

**STUDY OF THE CRIME OF TRAFFICKING IN PERSONS ON SHIPPING
(PN TUAL DECISION NUMBER 106/PID SUS/2015/PN TUL)**

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ABSTRACT

The crime of trafficking in persons (human trafficking) is a very complex crime that is difficult to eradicate. In cases of criminal acts of trafficking in persons, usually it does not only involve one area of life but more than one area of life. The practice of trafficking in persons is rife in the world, especially in the world of shipping. The crime of trafficking in persons (human trafficking) is a very complex crime that is difficult to eradicate. In cases of criminal acts of trafficking in persons usually do not only involve one area of life but more than one area of life. The crime of trafficking in persons also often occurs not only in the territory of a country but also outside the territory of a country. However, there is more attention devoted to the case of trafficking in persons in the shipping world. For this reason, this study aims to determine the factors that cause the occurrence of the criminal act of trafficking in persons, the sanctions obtained by the perpetrators in the legal system.

Keywords: Trafficking in Persons, Crime, Criminal

INTRODUCTION

The crime of trafficking in persons is generally in the form of a violation of human dignity and human dignity in the form of cruel treatment, and even treatment similar to slavery. The perpetrator is accepted as the helpless victim, who is trapped in a network that is very difficult to identify, so that it will be difficult to find a solution.¹

Trafficking in persons is the act of recruiting, transporting, harboring, sending, transferring or receiving a person by means of threat of force, use of force, abduction, detention. Then, counterfeiting, fraud and abuse of power or a position of vulnerability, entrapment of money or providing payments or benefits, so as to obtain the consent of the person who has control over the other person, whether carried out within countries or between countries, for the purpose of exploitation or causing people to be exploited. The definition of exploitation is an act with or without the consent of the victim, which includes but not limited to prostitution, forced labor or services, slavery or practices similar to slavery, prosecution, extortion, use of physical, sexual, reproductive organs or unlawfully transferring or transplanting organs and or tissues body or exploiting one's power or ability by another party to gain material or immaterial benefits. Trafficking in persons is not a new phenomenon in the world, there are even countries that are considered the biggest countries in the occurrence of crimes of trafficking in persons, one of which is Indonesia.²

Trafficking in persons is a modern form of human slavery and is a form of treatment for violations of human dignity. The provisions of Article 297 of the Criminal Code do not clearly define the definition of trafficking in persons, the imposition of sanctions that are too light are not commensurate with the impact received by victims of the crime of trafficking in persons, and from the point of view of the victims, are women and minors, including infants. Only a small number of cases where the victim is an adult male, which means they are not included in the victims protected by Article 297 of the Criminal Code. Seeing the current condition, namely with the presence of adult male victims, this regulation should be expanded and not limited to only women and minors. Victim identification is carried out in response to direct reports from victims, families, or other people. This response is the standard for trafficking investigations in which a victim is identified and then asked for information on the criminal act involved.

The collection of evidence to corroborate the victim's statement is carried out as a further stage of the investigation. Victim identification can also occur proactively, as a follow-up to investigations carried out by the police or other authorized officials, such as immigration officers or state officials in the field of manpower. At the investigation stage, initial action is very important in identifying whether the crime of trafficking in persons occurred or not. If a crime does occur, the investigation plays a key role in the success of the prosecution. In investigating criminal cases, victims and witnesses must be given more attention because it is through them that comprehensive information can be obtained regarding the crimes that occurred.

The presence of the victim in the location of the crime will make it easier for investigators to collect evidence and examine the perpetrator. However, the effectiveness of this investigation will not be achieved if the victim does not have access to services and protection according to their needs. Meanwhile, we are also aware that the traffickers with all their tricks will not give up easily, so it is necessary to enact regulations to ensnare the traffickers without limiting the victims. In addition to Article 297 of the Criminal Code, there is also Article 324 of the Criminal Code which regulates the slave trade in the sense that slaves are 3 people or humans as victims of the crime of trafficking, but Article 324 of the Criminal Code does not clearly formulate the idea of slaves with the criteria of what kind of trade .

