and 2009 the number had indeed decreased, namely to 88 cases and 55 cases. It's just that in 2010 the number increased again reaching 412 cases. Of the 412 cases, 101 victims have been evacuated . The rest are still stuck because they do not have documents. The amount is the total of all provinces in Indonesia. [2]

Tackling trafficking through product hukum in the form of legislation, basically is one form of crime prevention policy or part of a political / criminal policy. Criminal policy according to Soedarto has 3 (three) meanings, namely:[3]

1. In a narrow sense, it is the whole principle and method that form the basis for a reaction to a violation of the law in the form of a criminal .
2. In the broadest sense, is the overall function of the law enforcement apparatus, including the workings of the Courts and Politicians .
3. In the broadest sense, all policies are carried out through legislation and official materials, which aim to enforce the central norms of society.

From these three meanings, Soedarto provides a brief understanding of criminal politics that is "a rational effort by the community in tackling crime".

On 26 - 28 February 2002 . In Bali the Asian Regional Conference on trafficking has been held. In a conference that stated that the biggest casualties are

women and children. The participating countries agreed to take measures to eradicate trafficking in persons. [4] It is realized that women are a strategic group of generation sustainability because women have a reproductive function by giving birth to offspring and are a group that determines the quality of the family, while children are budding, potential, and strategic groups for the future sustainability of the nation which have characteristics and special characteristics which must be fulfilled and guaranteed their rights so that their growth and development, survival and protection from discrimination, violence and exploitation are protected. In this regard, guaranteeing the absolute rights of women and children to be protected for growth and development, survival and protection from rice discrimination, violence and exploitation and no less important is legal protection.

According to Setiono, legal protection is an act or an effort to protect the public from arbitrary acts by the authorities that are not in accordance with the rule of law, to realize order and order to enable humans to enjoy their dignity as human beings. [5] Legal protection is closely related to law enforcement, where law enforcement aims to realize the values or rules that contain justice and truth. In state administrative law the government is most responsible for law enforcement, which is carried out with supervision and sanctions.

Human trafficking is a human rights violation victims treated solely as commodities to be bought, sold, shipped, and resold. In the opinion of the *United Nations* (United Nations) in Article 3 paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, human trafficking or trafficking defines the following: "Transportation of recruitment, holding, sending or receiving people, by means of threats or the use of force or other forms of coercion, kidnapping, fraud, deception, abuse of power or vulnerable positions or the giving or receiving of payments or profits to reach agreement from people in control of others, for exploitation purposes. Exploitation includes, at a minimum, exploitation from the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or slavery-like practices, servitude or organ harvesting."

Before the enactment of Law Number 21 Year 2007 concerning Eradication of the Criminal Act of Trafficking in Persons, in April 2007, the existing regulations were inadequate to combat trafficking in persons, to ensnare traffickers and fulfill a sense of justice for the protection of victims, due to regulations regulations used, namely Article 297 of the Criminal Code and Law Number 39 of 1999 on Human Rights relating to trafficking and criminal penalties under Article 297 of the Criminal Code penalties are mild, namely the threat of 0-6 years in prison, while in law Law No. 39 of 1999 concerning Human Rights no sanctions.

The legislation that the other relating to trafficking in persons, namely Law No. 35 of 2014 on the Amendment of Act No. 23 of 2002 on Child Protection. After the enactment of Law Number 21 Year 2007 concerning Eradication of the Criminal Act of Trafficking in

Persons in April 2007 which is a special regulation governing the crime of trafficking in persons, so that it can be a means for law enforcement, particularly in dealing with trafficking in persons.

Trafficking in persons also involves syndicate networks that are difficult to know. In this case there are people who recruit (*recruiter*), so it must be known pockets where many cases of trafficking occur. Collaboration with certain departments or agencies, and what must be improved is with institutions / task forces that are engaged in empowering women, women in the regions. Actually, many parties who have already taken this idea can do it individually. Regarding the idea of trafficking in persons must be disseminated and socialized with more emphasis on increasing the role of parties.

