

# Criminal Responsibility for Human Traffickers

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## Abstract

Human trafficking is a criminal practice that is quite widespread in Indonesia and threatens the lives of society. This research aims to discuss the law in Indonesia regarding human trafficking and discuss criminal responsibility for perpetrators of human trafficking in Indonesia. The research method used is normative juridical research, with data collection techniques from literature studies which refer to literature, law books, scientific works, and scientific articles that are sourced from secondary data. The results found that legal regulations regarding human trafficking certainly refer to Law Number 21 of 2007 concerning the Eradication of the Criminal Act of Human Trafficking. Then, criminal responsibility links the basis for imposing criminal sanctions with the burden of responsibility that burdens people who commit criminal acts. Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking contains criminal penalties for those who commit acts of human trafficking. As well as the maximum and minimum for imposing criminal sanctions on those involved in human trafficking under Law Number 21 of 2007.

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## INTRODUCTION

The problem of crime is a human problem that has become a social reality, the reason for this is that the problem is not well understood because one does not look at the point of the problem in depth. Human development influences the tendency and ability to carry out criminal behavior. Furthermore, humans can influence the people around them and their environment to fulfill their physical, mental, and social needs, both positively and negatively. Indonesia is one of the countries that is a hub for trafficking (Weitzer, 2014). Victims of human trafficking range from children, young girls, adult women, and men who are trafficked for sexual exploitation and forced labor (Raymond, 2002). Slavery and the slave trade are one of the first forms of human rights violations recognized as international crimes (Alfitra, 2014). Law is understood as a coercive order, namely an order that applies sanctions in the form of coercive actions, then the provisions explaining the law in the law will appear as a statement that under certain conditions, which are also determined by that legal order, certain coercive actions are also determined by that order. , should do (Puanandini, 2020).

Human trafficking is a problem of widespread concern in Asia and even throughout the world (Feingold, 2005). Human trafficking occurs not only within Indonesia, namely inter-island human trafficking, but also human trafficking outside Indonesia where human trafficking occurs in other countries. So seeing this, human trafficking is truly a disturbing crime not only in Indonesia but even in other countries in the world (Faradila et al., 2023). With the development of information, communication, and transformation technology, the crime mode of human trafficking is becoming increasingly sophisticated.

*Trafficking or* human trafficking has long been a national and international problem for countries in the world, including Indonesia. Even though human trafficking occurs frequently, some elements of society do not seem to be widely understood. This is because the information obtained by the public regarding trafficking is still very low. The issue of trafficking in children and women began to attract the attention of many parties in Indonesia when ESCAP (UN Socioeconomic Committee for the Asia-Pacific Region) issued a statement placing Indonesia along with 22 other countries in the third or lowest ranking in responding to this issue (ESCAP, 2013, 2016). The problem of poverty seems to be the main reason why human trafficking continues to increase. Whether you realize it or not, this method has become a tempting source of income. Human trafficking is a heinous crime against human rights, which ignores a person's rights to live freely, not be tortured, personal freedom, thought and conscience, various rights not to be enslaved, and others (Alfitra, 2014).

The criminal act of trafficking in persons or commonly referred to as Human Trafficking. Human trafficking is a crime that is very difficult to eradicate and is even referred to by the international community as a form of contemporary slavery and a violation of human rights. This crime continues to grow nationally and internationally (Ulfa, nd). The more developed and advanced technology, information, communication, and transportation, the more the modes of crime develop, where operations are often carried out behind closed doors and outside the law.

Human trafficking can be said to be slavery and also violates human rights. This condition develops in economic communities that have a weak economic level, lack understanding of religion or morality, and depend on economically strong community groups (Z et al., 2022). The reasons given by the victims were generally that their actions were legal based on an agreement. Violations of human rights in the form of slavery generally take the form of deprivation of a person's freedom, carried out by strong economic groups against weak economic groups (Munthe, 2015). Therefore, on this basis, preventing human trafficking from the perspective of human rights violations must be carried out comprehensively and integrally, which can be done at the level of criminal law policy using legislation, execution, and judiciary.

Information about human trafficking or what can also be called human trafficking is news that is often discussed by various communities. This criminal act of human trafficking is usually not only carried out by individuals but also by groups of people (Gozdziak & Collett, 2005; Jahic & Finckenaue, 2005). The establishment of the Human Trafficking Crime Law has certainly received



hope from the public to obtain justice that is upheld by the existence of criminal sanctions imposed on the perpetrators by the provisions contained in the articles that regulate it.

