

## Indonesian Government's Efforts to Eradicate the Crime of Human Trafficking



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**ABSTRACT:** Trafficking in persons is an intrinsic form of an act that violates human dignity and dignity. Therefore this form of act, in addition to violating the law, also violates the principles of human rights. It can be concluded that human rights are the inherent essence of human beings which are natural and fundamental as God's gift that must be respected, maintained and protected by every individual, society or state. The method used in the study is a normative juridical approach. The normative juridical approach is an approach carried out based on secondary data in which there are legal materials including primary, secondary and tertiary legal materials related to one another with research studies. The results of this study know the construction of law enforcement as a series of processes to apply legal values, ideas, and ideals. The provision of criminal sanctions by the Indonesian state is implemented into the Criminal Code (KUHP) and must also refer to specific criminal law, Number 21 of 2007 concerning the Eradication of Trafficking in Persons. Meanwhile, efforts to combat trafficking in persons can be carried out by preventive measures, repressive countermeasures and preemptive countermeasures.

**KEYWORDS:** Trafficking in Persons, Law Enforcement, and Countermeasures

### INTRODUCTION

Human Trafficking has been longstanding and growing due to weakening economic conditions, low religious and moral insight into society, coupled with strong economic organization.<sup>1</sup> Such conditions often cause inequality in various social and economic fields of society. In the end, this inequality can easily encourage crime.<sup>2</sup> In addition to referring to the above factors, there is also the influence of the level of education possessed, with the low education of a person, the easier the person will be deceived, because this is what further nourishes human trafficking in urban and rural areas.<sup>3</sup> Historically, human trafficking can be regarded as slavery and also violates human rights.<sup>4</sup> This Human Trafficking can be called the modern form of trafficking. This is because not only depriving human rights but there can be persecution, physical torture and the like.<sup>5</sup> Human trafficking is also an intrinsic form of an act that violates human dignity and dignity. Therefore this form of act, in addition to violating the law, also violates the principles of human rights. It can be concluded that human rights are the inherent essence of human beings which are natural and fundamental as God's gift that must be respected, maintained and protected by every individual, society or state.<sup>6</sup>

The Indonesian Constitution recognizes human beings as citizens guaranteed by law. Article 27 paragraph (1) of the 1945 Constitution affirms that, every citizen has equal standing in law and government and is obliged to uphold the law and government without exception. This provision by law, gives every citizen the right to get guarantees of protection and legal guarantees.

<sup>1</sup> Novi Darmayanti, Kadek, et al. (2022). Human Trafficking as a Transnational Crime. *Ganesha Law Riview*. 4(2), 33-42. doi: <https://doi.org/10.23887/blr.v4i2.1425>

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Indonesia itself is one of the countries that acceded to and implemented the Palermo Protocol, and it is evident that Indonesia succeeded in promulgating in the State Gazette of the Republic of Indonesia in 2007 Number 58, which is an addition to the State Gazette of the Republic of Indonesia Number 4720, in the form of Law Number 21 of 2007 concerning the Eradication of Human Trafficking.

The most vulnerable groups targeted by traffickers are women and children.<sup>7</sup> There are three elements contained in the definition of human trafficking. First, the act, Second, the way to control the victim, Third, the purpose of trafficking.<sup>8</sup> Generally, the definition of the criminal act of persons can be seen in Article 1 paragraph (1) of Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons, "Human Trafficking is the act of recruiting, transporting, sheltering, sending, transferring, or receiving a person by threat of violence, use of force, kidnapping, captivity, forgery, fraud, abuse of power or vulnerable position, debt bondage or giving payment or benefits, so as to obtain the consent of the person in control of the other person, whether committed within the country or between countries, for the purpose of exploitation or resulting in the exploitation of the person."<sup>9</sup>

Article 3 (a) of the *Palermo Protocol*, the offence of Human Trafficking is "recruitment, transfer to a place, transfer, shelter or reception by threat, or coercion by force or by other means of violence, kidnapping, fraud, molestation, sale, or rental for profit or payment for the purpose of exploitation".<sup>10</sup> In this context it is important to note two things: First, the Palermo protocol applies with respect to domestic trade, and second, it focuses on the trafficking chain.<sup>11</sup> Thus an important objective of the Protocol is to protect and assist victims of Human Trafficking with full respect for human rights.<sup>12</sup>