The crime of trafficking in persons is increasingly showing an increasing trend in any field, especially in shipping field. Therefore, a comprehensive and synergistic treatment is needed. The ongoing traffic in human trafficking becomes even more concerning when the consequences have shackled the basic rights and independence of the victims, which will further hamper the process of developing potential and quality Indonesian human resources. Furthermore, on April 17, 2007 the

¹ Tm Jarngan ndonesa ACT, *Panduan Nasional Melindung Hak dan Martabat orang yang Dperdagangkan d ndonesa, Jakarta, 2010: Yayasan Jurnal Perempuan*, hlm 43-44

² Moh.Hatta, *Tindak Pdana Perdagangan Orang Dalam Teor Dan Praktek, Lberty Yogyakarta*, 2012, Halaman 5

Indonesian government finally ratified and promulgated the Law of the Republic of Indonesia Number 21 of 2007 concerning Eradication of Regional Regulations. agangan People who specifically regulate the crime of trafficking in persons. This law is expected to be able to provide a formal and material legal basis as well as to anticipate and ensnare all types of actions in the process, methods or all forms of exploitation that may occur in the practice of human trafficking, whether carried out between domestic regions or between countries, both by perpetrators of human trafficking. individuals and corporations, then the last one is the regulations originating from the Draft Law of Law.

The handling of cases of the criminal act of trafficking in persons cannot be done partially by law enforcement officers alone but must involve other stakeholders. The provisions of Articles 50, 51, 52 and 53 of Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons regulate medical rehabilitation, social rehabilitation, repatriation assistance and social integration for victims of TIP, all of which require synergy between law enforcers and agencies, institutions. or service providers for victims of TIP. Coordination and cooperation by all elements involved in handling victims of the crime of trafficking in persons, such as the rehabilitation, integration, and repatriation of victims of the crime of trafficking in persons as well as coordination of Government Institutions Abroad.

TIP cases can also not only be seen in a separate perspective from other criminal acts. TIP is also related to criminal acts which are regulated in Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Workers, Law Number 13 of 2003 concerning Manpower, Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2004, Law Number 6 of 2011 concerning Immigration, Law Number 36 of 2009 concerning Health, Law Number 31 of 2004 concerning Fisheries as amended by Law Number 45 of 2009, Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, Law Number 31 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001, as well as other criminal acts regulated in the Criminal Code.

From the description above, it can be seen that the occurrence of criminal acts, especially the crime of human trafficking, is influenced by several factors, both from the perpetrator and the victim, therefore the author is interested in conducting research in the form of a journal with the title "Study of the Crime of Trafficking in Persons in Shipping (PN TUAL Decision Number 106/PD.SUS/2015/PN Tul"

1.1 Problem Formulation

1. How is law enforcement against perpetrators of criminal acts of trafficking in persons in shipping?
2. What is the judge's consideration in giving punishment to the perpetrators of the Criminal Act of Trafficking in Persons in the decision of the PN TUAL Number 106/PD.SUS/2015/PN Tul?

1.2 Research purposes

The author of this journal conducts research that occurs on the voyage so that there is a goal, in terms of writing this journal also has a goal to be achieved in a problem.

The following are the objectives of the research that has been compiled by the author:

1. To find out law enforcement against perpetrators of criminal acts of trafficking in persons in shipping.
2. To find out the judge's considerations in giving punishment to the perpetrators of the crime of trafficking in persons in the decision of the PN TUAL Number 106/PD.SUS/2015/PN TUL.

1.3 Benefits of research

1. Theoretical Benefits

The results of this study are expected to be useful for the development of science and as input for those who are competent in the field of law in general and in the field of criminal law in particular, especially those related to handling criminal acts of trafficking in persons in shipping.

2. Practical Benefits

- For the community, the results of this research are expected to have a positive

impact on the community and increase the mindset to overcome and see the situation of cases of trafficking in persons in shipping

- For researchers, the results of this study are expected to add insight into the world of trafficking in persons in shipping and direct experience of seeing existing cases
- For students, this research is expected to increase knowledge about human trafficking in shipping.

RESEARCH METHOD

The research we use is normative juridical research (library method). In using the research method, one is expected to be able to analyze the problem to be studied, so that they can find the truth, because the research method tells about how a person learns, analyzes and understands the problems at hand.³

2.1. Types of Research

The type of data in this study is normative, namely data directly from the relevant agencies in the Tual District Court and from library materials. The data are:

1. Primary Data

Primary data or basic data in this study are needed to provide a clear understanding of secondary data regarding criminal case decisions by No. 106/PD.SUS/2015/PN Tul. Sourced directly from the agency, namely the District Court which is the location of the research.

2. Secondary Data

In this study, secondary data is the main data obtained from the library, on various reading sources such as books, journals, articles and applicable laws and regulations or other sources related to research problems.

