



IMPLEMENTATION OF CRIMINAL SANCTIONS POLICY IN EFFORTS TO PREVENT AND HANDLE THE CRIME OF HUMAN TRAFFICKING (TPPO) BASED ON THE THEORY OF JUSTICE

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ABSTRACT

The crime of trafficking in persons is considered a new crime in the legal system in Indonesia even though the act of trafficking in persons has been occurring in Indonesia for a long time. This research uses empirical juridical legal research methods, namely legal research regarding the enactment or implementation of normative legal provisions in action at each specific legal event that occurs in society. This research aims to determine criminal sanctions to prevent criminal acts of human trafficking (TTPO), current efforts to prevent and handle criminal acts of human trafficking (TTPO) as well as the implementation of criminal sanctions policies in efforts to prevent criminal acts of human trafficking (TTPO). The results of this research state that Law Number 21 of 2007 concerning the Crime of Human Trafficking is the legal umbrella in this case. In this case, it is known that the formulation of the criminal sanction policy for the crime of trafficking in persons which will be included in the National Criminal Code Bill must be much better than the formulation of the crime of trafficking in persons in positive law. The application of criminal sanctions in efforts to prevent criminal acts of human trafficking (TTPO) is based on the theory of justice stated that justice can change but the essence of justice always exists in human life and social life.

Keywords: Criminal Sanctions, Prevention, Crime of Human Trafficking, Justice

INTRODUCTION

Trafficking in persons (human trafficking) has actually happen for quite some time and this is an act that is contrary to human dignity (Jones, 2009). Human trafficking is an organized crime carried out using conventional methods, including persuasion and sophisticated methods (Lavorgna, 2015). The perpetrator or syndicate organizes the crime by building a network from the area/country of origin of the victim to the area/country of destination of the worker (Szabo, 2022). Criminal act of people-trafficking(human trafficking) is not only done by individuals, but also by groups of people (corporations) (Tukan et al., 2023).

The crime of human trafficking is a crime that is considered new in the legal system in Indonesia even though this form of action has existed for a long time in Indonesia (Yuliantini

& Mangku, 2020). This is because the law to eradicate criminal acts of trafficking in persons only emerged and was passed by the Government on 19 April 2007 in the State Gazette of 2007 Number 58 (Farrell et al., 2014). According to Article 2 paragraph 1 of Law Number 21 of 2007 concerning the Crime of Trafficking in Persons, it is: "Action recruitment, harboring, transporting, sending, transferring or receiving a person by threat of violence, use of force, kidnapping, confinement, forgery, use of force, fraud, abuse of force or a position of vulnerability, debt bondage or providing payments or benefits so as to obtain the consent of the person those who have control over other people whether carried out within the country or outside the country for the purposes of prostitution or social exploitation, legal or illegal migrant workers, child adoption, mail-order brides, domestic servants, pornography industry, begging, drug trafficking, sales body organs and other exploitation".

This law is a legal protection for handling criminal cases of human trafficking (Farrell et al., 2014). This is to protect every individual who is a victim of TIP. Victim protection includes psychological and physical protection (Karim & Lessy, 2022). In this case, if the victims are children then efforts to protect victims of trafficking and exploitation of children is a complex matter because it intersects with various aspects of life, so awareness and participation of the entire community, state administrators and law enforcement officers is needed. Therefore it is necessary to have efforts to prevent the occurrence of cases such as those mentioned before (Nicell, 2009). In Indonesia, efforts to prevent and fulfill children's rights are of little concern (Collins, 2017). The current Criminal Code does not pay enough attention to victims (Elias, 2017). There is no criminal compensation in the Criminal Code, either as a main crime or as an additional crime (Miers, 2014).

The acceleration number of criminal cases of human trafficking that reach cross-border aspects has increased the interest of humanitarian activists in discussing this matter (Piscitelli, 2022). Cross-border meetings are encouraged to discuss this issue to obtain a solution which is expected to reduce the occurrence of criminal acts of human trafficking (trafficking).

Problem Formulation

Based on this background description, the author can formulate the problem as follows:

1. What are the legal regulations regarding sanctions for criminal acts of trafficking in persons (TTPO)?
2. How are criminal sanctions implemented in efforts to prevent criminal acts of human trafficking (TTPO) currently?
3. What is the legal construction of the application of criminal sanctions policies in efforts to prevent and handle criminal acts of human trafficking (TTPO) based on the theory of justice?

METHOD

This research uses empirical juridical legal research methods, namely legal research regarding the enactment or implementation of normative legal provisions in action at each specific legal event that occurs in society. In this case, it concerns the Legal Construction of the Implementation of Criminal Sanctions Policies in Efforts to Prevent and Handle the Crime of Human Trafficking (TTPO) Based on the Theory of Justice.

This research uses 3 (three) types of research with a statutory approach, a conceptual approach, and a case approach. The legal approach is carried out by reviewing the Human Trafficking Crime Law (TTPO).