• **Problem**

Based on the description in the background behind at the top, then that becomes a problem in scientific writing this is:

1. What is the policy carried out by the Indonesian government in terms of preventing the crime of trafficking in persons?
2. What obstacles do the Indonesian government face in preventing the crime of trafficking in persons?

2. DISCUSSION

• **Government's Policy in the Prevention of Trafficking in Persons**

Trafficking in persons is a type of action called a crime, and crime in juridical terms is called a crime. According to Chairul Bariah Mozasa, kejahatan is one form of deviant behavior that always exist in society, and in relita no society devoid of crime. [6]

This deviant behavior, is a threat to social norms that underlie life/ social order ; can create social tensions and are a real or potential threat to order. [7] Crime is a problem in people's lives, hence crime is not only related to humanity, it is also related to social order.

The Polri case handling data from 2014-2016 mentioned that there were 509 cases handled, but only six were sentenced. The most commonly used mode is sending female migrant workers. The high *supply and demand* of TKI victims is because TKIs are considered the most friendly among other foreign workers but the most vulnerable are also exploited. [8] Other modes are sex workers, mail order brides, child labor, child adoption, art / cultural ambassadors / scholarships, abduction of children

/ infants / teenagers, forced labor, slavery, servitude and organ harvesting. Generally the victims are women and children who become discriminated. They are second-class citizens who can be treated at will. Factors of poverty and corruption, law enforcement and buying and selling fake ID cards / passports triggered the rampant trafficking in people.

The criminal law policies carried out in the prevention of trafficking in persons are as follows :

1. *Policy formulation / legislation*

Policy formulation / legislation is the process of making laws and regulations carried out by lawmakers (the Government together with the House of Representatives / DPR). These two bodies / institutions are authorized to make legal regulations, namely through the process of realizing legal expectations in reality. Therefore, every legal rule that is made should be able to reach every need and event in the community.

The policy formulation / legislation stage is the most strategic stage, because at this stage a legal regulation will be produced which will guide the next steps in the legal policy process. The legislative product called this law in the level of legal policy is in the formulation level, and its position is in the abstract level (in the form of regulations / laws), meaning that this law will have meaning, if it is implemented in reality. For this reason, in order for this law to be realized in society, it is necessary to have bodies that can implement it which in law / political science is called the executive body. Whereas the body in charge of implementing or making effective laws and regulations is called a judicial body / judicial body that is independent and neutral, and free from interference from other bodies.

2. *Application / judicial policy*

Policy implementation phase applications, namely criminal law by officers p enegak law from police, prosecutors, and courts. This stage is also called the judicial stage. The application / judicial policy cannot be separated from the *criminal justice system*, which is an effort made by the community in tackling crime / crime. The application / judicial policy relates to the process of law enforcement and the operation of law in society. Therefore, in realizing the *criminal justice system* (CJS), law enforcement officers (Police, Prosecutors, and Judges) must be able to coordinate properly in carrying out their duties, in harmony, and authority, or must refer to CJS management.

3. *Execution / administration policy*

The execution policy is a legal policy in the concrete implementation phase of criminal law by criminal implementation officers and this stage is also called the administrative stage. Criminal enforcement officers carried out by prison officers (Lapas), for those who have been sentenced (*punishment*) by the Judge.

At this stage the Judge in applying *punishment*, can take the form of sanctions in the form of criminal (*penal*) and administrative sanctions (non-penal). Against the imposition of sanctions for the perpetrators of acts of human trafficking.

If the perpetrators of trafficking in persons are subject to sanctions according to the concept of development law, they can refer to Law Number 21 Year 2007 concerning Eradication of Trafficking in Persons, or to jurisprudence. However, in the legal system in Indonesia, more law enforcement peroses refers to the principle of legality, the rule of law bersarkan written (Act). Likewise Judges in Indonesia, more often impose sanctions in accordance with the provisions in Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Trafficking in Persons.