2.1 Nature of Research

The nature of this research is descriptive analysis, namely to provide data that is as accurate as possible which was carried out at the Tual District Court.

2.2 Method of collecting data

In this study using the library study research method, namely the study of information from various sources that can be published widely.

2.3 Data analysis

We compiled this academic paper on the study of the criminal act of trafficking in persons in shipping with a comparison of taking secondary legal materials. descriptive so that the analysis is studied as a whole.⁴

RESULTS AND DISCUSSION

Law enforcement against perpetrators of criminal acts of trafficking in persons in shipping. Law enforcement is one of the efforts to create order, security, harmony and peace in society, whether it is an effort to prevent or eradicate or take action after a violation of the law (either preventively or repressively). The law is present to provide protection for the basic rights of citizens from possible violations in the use of that authority (Rahardjo, 2009).⁵

Trafficking in persons and forced labor in shipping in the fishing industry which was followed by decision number 106/Pd.Sus/2015/PN TUL is a finding of slavery in shipping in the fishing industry. Legal and non-legal efforts have been made so that the perpetrators get the appropriate punishment. The victim gets the right of remediation, restus and repatriation to the country of origin. In March 2015, the Ministry of Maritime Affairs and Fisheries, the Police, Immigration, and other government agencies in rescue operations, brave aid, and repatriation of foreign fishermen. It is important that these tragic events are not forgotten to assist law enforcement activities.

The enforcement of the law against perpetrators of criminal acts of trafficking in persons in shipping is still not optimal, which can be seen from the news in the media, both in print and

⁵ <https://ranahresearch.com/metode-penelitian-dan-jenis-metode-penelitian/>

⁶ Syamsul Arfin, *metode Penulisan Karyailmah dan Penelitian Hukum*, Medan Area Universitas press, 2012. Hal.66

⁷ Satjpto Raharjdo, 2009, *Penegakan Hukum Suatu Tnjauan Sosologs*, Genta Publshng, Yogyakarta.

electronic media. the mode of operation of individuals, which turns out to be more than one perpetrator. And if the perpetrators of human trafficking are found, it will be processed more difficult until the court to obtain criminal sanctions for proof must be guided by the code of criminal procedure law which has the principle that judges may not impose criminal offense against a person unless he has at least two valid pieces of evidence, and it can be assured that a criminal act has actually occurred and that the accused is guilty of trafficking in persons as regulated in Article 183 of the Criminal Procedure Code.⁶

The accused in this recruitment intentionally provides assistance at the time of the crime committed to recruit, transport, harbor, send, transfer or receive a person, by means of threats of violence, abduction, confinement, fraud, abuse of power, or a position of vulnerability, debt bondage or giving payment of benefits even though obtaining approval from a person who has control over another person, results in the person being exploited (Article 1 paragraph 1 of Law No. 21 of 2007).⁷

For law enforcement, according to Soerjono, what is expected is not only to carry out the rules of the law itself, it is also necessary to pay attention to the factors that influence the course of law enforcement, namely:

1. The Legal Factors Alone
2. Law enforcement factors
3. Factors or facilities that support the implementation of law enforcement.
4. Community factors, the environment in which the law applies / is applied.
5. Cultural factors, as a result, creative works and tastes based on human initiative in social life.⁸

Thus, it can be interpreted that the law enforcement process is only to carry out the law, so it will feel stiff and will disturb peace in the social community.

Judge's consideration in giving punishment to the perpetrators of the Criminal Act of Trafficking in Persons in the PN TUAL decision Number 106/Pd.Sus/2015/PN TUAL

In 2015, the Aru Islands Police handled 1 (one) case. The handling is based on the Police Report: LP 16//2015/RES ARU, March 03 2015. With 8 (eight) suspects, namely HP (WN Thailand), BJ (WN Thailand), SM (WN Thailand), SK (WN Thailand), YN (WN Thailand), M (WN), Y (WN), and H (WN). the victims were 28 people (all Myanmar citizens). Based on the cases above, which have received great attention both nationally and internationally, namely the TIP case that occurred in Benjina Village, Aru Tengah District, Aru Islands Regency, Maluku Province, because the TIP perpetrators did not only involve Indonesian citizens, but also foreigners who believed in Thailand. In addition, all 28 (twenty eight) victims were Myanmar citizens. A number of Myanmar residents were brought in through Thailand to be forced to work for PT Pusaka Bejina Resources. Inside the five-story company complex there are cages to confine the "slaves" from Myanmar and they work 20 to 22 hours per day. The interviewee with the initials AP admitted that he would be whipped using the tail of a poisoned par if he complained or tried to rest⁹