The crime of human trafficking is an organized crime, meaning that this crime involves several people who have networks or connections with each other and have the aim of exploiting victims for one-sided gain (the perpetrator). According to Donald Cressey, organized crime is a crime that entrusts its implementation to someone who establishes a small division of labor, in which there is an assessor, collector, and coercer (Cressey, 1986).

The problem of human trafficking that occurs in the world today is not only related to downstream problems within the scope of policy implementation of human trafficking legislation, such as the still low response and commitment of the state, prevention and control measures rely more on penal means, handling and prosecution are often characterized by games. dirty and less intensive and effective cooperation within the country and across national borders bilaterally, regionally, and internationally. However, the problem stems from the many different definitions of human trafficking (Amrullah, 2015).

Human trafficking is a problem of widespread concern in Asia and even throughout the world. Human trafficking occurs not only within Indonesia, namely inter-island human trafficking, but also human trafficking outside Indonesia where human trafficking occurs in other countries (Hidayati, 2012; Nugroho, 2018; Nuraeny, 2015). So seeing this, human trafficking is truly a disturbing crime not only in Indonesia but even in other countries in the world. With the development of information, communication, and transformation technology, the crime mode of human trafficking is becoming increasingly sophisticated.

Human trafficking (trafficking) which is rampant in Indonesia is very worrying because from year to year, this crime is increasing and it is very difficult to estimate with certainty the number of human trafficking cases in Indonesia. The increase in human trafficking crimes in recent years has occurred due to the economic crisis that hit Indonesia, where the increasing unemployment rate in urban areas and rural areas of Indonesia, has made some people do anything to meet their living needs. Since the 1998 crisis, the economic and political conditions that have occurred have been very unfavorable, so people no longer have confidence in the government's ability to provide employment opportunities, so many people choose to work abroad with all the risks rather than working in their own country.

Based on Law Number 21 of 2007 concerning the Eradication of the Criminal Act of Trafficking in Persons which is currently in force is not much different from the formulation of the UN Protocol and is more detailed or covers the scope of criminal acts of trafficking in persons than the formulation of the Criminal Code. To firmly protect victims of human trafficking in Indonesia, Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking was passed. Therefore, the Criminal Code, which is considered by some groups to not protect because the legal threat is still too light, is no longer used to threaten punishment for perpetrators of human trafficking; In fact, the UUTPPO now uses very high penalties for perpetrators of human trafficking. Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking determines a group of people who commit the crime of human trafficking. A corporation is an organized group referring to more than one or two actors, while individual actors and officials use the term "one actor". Human traffickers do their work in a very orderly and neat manner. The existence of regulations regarding criminal responsibility for perpetrators is consistent with the characteristics of perpetrators of human trafficking crimes. By Article 2 paragraph 1 of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, six forms of activity that constitute the crime of human trafficking are formulated, namely recruitment, transportation, housing, supply, transfer, or placement.

This research will discuss criminal responsibility for perpetrators of human trafficking, where the aim is to understand the legal regulations in Indonesia regarding trafficking people (human trafficking) and discuss criminal responsibility for perpetrators of human trafficking (human trafficking) in Indonesia.



## RESEARCH METHODS

The research used is normative research, which type of research focuses on written studies that use secondary data such as statutory regulations, court decisions, legal theory, legal principles, and legal principles and can be the results of scientific work by legal scholars (doctrine). , so this research is closely related to library research (Irwansyah, 2020). The approach in this research is statutory. The statutory approach is a type of approach that examines all laws and regulations that are directly related to the legal problem to be studied (Marzuki, 2014).

The conceptual approach is a type of approach that departs from views and doctrines that give rise to legal understandings, legal concepts, and legal principles that are relevant to the legal issue at hand. This approach is very important because understanding the views or doctrines that develop in legal science can be a basis for building legal arguments when resolving the legal issues faced (Irwansyah, 2020).