Globalization that can no longer be avoided makes countries conduct international trade both in goods and services, but also including labor.<sup>13</sup> Most trafficking victims are often unaware that they are trafficking victims, because "trafficking" is packaged in such a way that victims are unaware of it.<sup>14</sup> By mid-2023, 1,305 people in Central Java will be victims of trafficking cases. This number became known after the Central Java Regional Police uncovered trafficking cases during the period from June 6 to June 12, 2023 and succeeded in uncovering 26 cases. As a result of the disclosure, as many as 33 suspects were arrested. Of these, 10 suspects came from the Public Company (PT) for labor distribution and the other 23 suspects were individuals. These suspects are known to recruit and gather prospective laborers, domestic helpers, and crew members to be sent abroad through unlicensed PTs. The mode carried out by the perpetrators includes recruiting, collecting and sending prospective workers abroad without going through official procedures that have been determined by the Indonesian government.

One of the real social and legal issues faced by the Indonesian nation today is the high rate of Human Trafficking. The number of trafficking victims on the ground is difficult to establish by numbers.<sup>15</sup> Given that from previous events, almost all acts of Human Trafficking are like icebergs that are small only on the surface, but large inside that will never be seen. The number of victims due to trafficking continues to grow, of course, inseparable from increasingly advanced technological factors, victim factors that are in a vulnerable state as described above and also due to the weakness of law enforcement on the problem of trafficking itself.

Human Trafficking is usually not only committed by individuals but also carried out by a group of people, even creating a (corporation). This form of trafficking is closely related to sex work and other exploitative purposes. Exploitation includes, sexual exploitation, forced labor or service, slavery, or practices that are almost slavery-like, servitude or organ harvesting. The issues raised in this case were criminal law enforcement for traffickers in Indonesia and countermeasures to combat trafficking.

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<sup>7</sup> Ardin, Andi Jefri & Beniharmoni Harefa. (2021). Fulfillment of the Rights of Children Victims of Trafficking. *Journal of Sound of Law*. 3(1), 174-196. doi: <https://doi.org/10.26740/jsh.v3n1.p174-196>

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<sup>9</sup> Law No. 21/2007 on the Eradication of Human Trafficking, Pub. L. No. 21 (2007). [https://pih.kemlu.go.id/files/UU No. 21/2007 on Human Trafficking](https://pih.kemlu.go.id/files/UU%20No.%2021%202007%20on%20Human%20Trafficking).

<sup>10</sup> Article 3 of the Protocol to Prevent, Suppress, and Punish Human Trafficking, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

<sup>11</sup> Jansson, D. B. (2014). *Modern Slavery: A Comparative Study of the Definition of Human Trafficking*. Martinus Nijhoff Publishers, p.92

<sup>12</sup> *Ibid*, p.71

<sup>13</sup> Juliantika, I Ketut Eka Yoga, et al. (2020). Criminal Law Policy in Combating Child Trafficking. *Journal of Legal Construction*. 1(2), 374-378. doi: <https://doi.org/10.22225/jkh.1.2.2546.374-378>

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## FORMULATION OF THE PROBLEM

1. How is criminal law enforcement enforced for traffickers in Indonesia?
2. How is countermeasures can be made to combat trafficking?
- 3.

## RESEARCH AND METHODS

The method used in the study is a normative juridical approach. The normative juridical approach is an approach carried out based on secondary data in which there are legal materials including primary, secondary and tertiary legal materials related to one another with research studies. Also known as the literature approach, namely by studying books, laws and regulations, and documents, so that it can develop the object of research to draw conclusions.

## DISCUSSION

### 1. Criminal Law Enforcement for Traffickers in Indonesia

The most commonly used definition of Human Trafficking is the Trafficking *Protocol definition*.<sup>16</sup> Human Trafficking is the recruitment, transportation, transfer, detention or reception of a person by using threats or other benefits to obtain the consent of a person under the control of another person for exploitation. Exploitation includes at least exploitation, prostitution or other sexual exploitation, e.g. forced labor, slavery or similar practices, prevention or organ harvesting.<sup>17</sup>

The consequences of Human Trafficking inevitably lead to both material and immaterial losses.<sup>18</sup> With efforts to comply with legal norms in a real way as a guideline for actors in legal relations of public and state life, it is called law enforcement. Generally, law enforcement can be interpreted as the act of applying legal means to impose sanctions/granting penalties to ensure compliance with the agreed and stipulated provisions to be carried out together. The essence and meaning of law enforcement lies in harmonizing the relationship between values described in the rules of legal norms which are further manifested in values to create, maintain and maintain social peace.