The data used in this research is primary data which mean the data were obtained directly from the source namely the judge who handed down the verdict for the crime of trafficking in persons and secondary data is data obtained directly through literature searches or from official documents, which obtained from criminal law books, criminal law books, criminal law books, criminal law books, criminal law books, criminal law books. human trafficking crimes and books on legal philosophy, legal theory and legislative science.

RESULTS AND DISCUSSION

Legal Regulations Regarding Sanctions for the Crime of Human Trafficking (TTPO)

The crime of human trafficking is specifically regulated for the first time in Indonesia, namely in Law Number 21 of 2007 concerning the Crime of Human Trafficking (hereinafter referred to as the TTPO Law). Based on Article 2 of the TIP Law, sanctions are explained as follows:

Any person who recruits, transports, harbors, sends, transfers or receives someone with threats of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or a vulnerable position, debt bondage or providing payments or benefits despite obtaining the consent of the person who has control over another person, for the purpose of exploiting that person in the territory of the Republic of Indonesia, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 120,000,000.00 (one hundred twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).

If the act as intended in paragraph (1) results in a person being exploited, then the perpetrator will be punished with the same crime as intended in paragraph (1).

Based on the provisions of this article, it can be seen that the criminal aspect includes aspects of the perpetrator, the act, the method of action, the aim, the area and the threat of punishment. In this case, the sanctions for criminal acts that do not resulted in exploitation of the acts referred to in Article 2 paragraph (1) are imprisonment for a minimum of 1 (one) year and a maximum of 6 (six) years and a minimum fine. Rp. 40,000,000.00 (forty million rupiah) and a maximum of Rp. 240,000,000.00 (two hundred and forty million rupiah) as stated in Article 9.

Perpetrators of the crime of trafficking in persons may be subject to additional sanctions. Based on the TIP Law, additional sanctions are classified into several categories such as:

These additional sanctions can be classified as follows:

Additional sanctions based on additional consequences suffered by the victim. Additional sanctions seen from the additional consequences suffered by the victim can be divided into two additional sanctions as stated in Article 7 paragraph (1) and paragraph (2), namely:

If the criminal act as intended in Article 2 paragraph (2), Article 3, Article 4, Article 5, and Article 6 results in the victim suffering serious injuries, serious mental disorders, other

infectious diseases that endanger her life, pregnancy, or disruption or loss of reproductive function, then the criminal threat is increased by 1/3 (one third) of the criminal threat in Article 2 paragraph (2), Article 3, Article 4, Article 5 and Article 6.

If the criminal act as referred to in Article 2 paragraph (2), Article 3, Article 4, Article 5 and Article 6 results in the death of the victim, he shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of life imprisonment and a maximum fine of a little Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 5,000,000,000.00 (five billion rupiah).

Additional sanctions based on the perpetrator which can be classified as follows:

Additional sanctions for perpetrators who have the status of state administrators. Additional sanctions imposed on State officials who commit criminal acts of human trafficking are as follows:

a. Additional punishment of 1/3 of the criminal threat in Article 2, Article 3, Article 4, Article 5 and Article 6.

b. Additional institutional punishment in the form of dishonorable dismissal from his position. Additional sanctions for corporations in the form of:

a. Additional sanctions in the form of 3 (three) times the threat in Article 2, Article 3, Article 4, Article 5 and Article 6

b. Additional sanctions include revocation of business permits, confiscation of assets resulting from criminal acts, revocation of legal entity status, dismissal of management and/or prohibition of the management from establishing a corporation in the same business field.

Additional sanctions for perpetrators who are in groups. Additional sanctions for perpetrators who are in groups are 1/3 (one third) of the threat of sanctions as intended in Article 2.

Additional sanctions based on the victim. Additional sanctions seen from the victim's side apply to criminal acts of human trafficking with children as victims. If the crime of human trafficking in Article 2 is committed against a child, the criminal sanction will be increased by 1/3 (one third).

Implementation of Criminal Sanctions in Efforts to Prevent the Current Crime of Human Trafficking (TTPO)

According to Soedjono Dirdjosisworo explained that crime is a human act An act will not be called a crime unless it contains all of the following elements:

a) There must be certain real or detrimental consequences;

b) The loss must be prohibited by law, must be stated clearly in the criminal law;

c) There must be an act or attitude of condoning an intentional or reckless act that causes detrimental consequences;

d) There must be categorized as bad intention (mens rea);

e) There must be a relationship of unity or conformity to the similarity of the relationship between the evil intention and the action;

f) There must be a causal relationship between the loss prohibited by law and the intentional act of one's own will;

g) There must be a punishment prescribed by law.

According to Darwan Prints, a crime is "a punishment imposed on a person who is legally and convincingly proven to have committed a criminal act". Sanctions in criminal law are

divided into two, namely: criminal sanctions and action sanctions. Criminal sanctions are actually reactive to an act, while action sanctions are more anticipatory towards the perpetrator of the act. The focus of criminal sanctions is aimed at an iniquity that a person has committed through the imposition of suffering so that the person concerned is deterred. The focus of action sanctions is more focused on efforts to provide assistance to the perpetrator so that he changes.