If seen in Law No. 17 of 2008 concerning Shipping Article 151 (1) Every crew member has the right to get welfare which includes:

- a. Wages
- b. Working hours and rest hours
- c. Guaranteed departure to the destination and return to the place of origin
- d. Compensation if the ship cannot operate due to an accident
- e. Opportunity to develop career
- f. Membership of accommodation, recreational facilities, food or drink and
- g. Maintenance and health care as well as work accident insurance daredevil

⁸ Kitab Undang-Undang Hukum Acara Pidana, Undang-Undang Nomor 8 Tahun 1981

⁹ Undang-Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang

¹⁰ Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, apt araja Grafindo persada, jkt, 2005, hal.7

⁹<https://regional.kompas.com/read/2015/11/19/11035781/Sidang.Kasus.Perdagangan.Manusia.d.Benjna.Digelar?page=all>

In this case, there are foreigners who based on the general provisions in Article 1 point 6 of Law No. 9 of 1992 concerning immigration which explains that foreign citizens are not Indonesian republicans. temporarily in the territory of the Republic of Indonesia with the aim of working, pursuing education and training or conducting scientific research in Indonesia according to applicable regulations by using a temporary residence visa and a maximum of 1 (one) year.

Therefore, foreign nationals who are entangled in this case are included in the formulation of immigration crimes according to law number: 9 of 1992 which is regulated in Chapter V of the criminal provisions, namely:

Article 48

- a. Everyone who enters or leaves the territory of Indonesia without going through an inspection by an immigration official at the Immigration Checkpoint shall be subject to a maximum imprisonment of 3 (three) years or a maximum fine of Rp. 15,000,000 (fifteen million rupiah).
- b. Article 49
- c. Sentenced to a maximum imprisonment of 6 (six) years and a maximum fine of Rp. 30,000,000 (thirty million rupiah).
- d. foreigner who knowingly fakes or falsifies a visa or immigration permit
- e. Foreigners who knowingly use fake or falsified visas or immigration permits to enter are in the territory of Indonesia.¹⁰

The Crime of Trafficking in Persons is a behavior that deviates from the existing norms in a social system. Social deviations that are adaptive (adjustments), social deviations can also be categorized as social pathologies with serious social/social disease or are all human behavior that is considered inappropriate by violating general norms and customs.

However, in this case, if we look at the existing legal facts, specifically regulated in the Republic of Indonesia Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, which resulted in the application of the *lex specialis derogat legi generali* principle or special regulations that override general regulations. The punishment of the perpetrators of the criminal act of trafficking in persons in the Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons is regulated in Article 2, namely paragraph (1) Any person who recruits, transports, harbors, sends, transfers, or accepts someone with threats violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage or giving payments or benefits despite obtaining the consent of a person having control over another person, for the purpose of exploiting that person in the territory of the Republic of Indonesia.

The law is *lex specialis derogat legi generali*, which means that general regulations are set aside by special regulations if the makers are the same. The purpose of this principle is that for special events it is mandatory to apply a law that mentions that event, although for special events it can also be treated by a law that mentions a broader or more general event which may also include the special event. in Article 2 of the Criminal Code (KUHP) which reads: "Criminal provisions in Indonesian legislation are applied to everyone who commits a criminal act in Indonesia." So anyone who commits a crime in the territory of Indonesia can be processed by the law applicable in Indonesia.¹¹

Based on the facts described in the decision of the Panel of Judges, considering that the defendant can be declared to have committed a criminal act, then considering that the defendant has been indicted by the public prosecutor with an indictment in the form of Subsidence, the Panel of Judges will first consider the Primary indictment as stipulated in article 2 paragraph (2) in conjunction with Article 10 of the Law of the Republic of Indonesia Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons. Article 56 paragraph (1) of the Criminal Code, the elements of which are as follows:

¹⁰ Undang-undang no 9 tahun 1992 tentang keimigrasian

¹¹ Purnad Purbacaraka, Soerjono Soekanto. Perundang-undangan Dan Yurisprudens, Bandung: Alumn, 1979, h. 16-17

1. Everyone
2. Who recruits, transports, harbors, sends, transfers, or receives a person
3. By threat of violence, use of force, kidnapping, confinement, fraud, deception, abuse of power or a position of vulnerability, money entrapment, or the giving of payments or benefits despite obtaining the consent of a person having control over another person
4. Causing people to be exploited in the territory of the Republic of Indonesia