Law enforcement, including criminal law enforcement, is a series of processes of applying abstract legal values, ideas, and ideals into legal objectives. The purpose of law or the legal mind contains moral values such as justice and truth.<sup>19</sup> The above reason is in accordance with Satjipto Rahardjo's opinion that the law is not an institute that falls from the sky, but is rooted in a certain socio-cultural community.<sup>20</sup>

The provision of criminal sanctions by the Indonesian state is implemented into the Criminal Code (KUHP), the imposition of criminal sanctions for Human Trafficking in the Criminal Code is regulated in book II Article 297 and Article 298 Paragraphs (1) & (2). The provisions regarding the prohibition of Human Trafficking are basically regulated in the Criminal Code (KUHP).

Article 297, Whoever knowingly causes or facilitates the trafficking of minors shall be punished with imprisonment for not more than six years. Article 298 Paragraph 1: In the case of conviction under any of the offences in articles 281, 284, 290 and 297 deprivation of rights under Article 35 Nos. 1-5 may be stated. Paragraph 2: If the person guilty commits any of the offences under articles 261, 297 in the exercise of his livelihood, then the right to do that livelihood may be revoked.

The imposition of sanctions on trafficking offenders is not only based on the Criminal Code which has been regulated in Article 297 and Article 298 paragraphs (1) & (2), but also must refer to special criminal law Number 21 of 2007 concerning the Eradication of Human Trafficking which is regulated outside the formulation of the general criminal law. This law applies *lex specialis* to various existing laws and regulations.<sup>21</sup> Such criminal laws regulate the provisions of formal criminal law and material criminal law at the same time.

Law No. 21 of 2007 concerning the Eradication of Human Trafficking, Articles 2 to 27. Article 2 paragraph (1) states "Any person who recruits, transports, shelters, sends, transfers, or receives a person by threat of force, use of force, kidnapping, captivity, forgery, fraud, abuse of power or vulnerable position, debt bondage, or gives payment or benefit despite obtaining the consent of the person in control of another person, for the purpose of exploiting that person in the territory of the State The Republic of

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<sup>16</sup> Purwanti, Ani. (2017). Protection and Rehabilitation for Women Victims of Violence according to Indonesian Law (Study on Central Java Government's handling through KPK2BGA). *Diponegoro Law Review*. 2(2), 312-325. DOI: <https://doi.org/10.14710/dilrev.2.2.2017.68-81>

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<sup>19</sup> Maroni. (2018). *The Face of Human Rights in Criminal Justice*. Aura Publishing. Lampung, p.121

<sup>20</sup> Satjipto Rahardjo. (2008). *The State of Law that Makes Its People Happy*. Genta Press. Yogyakarta, p.31

<sup>21</sup> Basuki, Udiyo. (2017). Law Enforcement of Human Trafficking from a Human Rights Perspective. *Varia Justicia*. 13(2), 132-146. doi: <https://doi.org/10.31603/variajusticia.v13i2.1887>

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Indonesia, shall be punished with a short imprisonment of 3 years and a maximum of 15 years and shall be punished with a fine of at least Rp. 120,000,000 (one hundred twenty million rupiah) and a maximum of Rp. 600,000,000 (six hundred million rupiah).

Article 7 Paragraph (1), if the criminal act as referred to in Article 2 Paragraph (2), Article 3, Article 4, Article 5, and Article 6 results in the victim suffering serious injury, severe mental illness, other infectious diseases that endanger life, pregnancy, or impaired or loss of reproductive function, then the criminal threat is added to 1/3 (one-third) of the criminal threat in Article 2 Paragraph (2), Article 3, Article 4, Article 5, and Article 6. Meanwhile, in Paragraph (2), if the crime as referred to in Article 2 Paragraph (2), Article 3, Article 4, Article 5, and Article 6 results in the death of the victim, it shall be punished with a maximum imprisonment of 5 (five) years and a maximum of life and criminal imprisonment and a minimum of Rp.200,000,000.00 (two hundred million rupiah) and a maximum of Rp.5,000,000,000, 00 (five billion rupiah).