Types of Crimes The Criminal Code as the main criminal code has detailed the types of crimes, as formulated in Article 10 of the Criminal Code. The types of punishment are differentiated into basic punishment and additional punishment, which consists of:

a. Principal Crime

- 1). Death penalty;
- 2). Imprisonment;
- 3). Criminal Cage; ;
- 4). Criminal fines; And
- 5). Cover-up crime.

b. Additional Penalty

- 1). Revocation of certain rights;
- 2). Confiscation of certain items;
- 3). Announcement of the judge's decision.

Regarding the implementation of criminal sanctions policies in efforts to prevent and handle criminal acts of human trafficking (TTPO), this currently occurs due to various factors. The factors for human trafficking are:

Economic Factors. Economic factors are factors that often cause someone to commit crimes, because the economy plays an important role in continuing life further, because there is very strong economic pressure, many women look for work without considering the health, safety, danger and halal nature of the job.

Family factors. The role of the family in determining a child's behavior patterns before adulthood and afterward is very important for the child's subsequent development because no one is born immediately with evil traits, it is the family that is the first source that influences a child's development. One of the factors in the occurrence of human trafficking crimes is family factors. This opinion is based on the number of victims and perpetrators of human trafficking crimes who are caught, most of whom come from disharmonious families and broken homes, the lack of attention from both parents makes them live without direction and tend to be careless.

Religious Factors. Filling the soul with religious teachings is very necessary and should start from an early age. If religious guidance can be implemented properly in every decision making, then all actions that will be done will always be rewarded by God Almighty. On the other hand, if religious values are not present in the human soul, then they will be easily tempted to do things that harm others.

External Factors. These external factors include the environment, social culture, technological developments, education, weak registration/documentation of births of children or residents so that it is very easy to falsify identity data and the weakness of legal officers and related parties in monitoring indications of human trafficking cases.

Legal Construction of Implementing Criminal Sanctions Policies in Efforts to Prevent and Handle the Crime of Human Trafficking (TTPO)

Justice is normative for law because it functions as a transcendental prerequisite that underlies every dignified law (Parwata et al., 2018). Justice is the moral foundation of law and at the same time the benchmark for a positive legal system (Sulistyarini et al., 2018). In other words, justice is always the basis of law (Butler, 2023). Without justice, a rule does not deserve to be called a law (Panter-Brick, 2023). According to Myren, equating justice and legal regulations is the easiest way to understand justice (Fihim et al., 2023). Legal regulations are used to promote justice in 2 (two) ways: First, Legal regulations introduce a number of moral norms as legal norms and establish norms in the legal system as a system of justice. Second, The justice system is formed through a number of institutions established by legal regulations to:

- 1). Carry out and enforce legal rules to obtain justice;
- 2). Sort out and present to decision makers the existence of other forms of legal violations;
- 3). Deciding when a legal violation has occurred and what the sanctions are;
- 4). Implement the contents of existing decisions.

Relating to the legal construction of implementing criminal sanctions policies in efforts to prevent and handle criminal acts of human trafficking (TTPO) based on the theory of justice. Based on criminal sanctions, perpetrators of human trafficking are threatened with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 120,000,000 and a maximum of IDR. 600,000,000. These prison sentences and fines can increase if they result in life-threatening illnesses or even death for the victim. In the findings of this research, the legal construction of implementing criminal sanctions policies in efforts to prevent and handle criminal acts of trafficking in persons (TTPO) based on the theory of justice should not only impose imprisonment but also fines, with the highest limit even if the perpetrator is sentenced to life imprisonment. (Article 7 paragraph (2) of the TPPO Law).

CONCLUSION

Based on the description of the discussion above, it is concluded that the crime of trafficking in persons in Indonesia is specifically regulated in Law Number 21 of 2007 concerning the Crime of Trafficking in Persons. The law is called the TPPO Law (Criminal Act of Trafficking in Persons). Perpetrators of criminal acts must be held accountable for their actions. The current implementation of criminal sanctions policies in efforts to prevent criminal acts of trafficking in persons (TTPO) means that the formulation of the implementation of criminal sanctions policies for criminal acts of trafficking in persons which will be included in the National Criminal Code Bill should be much better than the formulation of criminal acts of trafficking. In relation to efforts to prevent human trafficking, the substance of the criminal act of human trafficking formulated in the National Criminal Code Bill must provide clarity on the elements of the criminal act of human trafficking itself. The application of criminal sanctions policies in an effort to prevent criminal acts of human trafficking (TTPO) is based on the theory of justice, namely that justice can change but the essence of justice always exists in human life in society. In fact, every criminal sanction must be able to adhere to the principles of justice that apply in society so that society is treated

fairly. Legal construction in the implementation of criminal acts of human trafficking can be carried out by carrying out cooperation programs with other countries aimed at preventing it and revising criminal sanctions in cases of criminal acts of persons, with the aim and purpose of providing a greater deterrent effect to perpetrators of criminal acts of human trafficking. . This is of course in order to provide a sense of justice for the victim and the victim's family, so it is necessary to construct the National Criminal Code Bill related to the criminal act of trafficking in persons.

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