Legal reform usually ends with the enactment of a legal regulation. Every legal reform should be based on the community's needs which include social, political and economic needs. In reality, law often emphasizes political and economic interests, but is separated from social needs, so that law enforcement cannot run optimally. Legal reform must pay more attention to social interests, the community, because the law is applied to the lives of the people. Renewal of criminal law is the result of joint decisions of various authorities in the country who work together in tackling criminal problems.

According to the author, the method used by the Indonesian government to prevent or eliminate *human trafficking* is:^[9]

1. Punishment. Government regulations,

in the form of laws, Perpres or local regulations, should provide severe and strict sanctions for human traffickers, especially syndicates / bosses / main actors. In the implementation of the sentence given may not be selective and give a deterrent effect to the perpetrators. Existing rules must be strictly implemented not only to become rules without their realization.

2. Law Enforcement Cooperation.

Trafficking is a threat to internal security because it has become a huge source of income for international crime syndicates. As part of transnational organized crime, trafficking in persons cannot be fought partially or individually by each country. Countries that are anti-slavery and intend to protect the lives of their citizens must come together to work together to fight trafficking in persons. Inter-governmental cooperation (G-to-G) between NGOs, community organizations and domestic and foreign individuals must be fostered and developed so as to form a force capable of combating such organized

crime. Therefore there is a need for cooperation from all parties both domestically and abroad to eliminate this Human Trafficking.

3. Traffic Border Monitoring

Unitary State of the Republic of Indonesia has an area of 5,193,252 km² area consists of mostly ocean and only 36,6% in the form of land. The existing land is a series of 17,000 islands covering a total area of 1,904,443 km² so that the boundaries between regencies / cities and provinces in the country, as well as with neighboring countries become very "porous", easily penetrated in various ways. The border between the provinces of Sumatra Island and Singapore and the Peninsular Malaysia by sea is very easy to penetrate. Likewise, the border between the provinces in Kalimantan and East Malaysia (Sarawak and Sabah) is easily crossed via "rat roads" from West Kalimantan to Kuching, Sarawak or from East Kalimantan to Tawau, Sabah. The same thing happened at the border between Papua and Papua New Guinea. Therefore it is necessary to monitor the level of cross-border traffic between countries.

4. Victim Protection

Protection of victims of trafficking in persons includes activities: shelter in a safe place, repatriation (to their original area or into the country) including efforts to provide legal assistance and assistance, rehabilitation (recovery of physical, psychological health), reintegration (reintegration into their families or their communities.) and empowerment efforts (economy, education) so that victims are not trapped again in trafficking in persons.

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

1. Public awareness to prevent *human trafficking* through socialization to various groups (Camat, Village / Lurah Head, Teachers, School Children).
2. Expanding employment opportunities through training in entrepreneurial skills, economic empowerment and others.
3. Increasing the participation of children's education both formal and informal.

It is clear that the government's policy in efforts to prevent and combat criminal acts of trafficking in persons can be through two means namely criminal law and non-criminal law. To prevent and deal with trafficking in persons, one can also use legal means, namely the enactment of Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons. Overcoming the problems of trafficking not only involves a single institution, will but

must involve all stakeholders in the society, namely government agencies, NGOs, community based organizations who are members of a partnership that is reinforced by government regulations, not least the minister's decision to co deal with the problem of trafficking in persons.

• **What obstacles are faced in preventing the crime of trafficking in persons**

Prevention of criminal acts is the first step in the prevention of criminal acts, therefore discussing prevention is inseparable from the crime prevention policy, which as a whole is part of *law enforcement*, and at the same time provides protection to the community (*social defense*).