In addition to Article 2 of Law Number 21 of 2007 concerning the Eradication of Human Trafficking, there are other criminal provisions in this law, namely Article 3, Article 4, Article 5 and Article 6. Writing in Law Number 21 of 2007, there is an additional criminal threat of 1/3 (one-third) if the victim suffers serious injury, severe mental disorders, other infectious diseases that endanger life, pregnancy, or impaired or loss of reproductive function.

### 2. Countermeasures That Can Be Taken To Eradicate Human Trafficking

Prevention of Human Trafficking is based on high values, national and international commitment to early prevention, bullying of perpetrators, protection of victims and increased cooperation.<sup>22</sup> On the other hand, trafficking occurs when a person or group of people moves to another place illegally due to certain circumstances that make life difficult.<sup>23</sup>

In Indonesia, Human Trafficking always appears and exists in various forms according to the situation and conditions. In the case of trafficking, the most vulnerable victims are women and children. Women are traded for sexual purposes by being used as commercial sex workers and labor in other sectors. Meanwhile, children are traded for illegal labor for low wages. The acts of exploitation and violence experienced by the victim create deep trauma and suffer psychological or mental harm.

Prevention efforts in addressing Human Trafficking are based on noble values, national, and international commitments to conduct early prevention, prosecution of perpetrators, victim protection, and increased cooperation. For this reason, all tools needed to realize these commitments are continuously pursued, complemented and perfected, both in terms of regulations and budgeting. Based on various things that happen, that in terms of Human Trafficking with its various complexities, in terms of eradication, of course, not only the government or law enforcement (police) play a role but cooperation is needed from all parties, both relevant agencies, non-governmental organizations, and the community, to law enforcement officials who are directly dealing with various cases of trafficking, so it is expected to prevent or at least prevent or at least reduce the occurrence of trafficking crimes in the community.

Criminal law policy for the prevention and prevention of health by using criminal legal means (*penal*), is the oldest and there is an old way with human change. The use of criminal legal means (*penal*) for the prevention and mitigation of weaknesses, namely:<sup>24</sup>

First, the causes of such complex crimes are beyond the reach of criminal law, Second, criminal law is part (sub-system) of a means of social control that is impossible to overcome the problem of crime as a humanitarian and community problem (as a socio-psychological, socio-political, socio-economic, socio-cultural and so on) problem that is very complex, Third, the use of criminal law in tackling crime is only a "*kurieren am symptom*". Therefore, criminal law is only a "symptomatic treatment" of symptoms and not a "qualitative treatment of causes", Fourth, criminal law sanctions are "remedian" that contain contraconductive or paradoxical properties and contain negative elements and side effects, Fifth, the penal system is fragmentary/not whole and individual or personal, not structural or functional, Sixth, the limitation of the type of criminal sanctions and the system of formulating criminal sanctions that is rigid and imperative, Seventh, the functioning of criminal law requires more varied means of support and more demanding "high costs".

Crime or criminality is basically very closely related to the conditions that surround a society. The pattern or form of crime can change at any time following the dynamic conditions of the community such as, among others, regarding socio-economic, social, among others, socio-economic, socio-cultural, socio-political aspects and others. This dynamic condition greatly affects the pattern or form of crime both in quantity and quality.

The pattern of crime is so dynamic, the forms of crime reduction must be carried out dynamically, integrated and comprehensive. The law governs what is required and what is permissible under the law or otherwise. By law it can be qualified which actions are in accordance with the law and which actions are against the law. Professor Sudarto divides unlawful acts or two types, namely "unlawful acts that actually occur (*onrecht in actu*) and unlawful acts that may occur (*onrecht in potentie*).<sup>25</sup>

<sup>22</sup> Lopian and Geru. (2006). *Trafficking in Women and Children, Comprehensive Countermeasures, North Sulawesi Case Study*. Indonesian Torch Foundation. Jakarta, p.10