The materials studied in normative legal research are library materials or secondary data. Secondary data uses 3 (three) legal materials as sources of legal materials in normative research which is closely related to library research, including:

1. The primary legal materials used are legal materials that have binding force, including:
  - 1) Criminal Code (KUHP)
  - 2) Law Number 39 of 1999 concerning Human Rights
  - 3) Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking.
  - 4) Presidential Regulation (PERPRES) Number 22 of 2021 concerning Amendments to Presidential Regulation Number 69 of 2008 concerning the Task Force for Preventing and Handling Crimes of Human Trafficking
2. Secondary legal materials used include materials including textbooks, research results, legal journal articles, the internet, and comments on court decisions.

The data collection technique is searching to find legal materials that are relevant to the issue at hand (Marzuki, 2014). Collecting legal materials using a conceptual approach by searching publications about law, such as books, journal articles, legal dictionaries and so on which contain many legal concepts.

Data analysis to answer the legal issues formulated in the research objectives, after collecting relevant legal materials has been carried out, the next stage is processing them by taking an inventory of legal materials, then systematically synchronizing them according to the hierarchy of statutory regulations and then analyzing them using qualitative description presentation techniques to be able to conclude. in answering the problem that is the aim of the research.

## RESULTS AND DISCUSSION

### Legal Rules in Indonesia Against Human Trafficking

Human trafficking is an act that is contrary to human dignity which is protected by law based on Pancasila and the 1945 Constitution. Article 20 of Law Number 39 of 1999 concerning Human Rights, states that: "No one may enslaved or enslaved" (Sahetapy et al., 2022). The meaning of the provisions of the Article above is that the prohibition of slavery or servitude, slave trading, trafficking in women, and all acts of any kind with a similar purpose, are prohibited. If you look at the Universal Declaration on Bioethics and Human Rights (2005), there are two main principles in the statement relating to human dignity and human rights, namely:

- 1) Human dignity, human rights, and fundamental freedoms must be fully respected.
- 2) The interests and welfare of individuals should be given priority over the sole interests of science or society.

Based on the Criminal Code (KUHP), Article 297 states, "Trafficking in women and boys under the legal age is punishable by a maximum of six years." This article does not clearly state the meaning of trade alone (Asnawi et al., 2022). The following article also does not prohibit trafficking in young women, girls, and boys. Because there is no explanation by the State regarding the meaning of "trafficking" in Article 297 of the Criminal Code, Indonesia does not have an official definition of what is meant by human trafficking.



The criminal act of human trafficking in Indonesia is regulated in Law Number 21 of 2007 concerning the Eradication of the Criminal Act of Human Trafficking. A trafficked person (trafficking victim) is someone recruited, brought, bought, sold, transferred, received, or hidden. This is done in various ways, including threats, use of verbal and physical power, kidnapping, fraud, deception, exploiting a position of vulnerability (for example when someone has no other choice), isolation, drug addiction, and entrapment (Sahetapy et al., 2022).

The subjects of the crime of trafficking in persons who were convicted of the crime of trafficking in persons were as follows:

1. Each person;
2. Corporation;
3. Organized group; as well as
4. State administrators who abuse their position

Everyone involved in human trafficking, whether individuals or businesses, is guilty of the crime. Considering that people in this sense include humans and companies, the term "person" is quite broad. Person in this sense, someone involved in human trafficking is considered an individual. A corporation is defined as "a group of people and/or goods that are regulated as a legal organization or not as a legal entity".

An organized group is a structured group consisting of 3 or more people who work to commit one or more crimes regulated in this article to obtain material or financial benefits, either directly or indirectly. Specifically, structured clustering shares four characteristics:

1. Have at least three members;
2. Has been around for a while;
3. To act with the intent to commit one or more crimes; And
4. Motivated by the desire to make money or gain material gain.

### **Criminal Responsibility for Human Trafficking Perpetrators in Indonesia**

Regarding criminal responsibility, it functions as a determinant of the conditions that must exist for a person so that it is legal to be sentenced. Criminal liability concerns the issue of perpetrators of criminal acts, the rules regarding criminal liability are regulations regarding how to treat those who violate obligations. So an act that is prohibited by society is held accountable to the person who did it, meaning that the objective punishment for that punishment is then passed on to the defendant (Faradila et al., 2023). Criminal liability without fault on the part of the offending party cannot be held accountable. So a person can't be held accountable and punished if he has not committed a criminal act. But even if he commits a criminal act, he cannot always be punished.