The Panel of Judges considered that before imposing a sentence on the defendant, the aggravating and mitigating factors should be considered:

Aggravating things;

- The defendant's actions caused harm to the community, especially the victims of the crime of trafficking in persons

mitigating things;

- The defendant regrets his actions
- The defendant was not complicated in providing information
- The defendant was polite and cooperative
- The defendant has never been convicted

Considering that, in addition to aggravating and mitigating factors, the above factors can also be used as a basis in imposing a criminal sentence for the defendant, Based on article 222 of the Criminal Procedure Code, the defendant is charged with court fees, the amount of which will be determined in this decision taking into account, article 2 paragraph (2) in conjunction with Article 10 of the Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Criminal Act of Trafficking in Persons in conjunction with Article 56 paragraph (1) of the Criminal Code, and Law No. 8 of 1981 concerning the Book of Laws Criminal Procedure Code (KUHAP) and other regulations related to this case.

Based on the process of investigation, prosecution and examination of the case before the Tual District Court, it was found that the 8 (eight) defendants, each 3 (three) WN and 5 (five) Thai WN, legally and convincingly based on the judge's decision declared guilty of committing the crime of trafficking in persons and each defendant is sentenced to 3 (three) years in prison and a fine of Rp. 160,000,000 (one hundred and sixty million rupiah). In addition, some of the defendants were charged with paying restitution to the victims of TIP.¹²

In conclusion, the authors agree about the decision used by the judge, because the defendants were proven to have committed crimes against people and the crimes of the defendants were contained in the elements in the article of the verdict.

CONCLUSION

Factors that influence human trafficking with various modes to deceive the victims, and the lack of knowledge and information about cases of trafficking in persons.

Legal policy efforts that can be taken to prevent the crime of trafficking in persons from a legal and human rights perspective have been running well. The imposition of sanctions on perpetrators of the crime of human trafficking is not only based on the Criminal Code, but must also refer to the law on special crimes outside of general crimes. The special crime laws such as Law Number 21 of 2007 and Law Number 23 of 2002, and the imposition of criminal sanctions on trafficking in persons according to the Human Rights Law are regulated in Article 9 of Law Number 26 of 2000 if they do not meet the elements then it is said to be an ordinary crime regulated in the Criminal Code. In the description of this research can also find out about the judge's considerations in giving punishment to the perpetrators in the decision of the PN TUAL Number 106/PD.SUS/2015/PN Tul

REFERENCES

Tim Jaringan indonesia ACT, Panduan Nasional Melindung Hak dan Martabat orang yang Diperdagangkan di indonesia, Jakarta, 2010: Yayasan Jurnal Perempuan, hlm 43-44

¹² Putusan Pidana TPPO Nomor 106/Pd.SUS/2015/PN TUAL

- Moh.Hatta, Tindak Pidana Perdagangan Orang Dalam Teori Dan Praktek, Liberty Yogyakarta, 2012, Halaman 5
- internasional Organzaton for iMgration, Pedoman Untuk Penyidikan Dan Penuntutan Tindak Pidana Trafking Dan Perlindungan Terhadap Korban Selama Proses Penegakan Hukum, Jakarta, 2005.
- Indonesia, Undang-Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang
<https://ranahresearch.com/metode-penelitian-dan-jens-metode-penelitian/>
- Syamsul Arfin, metode Penulisan Karya ilmiah dan Penelitian Hukum, Medan Area Unverstas press, 2012. Hal.66
- Satjpto Rahardjo, 2009, Penegakan Hukum Suatu Tinjauan Sosologis, Genta Publishing, Yogyakarta.
- Kitab Undang-Undang Hukum Acara Pidana, Undang-Undang Nomor 8 Tahun 1981
- Undang-Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang
- Soerjono Soekanto, Faktor-Faktor yang Mempengaruhi Penegakan Hukum, apt araja Grafndo persada, jkt, 2005, hal.7
- <https://regonal.kompas.com/read/2015/11/19/11035781/Sdang.Kasus.Perdagangan.Manusia.d.Benjna.Digelar?page=all>
- UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 17 TAHUN 2008 TENTANG PELAYARAN
- Undang-undang no 9 tahun 1992 tentang keimigrasian
- Purnad Purbacaraka, Soerjono Soekanto. Perundang-undangan Dan Yurisprudensi, Bandung: Alumni, 1979, h. 16-17
- Putusan Pidana TPPO Nomor 106/Pd.SUs/2015/PN TUAL