<sup>23</sup> I Made Pasek Diantha, (2020). *Transnational Criminal Law: A Preliminary Study*. Prenadamedia. Jakarta, p.31

<sup>24</sup> Barda Nawawi Arief. (2012). *Criminal Law Policy*. Prenadamedia. Jakarta, p.74

<sup>25</sup> Soedarto. (1986). *Capita Selecta of Criminal Law*. Alumni. Bandung, p.111

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These two things will be of concern in law enforcement problems by following this division, then the forms of crime reduction can be classified into three types:

### 1. Preventive

Efforts are made to minimize the space for movement and the opportunity to commit crimes. This effort includes guarding, patrolling, escorting and developing early detection and early *warning* systems in residential and work environments. These efforts can be made by the Police, other law enforcement officials, as well as by community initiative. The problem of law enforcement is not only about actions when a crime has occurred or there is a suspicion that a crime has occurred, but also includes activities to maintain the possibility of crime (*onrecht in potentie*) which in general can be referred to as prevention of crime.

According to Bambang Poernomo, preventive legal action is an action to smooth the enactment of the law at the time before the occurrence of unlawful acts in real time.<sup>26</sup> In other words, preventive measures include crime prevention measures by using legal and non-legal means. These forms of preventive crime control include police patrol activities, Siskamling (mobile security system), the formation of security guards (security units) and others.

### 2. Repressive

Repressive actions are actions taken by law enforcement officials after a crime or criminal act. Bambang Poernomo said that repressive action is a strict legal action against someone's actions after a violation of the law, from the action of investigation by the police in the form of filing, providing evidence, to be presented to the prosecutor as a prosecution action that completes the filing with juridical requirements in the letter of accusation, to the examination of the trial. which prioritizes the analysis of events that result in violating the law (major) and the rule of law (minor) concerned to obtain a conclusive legal decision) and ends with the implementation of the decision."<sup>27</sup>

In other words, repressive action is an action carried out by law enforcement officials in accordance with their respective authorities after the occurrence of a crime or criminal act. This repressive action begins with the act of investigation and investigation by the police, prosecution by the Prosecutor, examination and decision of the Court by the Judge to the execution of the decision by the Penitentiary apparatus.

### 3. Preemptive

Actions taken by local governments at the level of policies, plans, programs and activities in order to improve the quality development of human resources and there are 4 regional regulations in preemptive prevention, namely:

- a. Increasing the number and quality of education, both formal and non-formal for the community
- b. Opening accessibility for communities to improve by education, training, funding, income generation and social services.
- c. Facilities for providing employment for the community.

Repressive and preventive crime suppression is part of criminal politics in general carrying out criminal politics means holding elections from many alternatives what is the most effective way to be able to overcome crime. In a narrow sense, criminal politics is defined as the overall principles and methods that are the basis for reactions to criminal violations of the law, while the basis of reactions to violations of the law is criminal, while in a broader sense it includes the entire function of the law enforcement apparatus, including the workings of the courts and police. In its broadest sense, it encompasses the entirety of policies carried out through legislation and official bodies, aimed at enforcing the central norms of society.

## CONCLUSION

Criminal law enforcement is a series of processes of applying abstract legal values, ideas, and ideals into legal goals. The provision of criminal sanctions, the state is implemented in the Criminal Code (KUHP), the imposition of criminal sanctions for Human Trafficking in the Criminal Code is regulated in book II Article 297 and Article 298 Paragraphs (1) & (2). In special criminal law, Number 21 of 2007 concerning the Eradication of Human Trafficking which is regulated outside the formulation of the general criminal law. Law No. 21 of 2007 concerning the Eradication of Human Trafficking, Articles 2 to 27.

Prevention efforts in dealing with Human Trafficking are based on noble values, national and international commitments to carry out early prevention, action against perpetrators and victim protection, so the forms of crime prevention can also be classified into three types, namely preventive countermeasures, repressive countermeasures and preemptive countermeasures.

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<sup>26</sup> Bambang Purnomo. (1984). *Legal Orientation of Criminal Procedure*. Amarta. Yogyakarta, p.88

<sup>27</sup> *Ibid.* p.90

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### Legislation

- 1) Protocol to Prevent, Suppress And Punish Human Trafficking, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime
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