Protection of individuals and the community depends on the precise formulation of criminal law, and this is no less important than people's lives. On that basis, the criminal law system, criminal acts, judges' evaluation of violators in their pure relationship with the law, and the criminal constitute institutions (institutions) that must be maintained. Crime as "*a human and social problem*", according to Marc Ansel, cannot be easily formulated in a statutory regulation. [10]

In general, the causes of trafficking in persons are economic problems (poverty) with a mode of debt bondage and low levels of education, so prevention efforts must also be in line with efforts to reduce poverty and increase and expand employment and employment opportunities. However, in addition to problems of poverty, poor education, there are many causes eat it from the crime of trafficking in persons are very complex, so that prevention and mitigation require the most comprehensive, integrated, sustainable and well coordinated among the central government, p e m ering regions, religious organizations, non-governmental organizations, universities, mass media, and all components of society. In other words, prevention and treatment efforts are needed by increasing the participation and function of various sectors and elements from the central to the regional level.

In this regard, there are several obstacles that are considered as the most significant faced by the Indonesian government in relation to trafficking in persons, including: [11]

1. There are still many community members who live below the poverty line;
2. The lack of quality education and training for prospective migrant workers who will work abroad;
3. The lack of means for recruiting local workers;
4. There is still an understanding in the community to legalize marriages at an early age;

5. The still widespread debt bondage in recruitment to the repatriation of labor, so that the potential for trafficking in persons;
6. Lack of supporting activities in the area of origin for victims of trafficking in persons, so that returned victims are vulnerable to being trafficked again;
7. There is still the use of tourism facilities to open the gap of prostitution;
8. Not yet optimal role of the community and community leaders in the effort to tackle the crime of trafficking in persons;
9. There is no integrated monitoring and evaluation system in preventing the crime of trafficking in persons;
10. Weak community involvement in efforts to prevent and deal with perpetrators.

The government issued legal regulations aimed at protecting the community, creating order, providing security, realizing justice, and finally creating welfare for the people. This is in accordance with the aim of developing national law that is carried out in Indonesia, namely that the law has a role as a means to carry out and control changes and community development. For this reason, laws that will and have been created must be able to follow and regulate every change in society.

3. CLOSING

- ***Conclusions***

From the description above, conclusions can be drawn as follows:

- a. The policy that the government has taken to prevent the crime of trafficking in persons is by applying severe penalties to the main perpetrators or trafficking syndicates, conducting legal enforcement cooperation, namely intergovernmental cooperation (G-to-G) between NGOs, community organizations and individuals in and overseas, cross-border traffic control of the Unitary State of the Republic of Indonesia and the most important thing is the protection of victims by providing shelter in a safe place, repatriation (to their home area or into the country) including efforts to provide legal assistance and assistance, rehabilitation (recovery of physical health, psychic), reintegration (reunification to his family or community) and empowerment efforts (economic, education) so

that victims are not trapped again in trafficking in persons.

- b. Obstacle faced Indonesia government in preventing the crime of trafficking is 1) many community members who live below the poverty line; 2) the minimum quality of education and training for prospective migrant workers who will work abroad, 3) the lack of means of recruiting local workers, 4) the understanding of the community to legalize marriages at an early age, 5) the still widespread debt bondage in recruitment, repatriation of personnel work, thereby potentially follow pidana trafficking in persons, 6) lack of support activities in the area of origin for victims of criminal acts of commerce people, so that the victim was discharged susceptible to being re-trafficked, 7) compassion there is utilization of tourist facilities to open a gap prostitution, 8) forgetting also the role as well as the society and community leaders in efforts to combating acts of pidana trafficking, 9) Yet been no monitoring and evaluation system that is integrated in the prevention of human trafficking crime as well as 10) the lack of community involvement in efforts prevention and perpetrators actions.

Suggestions

Suggestions that the author can convey in writing this scientific work are:

1. It is recommended that there be active cooperation and participation between victims, families, communities and law enforcement for responsible and sustainable trafficking in persons.
2. Everyone should be vigilant and cautious when dealing with any form of trafficking and take action as soon as possible so that the crime of trafficking does not occur or at least can be prevented immediately.

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