Human Trafficking (trafficking) itself in Article 3 of the UN Protocol is defined as the recruitment, sending, transfer, harboring, or receiving of a person, with the threat or use of violence or other forms of coercion, kidnapping, fraud, lies or abuse of power or a vulnerable position or giving or receiving payments or obtaining benefits to obtain the consent of someone who has power over another person, for exploitation. Exploitation includes at least the exploitation of the prostitution of another person or other forms of sexual exploitation, forced labor or services, slavery, or practices similar to slavery, servitude, or removal of bodily organs (Ulfa, nd).

Criminal liability for perpetrators of human trafficking, as stated in Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, provides quite severe criminal sanctions for perpetrators of criminal acts of human trafficking as a form of protection for victims of human trafficking. Criminal provisions are contained in articles 2 to 23 of Law Number 21 of 2007 concerning the eradication of criminal acts of human trafficking (Daud & Sopoyono, 2019). Article 2 threatens to be criminalized for the actions of a human trafficker whether they are against the law or obtain the consent of a person who has control over another person to exploit them. Article 2 paragraph (1) of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking reads:



"Every 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 approval from a person who has control over another person, to exploit 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 and twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).

Acts of human trafficking, considering that the victims are women and children, are regulated in addition to Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, but are also regulated in Law Number 23 of 2002 concerning Child Protection (Sibuea, 2018).

Apart from Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, the same sanctions also apply to every action carried out by the perpetrator which results in people being exploited. Apart from the special provisions of the Trafficking Law above, the sanctions for regulating human trafficking can also be seen in Article 297 of the Criminal Code which reads: "

Trafficking in women and men who are minors is punishable by imprisonment for up to six years." Then, Article 324 of the Criminal Code also states that: "Anyone who, at his own or someone else's expense, carries out a trade in slaves or commits acts of trading in slaves or deliberately interferes in this matter, either directly or indirectly, shall be punished by imprisonment for a maximum of twelve years".

Factors that cause human trafficking, such as those related to the falsification of documents or information related to a person's data or identity, are also prohibited by national law (Sahetapy et al., 2022). In this regard, it is stated in Article 19 of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, which reads:

"Any person who provides or enters false information on state documents or other documents to falsify state documents or other documents, to facilitate the crime of trafficking in persons, shall be punished by imprisonment for a minimum of 1 (one) year and a maximum of 7 (seven) years and a fine of at least Rp. 40,000,000.00 (forty million rupiah) and a maximum of Rp. 280,000,000.00 (two hundred and eighty million rupiah)."

Criminal responsibility is related to punishment, which serves to prevent crime by enforcing legal requirements to protect society, resolve disputes caused by criminal activity, restore balance, foster a sense of peace in society, and socialize prisoners through assistance so that they can become productive members. society, and cleanse the guilty of their misdeeds. Based on this, criminal law recognizes three circumstances that constitute criminal liability or error, namely:

1. The capacity to accept responsibility or answer to the maker.
2. There is an unlawful act, namely an intentional, careless, or negligent act by the perpetrator as proven by his psychological attitude.
3. no defense or explanation releases the manufacturer from criminal liability.

Punishment is linked to criminal responsibility and serves to prevent crime by enforcing legal requirements to protect society, resolving conflicts caused by criminal activity, fostering a sense of balance, promoting a sense of peace in society, and helping to socialize prisoners so that they can contribute. members of society, and free the guilty from their mistakes. Thus, criminal law recognizes three circumstances that give rise to criminal liability or error, namely:

## CONCLUSION

The conclusion that can be drawn is that the criminal act of human trafficking is systematically organized, where the people involved have personal and/or group interests. The criminal act of human trafficking is also categorized as a crime that violates a person's human rights, where the perpetrators sell people to become workers who provide benefits for them. In Law Number 21 of 2007 some sanctions must be received for perpetrators of criminal acts of human trafficking, namely in the form of imprisonment for a minimum of 3 (three) years a



maximum of 15 (fifteen) years, and a maximum fine of Rp. 120,000,000,- (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000,- (six hundred million rupiah). This sanction can double or increase the minimum detention time and fine according to the category of violation committed by the perpetrator, such as a government official or a victim who suffers serious injuries. Law enforcement to eradicate human trafficking (trafficking) already has statutory regulations that regulate it as an instrument, and the legal instrument itself has sanctions for those who violate it, about law enforcement, some regulations regulate it, such as the Criminal Code (KUHP). Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking.

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Criminal Code (KUHP)

Law Number 39 of 1999 concerning Human Rights

Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking.

